



JUSTICE 1 COMMITTEE

AGENDA

4th Meeting, 2004 (Session 2)

Wednesday 28 January 2004

The Committee will meet at 10.30 am in Committee Room 3.

1. **Gender Recognition Bill – UK legislation:** The Committee will take evidence from—
Hugh Henry, Deputy Minister for Justice.
2. **Criminal Procedure (Amendment) (Scotland) Bill (in private):** The Committee will consider a draft Stage 1 report.

Alison Walker
Clerk to the Committee
Tel: 0131 348 5195

The following papers are attached for this meeting—

Agenda item 1

Note by the clerk	J1/S2/04/4/1
Scottish Executive memorandum for the Gender Recognition Bill	J1/S2/04/4/2
Submission from the Equality Network	J1/S2/04/4/3
Gender Recognition Bill and explanatory notes	J1/S2/04/4/4
SPICe briefing 03/93, <i>Draft Gender Recognition Bill</i>	J1/S2/04/4/5
Note by the clerk (PRIVATE PAPER) (TO FOLLOW)	J1/S2/04/4/6

Agenda item 2

Draft Stage 1 report (PRIVATE PAPER)	J1/S2/04/3/1
--------------------------------------	--------------

Papers for information circulated for the 2nd meeting, 2004 (session 2)—

Criminal Procedure (Amendment) (Scotland) Bill—

Seminar with legal practitioners – note by the clerk	J1/S2/04/4/7
Scottish Executive Criminal Procedure (Amendment) (Scotland) Bill team, expected typical custody case timeline	J1/S2/04/4/8
Correspondence from the Crown Office and Procurator Fiscal Service	J1/S2/04/4/9
Warwickshire Victims and Witnesses Information Project (VIP) paper	J1/S2/04/4/10
Warwickshire VIP proposal	J1/S2/04/4/11
Warwickshire VIP evaluation plan	J1/S2/04/4/12
Warwickshire VIP newsletter	J1/S2/04/4/13

Forthcoming business—

Wednesday 4 February 2004 – Justice 1 Committee meeting
Wednesday 11 February 2004 – Justice 1 Committee meeting
Wednesday 25 February – Justice 1 Committee meeting

JUSTICE 1 COMMITTEE

Late papers for the 4th Meeting, 2004 (Session 2)

Wednesday 28 January 2004

I attach the following papers:

Agenda Item 1

Note by the Clerk (Private Paper)

J1/S2/04/04/6

Agenda Item 2

Correspondence from John Ewing, Chief Executive, Scottish
Courts Service

J1/S2/04/04/14

26 January 2004

Tony Reilly

Justice 1 Committee
Gender Recognition Bill

Note by the Clerk

Background

Sewel motions

1. During the passage of the Scotland Bill, it was established that it would be the convention of the UK Parliament that it would not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament (“the Sewel convention”). Sewel motions are a result of this convention and are the means by which the Scottish Executive obtains the Parliament’s consent to UK legislation on devolved matters.

UK legislation

2. The Gender Recognition Bill (“the Bill”) was introduced to the House of Lords on 27th November 2003. A Sewel motion has subsequently been lodged, with a view to extending the Bill to Scotland—

S2M-813 Cathy Jamieson: Gender Recognition Bill - UK Legislation—That the Parliament endorses the principle of giving transsexual people legal recognition of their acquired gender and agrees that the provisions in the Gender Recognition Bill that relate to devolved matters should be considered by the UK Parliament thereby ensuring a consistent UK approach and early compliance with the rulings of the European Court of Human Rights with respect to the Convention rights of transsexual people under Article 8 (right to respect for private life) and Article 12 (right to marry).

The Equal Opportunities Committee

3. The Equal Opportunities Committee took evidence in relation to the Bill at its meeting on 9 December 2003; the official report of that meeting is reproduced in Annex A.

Gender recognition of transsexuals

European convention on human rights

4. In July 2002, the European Court of Human Rights¹ found the UK, in not legally recognising transsexual people in their acquired gender, to be in contravention of articles 8 and 12² of the European convention on human rights. The UK consequently needs to give legal recognition to

¹ *Goodwin v United Kingdom and I v United Kingdom*

² The rights to respect for private and family life and to marry, respectively.

transsexuals in their acquired gender in order to meet its human rights obligations.

Gender Recognition Bill

5. The Bill proposes the creation of gender recognition panels, which would be able to issue gender recognition certificates. This would enable people to be recognised in their acquired gender for legal purposes, including being able to get a birth certificate showing the acquired gender.

Justice issues affected by the bill

Marriage

6. Paragraph 7 of Schedule 4 to the bill adjusts the restrictions on marriage between related persons under the Marriage (Scotland) Act 1977; where a party to the marriage is of an acquired gender, the restrictions will apply to relationships arising from any previous marriage in the birth gender, i.e. a male-to-female transsexual person may not marry her ex-wife's father.
7. Under the Bill, a married person applying for gender recognition must dissolve the marriage before being granted full recognition. In evidence to the Equal Opportunities Committee³, the following views were expressed in relation to this requirement:
 - People should not be forced to end a marriage that they wish to retain;
 - If an existing marriage is to be replaced by a civil partnership, the transition should be seamless with no loss of rights arising from the length of the partnership compared with the length of the marriage.
8. Andrea Brown, of TransAlba, commented that "...it would be perfectly possible to insert one line in the bill, to say that, where the marriage in question is legal and both parties wish it to continue, that should be allowed. I do not think that that would set a precedent, because it would not allow same-sex couples to enter into a marriage; it would simply allow an existing marriage to continue."⁴

Age

9. Under clause 1, applicants must be aged at least 18. A majority of those providing evidence to the Equal Opportunities Committee stated that the age criterion in Scotland should be set at 16, the age at which people can marry with parental consent. It was further stated that it was possible for a transsexual person to have lived in the acquired gender for the two years by the age of 16.

³ *Official Report, Equal Opportunities Committee*; 9 December 2003; cf. Annex A.

⁴ *Ibid.* c 258.

Parenthood

10. Under clause 12 of the Bill, the status of a person as father or mother of a child, including parental rights and responsibilities, is not affected by recognition of an acquired gender.

Succession

11. Recognition of a person's acquired gender under the Bill will not affect the distribution of property under a will or other instrument made before the day on which the legislation comes into force.
12. For wills or other instruments made after the legislation comes into force, the general principle that, where a full gender recognition certificate is issued to a person, the person's gender becomes, for all purposes, the acquired gender will apply⁵, e.g. if a will refers to the "eldest daughter" and, following recognition in the acquired gender, a person that was previously a son becomes the "eldest daughter", that person will inherit as the eldest daughter – subject to Clause 18(2), under which a person may apply to the High Court or Court of Session for an order on the ground of being adversely affected by the different disposition or devolution of the property.

Gender-specific sexual offences

13. In Scotland, many sexual offences are gender specific, e.g. committed by a man upon a woman. Under clause 19 of the Bill, where criminal liability would exist in relation to such an offence but for the fact that a person has become of the acquired gender, that criminal liability would exist regardless of the gender change.
14. In its written submission to the Committee (J1/S2/04/4/3), the Equality Network expresses concern in relation to this clause:

"There are two problems with the application of this law to transsexual people. Firstly, it is uncertain whether the courts would accept that a rape involving a surgically constructed vagina or penis can constitute the crime of rape. Secondly, the victim or the accused may be legally of the 'wrong' gender for the crime of rape to apply. These two problems mean that the following cases might not be recognised as rape by the law:

1. The first problem could mean that if a post-operative transsexual woman who had obtained gender recognition was raped, the courts might throw out a charge of rape on the grounds that rape law does not apply in the case of surgically constructed genitalia. Similarly, a post-operative transsexual man who had obtained gender recognition might be acquitted of rape on the same grounds.

2. Both problems apply to a post-operative transsexual woman who is raped before she has obtained gender recognition: the court might decide that her surgically constructed genitalia

⁵ Clause 9(1) of the Gender Recognition Bill.

does not count for the purposes of rape, but in any case she is still, at that time, legally a man, so the law of rape does not apply for that reason also.

3. The second problem above would mean that a transsexual man who could physically be raped (i.e. who had not had complete genital reassignment surgery), would be recognised by the law as a victim of rape the day before his gender recognition, when he was still legally a woman, but not the day afterwards, when he is legally a man.

All of this is highly unsatisfactory, especially given that there is evidence that transsexual people are at increased risk of sexual assault.”

Privacy

15. Clause 21 of the Bill sets out provisions prohibiting disclosure of information in respect of a gender recognition application and the gender history of a successful applicant. In its submission to the Committee (J1/S2/04/4/3), the Equality Network welcomes the general arrangements in clause 21, but goes on to raise concerns relating to the health and justice systems in Scotland. The Equality Network believes that the Scottish Executive should ensure that there is suitable training, guidance and standards within the NHS to ensure fair treatment and privacy and that court rules are in place to prevent inappropriate public disclosure.

Procedure

16. The Deputy Minister for Justice will attend the meeting to outline the Scottish Executive's intentions in relation to the legislation and the Committee will have the opportunity to question the Minister and officials on these points.
17. The Standing Orders do not set out a formal procedure for the Parliament's consideration of Sewel motions. In some cases, Sewel motions have been considered directly by the whole Parliament; in other cases, they have been considered by the relevant subject committee before they are debated by the whole Parliament, as applies in this case.
18. Following its consideration of the motion, the Committee may report to the Parliament. Such a report need only be a short statement of the Committee's conclusions.
19. Whatever mechanism is employed, conferring the consent of the Parliament requires a resolution of the Parliament. The motion will therefore be debated by the Parliament in plenary on 5 February 2004. **The Committee is invited to consider the motion and the implications for Scotland and report its conclusions to the Parliament in advance of this debate.**

EQUAL OPPORTUNITIES COMMITTEE

OFFICIAL REPORT

10th Meeting, 2003 (Session 2)

Tuesday 9 December 2003

**Gender Recognition Bill
(UK Legislation)**

The Convener: I welcome our next group of witnesses, from whom we will take evidence on gender recognition. It is understood that a Sewel motion on the Gender Recognition Bill will come before the Parliament in the new year. Although we are unsure of the precise timing of that, the committee felt that it was important to take evidence on the bill. The clerks will produce a summary of the evidence from today's session and from the written submissions. We will then submit that to the Executive when we know exactly what is happening. I apologise for the lack of clarity on where today's evidence is going.

I welcome our witnesses: Andrea Brown, from Transalba; Maxwell Reay, from Transmen Scotland; Zara Strange, from Press for Change; Nick Laird, from the Equality Network's transgender issues forum and the Sandyford Initiative; and George Burrows, from LGBT Youth Scotland. I extend a very warm welcome to you. We will move right into the question session.

Will the panel briefly outline for the committee and for public record the difficulties that are currently faced by transgender people in the absence of the proposed Gender Recognition Bill?

Andrea Brown (Transalba): It is a very complex situation or, rather, the situation has been made very complex. The situation is actually very simple, given that gender dysphoria is a medical condition like any other medical condition. Unfortunately, because it relates to gender, that makes everything complicated.

Currently, we do not have the right to have our true gender recognised. We object to the use of phrases such as "sex change". We have not undergone a sex change. We have aligned our gender to our true gender, which is the one in which we should have been born but unfortunately were not. At the moment, we are not allowed to marry. There are issues regarding pension rights, next-of-kin status and even simple things such as benefits, because even though we may have gone through official name changes and so on, we are not recognised as our true selves.

We welcome the Gender Recognition Bill as a step towards ironing out a lot of those irregularities and problem areas. However, in the answers from me and

my colleagues over the course of the next hour, the committee will find that there are still certain issues that, as it stands, the Gender Recognition Bill does not cover.

Col 251

Maxwell Reay (Transmen Scotland): Without the bill, transsexual men, whom I work with and support, fear that somebody may find out that they were born a different gender. Their lives can become difficult because of prejudice and discrimination. The bill will help people to live ordinary lives without the fear of being outed and the ramifications that that might have for their employment and housing, for their families, and for their personal safety and security.

The Convener: Does the bill go far enough towards providing the required improvements?

Andrea Brown: Certain elements of the bill create institutional outing for transgender people—particularly people in my circumstances. I am legally married. To claim my human rights and change my birth certificate, I would have to divorce my wife and—if the correct legislation is passed, as we hope it will be—ultimately convert my marriage to a civil partnership. However, the civil partnership offered is only same-sex civil partnership, which in itself is a form of outing. To achieve what the Government says is my basic human right—to be recognised as who I am—I would be institutionally outed twice. Divorce proceedings are a matter of public record. There are tabloid journalists who make a steady living out of trawling court records looking for what they regard as newsworthy stories.

Nick Laird (Equality Network): The bill goes a long way towards addressing most of the issues, although the Sex Discrimination Act 1975 should be extended to cover discrimination against trans people in the provision of goods and services. As things stand, trans people are protected in employment, so although an organisation would not be able to discriminate against somebody in employment, it could refuse to serve that person, for example. That is a mismatch.

Section 2A of the Sex Discrimination Act 1975 talks about discrimination against a person who

"intends to undergo, is undergoing or has undergone gender reassignment."

The Gender Recognition Bill, on the other hand, talks about a person who has lived for two years in the role. That mismatch should be fixed so as not to cause any problems.

Elaine Smith: I have a supplementary question that I would like to put to Andrea Brown. Paragraph 28 of the explanatory notes to the bill says, under the heading "Clause 9: General":

"*Subsection (2)* provides amplification of *subsection (1)*, making clear that the recognition is not retrospective, so the certificate does not rewrite the gender history of the transsexual person".

It therefore seems that if you obtained a new birth certificate, that would not expunge from the

Col 252

record the original birth certificate. From what date would the new birth certificate apply? Could people go back to look at the original birth certificate, and could that cause problems? One example springs to mind, although I am sure that there are many more. If an acquired-gender man wanted to become a Catholic priest, what would be the implications? I am not very clear about such issues. Can you throw any light on them for me?

Andrea Brown: There are two distinct systems—the way in which gender recognition will be handled in England and the better way in which it will be handled in Scotland. That affects those of us unfortunate enough to have been not only born a man but born in England—I will be subject to the lesser practice.

In England there would be some form of marking on the original birth register that my gender had changed. The new birth certificate that would be issued to me would look like one issued today—there would be no matching of birth certificates. There are two clues there for anybody who wants to look—if they look at the original record, they will see an annotation. Those responsible are saying, "We will be very careful about how we annotate the register", but if one sees an annotation often enough, one thinks, "Oh, that's what that means."

11:15

Elaine Smith: If you were asked to produce your birth certificate, would you need to produce one that was dated today? If so, people might ask you questions about your age.

Andrea Brown: Yes, it would arouse suspicions. The system would be better in Scotland, in as much as there would be a gender recognition register. All inquiries about people's antecedents and birth certificates would automatically entail an examination of that information, and those are the only details that they would be given—not that there would be any change in those details. The birth certificate that is issued to someone today would be germane to the type of certificate that would have been issued when they were born. Birth certificates might change every 10 years. I was born in 1953 so if I could get a new birth certificate through the Scottish system, I would get a 1953 birth certificate.

Mrs Milne: All the written evidence that we have received so far indicates that there is a preference for the age limit in Scotland to be set at 16, to tie in with

the legal age for marriage. As you know, the bill currently gives the age of 18 for gender re-registration. Will the panellists comment further on that? Are you content with the other criteria for registration?

Col 253

George Burrows (LBGT Youth Scotland): The way I see it, at the age of 16 you can finish compulsory education, get a job, live on your own and have responsibilities, but you cannot get gender recognition. I see that as a discrepancy.

Zara Strange (Press for Change): I have no preference on the matter, but the issue clearly affects younger people. I return to what was said before about birth certificates. It might appear that, if I were to get a new certificate today, it would register me as being 49 years younger than I am. Although I think that that would be marvellous—

The Convener: I thought that, too.

Zara Strange: I understand that that will not be the case. My birth is registered in England as well, and my new certificate would register my true date of birth.

Andrea Brown: The certificate would give the true date of birth, but it would be issued in the style of a certificate for a new birth in 2003.

Nick Laird: The requirements for the certificate are generally reasonable. However, because the legal age of capacity in Scotland is 16, the age limit in the bill should tie in with all other requirements. If someone can legally marry at 16, the age for gender re-registration should match up.

People who transitioned six years ago have a six-month period in which they can be fast-tracked, according to the provisions of the bill. Six months might not be enough time because most trans people—especially people who transitioned a long time ago—would not be in contact with any of the support groups or services; they would just be getting on with their lives. There is no reason why the period should last only six months. If it were extended to two years, that would give everybody enough time to find out about their options

The bill refers to a six-month limit on interim gender recognition. There is no reason why the interim certificate should lapse—that provision was not included in the draft bill and was not consulted on—and it could continue. The cost could impact on people if they had to reapply. There is no real reason for the inclusion of that provision.

Elaine Smith: Are you all content with the provisions to establish gender recognition panels, as outlined in schedule 1, or do you have any comments to make on the make-up of the panels?

Zara Strange: My understanding is that because the bill clearly defines when panels should accept or refuse applications, little room is left for discretion. Clearly, I would like a gender recognition panel, with Scottish representatives, to be set up in Scotland. If there is to be an appeals process, a lot of people would find it expensive to

Col 254

travel to the panel if it were set up in the south of England. It would also be nice to have people on the panel who have experience of what our lives are like, but I would not argue too strongly for that, because many issues are more important.

Elaine Smith: The bill states that members of the panel can be legal members or medical members. Is that enough?

Zara Strange: There are some well-qualified professional trans people in both those professions.

Elaine Smith: So you would be happy with that.

Andrea Brown: I do not see that there is any other option. Panel members would be considering matters of medical fact and legal fact. Yes, it would be nice to have a lay person on such a panel—purely on the basis of what is reasonable to the man on the Clapham omnibus—but that increases the chance of somebody being unsympathetic. It is a difficult situation. I am happy with the projected set-up. We do not need to be too concerned about it. We will judge the situation on the results. If it became apparent that something was wrong with the system, we would look for something to happen.

We were asked whether the age of consent for making an application should be 16 or 18. Like Zara Strange, I am well past the age when that could affect me, but the issue is one of the sovereign differences between Scotland and England, which I would like to see maintained.

Elaine Smith: Concerns were raised by Press for Change about the potential cost to applicants of providing reports as evidence to the gender recognition panel. The evidence that we received from young transsexuals suggested that the cost of applying should be no more than the current cost of applying for a passport, and that the fee should be waived completely for applicants who receive benefits such as income support. The concern was also raised in evidence that fees might rise into the hundreds of pounds. What are the panel's views on those issues?

Zara Strange: It has been indicated that the process has to be self-financing, but because of the number of people that we are talking about, the cost would be hundreds of pounds or, in one case in particular, thousands of pounds. I am in employment, but it will be difficult for me to find that kind of money, as it will be for a lot of people.

Elaine Smith: Could you expand on the case in which the cost would be thousands of pounds?

Zara Strange: Volume 2 of the 19th report by the Joint Committee on Human Rights, on the Draft Gender Recognition Bill, contains the evidence that was taken by the committee and includes a graph showing the three options.

Col 255

Andrea Brown: While Zara Strange is finding that information, I will add a comment on fees. The Gender Identity Research and Education Society commissioned a survey a couple of years ago into the employment, or otherwise, of transsexual people. It revealed that a growing number of transsexual people are on long-term health benefits, often with the collusion of general practitioners. Given the lack of protection that exists, people find that maintaining a life under the stress of work is detrimental to health. It is probable that more than half the transsexuals in the United Kingdom are on benefits rather than in work. As Zara Strange said, it is difficult for people who are working to find the money. For people who are on benefits, it would be impossible.

Zara Strange: I refer to page 78 of volume 2 of the 19th report by the Joint Committee on Human Rights. The whole process, on a full-recovery basis, would cost £833, according to the Government's estimates. On top of that, there are fees for a statutory declaration. The process is different in England, but if Andrea Brown wanted to have a solicitor make a declaration, for example, that would cost up to £135. People also need a medical certificate, which can cost between £25 and £50. If someone transitioned a long time ago and their doctor's records had been lost, they might have to go through the full process again, in which case they would need three consultations. If they went private because they could not wait for the NHS, the consultations would cost £600. If they wanted a copy of their birth certificate, that would cost £11; a new birth certificate would also cost £11. If we add all that together, it comes to £1,640, so although applying for the registration certificate costs only £833, a lot of other expenses are involved.

Elaine Smith: In terms of equal opportunities, will those costs exclude poor people? It is only richer people who will be able to access the system.

Maxwell Reay: I stayed in employment throughout my initial transition, but so that I could have my chest surgery when I could be off work, I had to fund my transition myself. If I had gone through the NHS, I would have had to go for surgery when the NHS wanted me to go. That might not have suited my employment at the time, so I ended up funding my transition so that I could stay in employment. Even though I was earning a wage, an extra cost on top of the transition would have made it even more difficult to access.

Margaret Smith: Several of the bill's provisions around marriage are complex—and marriage can be complex at the best of times. I would like to

investigate a few of those provisions. Andrea Brown has outlined how her particular set of circumstances would be affected. Will you outline

Col 256

how people feel about the fact that people who are in marriages, a significant minority of whom will wish to stay in their marriage, will have to divorce? That will have an impact on their families and on benefits, financial security and other aspects of their lives.

I am also interested to hear whether you are happy with the introduction of a new ground for divorce in Scotland—the issuing of an interim gender recognition certificate. Earlier Nick Laird spoke about the time limit of six months on the interim certificate, which was not included in the draft bill and has not been consulted on properly. From the information that we have received, there seems to be concern both about the lack of consultation on the time limit and, more significantly, about whether the provision is required. Presumably, the Government believes that if the time limit is not in place an interim gender recognition certificate could continue indefinitely and people would not get divorced. Should the time limit of six months be extended to, say, two years? The Government would then get its end of the bargain and people would be able to hear about what was happening in good time. That would allow them to put their house in order and to do something about the situation.

11:30

Andrea Brown: The marriage issue has become a minefield, but in fact it is quite simple. It is particularly simple in Scotland, because there is nothing in Scots law to say that people cannot maintain a same-sex marriage; the law says simply that people cannot enter into such a marriage. There is no reason why Scots law could not be invoked today to say that the very small number of people who are lucky enough to have a marriage that is strong enough to cope with the transition should not remain married.

The problem is compounded by some of the vagaries of the replacement civil partnership registration. It has been suggested that, although the transition from marriage to a recognised civil partnership will be automatic, in effect there will be a one-day delay. That means that for one day people will totally lack legal protection for their partnership. They will have to stay at home, wrap themselves in cotton wool and hope that the boiler does not blow up. If anything happens to them in that period of 24 hours—for example, if they are hit by a bus—their ex-wife or husband and partner-to-be will have no legal protection. They will have no pension rights; in hospital, they will have no legal say as next of kin.

If there is to be a transition, why can it not happen seamlessly? I do not see why it has to happen at all. People get married because they want to be married and do not get married

Col 257

because they do not want to be married. We are campaigning vigorously that civil partnerships should not be just for same-sex couples, as they are a form of institutional outing.

Margaret Smith: You note the lack of a seamless transition from marriage to civil partnership. During the transitional period, people could stay in and try not to get knocked down by a bus. However, when we are dealing with rights such as pension rights, which are dependent on the length of a marriage, the transition could be seen as a break. Those rights could be affected by a break of even one day. The relatively small number of people who want to request an interim gender recognition certificate and to indicate that they wish to retain their marriage could do both things at the same time.

Andrea Brown: Even then, there would be problems. People may have rights because of the length of their marriage, but they will lose those rights because civil partnership registration is not retrospective—it begins at day 1. The outcome is not satisfactory in any way.

Zara Strange: If someone wanted to use the interim certificate provision, which is restricted to six months, but civil partnerships were not in place by the end of that period, they might have to reapply, which has inherent costs. Alternatively, people could decide that they wanted to divorce anyway.

Andrea Brown: The bill also takes it as read that the divorce proceedings will proceed within six months, which I do not think is possible for us. Someone could lose their interim certificate and have to start again. There are several inherent weaknesses in the bill and that is one of them. We end up going round in a spiral, because one thing leads to another, which has a knock-on effect that in turn affects something else.

The arbitrary setting of a period of six months is one of the big flaws in the bill. If the courts are very full when someone needs to go through a divorce—leaving aside the question of whether they should have to do that—and the divorce can be obtained only in seven months, their interim certificate will lapse. Where does that person go then?

Margaret Smith: How can we get out of that cycle? Should the bill be amended to allow full gender recognition without the requirement to dissolve an existing marriage first? Is that the only way in which we can avoid getting into that cycle?

Andrea Brown: It is probably the case that nearly a majority of the other member states of the European Union now recognise same-sex marriages. We are talking about the bill because it has been forced on the United Kingdom by the EU saying that the vast majority of people are

Col 258

recognising same-sex marriages. Until the bill is enacted, the UK will be keeping exclusive company with Andorra and Albania. Those are the only two

other countries that will not renew a birth certificate, so the UK is a member of quite an exclusive club. Andorra is known for stamps, and the history of Albania on human rights issues leaves a lot to be desired. Ultimately, the UK will have to recognise same-sex marriages.

I cannot understand why the bill should not be amended, given that transsexuals are in a tiny minority in the UK anyway and that only a tiny minority of those are in a marriage that is strong enough to withstand the pressures and strains of the situation. To me, it would be perfectly possible to insert one line in the bill, to say that, where the marriage in question is legal and both parties wish it to continue, that should be allowed. I do not think that that would set a precedent, because it would not allow same-sex couples to enter into a marriage; it would simply allow an existing marriage to continue.

Margaret Smith: According to the figure that we have, there are about 300 transsexuals who are known to the medical profession in Scotland. That figure is probably lower than the actual number. It has been suggested to me that the percentage of people in such a situation who might want to retain marriages is no higher than 10 per cent—in fact, it is nearer 5 per cent. Is it fair to say that we are talking about roughly 5 per cent of 300 people?

Andrea Brown: When it comes to statistics, I share Jonathan Swift's view that there are

"lies, damned lies and statistics."

Margaret Smith: We are talking about a handful of people.

Andrea Brown: Yes, we are talking about a handful of people who are in exceptional circumstances. We are not talking about the thin end of a wedge, opening any floodgates or radically changing any laws; we are asking that the law not be changed.

Zara Strange: Notwithstanding what Andrea Brown has said, I want to record my view that, as schedule 2 stands, I support the proposed Scottish way of proceeding on divorce or annulment on the basis that an interim gender recognition certificate has been granted. In England and Northern Ireland, an application to dissolve a marriage has to go before the courts within six months. I see no logic for that. I want to put it on record that I am pleased that the Scottish Parliament will not make that requirement and that anyone who has an interim certificate will be able to apply at any time, not just within the first six months. I think that that is a great move.

Maxwell Reay: I want to comment on the marriage situation from a religious point of view.

Col 259

There are people who will not want to be divorced, because they had a religious marriage ceremony. I am a member of the Metropolitan Community

Church in Edinburgh, some of whose members have had a Christian wedding ceremony and have a legal marriage, which would have to be dissolved in order for them to be allowed to change their gender. It seems strange that somebody would have to deny a commitment that they have made in front of God and their family and friends in order to change their gender. It is important to remember that there are people for whom marriage is not just a legal matter but has religious significance as well.

Margaret Smith: At the beginning of the meeting, the convener said that we are a little bit in the dark with regard to timings. The likelihood is that Westminster will legislate for Scotland by way of a Sewel motion. Is the panel content with that? The convener said that we felt that it was important to take evidence so that when we debate the Sewel motion—the time scale is likely to be short—we will have an idea of what the issues are.

Zara Strange: As opposed to waiting longer and allowing the Scottish Parliament to deal with the matter separately?

Margaret Smith: Yes. The Scottish Parliament is able to legislate only on devolved matters and not on reserved matters, such as pensions.

Zara Strange: We would like equality throughout the UK, because many of us were born in one country and live in another. We continually move about and, for all that is said, we quite like each other. Time is of the essence and, although I voted for a Scottish Parliament, if a Sewel motion can produce a result quicker, on a purely selfish basis, I would like the legislation to be passed as soon as possible.

Nick Laird: Overall, the bill is good. There are things in it that could be changed, but the Sewel motion is the best way forward, because it will be quicker.

The Convener: All the witnesses are nodding, so I take it that that is the consensus.

Shiona Baird: My question is on consultation. You have raised points about flaws and discrepancies in the bill. The evidence notes that neither the Joint Committee on Human Rights nor transsexual people have had any opportunity to scrutinise the new provision. That would seem to raise issues regarding the consultation process during the development of the legislation. Were panel members involved in consultation on the bill and are you satisfied with how the process has been handled?

Andrea Brown: I have been involved through the Equality Network for a long time. I feel that I

Col 260

am in something of a cleft stick because, like Zara Strange, I want the bill to be made law as soon as possible, but I know that that automatically cuts

down consultation time. Given that certain things that we thought had been accepted during the consultation have either failed to appear in the bill or been changed radically, a little more consultation time on the bill would do no harm.

However, we want everything now—we want the bill passed tomorrow exactly as we want it. As we obviously cannot have that, I would be content to have the bill as it is in place. I would then campaign to have it tidied up and to get certain elements changed and for the Scottish Parliament to recognise that it has rights and responsibilities in this area under the devolution settlement. It could then change the bill with regard to such things as the age level and maybe even marriage. There is nothing in Scots law that says that the marriage cannot continue. I do not think that there is anything in UK law that says that. The proposed legislation is brand new; nothing exists that can cope with the situation, even though everyone seems to be saying that it does. All we are asking is for things to be left alone. Give us what is in the bill but leave everything else alone.

11:45

Zara Strange: Like Andrea and probably every witness sitting at the table, we have spent a long time, often many years, considering these issues. It has not come as a shock. We anticipated some issues, particularly those that had a Scottish element.

The difference between the draft bill and the bill as it now stands is that two changes were introduced that have to be considered. Trans men between the ages of 60 and 65 who have been forced to retire at age 60 by their employer will suddenly have to go out and find employment for the next few years. That is not easy for anyone, and particularly not for someone in that situation. The other change is the addition of rights for disclosure and the six-month interim period. There has been no discussion about that. We only got the papers last week, probably at the same time as members did.

Marilyn Livingstone: It is interesting that pensions were mentioned in all your submissions. How would the panel like the issue of pensions to be handled for those who, once they reregister gender, are likely to lose a pension that they are already receiving?

Andrea Brown: Pensions are similar to so much else in the situation. There are not many people who would form exceptions to what is being proposed, but there are some. There is a difference between dealing with the situation as it is and creating a problem for the future.

Col 261

As Zara Strange said, a female-to-male transsexual aged 62 who has been receiving a pension for two years would have to look for a job for those three years in order to receive his human rights. I do not understand that; I do not

see why it is not possible to say that that person can continue under those circumstances.

Marilyn Livingstone: Is that the only group that is affected?

Andrea Brown: It is a very noticeable and self-evident group. There are also problems with private pensions. I do not understand why it appears to be impossible to say that, in certain very limited situations, things should just be allowed to stay as they are. We are not saying that all trans men should be entitled to a pension at 60. We are just saying that if someone is over 60 when the bill is enacted, and they are in transition, they should be allowed to continue.

Zara Strange: The retirement age is going to be equalised between 2015 and 2020, so any precedent will be only for the short term.

Marilyn Livingstone: Is that the witnesses' general view?

Maxwell Reay: From the people that Transmen Scotland has spoken to, it is clear that there are trans men who will fall into that category of being between the ages of 60 and 64. There might not be a huge number of them, but there will be some. They have often been economically disadvantaged in the past because their employment was lower paid when they were female, they have not been able to do the jobs that they might have wanted to do, and they were made to retire at 60. We certainly support a change so that the position becomes more equal and we think that such people should retain their pensions until the pension age is made equal for everyone.

Marilyn Livingstone: My second question has partly been answered, but I ask all the witnesses to express their views on the fast-track procedure in clause 26 of the bill.

George Burrows: In general, it is a good idea, but there could be an issue with young people whom I represent. For example, someone aged 13 or 14 may have known that they were transsexual and have every intention to live in role as the bill will require, but, because of their situation—perhaps living in a family in which it is not practically possible to do that—they may miss three years, so it will appear that they did not live in role for that three-year period, when they may have done everything that was reasonably possible to do so. That might also raise the question of what evidence is acceptable to show that somebody has lived in role: would it be a name-change document in England or would it be

Col 262

acceptable for a parent, a medical practitioner or a psychologist to say, "Yes, this person has lived in role," although they might not have a diagnosis that dates back to the correct stage?

Zara Strange: I am very much in favour of the fast-track procedure. It is seven years since I went through the changing of the legal documents, so I would just fall into the category in clause 26. To have to go through the full process and go back to the people to whom I was referred years before would be difficult and costly, so I very much support the six-year fast tracking.

Marlyn Glen: All those who have submitted written evidence have expressed concern regarding the recognition of rape in Scots law for post-operative transsexuals. What are the witnesses' views?

Nick Laird: In England, the Sexual Offences Act 2003 already specifically mentions surgically constructed genitalia and demonstrates that gender-specific offences apply fully to trans people, so a law already exists and we need only to make the same law for Scotland. It is a necessary amendment to Scots law and, as such an amendment has already been made in England, it could be done without any problems in Scotland as well.

Zara Strange: Two months ago, I was stalked—I was followed. It is all recorded with the police. I thought that there was a sexual element to the stalking, but I was loth to report it, and I did so only when a friendly policeman said, "Zara, if you don't, other people could be affected by that person." However, having gone through it, I would not report anything of a sexual nature that happened to me.

Because this is a key issue, I have spoken to trans men about it. A young trans man told me very clearly that, if he was sexually assaulted—and a young trans man could be vaginally raped—he would not report it. There is the trauma of having to go through the court system. The victim does not decide how to record the crime; it is the court that does that. I was told that the prospect of recording the assault as rape would be more traumatic for someone seeking justice than the rape itself. The young trans man told me that, because of that, he would not report the rape. As a trans woman, I too would not report it. That is the kind of level that we are talking about.

Andrea Brown: Rape is a pressing issue for trans people in general. Probably a third of all male-to-female transsexuals in Scotland whom I know have been raped. Those were not opportunistic rapes; they were targeted rapes. Attitudes have changed: they have changed a great deal in the police, who are much more positive today. I work a lot with police forces in Scotland to help to develop that work.

Col 263

One of our members who is 16 or 17 years post-operative has been raped three times. The rapes were targeted rapes. On the first occasion, when she tried to report it to the police, she was told, "Well, you want to be a woman. This is what happens to a woman." She was told to go away.

The current rape laws do not protect us. The issue will have to be addressed in the future.

Zara Strange: The issue is quite simple. I believe that, among your papers, you have a paper that includes the Parliament's definition of rape. The definition needs the simple removal of a few words and the addition of the equivalent of the wording in the Sexual Offences Act 2003, which recently passed through the Westminster Parliament. The addition would be:

"References to a part of the body include references to a part surgically constructed".

We are not talking about major changes to the bill.

I know that a lot of law in Scotland is based on case law. However case law, procedures and the suggestion of sitting down and chatting things through will not work. I firmly believe that, for us to have the protection that we need, the offence needs to be enshrined in legislation. At the moment, that protection is not there.

Andrea Brown: The issue of rape needs to be addressed outwith the context of the bill. My birth certificate says that I am male. Under Scots law as it stands no one can rape me. The issue of rape is much wider than the bill and it needs to be looked at.

Marlyn Glen: Thank you. The issue is difficult, but it is important that your evidence is put on the record.

Frances Curran (West of Scotland) (SSP): Your evidence is harrowing. I want to ask the panel about privacy, which is linked to the issue that we have just discussed and to other issues to do with discrimination. Andrea Brown spoke about her birth certificate. Are the privacy provisions in the bill adequate to protect the identity of people who have reregistered their gender?

Maxwell Reay: Clause 21(4)(c) says—

The Convener: I am sorry, Maxwell, but we will have to stop for a minute. There is a changeover of technicians and your microphone is not switched on. Right, you can fire away again.

Maxwell Reay: As I said, clause 21(4)(c) says:

"the information is protected information by virtue of subsection (2)(b) and the person by whom the disclosure is made does not know or believe that a full gender recognition certificate has been issued".

On reading that, I became concerned—the words really jumped out at me. The wording seems to

offer a loophole to people. They could say, "Oh, I am sorry. I did not know that you had a gender recognition certificate, so I could tell anybody I liked that you were a transsexual."

In circumstances where a gender recognition certificate has had to be provided for, say, a pension or insurance, it could be argued that the organisation has that certificate and is therefore aware of it. However, if, for instance, I took up new employment where my boss, not knowing that I had transitioned and knowing me just as Maxwell, for some reason searched the website, found my name on the documents, thought, "Oh, that person has transitioned," and then outed me, they could quite easily say that they did not know that I had a certificate because I would never have had to give them the certificate. In a sense, to get protection from being outed, I would have to out myself with my certificate every time that I took a new job. I think that that paragraph needs to be looked at and changed.

12:00

Nick Laird: On privacy, I recently did some qualitative research workshops with some trans people. One thing that came out of that was that privacy is an issue, particularly within the NHS. There is a definite need for suitable training, guidance and standards within the NHS on the treatment of trans people and privacy issues.

For example, one woman in the group told how her own general practitioner put "Mr" followed by her female name on her prescriptions. When she said to the GP, "I have to go into a chemist to pick up this prescription," the GP scored out the "Mr" and wrote "Miss", which drew even more attention to it. She repeatedly asked for that to be changed on her records, but the GP told her, "I'll decide when you're feminine enough to change it." That may be an extremely bad example, but it actually happened to somebody. That is the kind of attitude that can exist, but there are many examples. There is a report containing examples of people's issues with the NHS. That is a privacy issue that needs to be addressed.

Zara Strange: Between the draft bill and the final bill, paragraph (f) was added to clause 21(4). I was pleased to see that, because paragraph (f) states:

"the disclosure is for the purpose of preventing or investigating crime".

Paragraph (d) has always been in the bill. Paragraph (d) states:

"the disclosure is in accordance with an order of a court or tribunal".

In view of the fact that paragraph (f) has been added, I cannot see the justification for the retention of paragraph (e), which states:

"the disclosure is for the purpose of instituting, or otherwise for the purposes of, proceedings before a court or tribunal".

That is an all-embracing provision, which could include witnesses, jurors and victims.

Among the other things that I do, I have been a children's panel member for 10 years. There are occasions when the press are allowed into a children's hearing, so the provision could include me. I was outed seven or eight years ago by the press, so they know who I am. Under that provision, the press could come into a children's hearing and, although they certainly could not identify the child, they could well and truly identify me.

For the sake of criminal and family law, I can see the reasoning behind the provision. There is a need to be able to ensure that justice is done and seen to be done. However, I believe that clauses 21(4)(d) and 21(4)(f) would cover that. The all-encompassing and all-embracing clause 21(4)(e) should be removed.

The Convener: Obviously, we are dealing with a Sewel motion, but I would be interested in hearing what the various organisations are doing to try to influence the discussion in Westminster. I spoke to an MP recently who was confused that we were taking evidence on the issue. I am not sure what evidence or areas of work MPs will be looking at. What discussions are under way at Westminster, if any, that you may be able to influence, or through which you can put forward your views on the bill?

Zara Strange: There is a committee, which is chaired by—I am not sure which MP it is. Could somebody help me out here? She is a lovely lady. I cannot remember her name, although she is the MP for Birmingham Selly Oak. There are people from Press for Change on that committee, and other organisations have representatives on it, too. Members of that committee have been restricted in what they can say. However, the trans community has been represented on it. It is leap of faith to think that the committee will do what we want it to do, as its members could not tell us what they were doing. Hopefully, that committee will continue its work. It is the old thing, however: it is not quite as if things north of Watford Gap do not happen; it is as if things north of Berwick do not exist. It is important that consideration is given to the subject here, even using a Sewel motion and, as I said, a lot is going on at Westminster.

Col 266

The Convener: Thank you very much for your evidence this morning, which will form part of our report on the Sewel motion.

12:06

Minister for Justice
Cathy Jamieson MSP

Telephone: 0131-556 8400
scottish.ministers@scotland.gsi.gov.uk
<http://www.scotland.gov.uk>

21 January 2004

SEWEL MOTION AND MEMORANDUM FOR THE GENDER RECOGNITION BILL

I am grateful for your agreement to consider this Sewel motion at short notice. The Bill was scheduled to be introduced into the House of Lords at the start of 2004 but when an earlier slot became available after the Queen's Speech, the UK Government took the opportunity to make early progress on providing legal recognition of the acquired gender of transsexual people and thus compliance with the rulings of the European Court of Human Rights. Since then, the Bill has made very swift progress through the House of Lords.

If you require any further information please get in touch.

Cathy

CATHY JAMIESON



SEWEL MOTION AND MEMORANDUM FOR THE GENDER RECOGNITION BILL

SEWEL MOTION

That the Parliament endorses the principle of giving transsexual people legal recognition of their acquired gender and agrees that the provisions in the Gender Recognition Bill that relate to devolved matters should be considered by the UK Parliament thereby ensuring a consistent UK approach and early compliance with the rulings of the European Court of Human Rights with respect to the Convention rights of transsexual people under Article 8 (right to respect for private life) and Article 12 (right to marry).

Scottish Executive
January 2004

SEWEL MOTION AND MEMORANDUM FOR THE GENDER RECOGNITION BILL

SEWEL MEMORANDUM FOR GENDER RECOGNITION BILL

Motion

1. The motion to be put to the Parliament is:

Gender Recognition Bill: That the Parliament endorses the principle of giving transsexual people legal recognition of their acquired gender and agrees that the provisions in the Gender Recognition Bill that relate to devolved matters should be considered by the UK Parliament thereby ensuring a consistent UK approach and early compliance with the rulings of the European Court of Human Rights with respect to the Convention rights of transsexual people under Article 8 (right to respect for private life) and Article 12 (right to marry).

Background

2. Transsexual people are not, at present, recognised in their acquired gender under the law in any part of the United Kingdom. Although transsexual people may obtain some official documentation in their new name and gender, such as driving licences and passports, they cannot obtain new birth certificates and they cannot enjoy any rights conferred by law to their acquired gender. For example, they cannot marry in their acquired gender.

3. On 11th July 2002, the European Court of Human Rights delivered its judgements in the case of *Goodwin v The United Kingdom* and *I v The United Kingdom* (2002) 35 EHRR 18. The Court found that the UK had breached the Convention rights of these two transsexual people, under Article 8 (right to respect for private life) and Article 12 (right to marry). Scotland, like the rest of the United Kingdom, must rectify the breaches and secure the Convention rights of transsexual people.

Purpose of the Gender Recognition Bill

4. The purpose of the Gender Recognition Bill is to provide for the legal recognition of the acquired gender of transsexual people. The Bill provides for the establishment of Gender Recognition Panels comprising legal and medical members to determine applications for gender recognition certificates from transsexual people. Before issuing a certificate, the Panel must be satisfied that the applicant:

- has, or has had, gender dysphoria;
- has lived in the acquired gender throughout the preceding two years; and
- intends to continue to live in the acquired gender until death.

5. If the Panel is satisfied on the basis of the evidence which it receives that the applicant meets the criteria then a full gender recognition certificate will be issued unless the applicant is married. This will have the effect of providing full legal recognition of the transsexual person's acquired gender. A male-to-female transsexual person for example, will be legally recognised as a female under the law in any part of the United Kingdom. If a UK birth register entry exists, then the person will be entitled to a new birth certificate reflecting their

acquired gender. They will be able to marry someone of the opposite gender to their acquired gender.

6. If the applicant is married, an interim gender recognition certificate will be issued. The Bill makes provision for courts to end a marriage on the ground that an interim gender recognition certificate has been issued to one party and to issue a full gender recognition certificate to that party. To give legal recognition of a transsexual person's acquired gender without the dissolution of a pre-existing marriage would have the effect that the marriage would be subsisting as a marriage between two parties of the same legal gender.

7. The Bill makes supplementary provisions including a prohibition on disclosure of information relating to a person's application for a certificate, and an initial 'fast-track' application procedure for transsexual people who have lived in their acquired gender for at least six years. As these applicants will have been living in the acquired gender for a longer period, the criteria to be applied are slightly different.

Why a UK Approach?

8. The Scottish Executive believes that a UK approach offers a pragmatic and timely way forward for a number of reasons:

- The legal recognition of transsexual people combines reserved and devolved policy areas. The devolved areas include process issues particularly the creation and maintenance of a Gender Recognition Register and the provision of birth certificates reflecting the acquired gender of a transsexual person, and the right to marry in the acquired gender. Some of the legal consequences are reserved particularly pensions, benefits and insurance consequences. The Scottish Parliament could provide partial legal recognition of a transsexual person's acquired gender but not the reserved policy aspects. Including Scottish provisions in the Gender Recognition Bill will deliver comprehensive legal recognition of the acquired gender of transsexual people in Scotland;
- A UK approach offers the swiftest means of Scotland remedying the breaches of the Convention rights of the estimated 500 transsexual people living in Scotland. It is not clear when a suitable Scottish legislative vehicle or slot would be identified but it would certainly lag behind the Gender Recognition Bill which has commenced its Parliamentary passage in the House of Lords;
- If there were marked differences in the legal recognition of transsexual people north and south of the border, this could give rise to cross-border issues. For example, would a post-recognition marriage contracted in one jurisdiction be recognised in another jurisdiction for marriage-related purposes? Or, would a transsexual person living in Scotland but with a birth register entry in England find that legal recognition in Scotland is sufficient to secure a new birth certificate from the Registrar General? Including Scottish provisions in the Gender Recognition Bill ensures consistency in process and effect of legally recognising the acquired gender of transsexual people;
- Given the small numbers, once the initial tranche of applications has been processed, there are likely to be a very small number of Scottish applications in any one year which would mean that the cost of maintaining a distinct mechanism

in Scotland for providing legal recognition of transsexual people would be disproportionately high and could drive up the cost to the applicants and/or the cost to the public purse. A UK approach is therefore cost-effective;

- The Gender Recognition Bill provides for the Panel to determine an application without a hearing unless a hearing is considered necessary. The process is expected in most instances to be paper-based so geographic distance for transsexual people living in Scotland is likely to arise in extremely few cases;

Scottish Provisions in the Gender Recognition Bill

9. In proposing that the Gender Recognition Bill should extend to Scotland, the Scottish Executive recognises a number of Scottish provisions are required to ensure that the legislation takes account of Scottish law. The following provisions have been made:

- 5(1)(b) provides for a Scottish court granting a decree of divorce on the ground that an interim gender recognition certificate has been issued to a party to the marriage to issue a full gender recognition certificate sending a copy to the Secretary of State;
- 8(1) provides for an applicant to appeal to the Court of Session on a point of law against a decision by the Panel to reject the application and 8(5) provides for the Secretary of State to refer a case to the Court of Session where he considers that the granting of an application was secured by fraud;
- 18(2) provides for a person to apply to the Court of Session for an order if they consider that they have been adversely affected by the disposition or devolution of property as a consequence of the legal recognition of the acquired gender of a transsexual person;
- 19 relates to gender-specific offences and reflects the fact that many sexual offences in Scotland are gender specific, for example, rape is a crime committed by a man against a woman. The purpose of the section is to ensure that where criminal liability would exist but for the fact that a person (either as victim or perpetrator) has become of the acquired gender, that criminal liability should exist regardless of the gender change;
- 21(6) provides for Scottish Ministers to prescribe circumstances within devolved competence further to 21(4) in which disclosure of information does not constitute an offence;
- 22(2) provides Scottish Ministers with the power to make an order modifying the operation of any enactment or subordinate legislation within devolved competence in relation to persons who have acquired a new legal gender under this Bill. Legislation has made distinctions on the basis of gender for a considerable time. A thorough analysis has been undertaken of instances in which the facility to change gender may cause difficulties or complexities. This provision safeguards against the possibility of other instances coming to light in the future and ensures that they can be dealt with in Scotland;
- 23(1), 23(2) and 23(4) provide that powers delegated to Scottish Ministers by the Gender Recognition Bill will be exercised by statutory instrument, subject to the negative resolution procedure
- Schedule 1, 1(3)(b) provides for an advocate or solicitor in Scotland of at least seven year's standing to be deemed to have a relevant legal qualification to serve as a member of a Gender Recognition Panel;
- Part 2 of Schedule 2 amends the Divorce (Scotland) Act 1976 to provide for the granting of an interim recognition certificate to constitute grounds for divorce

- Part 2 of Schedule 3 requires the Registrar General for Scotland to create and maintain a Gender Recognition Register;
- Part 2 of Schedule 4 amends the Marriage (Scotland) Act 1977 to ensure that where one party to a marriage is regarded as being of the acquired gender, the restrictions on marriage cover relationships flowing from any previous marriage in the birth gender - for example, a male-to-female transsexual person who is granted a full gender recognition certificate may not marry her ex-wife's father;

10. The Gender Recognition Bill also requires the Secretary of State to consult Scottish Ministers on specific issues including the membership and choice of President of the Gender Recognition Panel, the list of approved countries for applicants who have secured legal recognition in other jurisdictions, additional information or evidence to support applications, the form and manner of applications to the Panel and the content and form of gender recognition certificates.

Financial Consequences

11. The UK Government estimate that the cost of establishing the Gender Recognition Panels to determine applications will be approximately £0.7 million and that all other costs will be met from within Departmental spending limits. These costs have been calculated on the basis of extending the Panel's activities to Scotland and no financial contribution from Scotland towards the running of the Panel is sought. There will be a very moderate cost associated with creating and maintaining the Gender Recognition Register in Scotland. The General Register Office for Scotland will meet this from within current resources.

Conclusion

12. Scotland, like the rest of the United Kingdom, is obliged to comply with the judgements of the European Court of Human Rights in relation to the Convention rights of transsexual people. Including Scottish provisions within the Gender Recognition Bill offers the swiftest, most cost-effective means of remedying the human rights breaches and delivering comprehensive legal recognition of the acquired gender of transsexual people embracing devolved and reserved policy consequences. A UK wide approach will also ensure consistency in the process of determining legal recognition and the legal consequences flowing from recognition of the acquired gender of a transsexual person thereby avoiding cross-border issues. Relevant Scottish provisions have been included within the Gender Recognition Bill to ensure that the legislation is fully workable in Scotland.

UK Gender Recognition Bill – Sewel motion

Submission to the Justice 1 Committee

21st January 2004

Equality Network, 22 Forth Street, Edinburgh, EH1 3LH

Tel: 07020 933 952

en@equality-network.org

www.equality-network.org

The Equality Network is a network of lesbian, gay, bisexual and transgender (LGBT) organisations and individuals in Scotland working for LGBT equality. We have attached (pages 3 to 14) a submission we made to the Equal Opportunities Committee in December, about the UK Gender Recognition Bill. That Committee also took oral evidence from representatives of transgender organisations in Scotland, on 9th December 2003 (Official Report at: <http://www.scottish.parliament.uk/equal/or/eo03-1001.htm>).

This covering note (pages 1 and 2) highlights issues we feel are of direct relevance to the Executive's proposed Sewel motion.

The Equality Network welcomes the Gender Recognition Bill, which corrects a long-standing injustice, and rectifies what is now a clear ECHR breach. We agree with the Scottish Executive that UK legislation with a Sewel motion is likely to be the best way to make the required changes to the law as soon as possible, and we urge the Committee and the Parliament as a whole to support the Sewel motion.

However we are very concerned at the short time that the Justice 1 Committee has been given to examine the Sewel memorandum and the associated issues, in advance of the likely date of the Sewel motion debate. In particular, it would seem that there is very little time for the Committee to consider input from the people affected by this legislation – transsexual people, or to consider fully the evidence that the Equal Opportunities Committee has already taken, and that Committee's views on that evidence.

Through consultation with transgender people in Scotland, we have identified a number of outstanding issues relating to the bill.

These are set out in our attached submission to the Equal Opportunities Committee, and were explored further in the oral evidence to that Committee on December 9th. Some of these issues concern reserved matters – the Sex Discrimination Act, and pensions – and so do not relate to the Sewel motion. Others, such as the application fees for gender recognition, the interim arrangements on initial commencement of the legislation, and the relationship between gender recognition and marriage, are being discussed by ourselves and transgender organisations throughout the UK, on a UK basis with the UK Government.

The remaining issues of concern are specifically Scottish matters that are directly the responsibility of the Scottish Executive, and we would particularly like to draw the Justice 1 Committee's attention to these, and ask that the Committee consider raising these issues in its report to the Parliament on the Sewel motion. In summary, these issues are:

The minimum age for application for gender recognition. For the reasons set out on page 6, we believe that the minimum age for application should be set at 16 in Scotland, rather than 18.

Sexual offences (see pages 12 & 13). If a transsexual woman is raped, or if a transsexual man commits rape, the law in Scotland does not recognise this as rape (it would have to be charged as an indecent assault, widely seen as a 'lesser offence'). Clause 19 of the bill, on sexual offences in Scotland, fails to correct this problem. In our view, this is an injustice that the Scottish Executive should correct as soon as possible, either by agreeing with the UK Government amendments to clause 19 of the bill, or by committing to introduce suitable legislation in Scotland as soon as possible to make the necessary small adjustments to sexual offences law.

Privacy within the justice system (see page 11). Transsexual people's privacy is often breached by the justice system, and better procedures are needed to prevent this from happening.

Fair treatment by NHS Scotland (see pages 5 & 11). Transsexual people often face discrimination within the NHS, much of it due to ignorance, and their privacy is frequently unnecessarily breached by NHS procedures. This needs to be addressed in practical ways within NHS Scotland if the bill is to have its desired effect of protecting the privacy of transsexual people.

Gender Recognition Bill

Submission to the Equal Opportunities Committee

7th December 2003

Equality Network, 22 Forth Street, Edinburgh, EH1 3LH

Tel: 07020 933 952

en@equality-network.org

www.equality-network.org

The Equality Network is a network of lesbian, gay, bisexual and transgender (LGBT) organisations and individuals in Scotland working for LGBT equality. We welcome the opportunity to comment to the Committee on the UK Gender Recognition Bill.

The Equality Network Transgender Issues Forum is an open Forum concerned with transgender equality issues in Scotland. It met between December 2000 and December 2002 to develop proposals to change the law in Scotland to recognise the gender identity of transsexual people. Those proposals were published on January 8th 2003, and may be found as Committee paper EO.S2.03.10.03, and also here:

www.equality-network.org/policy/resources/gender/finaldraft2.pdf

The Transgender Issues Forum has continued to meet during the period of development of the draft UK Gender Recognition Bill, including three useful meetings with civil servants from the Executive and UK Government. The Forum met on November 29th to discuss the actual bill published on November 28th. The bill addresses many of the issues identified in the Forum's original proposals, but there remain some matters that the bill does not deal with, or deals with in a less than fully satisfactory way, and this paper highlights those.

In general however the Equality Network very much welcomes this bill, which corrects a long-standing injustice. In order to keep this submission relatively short, we have not commented on the majority of the provisions in the bill, with which we agree.

The Sewel motion route

Legislation across the UK on this issue is urgent, given that change is required by the rulings of the European Court of Human Rights in the cases of *Goodwin v. UK* and *I v. UK*. In that context, **the Equality Network accepts that UK legislation, with a Sewel motion in the Scottish Parliament, is likely to be the quickest way to change the law in this area.**

However, it is important that the Scottish Parliament has the opportunity to consider carefully the devolved provisions in the bill before deciding on the Sewel motion. There were no Scottish provisions in the draft bill published in July, and the final bill also differs from the draft bill in a number of other important ways.

The bill was published on November 28th, and the Committee is taking oral evidence on December 9th, and written evidence in advance of that date. That is a very short timeframe. As the length of this submission and other submissions made to the Committee suggests, there are some complex issues involved, a significant number of which concern devolved matters.

We are concerned at the short time available to interested parties, to the Committee, and to the whole Parliament, to consider the issues raised by the bill before the debate on the Sewel motion. We are also concerned that the Committee and the Parliament will not have the opportunity after that debate to consider solutions that might be proposed to any difficulties identified.

Arrangements for application for gender recognition

The European Court of Human Rights has determined that gender recognition for transsexual people is a right protected by the ECHR. The Gender Recognition Bill achieves a good balance between the need to ensure that gender recognition is available to all transsexual people, and the need to reassure those who might be concerned that non-transsexual people might make fraudulent or frivolous applications for gender recognition. The requirements for a diagnosis of gender dysphoria, living in the acquired gender

for two years, and a declaration that one intends to do so permanently, are reasonable.

We also welcome the fact that the bill does not require a person to have undergone surgery or hormone treatment as a condition of gender recognition, because, for medical or other reasons, not all transsexual people undergo such treatment.

It is very important that the Gender Recognition Panel includes members legally qualified in Scotland. Much of Scots law is of course very different to that south of the border, and gender recognition applications from people resident in Scotland must be dealt with by Panel members qualified in Scots law. For example, 'deed polls' are not used for change of name in Scotland, and we know of cases where English institutions, such as universities, have refused to acknowledge the new name of a post-transition transsexual person resident in Scotland, because the person has not supplied evidence of a deed poll. The Gender Recognition Panel will need to be fully aware of such cross-border differences to consider applications properly.

It is very important that there is further consultation, both north and south of the border, on the operation of the Panel, including any requirements to be introduced by the Secretary of State under clause 3(6)(b) of the bill.

We are concerned that barriers to access to gender recognition may remain for some transsexual people, and these concerns are set out below.

Access to medical support

There is still considerable prejudice against transsexual people, including within some parts of the health service, and this can make it difficult for some transsexual people to access the health services they need, and may therefore make it difficult for them to obtain the medical certification they need for gender recognition. In many areas of Scotland there is little choice of GP, and some GPs have 'moral' objections even to acknowledging the existence of gender dysphoria. **The issue of discrimination against transsexual people needs to be addressed within the NHS, but extending anti-discrimination legislation to cover the provision of services (see later) would also help.**

Fee for application for gender recognition

A key factor with the potential to limit access to gender recognition is the fee level. The UK Government has suggested that the fee for making an application to the Gender Recognition Panel should be set high enough to provide ‘full cost recovery’ of the costs of setting up and running the gender recognition system. Given the relatively small number of transsexual people, it has been estimated that this could set the fee at between £500 and £1000. That would be quite wrong – no-one should have to pay such a sum for access to their human rights. That level of fee would be a major barrier for transsexual people who are disabled, retired or unemployed.

We note that, under clause 7(2) of the bill, the application fee is to be set by the Secretary of State, and this is the only decision of the Secretary of State under the bill that is not subject to a statutory requirement to consult with the Scottish Ministers. **In our view such a requirement to consult should be added to clause 7(2).**

The UK Government should clarify the proposed level of application fee as soon as possible, and should ensure that it is affordable for all transsexual people.

The minimum age for application

Clause 1 of the bill sets the minimum age for application for gender recognition at 18. That may be appropriate for England and Wales, but in our view is inappropriate for Scotland, where the age of legal capacity is 16. Of course, one cannot apply for gender recognition until one has lived in the acquired gender for at least two years, but we know of cases where a person in Scotland has begun to do that, with their parents’ support, before the age of 16. Furthermore, gender dysphoria is now being diagnosed at earlier ages, and it is often in the interests of a transsexual person’s well-being to transition earlier rather than later.

The date of starting to live in the acquired gender is, legally, a matter of fact, rather than an issue of legal capacity. Legal capacity becomes an issue at the point of choosing to apply for recognition. **Therefore, in Scotland, the minimum age for application for gender recognition should be set at the age of legal capacity, which is 16.**

Interim arrangements on introduction of the legislation

Clause 26 of the bill allows for special arrangements for those who transitioned (i.e. started living in their acquired gender) more than six years ago. This recognises the fact that, for some such people, medical records of gender dysphoria diagnosis may be difficult to obtain. Instead, people in that situation may submit an application for gender recognition based on evidence of having had surgical treatment.

However, this special arrangement is only available for six months after the commencement of the legislation. In our view, that time is too short. Many transsexual people who transitioned years ago are not in touch with organisations such as the various Scottish transgender groups, Press for Change, etc. – they are just getting on with their lives in their true, acquired gender. They may not hear about the details of the special arrangements within the first six months, and in that case, they will have missed the boat. **In our view, the time limit in clause 26 should be extended significantly, for example to two years.**

Relationship between gender recognition and marriage

There is a fairly complex relationship, under the provisions of the bill, between gender recognition and marriage. As required by the European Court rulings, the bill allows a person who has obtained gender recognition to marry in their acquired gender, and we welcome that. More problematic is the situation of a person who is already married when they apply for gender recognition.

Many transsexual people marry in their birth certificate gender before reaching the point of recognising their transsexual gender identity. When they do start to live in their true, acquired gender, they and their spouse may decide to end their marriage. However, some married couples in this situation choose to stay together – for them what matters is the relationship of love between two individuals, and the fact that one has realised that he or she is transsexual, and has transitioned to living in their true gender, does not prevent that relationship continuing.

However, the bill requires that a person who is married, and who meets the requirements for gender recognition, can only be issued with an interim gender recognition certificate, which has no effect on their legal gender. Full recognition is only granted when their marriage is dissolved, at which point the interim certificate is converted to a full gender recognition certificate. The UK Government justifies this on the grounds that to grant full gender recognition to a married person would create a same-sex marriage.

The bill will therefore introduce the only circumstance in which the Government intervenes in a successful loving marriage and forces two people who wish to remain married to each other to dissolve their marriage, with the resulting loss of legal protections for the family. A married transsexual person in that situation will be forced to choose between their fundamental human right of recognition in their true gender, and their marriage.

In our view, there would be no incompatibility between retaining the current rule that a marriage conducted between two people of the same sex is invalid, while allowing that two people whose marriage was initially valid could continue to be married if one of them changes legal gender. **The bill should be amended to allow full gender recognition without the requirement to first dissolve an existing marriage.**

Marriages between two transsexual people

As noted above, the UK Government's stated justification for forcing a transsexual person to dissolve a pre-existing marriage before obtaining gender recognition is to prevent the creation of a same-sex marriage. There are a number of marriages, in Scotland and in the rest of the UK, in which two transsexual people are married to each other. Even if the Government is determined to introduce the policy of requiring a marriage to be dissolved before gender recognition, there should be an exception for a marriage between two transsexual people, if both successfully apply for gender recognition.

There is no reason why such a couple should not be granted full gender recognition simultaneously without dissolving their marriage. The marriage would remain a mixed-sex marriage. In our view, if the bill is not amended as suggested above, to remove

altogether the requirement to dissolve an existing marriage before gender recognition, then **an exception should be inserted into the bill to allow the continuation of an existing marriage between two transsexual people, by granting them full gender recognition simultaneously.**

Relationship to civil partnership

It has been suggested by the UK Government that the requirement to end a marriage before full gender recognition is granted is not a great burden, because, assuming that civil partnership for same-sex couples is introduced, the previously married couple could, after full gender recognition of one partner, enter a civil partnership. Similarly, a married couple who are both transsexual could, having dissolved their marriage to obtain their full gender recognition, then remarry.

This is not a satisfactory solution. Firstly there is no guarantee that civil partnership will be introduced in the near future, or that it will be legally similar in nature to marriage. Secondly, some benefits associated with marriage (and perhaps in future with civil partnership) depend on the date of the marriage. For example, some pension schemes provide survivor's benefits only if the marriage predated the pensioner's retirement. Furthermore, financial provision on divorce applies only to matrimonial property, that is, property acquired during (or in anticipation of) the marriage.

Forcing a couple to dissolve their marriage and then restart it as a civil partnership or as another marriage may therefore result in very significant loss of benefits and protections.

Arrangements for dissolution of marriage

In some cases, at some point during the transition process for a married transsexual person, they and their spouse may decide not to continue with the marriage. Part 2 of schedule 2 to the bill allows a married couple, one of whom has obtained interim gender recognition, to dissolve their marriage in a relatively straightforward way, by introducing a new ground (interim gender recognition of one spouse) for divorce in Scotland. We welcome this as an appropriate mechanism to enable a marriage to be ended where one or both spouses wish this. **To allow such a divorce to proceed as smoothly as possible, it is important that the**

Scottish Executive introduce the necessary secondary legislation to allow the current simplified divorce procedure to be used, where there are no children under 16 and no application for financial provision.

An anomalous time limit has been introduced into the bill, which was absent from the draft bill. Under this limit, an interim gender recognition certificate in effect lapses after six months. If proceedings are not started to dissolve a marriage within six months of the granting of the interim gender recognition certificate, then the interim certificate can no longer be converted to a full certificate on the ending of the marriage, and the applicant must start the application process over again, and presumably pay a full fee again.

There are at least two anomalies associated with this time limit. Firstly, the six month limit does not apply to proceedings for divorce in Scotland on grounds of interim gender recognition, under schedule 2, part 2, whereas it does apply to proceedings for annulment in England and Wales on the same ground, under schedule 2, part 1.

Secondly, where proceedings for annulment or divorce have been started within the six month time limit, the interim gender recognition will be converted to full gender recognition when the decree of annulment or divorce is granted, even though that may happen after the six month period expires. However, if the non-transsexual spouse were to die between the application for annulment or divorce and the granting of the decree, and after the end of the six month limit, the interim gender recognition cannot be converted to full recognition, because of the provisions of clause 5(2)(b) of the bill.

In our view, there is no reason why an interim gender recognition certificate should lapse at all. The conditions for granting interim recognition are identical to those for granting full recognition, and full recognition lasts a lifetime. There was no six month time limit on interim recognition in the draft bill, and no call for this to be added to the bill in the report by the Westminster Joint Committee on Human Rights, which scrutinised the draft bill. **The six month limit on interim gender recognition should be removed from the bill.**

Privacy

We welcome the general arrangements in clause 21 of the bill to help ensure privacy for transsexual people. In meetings of the Equality Network Transgender Issues Forum, the two situations most often cited where privacy of transsexual identity has been breached, have involved the NHS and the court and tribunal system.

Privacy breaches by NHS staff are a serious problem – a reported example is the insistence by some GPs on addressing letters to transsexual women patients as “Mr.,” long after their full transition to living in the acquired gender. The provisions of the bill may help, but we think **the solution here lies in introducing suitable training, guidance and standards within the NHS.**

The court system is a common culprit in the outing of transsexual people. Clearly there will be cases (for example where a criminal charge relates to the period before transition) where the court will need to know of a person’s transsexual identity. However, in the large majority of cases where a transsexual person is a victim, witness or an accused in a criminal case, or a party to a civil case, their transsexual identity is completely irrelevant. Much more needs to be done to protect transsexual people from being harmed by inappropriate public disclosure in court or tribunal proceedings. This is especially important given that some sections of the press seem at present to regard any such disclosure as being of huge public interest. People’s lives have been greatly damaged by such disclosure and reporting.

Clause 21(4)(e) of the bill allows disclosure of transsexual identity for any purposes of court or tribunal proceedings. We are very concerned about this. Procedures need to be put in place to prevent inappropriate public disclosure. For example, if divorce proceedings under schedule 2, part 2 of the bill, to end a marriage on grounds of interim gender recognition, are public, then that will out any transsexual person applying for gender recognition who is ending their marriage. Such proceedings should be held in private.

Transsexual people will continue to be deprived of their right to privacy under article 8 of the ECHR until the Executive and UK Government ensure that court and tribunal rules are in place to prevent inappropriate public disclosure.

Sexual offences

A key Scotland-specific devolved provision in the bill is clause 19, which seeks to ensure that sexual offences law applies appropriately to transsexual people, whether as victim or as the accused.

Some important parts of Scots sexual offences law, such as the law of rape, are gender specific, and also depend on the involvement of particular parts of the body. Rape, in Scotland, is an offence committed by a man against a woman, involving penetration of the vagina with the penis, without consent.

There are two problems with the application of this law to transsexual people. Firstly, it is uncertain whether the courts would accept that a rape involving a surgically constructed vagina or penis can constitute the crime of rape. Secondly, the victim or the accused may be legally of the 'wrong' gender for the crime of rape to apply. These two problems mean that the following cases might not be recognised as rape by the law:

1. The first problem could mean that if a post-operative transsexual woman who had obtained gender recognition was raped, the courts might throw out a charge of rape on the grounds that rape law does not apply in the case of surgically constructed genitalia. Similarly, a post-operative transsexual man who had obtained gender recognition might be acquitted of rape on the same grounds.
2. Both problems apply to a post-operative transsexual woman who is raped before she has obtained gender recognition: the court might decide that her surgically constructed genitalia does not count for the purposes of rape, but in any case she is still, at that time, legally a man, so the law of rape does not apply for that reason also.
3. The second problem above would mean that a transsexual man who could physically be raped (i.e. who had not had complete genital reassignment surgery), would be recognised by the law as a victim of rape the day before his gender recognition, when he was still legally a woman, but not the day afterwards, when he is legally a man.

All of this is highly unsatisfactory, especially given that there is evidence that transsexual people are at increased risk of sexual assault.

English law already deals completely with these problems, by defining rape as including penetration of the vagina with the penis, without specifying the gender of the victim or perpetrator (section 1(1), Sexual Offences Act 2003). Furthermore, the English law explicitly extends to surgically-constructed genitalia (section 79(3), Sexual Offences Act 2003).

Clause 19 of the current bill is an attempt to deal with some of these issues in Scotland. It allows a person's gender recognition to be ignored for the purposes of sexual offences law, if that is necessary to allow the offence to apply. Clause 19 means that case 3 above would be recognised by the law as rape. But case 1 above might not, as clause 19 does not address the issue of surgically constructed genitalia. Neither is case 2 above covered by clause 19, both because surgically constructed genitalia are not included, and because clause 19 does not allow a pre gender recognition transsexual woman, who is still legally a man, to be recognised as a victim of rape.

In short, clause 19 of the bill goes only a small way to ensuring that rape and other gender-specific sexual offences apply in cases involving transsexual people. **Clause 19 should be extended to ensure that gender-specific sexual offences apply fully to transsexual people (either as victim or accused), by extending the flexibility in the treatment of a person's gender to pre-recognition transsexual people, and by ensuring that the law covers offences involving surgically-constructed genitalia. The provisions of the Sexual Offences Act 2003 for England and Wales demonstrate that this can be done.**

Discrimination (reserved legislation)

Clause 14 and schedule 6 to the bill make relatively minor but welcome changes to the protections given by section 2A of the Sex Discrimination Act 1975, which makes discrimination against transsexual people in employment and vocational training unlawful.

However, discrimination against transsexual people will continue to be lawful in the provision of goods and services, even though the Sex Discrimination Act bans such discrimination on grounds of sex. **The UK Government should take the opportunity in the current bill to further amend the Sex Discrimination Act, to extend the protection given to transsexual people to cover discrimination in the provision of goods and services.**

There is a further omission from schedule 6 to the bill. The protection given transsexual people by section 2A of the Sex Discrimination Act applies to all those who intend to undergo, are undergoing, or have undergone gender reassignment, that is, a process under medical supervision to change physiological or other characteristics of sex. This is a different requirement to that for gender recognition under the bill, which is a diagnosis of gender dysphoria and two years living in the acquired gender. As a result, there may be some transsexual people who obtain gender recognition but who are not covered by the protection of the Sex Discrimination Act.

The bill should slightly extend section 2A of the Sex Discrimination Act to remove the mismatch between the definition of gender reassignment in that Act, and the conditions for gender recognition in the bill.

Pensions (reserved legislation)

Although we strongly support the general principle that gender recognition should apply for all legal purposes, we are concerned about the hardship that will be incurred, in the first few years of the bill's operation, by transsexual men aged 60 to 64 who are receiving a pension. Under the provisions of schedule 5 to the bill, any such person who obtains gender recognition will cease to receive their pension, until they reach 65, the normal pension age for men. This will cause considerable hardship. It should be borne in mind that some transsexual men of this age are receiving their pension because they were forced against their choice to retire, having reached 60, the retirement age for women.

In our view, the bill should make transitional arrangements to allow that transsexual men who are aged 60 to 64, and who are already receiving a pension at the commencement of the legislation, can continue to do so after full gender recognition.

Gender Recognition Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Constitutional Affairs, are published separately as HL Bill 4 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

The Lord Falconer of Thoroton has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Gender Recognition Bill [HL] are compatible with the Convention rights.

Gender Recognition Bill [HL]

CONTENTS

Applications for gender recognition certificate

- 1 Applications
- 2 Determination of applications
- 3 Evidence
- 4 Successful applications
- 5 Subsequent issue of full certificates
- 6 Errors in certificates
- 7 Applications: supplementary
- 8 Appeals etc.

Consequences of issue of gender recognition certificate etc.

- 9 General
- 10 Registration
- 11 Marriage
- 12 Parenthood
- 13 Social security benefits and pensions
- 14 Discrimination
- 15 Succession etc.
- 16 Peerages etc.
- 17 Trustees and personal representatives
- 18 Orders where expectations defeated
- 19 Scottish gender-specific offences
- 20 Foreign gender change and marriage

Supplementary

- 21 Prohibition on disclosure of information
- 22 Power to modify statutory provisions
- 23 Orders and regulations
- 24 Interpretation
- 25 Commencement
- 26 Applications within six months of commencement
- 27 Extent
- 28 Short title

-
- Schedule 1 – Gender Recognition Panels
 - Schedule 2 – Interim certificates: marriage
 - Part 1 – England and Wales
 - Part 2 – Scotland
 - Part 3 – Northern Ireland
 - Schedule 3 – Registration
 - Part 1 – England and Wales
 - Part 2 – Scotland
 - Part 3 – Northern Ireland
 - Schedule 4 – Effect on marriage
 - Part 1 – England and Wales
 - Part 2 – Scotland
 - Part 3 – Northern Ireland
 - Schedule 5 – Benefits and pensions
 - Part 1 – Introductory
 - Part 2 – State benefits
 - Part 3 – Occupational pension schemes
 - Schedule 6 – Sex discrimination
 - Part 1 – Great Britain
 - Part 2 – Northern Ireland

A
B I L L

TO

Make provision for and in connection with change of gender.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Applications for gender recognition certificate

1 Applications

- (1) A person of either gender who is aged at least 18 may make an application for a gender recognition certificate on the basis of—
- (a) living in the other gender, or 5
 - (b) having changed gender under the law of a country or territory outside the United Kingdom.
- (2) In this Act “the acquired gender”, in relation to a person by whom an application under subsection (1) is or has been made, means—
- (a) in the case of an application under paragraph (a) of that subsection, the gender in which the person is living, or 10
 - (b) in the case of an application under paragraph (b) of that subsection, the gender to which the person has changed under the law of the country or territory concerned.
- (3) An application under subsection (1) is to be determined by a Gender Recognition Panel. 15
- (4) Schedule 1 (Gender Recognition Panels) has effect.

2 Determination of applications

- (1) In the case of an application under section 1(1)(a), the Panel must grant the application if satisfied that the applicant— 20
- (a) has or has had gender dysphoria,
 - (b) has lived in the acquired gender throughout the period of two years ending with the date on which the application is made,

- (c) intends to continue to live in the acquired gender until death, and
 - (d) complies with the requirements imposed by and under section 3.
- (2) In the case of an application under section 1(1)(b), the Panel must grant the application if satisfied –
 - (a) that the country or territory under the law of which the applicant has changed gender is an approved country or territory, and 5
 - (b) that the applicant complies with the requirements imposed by and under section 3.
- (3) The Panel must reject an application under section 1(1) if not required by subsection (1) or (2) to grant it. 10
- (4) In this Act “approved country or territory” means a country or territory prescribed by order made by the Secretary of State after consulting the Scottish Ministers and the Department of Finance and Personnel in Northern Ireland.

3 Evidence

- (1) An application under section 1(1)(a) must include either – 15
 - (a) a report made by a registered medical practitioner practising in the field of gender dysphoria and a report made by another registered medical practitioner (who may, but need not, practise in that field), or
 - (b) a report made by a chartered psychologist practising in that field and a report made by a registered medical practitioner (who may, but need not, practise in that field). 20
- (2) But subsection (1) is not complied with unless a report required by that subsection and made by –
 - (a) a registered medical practitioner, or
 - (b) a chartered psychologist, 25
 practising in the field of gender dysphoria includes details of the diagnosis of the applicant’s gender dysphoria.
- (3) And subsection (1) is not complied with in a case where –
 - (a) the applicant has undergone or is undergoing treatment for the purpose of modifying sexual characteristics, or 30
 - (b) treatment for that purpose has been prescribed or planned for the applicant,
 unless at least one of the reports required by that subsection includes details of it.
- (4) An application under section 1(1)(a) must also include a statutory declaration by the applicant that the applicant meets the conditions in section 2(1)(b) and (c). 35
- (5) An application under section 1(1)(b) must include evidence that the applicant has changed gender under the law of an approved country or territory.
- (6) Any application under section 1(1) must include – 40
 - (a) a statutory declaration as to whether or not the applicant is married,
 - (b) any other information or evidence required by the Secretary of State, and
 - (c) any other information or evidence which the Panel which is to determine the application may require, 45

and may include any other information or evidence which the applicant wishes to include.

- (7) The Secretary of State may not impose a requirement under subsection (6)(b) without consulting the Scottish Ministers and the Department of Finance and Personnel in Northern Ireland.

5

4 Successful applications

- (1) If a Gender Recognition Panel grants an application under section 1(1) it must issue a gender recognition certificate to the applicant.
- (2) Unless the applicant is married, the certificate is to be a full gender recognition certificate.
- (3) If the applicant is married, the certificate is to be an interim gender recognition certificate.
- (4) Schedule 2 (annulment or dissolution of marriage after issue of interim gender recognition certificate) has effect.
- (5) The Secretary of State may, after consulting the Scottish Ministers and the Department of Finance and Personnel in Northern Ireland, specify the content and form of gender recognition certificates.

10

15

5 Subsequent issue of full certificates

- (1) A court which —
- (a) makes absolute a decree of nullity granted on the ground that an interim gender recognition certificate has been issued to a party to the marriage, or
- (b) (in Scotland) grants a decree of divorce on that ground,
- must, on doing so, issue a full gender recognition certificate to that party and send a copy to the Secretary of State.
- (2) If an interim gender recognition certificate has been issued to a person and either —
- (a) the person's marriage is dissolved or annulled (otherwise than on the ground mentioned in subsection (1)) in proceedings instituted during the period of six months beginning with the day on which it was issued, or
- (b) the person's spouse dies within that period,
- the person may make an application for a full gender recognition certificate at any time within the period specified in subsection (3) (unless the person is again married).
- (3) That period is the period of six months beginning with the day on which the marriage is dissolved or annulled or the death occurs.
- (4) An application under subsection (2) must include evidence of the dissolution or annulment of the marriage and the date on which proceedings for it were instituted, or of the death of the spouse and the date on which it occurred.
- (5) An application under subsection (2) is to be determined by a Gender Recognition Panel.
- (6) The Panel —

20

25

30

35

40

- (a) must grant the application if satisfied that the applicant is not married, and
 - (b) otherwise must reject it.
- (7) If the Panel grants the application it must issue a full gender recognition certificate to the applicant. 5

6 Errors in certificates

- (1) Where a gender recognition certificate has been issued to a person, the person or the Secretary of State may make an application for a corrected certificate on the ground that the certificate which has been issued contains an error.
- (2) If the certificate was issued by a court the application is to be determined by the court but in any other case it is to be determined by a Gender Recognition Panel. 10
- (3) The court or Panel –
 - (a) must grant the application if satisfied that the gender recognition certificate contains an error, and
 - (b) otherwise must reject it. 15
- (4) If the court or Panel grants the application it must issue a corrected gender recognition certificate to the applicant.

7 Applications: supplementary

- (1) An application to a Gender Recognition Panel under section 1(1), 5(2) or 6(1) must be made in a form and manner specified by the Secretary of State after consulting the Scottish Ministers and the Department of Finance and Personnel in Northern Ireland. 20
- (2) The applicant must pay to the Secretary of State a non-refundable fee of an amount specified by the Secretary of State unless the application is made in circumstances in which the Secretary of State has determined that no fee is payable; and fees of different amounts may be specified for different circumstances. 25

8 Appeals etc.

- (1) An applicant to a Gender Recognition Panel under section 1(1), 5(2) or 6(1) may appeal to the High Court or Court of Session on a point of law against a decision by the Panel to reject the application. 30
- (2) An appeal under subsection (1) must be heard in private if the applicant so requests.
- (3) On such an appeal the court must – 35
 - (a) allow the appeal and issue the certificate applied for,
 - (b) allow the appeal and refer the matter to the same or another Panel for re-consideration, or
 - (c) dismiss the appeal.
- (4) If an application under section 1(1) is rejected, the applicant may not make another application before the end of the period of six months beginning with the date on which it is rejected. 40

- (5) If an application under section 1(1), 5(2) or 6(1) is granted but the Secretary of State considers that its grant was secured by fraud, the Secretary of State may refer the case to the High Court or Court of Session.
- (6) On a reference under subsection (5) the court –
 - (a) must either quash or confirm the decision to grant the application, and 5
 - (b) if it quashes it, must revoke the gender recognition certificate issued on the grant of the application and may make any order which it considers appropriate in consequence of, or otherwise in connection with, doing so.

Consequences of issue of gender recognition certificate etc. 10

9 General

- (1) Where a full gender recognition certificate is issued to a person, the person's gender becomes for all purposes the acquired gender (so that, if the acquired gender is the male gender, the person's sex becomes that of a man and, if it is the female gender, the person's sex becomes that of a woman). 15
- (2) Subsection (1) does not affect things done, or events occurring, before the certificate is issued; but it does operate for the interpretation of enactments passed, and instruments and other documents made, before the certificate is issued (as well as those passed or made afterwards).
- (3) Subsection (1) is subject to provision made by this Act or any other enactment or any subordinate legislation. 20

10 Registration

- (1) Where there is a UK birth register entry in relation to a person to whom a full gender recognition certificate is issued, the Secretary of State must send a copy of the certificate to the appropriate Registrar General. 25
- (2) In this Act "UK birth register entry", in relation to a person to whom a full gender recognition certificate is issued, means –
 - (a) an entry of which a certified copy is kept by a Registrar General, or
 - (b) an entry in a register so kept,
 containing a record of the person's birth or adoption (or, if there would otherwise be more than one, the most recent). 30
- (3) "The appropriate Registrar General" means whichever of –
 - (a) the Registrar General for England and Wales,
 - (b) the Registrar General for Scotland, or
 - (c) the Registrar General for Northern Ireland, 35
 keeps a certified copy of the person's UK birth register entry or the register containing that entry.
- (4) Schedule 3 (provisions about registration) has effect.

11 Marriage

Schedule 4 (amendments of marriage law) has effect. 40

12 Parenthood

The fact that a person's gender has become the acquired gender under this Act does not affect the status of the person as the father or mother of a child.

13 Social security benefits and pensions

Schedule 5 (entitlement to benefits and pensions) has effect. 5

14 Discrimination

Schedule 6 (amendments of Sex Discrimination Act 1975 (c. 65) and Sex Discrimination (Northern Ireland) Order 1976 (S.I. 1976/1042 (N.I. 15))) has effect.

15 Succession etc.

10

The fact that a person's gender has become the acquired gender under this Act does not affect the disposal or devolution of property under a will or other instrument made before the appointed day.

16 Peerages etc.

The fact that a person's gender has become the acquired gender under this Act— 15

- (a) does not affect the descent of any peerage or dignity or title of honour, and
- (b) does not affect the devolution of any property limited (expressly or not) by a will or other instrument to devolve (as nearly as the law permits) along with any peerage or dignity or title of honour unless an intention that it should do so is expressed in the will or other instrument. 20

17 Trustees and personal representatives

- (1) A trustee or personal representative is not under a duty, by virtue of the law relating to trusts or the administration of estates, to enquire, before conveying or distributing any property, whether a full gender recognition certificate has been issued to any person or revoked (if that fact could affect entitlement to the property). 25
- (2) A trustee or personal representative is not liable to any person by reason of a conveyance or distribution of the property made without regard to whether a full gender recognition certificate has been issued to any person or revoked if the trustee or personal representative has not received notice of the fact before the conveyance or distribution. 30
- (3) This section does not prejudice the right of a person to follow the property, or any property representing it, into the hands of another person who has received it unless that person has purchased it for value in good faith and without notice. 35

18 Orders where expectations defeated

- (1) This section applies where the disposition or devolution of any property under a will or other instrument (made on or after the appointed day) is different 40

from what it would be but for the fact that a person's gender has become the acquired gender under this Act.

- (2) A person may apply to the High Court or Court of Session for an order on the ground of being adversely affected by the different disposition or devolution of the property. 5
- (3) The court may, if it is satisfied that it is just to do so, make in relation to any person benefiting from the different disposition or devolution of the property such order as it considers appropriate.
- (4) An order may, in particular, make provision for – 10
 - (a) the payment of a lump sum to the applicant,
 - (b) the transfer of property to the applicant,
 - (c) the settlement of property for the benefit of the applicant,
 - (d) the acquisition of property and either its transfer to the applicant or its settlement for the benefit of the applicant.
- (5) An order may contain consequential or supplementary provisions for giving effect to the order or for ensuring that it operates fairly as between the applicant and the other person or persons affected by it; and an order may, in particular, confer powers on trustees. 15

19 Scottish gender-specific offences

- (1) Where (apart from this subsection) a relevant gender-specific offence could be committed or attempted only if the gender of a person to whom a full gender recognition certificate has been issued were not the acquired gender, the fact that the person's gender has become the acquired gender does not prevent the offence being committed or attempted. 20
- (2) An offence is a "relevant gender-specific offence" if – 25
 - (a) either or both of the conditions in subsection (3) are satisfied, and
 - (b) the commission of the offence involves the accused engaging in sexual activity.
- (3) The conditions are – 30
 - (a) that the offence may be committed only by a person of a particular gender, and
 - (b) that the offence may be committed only on, or in relation to, a person of a particular gender;

and the references to a particular gender include a gender identified by reference to the gender of the other person involved. 35

20 Foreign gender change and marriage

- (1) A person's gender is not to be regarded as having changed by reason only that it has changed under the law of a country or territory outside the United Kingdom.
- (2) Accordingly, a person is not to be regarded as being married by reason of having entered into a foreign post-recognition marriage. 40
- (3) But if a full gender recognition certificate is issued to a person who has entered into a foreign post-recognition marriage, after the issue of the certificate the marriage is no longer to be regarded as being void on the ground that (at the

- time when it was entered into) the parties to it were not respectively male and female.
- (4) However, subsection (3) does not apply to a foreign post-recognition marriage if a party to it has entered into a later (valid) marriage before the issue of the full gender recognition certificate. 5
- (5) For the purposes of this section a person has entered into a foreign post-recognition marriage if (and only if) –
- (a) the person has entered into a marriage in accordance with the law of a country or territory outside the United Kingdom,
 - (b) before the marriage was entered into the person had changed gender under the law of that or any other country or territory outside the United Kingdom, 10
 - (c) the other party to the marriage was not of the gender to which the person had changed under the law of that country or territory, and
 - (d) by virtue of subsection (1) the person's gender was not regarded as having changed under the law of any part of the United Kingdom. 15

Supplementary

21 Prohibition on disclosure of information

- (1) It is an offence for a person who has acquired protected information in an official capacity to disclose the information to any other person. 20
- (2) “Protected information” means information which relates to a person who has made an application under section 1(1) and which –
- (a) concerns that application or any application by the person under section 5(2) or 6(1), or
 - (b) if the application under section 1(1) is granted, otherwise concerns the person's gender before it becomes the acquired gender. 25
- (3) A person acquires protected information in an official capacity if the person acquires it –
- (a) in connection with the person's functions as a member of the civil service, a constable or the holder of any other public office or in connection with the functions of a local or public authority or of a voluntary organisation, 30
 - (b) as an employer, or prospective employer, of the person to whom the information relates or as a person employed by such an employer or prospective employer, or 35
 - (c) in the course of, or otherwise in connection with, the conduct of business or the supply of professional services.
- (4) But it is not an offence under this section to disclose protected information relating to a person if –
- (a) the information does not enable that person to be identified, 40
 - (b) that person has agreed to the disclosure of the information,
 - (c) the information is protected information by virtue of subsection (2)(b) and the person by whom the disclosure is made does not know or believe that a full gender recognition certificate has been issued,
 - (d) the disclosure is in accordance with an order of a court or tribunal, 45

- (e) the disclosure is for the purpose of instituting, or otherwise for the purposes of, proceedings before a court or tribunal,
 - (f) the disclosure is for the purpose of preventing or investigating crime,
 - (g) the disclosure is made to the Registrar General for England and Wales, the Registrar General for Scotland or the Registrar General for Northern Ireland, 5
 - (h) the disclosure is made for the purposes of the social security system or a pension scheme,
 - (i) the disclosure is in accordance with provision made by an order under subsection (5), or 10
 - (j) the disclosure is in accordance with any provision of, or made by virtue of, an enactment other than this section.
- (5) The Secretary of State may by order make provision prescribing circumstances in which the disclosure of protected information is not to constitute an offence under this section. 15
- (6) The power conferred by subsection (5) is exercisable by the Scottish Ministers (rather than the Secretary of State) where the provision to be made is within the legislative competence of the Scottish Parliament.
- (7) An order under subsection (5) may make provision permitting –
 - (a) disclosure to specified persons or persons of a specified description, 20
 - (b) disclosure for specified purposes,
 - (c) disclosure of specified descriptions of information, or
 - (d) disclosure by specified persons or persons of a specified description.
- (8) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale. 25

22 Power to modify statutory provisions

- (1) The Secretary of State may by order make provision for modifying the operation of any enactment or subordinate legislation in relation to –
 - (a) persons whose gender has become the acquired gender under this Act, or 30
 - (b) any description of such persons.
- (2) The power conferred by subsection (1) is exercisable by the Scottish Ministers (rather than the Secretary of State) where the provision to be made is within the legislative competence of the Scottish Parliament.
- (3) The appropriate Northern Ireland department may by order make provision for modifying the operation of any enactment or subordinate legislation which deals with a transferred matter in relation to – 35
 - (a) persons whose gender has become the acquired gender under this Act, or
 - (b) any description of such persons. 40
- (4) In subsection (3) –
 - “the appropriate Northern Ireland department”, in relation to any enactment or subordinate legislation which deals with a transferred matter, means the Northern Ireland department which has responsibility for that matter, 45

“deals with” is to be construed in accordance with section 98(2) and (3) of the Northern Ireland Act 1998 (c. 47), and
 “transferred matter” has the meaning given by section 4(1) of that Act.

23 Orders and regulations

- (1) Any power of the Secretary of State, the Scottish Ministers or a Northern Ireland department to make an order under this Act includes power to make any appropriate incidental, supplementary, consequential or transitional provision or savings. 5
- (2) Any power of the Secretary of State or the Scottish Ministers to make an order under this Act, and any power of the Registrar General for England and Wales or the Registrar General for Scotland to make regulations under this Act, is exercisable by statutory instrument. 10
- (3) A statutory instrument containing an order made by the Secretary of State under section 2, 21 or 22 is subject to annulment in pursuance of a resolution of either House of Parliament. 15
- (4) A statutory instrument containing an order made by the Scottish Ministers under section 22 is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (5) Any power of a Northern Ireland department to make an order or regulations under this Act is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)). 20
- (6) Orders and regulations made by a Northern Ireland department under this Act are subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.))).

24 Interpretation 25

In this Act –

- “the acquired gender” is to be construed in accordance with section 1(2),
 “approved country or territory” has the meaning given by section 2(4),
 “the appointed day” means the day appointed by order under section 25,
 “chartered psychologist” means a person for the time being listed in the British Psychological Society’s Register of Chartered Psychologists, 30
 “enactment” includes an enactment contained in an Act of the Scottish Parliament or in any Northern Ireland legislation,
 “full gender recognition certificate” and “interim gender recognition certificate” mean the certificates issued as such under section 4 or 5 and
 “gender recognition certificate” means either of those sorts of certificate, 35
 “gender dysphoria” means the disorder variously referred to as gender dysphoria, gender identity disorder and transsexualism,
 “Gender Recognition Panel” (and “Panel”) is to be construed in accordance with Schedule 1, 40
 “subordinate legislation” means an Order in Council, an order, rules, regulations, a scheme, a warrant, byelaws or any other instrument made under an enactment, and
 “UK birth register entry” has the meaning given by section 10(2). 45

25 Commencement

Apart from sections 22 to 24, this section and sections 27 and 28, this Act does not come into force until such day as the Secretary of State may appoint by order made after consulting the Scottish Ministers and the Department of Finance and Personnel in Northern Ireland.

5

26 Applications within six months of commencement

- (1) This section applies in the case of any application under section 1(1)(a) made during the period of six months beginning with the appointed day.
- (2) Section 2 has effect as if for paragraphs (a) and (b) of subsection (1) there were substituted –
 - “(a) either has or has had gender dysphoria, or has undergone surgical treatment for the purpose of modifying sexual characteristics,
 - (b) has lived in the acquired gender throughout the period of six years ending with the date on which the application is made,”.
- (3) Section 3 has effect as if for subsections (1) to (3) there were substituted –
 - “(1) An application under section 1(1)(a) must include either –
 - (a) a report made by a registered medical practitioner, or
 - (b) a report made by a chartered psychologist practising in the field of gender dysphoria.
 - (2) Where the application is based on the applicant having or having had gender dysphoria –
 - (a) the reference in subsection (1) to a registered medical practitioner is to one practising in the field of gender dysphoria, and
 - (b) that subsection is not complied with unless the report includes details of the diagnosis of the applicant’s gender dysphoria.
 - (3) Subsection (1) is not complied with in a case where –
 - (a) the applicant has undergone or is undergoing treatment for the purpose of modifying sexual characteristics, or
 - (b) treatment for that purpose has been prescribed or planned for the applicant,
 unless the report required by that subsection includes details of it.”
- (4) Paragraph 4(2) of Schedule 1 has effect with the omission of paragraph (b).

27 Extent

- (1) The following provisions extend only to England and Wales –
 - (a) Part 1 of Schedule 2,
 - (b) Part 1 of Schedule 3, and
 - (c) Part 1 of Schedule 4.
- (2) The following provisions extend only to Scotland –
 - (a) section 19,
 - (b) section 23(4),
 - (c) Part 2 of Schedule 2,

- (d) Part 2 of Schedule 3, and
 - (e) Part 2 of Schedule 4.
- (3) The following provisions extend only to England and Wales and Scotland –
 - (a) paragraphs 12, 14 and 16 of Schedule 5, and
 - (b) Part 1 of Schedule 6. 5
- (4) The following provisions extend only to Northern Ireland –
 - (a) section 22(3) and (4),
 - (b) section 23(5) and (6),
 - (c) Part 3 of Schedule 2,
 - (d) Part 3 of Schedule 3, 10
 - (e) Part 3 of Schedule 4,
 - (f) paragraphs 13, 15 and 17 of Schedule 5, and
 - (g) Part 2 of Schedule 6.
- (5) Subject to subsections (1) to (4), this Act extends to Northern Ireland (as well as to England and Wales and Scotland). 15

28 Short title

This Act may be cited as the Gender Recognition Act 2004.

SCHEDULES

SCHEDULE 1

Section 1

GENDER RECOGNITION PANELS

List of persons eligible to sit

- | | | |
|---|--|----|
| 1 | (1) The Lord Chancellor must, after consulting the Scottish Ministers and the Department of Finance and Personnel in Northern Ireland, make appointments to a list of persons eligible to sit as members of Gender Recognition Panels. | 5 |
| | (2) The only persons who may be appointed to the list are persons who – | |
| | (a) have a relevant legal qualification (“legal members”), or | 10 |
| | (b) are registered medical practitioners or chartered psychologists (“medical members”). | |
| | (3) The following have a relevant legal qualification – | |
| | (a) a person who has a 7 year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41), | 15 |
| | (b) an advocate or solicitor in Scotland of at least seven years’ standing, and | |
| | (c) a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least seven years’ standing. | |

President 20

- | | | |
|---|---|----|
| 2 | (1) The Lord Chancellor must, after consulting the Scottish Ministers and the Department of Finance and Personnel in Northern Ireland – | |
| | (a) appoint one of the legal members to be the President of Gender Recognition Panels (“the President”), and | |
| | (b) appoint another of the legal members to be the Deputy President of Gender Recognition Panels (“the Deputy President”). | 25 |
| | (2) The Deputy President has the functions of the President – | |
| | (a) if the President is unavailable, and | |
| | (b) during any vacancy in the office of President. | |

Tenure of persons appointed to list 30

- | | | |
|---|--|----|
| 3 | Persons on the list – | |
| | (a) hold and vacate their appointments in accordance with the terms on which they are appointed, and | |
| | (b) are eligible for re-appointment at the end of their period of appointment. | 35 |

Membership of Panels

- 4 (1) The President must make arrangements for determining the membership of Panels.
- (2) The arrangements must ensure that a Panel determining an application under section 1(1)(a) includes— 5
- (a) at least one legal member, and
- (b) at least one medical member.
- 5 The arrangements must ensure that a Panel determining an application under section 1(1)(b), 5(2) or 6(1) includes at least one legal member.

Procedure 10

- 6 (1) Where a Panel consists of more than one member, either the President or Deputy President or another legal member nominated by the President must preside.
- (2) Decisions of a Panel consisting of more than one member may be taken by majority vote (and, if its members are evenly split, the member presiding has a casting vote). 15
- (3) Panels are to determine applications in private.
- (4) A Panel must determine an application without a hearing unless the Panel considers that a hearing is necessary.
- (5) The President may, after consulting the Council on Tribunals, give directions about the practice and procedure of Panels. 20
- (6) Panels must give reasons for their decisions.
- (7) Where a Panel has determined an application, the Secretary of State must communicate to the applicant the Panel's decision and its reasons for making its decision. 25

Staff and facilities

- 7 The Secretary of State may make staff and other facilities available to Panels.

Money

- 8 (1) The Secretary of State may pay sums by way of remuneration, allowances and expenses to members of Panels. 30
- (2) The Secretary of State may pay compensation to a person who ceases to be on the list if the Secretary of State thinks it appropriate to do so because of special circumstances.

Disqualification

- 9 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (offices disqualifying person from membership of House of Commons), at the appropriate place insert— 35
- “Person on the list of those eligible to sit as members of a Gender Recognition Panel.”

- 10 In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (offices disqualifying persons from membership of Northern Ireland Assembly), at the appropriate place insert –

“Person on the list of those eligible to sit as members of a Gender Recognition Panel.”

5

SCHEDULE 2

Section 4

INTERIM CERTIFICATES: MARRIAGE

PART 1

ENGLAND AND WALES

- 1 The Matrimonial Causes Act 1973 (c. 18) is amended as follows. 10
- 2 In section 12 (grounds on which a marriage celebrated after 31st July 1971 is voidable), after paragraph (f) insert –
- “(g) that an interim gender recognition certificate under the Gender Recognition Act 2004 has, after the time of the marriage, been issued to either party to the marriage;”.
- 3 In section 13 (bars to relief), after subsection (2) insert –
- “(2A) Without prejudice to subsection (1) above, the court shall not grant a decree of nullity by virtue of section 12 above on the ground mentioned in paragraph (g) of that section unless it is satisfied that proceedings were instituted within the period of six months from the date of issue of the interim gender recognition certificate.”
- 4 (1) Paragraph 11 of Schedule 1 (grounds on which a marriage celebrated before 1st August 1971 is voidable) is amended as follows. 20
- (2) In sub-paragraph (1), after paragraph (d) insert “or
- (e) that an interim gender recognition certificate under the Gender Recognition Act 2004 has been issued to either party to the marriage;”.
- (3) After sub-paragraph (3) insert –
- “(3A) The court shall not grant a decree of nullity in a case falling within sub-paragraph (1)(e) above unless it is satisfied that proceedings were instituted within six months from the date of issue of the interim gender recognition certificate.”
- 25 30

PART 2

SCOTLAND

- 5 The Divorce (Scotland) Act 1976 (c. 39) is amended as follows. 35
- 6 (1) In subsection (1) of section 1 (grounds on which decree of divorce may be granted) –
- (a) the words “the marriage has broken down irretrievably” become paragraph (a), and

-
- (b) after that paragraph insert “or
 (b) an interim gender recognition certificate under the
 Gender Recognition Act 2004 has, after the date of the
 marriage, been issued to either party to the marriage.”
- (2) Accordingly, the title of that section becomes “Grounds of divorce”. 5
- 7 In section 2(1) (encouragement of reconciliation), for “in an action for
 divorce” substitute “under paragraph (a) of section 1(1)”.
- PART 3
- NORTHERN IRELAND
- 8 The Matrimonial Causes (Northern Ireland) Order 1978 (S.I. 1978/1045 (N.I.
 15)) is amended as follows. 10
- 9 In Article 14 (grounds on which a marriage celebrated after the
 commencement of that Article is voidable), after paragraph (f) insert –
- “(g) that an interim gender recognition certificate under the
 Gender Recognition Act 2004 has, after the time of the
 marriage, been issued to either party to the marriage;”. 15
- 10 In Article 16 (bars to relief), after paragraph (2) insert –
- “(2A) Without prejudice to paragraph (1), the court shall not grant a decree
 of nullity by virtue of Article 14 on the ground mentioned in
 paragraph (g) of that Article unless it is satisfied that proceedings 20
 were instituted within the period of six months from the date of issue
 of the interim gender recognition certificate.”
- 11 (1) Paragraph 18 of Schedule 3 (grounds on which a marriage celebrated before
 the commencement of Article 14 is voidable) is amended as follows.
- (2) In sub-paragraph (1), after paragraph (d) insert “or 25
 (e) that an interim gender recognition certificate under the
 Gender Recognition Act 2004 has been issued to either
 party to the marriage;”.
- (3) After sub-paragraph (4) insert –
- “(4A) The court shall not grant a decree of nullity in a case falling within 30
 sub-paragraph (1)(e) unless it is satisfied that proceedings were
 instituted within six months from the date of issue of the interim
 gender recognition certificate.”

SCHEDULE 3

Section 10

REGISTRATION

PART 1

ENGLAND AND WALES

<i>Introductory</i>	5
1 In this Part— “the Registrar General” means the Registrar General for England and Wales, and “the 1953 Act” means the Births and Deaths Registration Act 1953 (c. 20).	10
<i>Gender Recognition Register</i>	
2 (1) The Registrar General must maintain, in the General Register Office, a register to be called the Gender Recognition Register. (2) In this Part “the Gender Recognition Register” means the register maintained under sub-paragraph (1). (3) The form in which the Gender Recognition Register is maintained is to be determined by the Registrar General. (4) The Gender Recognition Register is not to be open to public inspection or search.	15
<i>Entries in Gender Recognition Register and marking of existing birth register entries</i>	20
3 (1) If the Registrar General receives under section 10(1) a copy of a full gender recognition certificate issued to a person, the Registrar General must— (a) make an entry in the Gender Recognition Register containing such particulars as may be prescribed in relation to the person’s birth and any other prescribed matter, (b) secure that the UK birth register entry is marked in such manner as may be prescribed, and (c) make traceable the connection between the entry in the Gender Recognition Register and the UK birth register entry. (2) Sub-paragraph (1) does not apply if the certificate was issued after an application under section 6(1) and that sub-paragraph has already been complied with in relation to the person. (3) No certified copy of the UK birth register entry and no short certificate of birth compiled from that entry is to include anything marked by virtue of sub-paragraph (1)(b). (4) Information kept by the Registrar General for the purposes of sub-paragraph (1)(c) is not to be open to public inspection or search. (5) “Prescribed” means prescribed by regulations made by the Registrar General with the approval of the Chancellor of the Exchequer.	25 30 35

Indexing of entries in Gender Recognition Register

- | | | |
|---|--|----|
| 4 | (1) The Registrar General must make arrangements for each entry made in the Gender Recognition Register to be included in the relevant index kept in the General Register Office. | |
| | (2) Any right to search the relevant index includes the right to search entries included in it by virtue of sub-paragraph (1). | 5 |
| | (3) Where by virtue of sub-paragraph (1) an index includes entries in the Gender Recognition Register, the index must not disclose that fact. | |
| | (4) “The relevant index”, in relation to an entry made in the Gender Recognition Register in relation to a person, means the index of the certified copies of entries in registers, or of entries in registers, which includes the person’s UK birth register entry. | 10 |

Certified copies of entries in Gender Recognition Register

- | | | |
|---|--|----|
| 5 | (1) Anyone who may have a certified copy of the UK birth register entry of a person issued with a full gender recognition certificate may have a certified copy of the entry made in relation to the person in the Gender Recognition Register. | 15 |
| | (2) Any fee which would be payable for a certified copy of the person’s UK birth register entry is payable for a certified copy of the entry made in relation to the person in the Gender Recognition Register. | 20 |
| | (3) If the person’s UK birth register entry is an entry in the Gender Recognition Register, sub-paragraph (1) applies as if the person’s UK birth register entry were the most recent entry within section 10(2)(a) or (b) containing a record of the person’s birth or adoption which is not an entry in the Gender Recognition Register. | 25 |
| | (4) A certified copy of an entry in the Gender Recognition Register must not disclose the fact that the entry is contained in the Gender Recognition Register. | |
| | (5) A certified copy of an entry in the Gender Recognition Register must be sealed or stamped with the seal of the General Register Office. | 30 |

Short certificates of birth compiled from Gender Recognition Register

- | | | |
|---|--|--|
| 6 | Where a short certificate of birth under section 33 of the 1953 Act is compiled from the Gender Recognition Register, the certificate must not disclose that fact. | |
|---|--|--|

Gender Recognition Register: re-registration 35

- | | | |
|---|--|----|
| 7 | (1) Section 10A of the 1953 Act (re-registration where parents not married) applies where an entry relating to a person’s birth has been made in the Gender Recognition Register as where the birth of a child has been registered under that Act. | |
| | (2) In its application by virtue of sub-paragraph (1) section 10A has effect – | 40 |
| | (a) as if the reference to the registrar in subsection (1) were to the Registrar General, and | |
| | (b) with the omission of subsection (2). | |

- (3) Sections 14 and 14A of the 1953 Act (re-registration in cases of legitimation and after declaration of parentage) apply where an entry relating to a person's birth has been made in the Gender Recognition Register as if the references in those sections to the Registrar General authorising re-registration of the person's birth were to the Registrar General's re-registering it. 5

Correction etc. of Gender Recognition Register

- 8 (1) Any power or duty of the Registrar General or any other person to correct, alter, amend, mark or cancel the marking of a person's UK birth register entry is exercisable, or falls to be performed, by the Registrar General in relation to an entry in the Gender Recognition Register which – 10
- (a) relates to that person, and
 - (b) under paragraph 4(1) is included in the index which includes the person's UK birth register entry.
- (2) If the person's UK birth register entry is an entry in the Gender Recognition Register, the references in sub-paragraph (1) to the person's UK birth register entry are to the most recent entry within section 10(2)(a) or (b) containing a record of the person's birth or adoption which is not an entry in the Gender Recognition Register. 15
- (3) The Registrar General may correct the Gender Recognition Register by entry in the margin (without any alteration of the original entry) in consequence of the issue of a full gender recognition certificate after an application under section 6(1). 20

Revocation of gender recognition certificate etc.

- 9 (1) This paragraph applies if, after an entry has been made in the Gender Recognition Register in relation to a person, the High Court or the Court of Session makes an order under section 8(6) quashing the decision to grant the person's application under section 1(1) or 5(2). 25
- (2) The High Court or the Court of Session must inform the Registrar General.
- (3) Subject to any appeal, the Registrar General must – 30
- (a) cancel the entry in the Gender Recognition Register, and
 - (b) cancel, or secure the cancellation, of any marking of an entry relating to the person made by virtue of paragraph 3(1)(b).

Evidence

- 10 (1) Section 34(5) of the 1953 Act (certified copy of entry in register under that Act deemed to be true copy) applies in relation to the Gender Recognition Register as if it were a register under that Act. 35
- (2) A certified copy of an entry made in the Gender Recognition Register in relation to a person is to be received, without further or other proof, as evidence – 40
- (a) if the relevant index is the index of the Adopted Children Register, of the matters of which a certified copy of an entry in that Register is evidence,

- (b) if the relevant index is the index of the Parental Order Register, of the matters of which a certified copy of an entry in that Register is evidence, and
 - (c) otherwise, of the person’s birth.
- (3) And any certified copy which is receivable in evidence of any matter in Northern Ireland by virtue of paragraph 31(2)(a) or (b) of this Schedule is also receivable as evidence of that matter in England and Wales. 5

Regulatory reform

- 11 An order under section 1 of the Regulatory Reform Act 2001 (c. 6) (power by order to make provision reforming law which imposes burdens) may reform the law contained in this Part of this Schedule even if – 10
 - (a) the order is made less than two years after this Act is passed, and
 - (b) no proposals about this Part have been consulted on under section 5, or included in a document laid before Parliament under section 6, of that Act. 15

PART 2

SCOTLAND

Introductory

- 12 In this Part – 20
 - “the Registrar General” means the Registrar General for Scotland, and
 - “the 1965 Act” means the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c. 49).

Gender Recognition Register

- 13 (1) The Registrar General must maintain, in the General Register Office of Births, Deaths and Marriages in Scotland, a register to be called the Gender Recognition Register. 25
- (2) In this Part “the Gender Recognition Register” means the register maintained under sub-paragraph (1).
- (3) The form in which the Gender Recognition Register is maintained is to be determined by the Registrar General. 30
- (4) The Gender Recognition Register is not to be open to public inspection or search.

Entries in Gender Recognition Register

- 14 (1) If the Registrar General receives under section 10(1) a copy of a full gender recognition certificate issued to a person, the Registrar General must – 35
 - (a) make an entry in the Gender Recognition Register containing such particulars as may be prescribed in relation to the person’s birth and any other prescribed matter, and
 - (b) otherwise than by annotating in any way the birth register, make traceable the connection between the UK birth register entry and the entry in the Gender Recognition Register. 40

- (2) Sub-paragraph (1) does not apply if the gender recognition certificate was issued after an application under section 6(1) and that sub-paragraph has already been complied with in relation to the person.
- (3) Information kept by the Registrar General for the purposes of sub-paragraph (1)(b) is not to be open to public inspection or search. 5
- (4) “Prescribed” means prescribed by regulations made by the Registrar General with the approval of the Scottish Ministers.

Indexing of entries in Gender Recognition Register

- 15 (1) The Registrar General must make arrangements for each entry made in the Gender Recognition Register to be included in an index of such entries kept in the General Register Office of Births, Deaths and Marriages in Scotland. 10
- (2) Whenever the Registrar General causes a search to be made under subsection (2)(a) of section 38 of the 1965 Act (search of indexes of entries in the registers of births, deaths and marriages) on behalf of any person, he must also, without payment of any fee additional to the fee or fees prescribed under that section – 15
 - (a) cause a search to be made of the index of entries in the Gender Recognition Register on behalf of that person, and
 - (b) issue to that person an extract of any such entry provided that (disregarding, for the purposes of subsection (4)(j) of section 21, this paragraph) disclosure of the entry to the person would not constitute an offence under that section. 20

Extracts of entries in Gender Recognition Register

- 16 (1) This paragraph applies in respect of an extract issued under paragraph 15(2)(b). 25
- (2) Except as regards the sex and name of the person to whom it relates, the extract must have the form and content it would have had had it been an extract from the register of births of the entry relating to that person.
- (3) The extract must not disclose the fact that the entry is contained in the Gender Recognition Register. 30

Abbreviated certificates of birth compiled from Gender Recognition Register

- 17 Where an abbreviated certificate of birth under section 40 of the 1965 Act is compiled from the Gender Recognition Register, the certificate must not disclose that fact.

Gender Recognition Register: correction, re-registration etc. 35

- 18 Section 18A(2) (decrees of parentage and non-parentage), section 20(1) and (3) (re-registration in certain cases), section 42(1) and (5) (correction of errors), section 43(1), (2) and (5) to (9) (recording change of name or surname) and section 44 (Register of Corrections etc.) of the 1965 Act apply in relation to the Gender Recognition Register as they apply in relation to the register of births. 40

Revocation of gender recognition certificate etc.

- 19 (1) This paragraph applies if, after an entry has been made in the Gender Recognition Register in relation to a person, the High Court or the Court of Session makes an order under section 8(6) quashing the decision to grant the person’s application under section 1(1) or 5(2). 5
- (2) The High Court or the Court of Session must inform the Registrar General.
- (3) Subject to any appeal, the Registrar General must cancel the entry in the Gender Recognition Register.

Authentication and admissibility

- 20 Section 41 of the 1965 Act (authentication of extracts etc. and their admissibility as evidence) applies in relation to the Gender Recognition Register as in relation to the registers kept under the provisions of that Act. 10

PART 3

NORTHERN IRELAND

Introductory 15

- 21 In this Part—
 “the Registrar General” means the Registrar General for Northern Ireland, and
 “the 1976 Order” means the Births and Deaths Registration (Northern Ireland) Order 1976 (S.I. 1976/1041 (N.I. 14)). 20

Gender Recognition Register

- 22 (1) The Registrar General must maintain, in the General Register Office in Northern Ireland, a register to be called the Gender Recognition Register.
- (2) In this Part “the Gender Recognition Register” means the register maintained under sub-paragraph (1). 25
- (3) The form in which the Gender Recognition Register is maintained is to be determined by the Registrar General.
- (4) The Gender Recognition Register is not to be open to public inspection or search.

Entries in Gender Recognition Register and marking of existing birth register entries 30

- 23 (1) If the Registrar General receives under section 10(1) a copy of a full gender recognition certificate issued to a person, the Registrar General must—
- (a) make an entry in the Gender Recognition Register containing such particulars as may be prescribed in relation to the person’s birth and any other prescribed matter, 35
- (b) secure that the UK birth register entry is marked in such manner as may be prescribed, and
- (c) make traceable the connection between the entry in the Gender Recognition Register and the UK birth register entry.

- (2) Sub-paragraph (1) does not apply if the gender recognition certificate was issued after an application under section 6(1) and that sub-paragraph has already been complied with in relation to the person.
- (3) No certified copy of the UK birth register entry and no short certificate of birth compiled from that entry is to include anything marked by virtue of sub-paragraph (1)(b). 5
- (4) Information kept by the Registrar General for the purposes of sub-paragraph (1)(c) is not to be open to public inspection or search.
- (5) “Prescribed” means prescribed by regulations made by the Department of Finance and Personnel. 10

Indexing of entries in Gender Recognition Register

- 24 (1) The Registrar General must make arrangements for each entry made in the Gender Recognition Register to be included in the relevant index kept in the General Register Office in Northern Ireland.
- (2) Any right to search the relevant index includes the right to search entries included in it by virtue of sub-paragraph (1). 15
- (3) Where by virtue of sub-paragraph (1) an index includes entries in the Gender Recognition Register, the index must not disclose that fact.
- (4) “The relevant index”, in relation to an entry made in the Gender Recognition Register in relation to a person, means the index of the entries in registers which includes the UK birth register entry. 20

Certified copies of entries in Gender Recognition Register

- 25 (1) Anyone who may have a certified copy of the UK birth register entry of a person issued with a full gender recognition certificate may have a certified copy of the entry made in relation to the person in the Gender Recognition Register. 25
- (2) Any fee which would be payable for a certified copy of the person’s UK birth register entry is payable for a certified copy of the entry made in relation to the person in the Gender Recognition Register.
- (3) If the person’s UK birth register entry is an entry in the Gender Recognition Register, sub-paragraph (1) applies as if the person’s UK birth register entry were the most recent entry within section 10(2)(a) or (b) containing a record of the person’s birth or adoption which is not an entry in the Gender Recognition Register. 30
- (4) A certified copy of an entry in the Gender Recognition Register must not disclose the fact that the entry is contained in the Gender Recognition Register. 35
- (5) A certified copy of an entry in the Gender Recognition Register must be sealed or stamped with the seal of the General Register Office in Northern Ireland. 40

Short certificates of birth compiled from Gender Recognition Register

- 26 Where a short certificate of birth under Article 40 of the 1976 Order is compiled from the Gender Recognition Register, the certificate must not disclose that fact.

Gender Recognition Register: re-registration

- 27 Articles 18, 19 and 19A of the 1976 Order (re-registration of births) apply where an entry relating to a person's birth has been made in the Gender Recognition Register as if the references in those Articles to the Registrar General authorising re-registration of the person's birth were to the Registrar General's re-registering it. 5

Correction of errors in Gender Recognition Register

- 28 (1) Any power or duty of the Registrar General to correct, alter, amend, mark or cancel the marking of a person's UK birth register entry is exercisable, or falls to be performed, by the Registrar General in relation to an entry in the Gender Recognition Register which – 10
- (a) relates to that person, and
 - (b) under paragraph 24(1) is included in the index which includes the person's UK birth register entry.
- (2) If the person's UK birth register entry is an entry in the Gender Recognition Register, the references in sub-paragraph (1) to the person's UK birth register entry are to the most recent entry within section 10(2)(a) or (b) containing a record of the person's birth or adoption which is not an entry in the Gender Recognition Register. 15
- (3) The Registrar General may correct the Gender Recognition Register by entry in the margin (without any alteration of the original entry) in consequence of the issue of a full gender recognition certificate after an application under section 6(1). 20

Revocation of gender recognition certificate etc.

- 29 (1) This paragraph applies if, after an entry has been made in the Gender Recognition Register in relation to a person, the High Court or the Court of Session makes an order under section 8(6) quashing the decision to grant the person's application under section 1(1) or 5(2). 25
- (2) The High Court or the Court of Session must inform the Registrar General.
- (3) Subject to any appeal, the Registrar General must – 30
- (a) cancel the entry in the Gender Recognition Register, and
 - (b) cancel, or secure the cancellation of, any marking of an entry relating to the person made by virtue of paragraph 23(1)(b).

Change of name

- 30 Paragraphs (4) to (6) of Article 37 of the 1976 Order (change of name) apply in relation to the Gender Recognition Register as they apply in relation to a register under that Order. 35

Evidence

- 31 (1) Article 42 of the 1976 Order (proof of age or death) applies in relation to the Gender Recognition Register as it applies in relation to a register under that Order. 40

- (2) A certified copy of an entry made in the Gender Recognition Register in relation to a person is to be received, without further or other proof, as evidence—
 - (a) if the relevant index is the index of the Adopted Children Register, of the matters of which a certified copy of an entry in that Register is evidence, 5
 - (b) if the relevant index is the index of the Parental Order Register, of the matters of which a certified copy of an entry in that Register is evidence, and
 - (c) otherwise, of the person’s birth. 10
- (3) And any certified copy which is receivable in evidence of any matter in England and Wales by virtue of paragraph 10(2)(a) or (b) of this Schedule is also receivable as evidence of that matter in Northern Ireland.

Fees

- 32 Article 47 of the 1976 Order (fees for searches, certificates etc.) applies in relation to the Gender Recognition Register as it applies in relation to a register under that Order. 15

SCHEDULE 4

Section 11

EFFECT ON MARRIAGE

PART 1 20

ENGLAND AND WALES

Marriage Act 1949 (c. 76)

- 1 The Marriage Act 1949 is amended as follows.
- 2 In section 1 (restrictions on marriage), insert at the end —
 - “(6) Subsection (5) of this section and Parts 2 and 3 of the First Schedule to this Act have effect subject to the following modifications in the case of a party to a marriage whose gender has become the acquired gender under the Gender Recognition Act 2004 (“the relevant person”). 25
 - (7) Any reference in those provisions to a former wife or former husband of the relevant person includes (respectively) any former husband or former wife of the relevant person. 30
 - (8) And—
 - (a) the reference in paragraph (b) of subsection (5) of this section to the relevant person’s son’s mother is to the relevant person’s son’s father if the relevant person is the son’s mother; and
 - (b) the reference in paragraph (d) of that subsection to the relevant person’s daughter’s father is to the relevant person’s 35

daughter’s mother if the relevant person is the daughter’s father.”

3 After section 5A insert –

“5B Marriages involving person of acquired gender

- | | | |
|-----|---|----|
| (1) | No clergyman is obliged to solemnise the marriage of a person whose gender has become the acquired gender under the Gender Recognition Act 2004. | 5 |
| (2) | No clerk in Holy Orders of the Church in Wales is obliged to permit the marriage of such a person to be solemnised in the church or chapel of which the clerk is the minister.” | 10 |

Matrimonial Causes Act 1973 (c. 18)

- | | | |
|---|--|----|
| 4 | The Matrimonial Causes Act 1973 is amended as follows. | |
| 5 | In section 12 (grounds on which a marriage celebrated after 31st July 1971 is voidable), insert at the end – | |
| | “(h) that the respondent is a person whose gender at the time of the marriage had become the acquired gender under the Gender Recognition Act 2004.” | 15 |
| 6 | In section 13(2), (3) and (4) (bars to relief), for “or (f)” substitute “, (f) or (h)”. | |

PART 2

SCOTLAND 20

Marriage (Scotland) Act 1977 (c. 15)

- | | | |
|---|---|----|
| 7 | In section 2 of the Marriage (Scotland) Act 1977 (marriage of related persons), insert at the end – | |
| | “(6) Subsections (1A) and (1B) above and paragraphs 2 and 2A of Schedule 1 to this Act have effect subject to the following modifications in the case of a party to a marriage whose gender has become the acquired gender under the Gender Recognition Act 2004 (“the relevant person”). | 25 |
| | (7) Any reference in those provisions to a former wife or former husband of the relevant person includes (respectively) any former husband or former wife of the relevant person. | 30 |
| | (8) And – | |
| | (a) the reference in paragraph (b) of subsection (1B) above to the relevant person’s son’s mother is to the relevant person’s son’s father if the relevant person is the son’s mother; and | 35 |
| | (b) the reference in paragraph (d) of that subsection to the relevant person’s daughter’s father is to the relevant person’s daughter’s mother if the relevant person is the daughter’s father.” | |

PART 3

NORTHERN IRELAND

Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984 (S.I. 1984/1984 (N.I. 14))

- | | | |
|---|--|----|
| 8 | In Article 18 of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984 (restrictions on marriage), after paragraph (2D) insert – | 5 |
| | “(2DA) Paragraph (2D) and Parts 2 and 3 of the Table in paragraph (1) have effect subject to the following modifications in the case of a party to a marriage whose gender has become the acquired gender under the Gender Recognition Act 2004 (“the relevant person”). | 10 |
| | (2DB) Any reference in those provisions to a former wife or former husband of the relevant person includes (respectively) any former husband or former wife of the relevant person. | |
| | (2DC) And – | |
| | (a) the reference in paragraph (2D)(b) to the relevant person’s son’s mother is to the relevant person’s son’s father if the relevant person is the son’s mother, and | 15 |
| | (b) the reference in paragraph (2D)(d) to the relevant person’s daughter’s father is to the relevant person’s daughter’s mother if the relevant person is the daughter’s father.” | 20 |

Matrimonial Causes (Northern Ireland) Order 1978 (S.I. 1978/1045 (N.I. 15))

- | | | |
|----|--|----|
| 9 | The Matrimonial Causes (Northern Ireland) Order 1978 is amended as follows. | |
| 10 | In Article 14 (grounds on which a marriage celebrated after the commencement of that Article is voidable), insert at the end – | 25 |
| | “(h) that the respondent is a person whose gender at the time of the marriage had become the acquired gender under the Gender Recognition Act 2004.” | |
| 11 | In Article 16(2), (3) and (4) (bars to relief), for “or (f)” substitute “, (f) or (h)”. | |

SCHEDULE 5

Section 13 30

BENEFITS AND PENSIONS

PART 1

INTRODUCTORY

- | | | |
|---|--|----|
| 1 | This Schedule applies where a full gender recognition certificate is issued to a person. | 35 |
|---|--|----|

PART 2

STATE BENEFITS

Introductory

- 2 (1) In this Part of this Schedule “the 1992 Act” means –
- (a) in England and Wales and Scotland, the Social Security Contributions and Benefits Act 1992 (c. 4), and
 - (b) in Northern Ireland, the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).
- (2) In this Part of this Schedule “the Administration Act” means –
- (a) in England and Wales and Scotland, the Social Security Administration Act 1992 (c. 5), and
 - (b) in Northern Ireland, the Social Security Administration (Northern Ireland) Act 1992 (c. 8).
- (3) Expressions used in this Part of this Schedule and in Part 2 of the 1992 Act have the same meaning in this Part of this Schedule as in Part 2 of the 1992 Act.

Widowed mother’s allowance

- 3 (1) If (immediately before the certificate is issued) the person is, or but for section 1 of the Administration Act would be, entitled to a widowed mother’s allowance under section 37 of the 1992 Act (allowance for woman whose husband died before 9th April 2001) –
- (a) the person is not entitled to that allowance afterwards, but
 - (b) (instead) subsections (2) to (5) of section 39A of the 1992 Act (widowed parent’s allowance) apply in relation to the person.
- (2) If (immediately before the certificate is issued) the person is (actually) entitled to a widowed mother’s allowance, the entitlement to widowed parent’s allowance conferred by sub-paragraph (1) is not subject to section 1 of the Administration Act.

Widow’s pension

- 4 If (immediately before the certificate is issued) the person is entitled to a widow’s pension under section 38 of the 1992 Act (pension for woman whose husband died before 9th April 2001), the person is not entitled to that pension afterwards.

Widowed parent’s allowance

- 5 If (immediately before the certificate is issued) the person is, or but for section 1 of the Administration Act would be, entitled to a widowed parent’s allowance by virtue of subsection (1)(b) of section 39A of the 1992 Act (allowance for man whose wife died before 9th April 2001), subsections (2) to (5) of that section continue to apply in relation to the person afterwards.

Long-term incapacity benefit etc.

- | | | |
|---|---|---|
| 6 | <p>If (immediately before the certificate is issued) the person is entitled to incapacity benefit, or a Category A retirement pension, under –</p> <ul style="list-style-type: none"> (a) section 40 of the 1992 Act (long-term incapacity benefit etc. for woman whose husband died before 9th April 2001), or (b) section 41 of the 1992 Act (long-term incapacity benefit etc. for man whose wife died before that date), <p>the person is not so entitled afterwards.</p> | 5 |
|---|---|---|

Category A retirement pension

- | | | |
|---|---|---|
| 7 | <p>(1) Any question –</p> <ul style="list-style-type: none"> (a) whether the person is entitled to a Category A retirement pension (under section 44 of the 1992 Act) for any period after the certificate is issued, and (b) (if so) the rate at which the person is so entitled for the period, <p>is to be decided as if the person’s gender had always been the acquired gender.</p> <p>(2) Accordingly, if (immediately before the certificate is issued) the person –</p> <ul style="list-style-type: none"> (a) is a woman entitled to a Category A retirement pension, but (b) has not attained the age of 65, <p>the person ceases to be so entitled when it is issued.</p> <p>(3) And, conversely, if (immediately before the certificate is issued) the person –</p> <ul style="list-style-type: none"> (a) is a man who has attained the age at which a woman of the same age attains pensionable age, but (b) has not attained the age of 65, <p>the person is to be treated for the purposes of section 44 of the 1992 Act as attaining pensionable age when it is issued.</p> <p>(4) But sub-paragraph (1) does not apply if and to the extent that the decision of any question to which it refers is affected by –</p> <ul style="list-style-type: none"> (a) the payment or crediting of contributions, or the crediting of earnings, in respect of a period ending before the certificate is issued, or (b) preclusion from regular employment by responsibilities at home for such a period. <p>(5) Paragraph 10 makes provision about deferment of Category A retirement pensions.</p> | <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |
|---|---|---|

Category B retirement pension etc.

- | | | |
|---|---|----|
| 8 | <p>(1) Any question whether the person is entitled to –</p> <ul style="list-style-type: none"> (a) a Category B retirement pension (under section 48A, 48B, 48BB or 51 of the 1992 Act), or (b) an increase in a Category A retirement pension under section 51A or 52 of the 1992 Act (increase in Category A retirement pension by reference to amount of Category B retirement pension), | 40 |
|---|---|----|

for any period after the certificate is issued is (in accordance with section 9(1)) to be decided as if the person's gender were the acquired gender (but subject to sub-paragraph (4)).	
(2) Accordingly, if (immediately before the certificate is issued) the person is a woman entitled to –	5
(a) a Category B retirement pension, or	
(b) an increase in a Category A retirement pension under section 51A or 52 of the 1992 Act,	
the person may cease to be so entitled when it is issued.	
(3) And, conversely, if (immediately before the certificate is issued) the person –	10
(a) is a man who has attained the age at which a woman of the same age attains pensionable age, but	
(b) has not attained the age of 65,	
the person is to be treated for the purposes of sections 48A, 48B and 48BB of the 1992 Act as attaining pensionable age when it is issued.	15
(4) But a person who is a man (immediately before the certificate is issued) is not entitled to a Category B retirement pension under section 48B of the 1992 Act for any period after it is issued if the person –	
(a) attains (or has attained) the age of 65 before 6th April 2010, and	20
(b) would not have been entitled to a Category B retirement pension under section 51 of the 1992 Act for that period if still a man.	
(5) Paragraph 10 makes provision about deferment of Category B retirement pensions.	
<i>Shared additional pension</i>	25
9 (1) Any question –	
(a) whether the person is entitled to a shared additional pension (under section 55A of the 1992 Act) for any period after the certificate is issued, and	
(b) (if so) the rate at which the person is so entitled for the period,	30
is to be decided on the basis of the person attaining pensionable age on the same date as someone of the acquired gender (and the same age).	
(2) Accordingly, if (immediately before the certificate is issued) the person –	
(a) is a woman entitled to a shared additional pension, but	
(b) has not attained the age of 65,	35
the person ceases to be so entitled when it is issued.	
(3) And, conversely, if (immediately before the certificate is issued) the person –	
(a) is a man who has attained the age at which a woman of the same age attains pensionable age, but	40
(b) has not attained the age of 65,	
the person is to be treated for the purposes of section 55A of the 1992 Act as attaining pensionable age when it is issued.	
(4) Paragraph 10 makes provision about deferment of shared additional pensions.	45

Deferment of pensions

- 10 (1) The person’s entitlement to –
- (a) a Category A retirement pension,
 - (b) a Category B retirement pension, or
 - (c) a shared additional pension,
- 5
- is not to be taken to have been deferred for any period ending before the certificate is issued unless the condition in sub-paragraph (2) is satisfied.
- (2) The condition is that the entitlement both –
- (a) was actually deferred during the period, and
 - (b) would have been capable of being so deferred had the person’s
- 10
- gender been the acquired gender.

Category C retirement pension for widows

- 11 If (immediately before the certificate is issued) the person is entitled to a Category C retirement pension under section 78(2) of the 1992 Act, the person is not entitled to that pension afterwards.
- 15

Graduated retirement benefit: Great Britain

- 12 (1) The provision that may be made by regulations under paragraph 15 of Schedule 3 to the Social Security (Consequential Provisions) Act 1992 (c. 6) (power to retain provisions repealed by Social Security Act 1973 (c. 38), with or without modification, for transitional purposes) includes provision modifying the preserved graduated retirement benefit provisions in consequence of this Act.
- 20
- (2) “The preserved graduated retirement benefit provisions” are the provisions of the National Insurance Act 1965 (c. 51) relating to graduated retirement benefit continued in force, with or without modification, by regulations having effect as if made under that paragraph.
- 25

Graduated retirement benefit: Northern Ireland

- 13 (1) The provision that may be made by regulations under paragraph 15 of Schedule 3 to the Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9) (corresponding power for Northern Ireland) includes provision modifying the Northern Ireland preserved graduated retirement benefit provisions in consequence of this Act.
- 30
- (2) “The Northern Ireland preserved graduated retirement benefit provisions” are the provisions of the National Insurance Act (Northern Ireland) 1966 (1966 c. 6 (N.I.)) relating to graduated retirement benefit continued in force, with or without modification, by regulations having effect as if made under that paragraph.
- 35

PART 3

OCCUPATIONAL PENSION SCHEMES

Guaranteed minimum pensions etc.: Great Britain

- | | | | |
|----|-----|---|----|
| 14 | (1) | In this paragraph “the 1993 Act” means the Pension Schemes Act 1993 (c. 48); and expressions used in this paragraph and in that Act have the same meaning in this paragraph as in that Act. | 5 |
| | (2) | The fact that the person’s gender has become the acquired gender does not affect the operation of section 14 of the 1993 Act (guaranteed minimum) in relation to the person, except to the extent that its operation depends on section 16 of the 1993 Act (revaluation); and sub-paragraphs (3) and (5) have effect subject to that. | 10 |
| | (3) | If (immediately before the certificate is issued) the person is a woman who is entitled to a guaranteed minimum pension but has not attained the age of 65 – | |
| | (a) | the person is for the purposes of section 13 of the 1993 Act and the guaranteed minimum pension provisions to be treated after it is issued as not having attained pensionable age (so that the entitlement ceases) but as attaining pensionable age on subsequently attaining the age of 65, and | 15 |
| | (b) | in a case where the person’s guaranteed minimum pension has commenced before the certificate is issued, it is to be treated for the purposes of Chapter 3 of Part 4 of the 1993 Act (anti-franking) as if it had not. | 20 |
| | (4) | But sub-paragraph (3)(a) does not – | |
| | (a) | affect any pension previously paid to the person, or | 25 |
| | (b) | prevent section 15 of the 1993 Act (increase of guaranteed minimum where commencement of guaranteed minimum pension postponed) operating to increase the person’s guaranteed minimum by reason of a postponement of the commencement of the person’s guaranteed minimum pension for a period ending before the certificate is issued. | 30 |
| | (5) | If (immediately before the certificate is issued) the person is a man who – | |
| | (a) | has attained the age of 60, but | |
| | (b) | has not attained the age of 65, | |
| | | the person is to be treated for the purposes of section 13 of the 1993 Act and the guaranteed minimum pension provisions as attaining pensionable age when it is issued. | 35 |
| | (6) | If at that time the person has attained the age of 65, the fact that the person’s gender has become the acquired gender does not affect the person’s pensionable age for those purposes. | |
| | (7) | The fact that the person’s gender has become the acquired gender does not affect any guaranteed minimum pension to which the person is entitled as a widow or widower immediately before the certificate is issued (except in consequence of the operation of the previous provisions of this Schedule). | 40 |
| | (8) | If a transaction to which section 19 of the 1993 Act applies which is carried out before the certificate is issued discharges a liability to provide a guaranteed minimum pension for or in respect of the person, it continues to do so afterwards. | 45 |

- (9) “The guaranteed minimum pension provision” means so much of the 1993 Act (apart from section 13) and of any other enactment as relates to guaranteed minimum pensions.

Guaranteed minimum pensions etc.: Northern Ireland

- | | | |
|-----|--|----|
| 15 | <p>(1) In this paragraph “the 1993 Act” means the Pension Schemes (Northern Ireland) Act 1993 (c. 49); and expressions used in this paragraph and in that Act have the same meaning in this paragraph as in that Act.</p> | 5 |
| (2) | <p>The fact that the person’s gender has become the acquired gender does not affect the operation of section 10 of the 1993 Act (guaranteed minimum) in relation to the person, except to the extent that its operation depends on section 12 of the 1993 Act (revaluation); and sub-paragraphs (3) and (5) have effect subject to that.</p> | 10 |
| (3) | <p>If (immediately before the certificate is issued) the person is a woman who is entitled to a guaranteed minimum pension but has not attained the age of 65—</p> | 15 |
| (a) | <p>the person is for the purposes of section 9 of the 1993 Act and the guaranteed minimum pension provisions to be treated after it is issued as not having attained pensionable age (so that the entitlement ceases) but as attaining pensionable age on subsequently attaining the age of 65, and</p> | 20 |
| (b) | <p>in a case where the person’s guaranteed minimum pension has commenced before the certificate is issued, it is to be treated for the purposes of Chapter 3 of Part 4 of the 1993 Act (anti-franking) as if it had not.</p> | 25 |
| (4) | <p>But sub-paragraph (3)(a) does not—</p> | 25 |
| (a) | <p>affect any pension previously paid to the person, or</p> | |
| (b) | <p>prevent section 11 of the 1993 Act (increase of guaranteed minimum where commencement of guaranteed minimum pension postponed) operating to increase the person’s guaranteed minimum by reason of a postponement of the commencement of the person’s guaranteed minimum pension for a period ending before the certificate is issued.</p> | 30 |
| (5) | <p>If (immediately before the certificate is issued) the person is a man who—</p> | |
| (a) | <p>has attained the age of 60, but</p> | |
| (b) | <p>has not attained the age of 65,</p> | |
| | <p>the person is to be treated for the purposes of section 9 of the 1993 Act and the guaranteed minimum pension provisions as attaining pensionable age when it is issued.</p> | 35 |
| (6) | <p>If at that time the person has attained the age of 65, the fact that the person’s gender has become the acquired gender does not affect the person’s pensionable age for those purposes.</p> | 40 |
| (7) | <p>The fact that the person’s gender has become the acquired gender does not affect any guaranteed minimum pension to which the person is entitled as a widow or widower immediately before the certificate is issued (except in consequence of the operation of the previous provisions of this Schedule).</p> | |
| (8) | <p>If a transaction to which section 15 of the 1993 Act applies which is carried out before the certificate is issued discharges a liability to provide a guaranteed minimum pension for or in respect of the person, it continues to do so afterwards.</p> | 45 |

- (9) “The guaranteed minimum pension provision” means so much of the 1993 Act (apart from section 9) and of any other enactment as relates to guaranteed minimum pensions.

Equivalent pension benefits: Great Britain

- 16 (1) The provision that may be made by regulations under paragraph 15 of 5
Schedule 3 to the Social Security (Consequential Provisions) Act 1992 (c. 6)
(power to retain provisions repealed by Social Security Act 1973 (c. 38), with
or without modification, for transitional purposes) includes provision
modifying the preserved equivalent pension benefits provisions in
consequence of this Act. 10
- (2) “The preserved equivalent pension benefits provisions” are the provisions of
the National Insurance Act 1965 (c. 51) relating to equivalent pension
benefits continued in force, with or without modification, by regulations
having effect as if made under that paragraph.

Equivalent pension benefits: Northern Ireland

- 17 (1) The provision that may be made by regulations under paragraph 15 of
Schedule 3 to the Social Security (Consequential Provisions) (Northern
Ireland) Act 1992 (c. 9) (corresponding power for Northern Ireland) includes
provision modifying the Northern Ireland preserved equivalent pension
benefits provisions in consequence of this Act. 20
- (2) “The Northern Ireland preserved equivalent pension benefits provisions”
are the provisions of the National Insurance Act (Northern Ireland) 1966
(1966 c. 6 (N.I.)) relating to equivalent pension benefits continued in force,
with or without modification, by regulations having effect as if made under
that paragraph. 25

SCHEDULE 6

Section 14

SEX DISCRIMINATION

PART 1

GREAT BRITAIN

- | | | |
|---|---|----|
| 1 | The Sex Discrimination Act 1975 (c. 65) is amended as follows. | 30 |
| 2 | In section 7A (gender reassignment: exception for genuine occupational qualification), insert at the end – | |
| | “(4) Subsection (1) does not apply in relation to discrimination against a person whose gender has become the acquired gender under the Gender Recognition Act 2004.” | 35 |
| 3 | In section 7B (supplementary exceptions relating to gender reassignment), for subsection (3) substitute – | |
| | “(3) Subsection (2) does not apply in relation to discrimination against a person whose gender has become the acquired gender under the Gender Recognition Act 2004.” | 40 |

-
- | | | |
|------------------|---|----|
| 4 | In section 9 (discrimination against contract workers), after subsection (3C) insert – | |
| | “(3D) Subsections (3B) and (3C) do not apply in relation to discrimination against a person whose gender has become the acquired gender under the Gender Recognition Act 2004.” | 5 |
| 5 | In section 11 (partnerships), after subsection (3C) insert – | |
| | “(3D) Subsections (3B) and (3C) do not apply in relation to discrimination against a person whose gender has become the acquired gender under the Gender Recognition Act 2004.” | |
| PART 2 | | 10 |
| NORTHERN IRELAND | | |
| 6 | The Sex Discrimination (Northern Ireland) Order 1976 (S.I. 1976/1042 (N.I. 15)) is amended as follows. | |
| 7 | In Article 10A (gender reassignment: exception for genuine occupational qualification), insert at the end – | 15 |
| | “(4) Paragraph (1) does not apply in relation to discrimination against a person whose gender has become the acquired gender under the Gender Recognition Act 2004.” | |
| 8 | In Article 10B (supplementary exceptions relating to gender reassignment), for paragraph (3) substitute – | 20 |
| | “(3) Paragraph (2) does not apply in relation to discrimination against a person whose gender has become the acquired gender under the Gender Recognition Act 2004.” | |
| 9 | In Article 12 (discrimination against contract workers), after paragraph (3C) insert – | 25 |
| | “(3D) Paragraphs (3B) and (3C) do not apply in relation to discrimination against a person whose gender has become the acquired gender under the Gender Recognition Act 2004.” | |
| 10 | In Article 14 (partnerships), after paragraph (3C) insert – | |
| | “(3D) Paragraphs (3B) and (3C) do not apply in relation to discrimination against a person whose gender has become the acquired gender under the Gender Recognition Act 2004.” | 30 |

Gender Recognition Bill [HL]

A

B I L L

To make provision for and in connection with change of gender.

The Lord Falconer of Thoroton

Ordered to be Printed, 27th November 2003.

© Parliamentary copyright House of Lords 2003
*Applications for reproduction should be made in writing to the Copyright Unit,
Her Majesty's Stationery Office, St. Clements House, 2-16 Colegate, Norwich, NR3 1BQ*

PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS
LONDON: THE STATIONERY OFFICE
Printed in the United Kingdom by
The Stationery Office Limited
£x.xx net

DRAFT GENDER RECOGNITION BILL

CAMILLA KIDNER

This briefing has been produced for the Equal Opportunities Committee in their consideration of the issue of gender recognition of transsexuals, which is the subject of a Westminster draft bill. It is likely that the devolved issues connected with this issue will be the subject of a Sewel motion.

SPICe Briefings are compiled for the benefit of the Members of the Parliament and their personal staff. Authors are available to discuss the contents of these papers with MSPs and their staff who should contact Camilla Kidner on extension 85372 or email Camilla.kidner@scottish.parliament.uk. Members of the public or external organisations may comment on this briefing by emailing us at spice.research@scottish.parliament.uk. However, researchers are unable to enter into personal discussion in relation to SPICe Briefing Papers.

Every effort is made to ensure that the information contained in SPICe briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

www.scottish.parliament.uk

SPICe briefing

20 November 2003

03/93



The Scottish
Parliament

KEY POINTS

- The UK needs to give legal recognition to transsexuals in their acquired gender in order to meet its obligations under the European Convention on Human Rights.
- In July 2002 the European Court of Human Rights found the UK to be in contravention of Articles 8 and 12 in the cases of *Goodwin v. United Kingdom* and *I v. United Kingdom*.
- The draft Gender Recognition bill was published on July 11 2003 at Westminster. It covers England and Wales. It is expected that a bill will be announced in the Queen's speech.
- A Sewel motion is expected to be put before the Scottish Parliament in order to extend the provisions of the bill to devolved matters in Scotland.
- The draft bill proposes the establishment of a gender recognition panel, which would be able to issue gender recognition certificates. This would, with a few specified exceptions, enable people to be recognised in their acquired gender for all legal purposes.
- Transsexual people would be able to get a birth certificate in their acquired gender.
- A person would be able to marry a person of the opposite gender to their acquired gender. E.g a male to female transsexual person would be able to marry a man.
- Before a full gender recognition certificate would be issued, a couple would have to dissolve any current marriage. E.g a male to female transsexual person who is currently married to a woman would have to dissolve this marriage before she would be legally recognised as a woman. This is because under current law only people of opposite genders can be married.
- To qualify for gender recognition the Panel would need to be satisfied that a person has or has had gender dysphoria, has lived in the acquired gender throughout the preceding two years and intends to continue to live in the acquired gender until death.
- There are around 300 transsexuals known to medical practitioners in Scotland.

SUMMARY OF MAIN PROVISIONS

The draft gender recognition bill was published in Westminster for pre-legislative scrutiny on July 11 2003. It would provide legal recognition to transsexual people in their acquired gender which would be achieved by the establishment of a gender recognition panel which can issue gender recognition certificates. These certificates would allow someone to be recognised in their acquired gender for all legal purposes, with certain, specified exceptions. In particular, it would allow an individual to acquire a new birth certificate in their acquired gender. A new register would be established called the Transsexual Persons Register which will enable a new birth certificate to be issued.

To qualify for gender recognition the Panel must be satisfied that a person:

- has, or has had gender dysphoria¹
- has lived in the acquired gender throughout the preceding two years and
- intends to continue to live in the acquired gender until death. (Department of Constitutional Affairs, 2003a para 6)

The draft bill also covers consequential issues such as: marriage, parentage, inheritance and privacy. On the issue of a full gender recognition certificate a person may marry someone of the same birth gender. A person may get an interim certificate if they are already married to someone of their different birth gender, but this does not provide full recognition under the bill. A change of gender does not affect someone's parental rights and responsibilities or change their status as the mother or father of a child. The inheritance of property will recognise the acquired gender with the exception of the inheritance of peerages and land associated with it.

While the issue of a certificate does not change history, an individual's privacy with regard to their past is protected by a general prohibition on disclosure. However, disclosure can be ordered by a court or tribunal and there is an order making power which allows further exceptions. Although not specified in the draft bill, the Explanatory Notes give the example of the Criminal Records Bureau as a body which may need to know that a person was previously of a different gender. (Department of Constitutional Affairs, 2003a para 41)

The bill itself will be introduced 'when parliamentary time allows'. It is expected that it will be included in the Queen's speech. The sponsoring department is the Department for Constitutional Affairs, and pre legislative scrutiny is being undertaken by the Westminster Joint Committee on Human Rights.

USE OF SEWEL MOTION

The bill as drafted covers England and Wales. Before introduction it will be expanded to cover Northern Ireland, and, dependent on the approval of a Sewel motion in the Scottish Parliament, expanded to cover Scotland.

The Transgender Issues Forum² supports the use of a Sewel motion, following a survey of their members. This is a change to their original position which was to press for the introduction of a Scottish bill. (Transgender Issues Forum, 2003) The Equality Network (2003a p7) are however; 'concerned that the proposed Sewel motion route may not give sufficient opportunity for scrutiny of the legislation in Scotland, and also carries the risk of the Scottish Parliament approving legislation which is then significantly altered by amendment at Westminster.'

¹ See below, p. 5

² including Equality Network, TransAlba, Granite Sisters, AroundAB-Out 2001
providing research and information services to the Scottish Parliament

HUMAN RIGHTS DEVELOPMENTS

There is at present no legal recognition of transsexual people in their acquired gender. Following the judgement in *Goodwin v United Kingdom* (2002) that the UK is in contravention of Articles 8 and 12³ of the European Convention on Human Rights, the UK intends to legislate in this area.

The legal status of transsexual people has been the subject of a number of cases at the European Court of Human Rights over the past twenty years.⁴ Indeed, in the domestic case of *Bellinger* the House of Lords noted 'the rapid development of Human Rights law on the issue' (*Bellinger v Bellinger* para 20) and that;

"The law on this matter in this country is, or is becoming a minority position, at least so far as Europe is concerned." (*Bellinger v Bellinger* para 17)

A survey of states by the human rights campaign group, Liberty (1998) found a trend in European states towards legal recognition of gender re-assignment. Four countries, the UK included, out of 37 did not allow a change to the birth certificate. Of the countries which publicly funded gender reassignment only the UK and Ireland did not give legal recognition.

Two key recent cases are *Bellinger v Bellinger* and *Goodwin v United Kingdom*. *Bellinger* concerned the right of a transsexual person to marry someone of their birth sex. The English Court of Appeal and the House of Lords held that this was not a legal marriage under current law. The House of Lords however, issued a declaration of incompatibility with the European Convention on Human Rights and referred the matter to Parliament. In *Goodwin* the UK was found in breach of Articles 8 and 12 of ECHR. Christine Goodwin is a post-operative male-to-female transsexual, who has lived fully as a woman since 1985. She claimed that the UK was in breach of her human rights in respect of employment, social security, pensions and marriage. For example, she continued to be considered male in respect of paying pension contributions until the age of 65 and had to produce a birth certificate to apply for loans which resulted in revealing her birth gender. She also was considered male for the purposes of paying car insurance and so had to pay higher car insurance premiums than women. In addition, she feared that, despite administrative arrangements intended to prevent it, her employer could trace her previous gender through her National Insurance records.

In previous cases, for example *Sheffield and Horsham v United Kingdom* (1998) and *Cosey* the European Court of Human Rights found no violation of human rights but had requested that the UK Government keep the issue under review. The UK Government established a working group in April 1999, under the Home Office, with the remit:

³ The European Convention on Human Rights Articles 8 and 12 are:

Article 8 – Right to respect for private and family life

1 Everyone has the right to respect for his private and family life, his home and his correspondence.

2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 12 – Right to marry Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

⁴ Other ECHR judgements concerning the rights of transsexuals are: *Rees v. United Kingdom* 17th October 1986, *Cosey v. United Kingdom* 27th September 1990, *X., Y. and Z v. United Kingdom* 22nd April 1997, *Sheffield and Horsham v. United Kingdom* 30th July 1998, *I v. United Kingdom* 11th July 2002.

To consider, with particular reference to birth certificates, the need for appropriate legal measures to address the problems experienced by transsexual people, having due regard to scientific and societal developments, and measures undertaken in other countries to deal with this issue' (Home Office 2000).

Reporting in July 2000, the group presented three options, which it recommended the Government consult the public on:

- To leave the current situation unchanged
- To issue birth certificates showing the new name, and, possibly, gender; and
- To grant full legal recognition of the new gender subject to certain criteria and procedures. (Home Office, 2000, p 25)

The domestic court of appeal and the ECHR noted a lack of progress in taking forward the report's recommendations. In 2001, in the case of *Bellinger v Bellinger*, the Court of Appeal noted that,

"To our dismay, we were informed that no steps whatsoever have been, or to the knowledge of Mr Moylan, were intended to be, taken to carry this matter forward." (*Bellinger para 96, quoted in Goodwin para 52*).

On 11 July 2002, the Strasbourg Court found the UK to be in contravention of articles 8 and 12 in the case of *Goodwin v United Kingdom*. On 23 July the UK government announced the reconvening of the working group with terms of reference to include 're-examining the implications of granting legal status to transsexual people in their acquired gender' (House of Commons, 2002). The working group was also asked to consider urgently the implications of the Goodwin judgement. On 13 December 2002, the Government announced its intention to legislate on the issue, (Department of Constitutional Affairs, 2002).

Subsequent to this announcement, the House of Lords, on 10 April 2003, confirmed the judgement in the *Bellinger* case - that in current English law a transsexual may not marry a person of their birth sex. Noting the ECHR judgement in *Goodwin*, the House of Lords issued a declaration of incompatibility and referred the matter to Parliament. Allowing a transsexual person to marry in their acquired gender:

"Would represent a major change in the law, having far reaching ramifications. It raises issues whose solution calls for extensive enquiry and the widest public consultation and discussion. Questions of social policy and administrative feasibility arise at several points, and their interaction has to be evaluated and balanced. The issues are altogether ill-suited for determination by courts and court procedures. They are pre-eminently a matter for Parliament, the more especially when the Government, in unequivocal terms, has already announced its intention to introduce comprehensive primary legislation on this difficult and sensitive subject," (*Bellinger, para 37*)

The draft gender recognition bill was published in July 2003. The ECHR approach to the human rights of transsexual people can be seen from the above to have developed over the last five years. In 1998 (*Sheffield and Horsham*), although the court encouraged the Government to act it was considered that the legal recognition of transsexual people fell within the state's margin of appreciation. By 2002 this was no longer the case.

GENDER DYSPHORIA

Gender dysphoria has been described as someone living with the conviction that their birth gender is incompatible with their true gender role.

“They have an overwhelming desire to live and function in the opposite biological sex. Some people become aware of their transsexualism as children while others discover their feelings later in life. Once experienced these feelings are unlikely to disappear.” (Home Office 2000, para 1.1).

Around 300 transsexual people are known to medical practitioners in Scotland (SNAP 2001 p.4) although the Equality Network claims the actual number is higher, because of people who seek treatment abroad or who have not yet sought support (Equality Network 2003 p 2). The following table is taken from the SNAP report survey of GPs and shows the total prevalence in the population as 8.18 per 100,000 of the population. Most transsexuals are male to female and most have not had gender reassignment surgery.

Table One: Number of cases of gender dysphoria identified by general practitioners, and calculated prevalence (per 100,000 population over 15 years) using a denominator of 3,336,261 (1,622,090 males, 1,714,171 females) Source: SNAP (2001) appendix 4

	Male to Female	Female to male	total	prevalence per 100,000 population		
				Male to female	Female to male	Total
Patients with gender dysphoria but not in treatment	53	13	66	3.27	0.76	1.98
Patients with gender dysphoria in psychological/ counselling treatment only	38	9	47	2.34	0.53	1.41
Patients taking sex hormone therapy, but pre-operative	54	11	65	3.33	0.64	1.95
Post operative transsexual patients	73	22	95	4.50	1.28	2.85
totals	218	55	273	13.44	3.21	8.18

The SNAP survey found rates of prevalence similar to those in other countries, and highlights that:

“Gender dysphoria is a condition with a range of treatment options varying with the needs of each individual. Some gender dysphorics do not wish clinical intervention. Those whose goal is physical gender reassignment may require multidisciplinary clinical intervention in order to achieve a body that aligns with their gender identity. Other patients with gender dysphoria may primarily require psychological or psychiatric support” (SNAP 2001 p8).

The draft bill provides for the change of gender to be confirmed by a panel according to set criteria. It is not required that a person has had gender reassignment surgery. This is in line the view in *Bellinger* which noted that:

“It is questionable whether the successful completion of some sort of surgical intervention should be an essential prerequisite to the recognition of gender reassignment. If it were, individuals may find themselves coerced into major surgical operations they would not otherwise have had,” (Bellinger HL para 41).

Gender reassignment is normally a three stage process; (Home Office 2000, Annex 1)

- Social gender role change
- Hormonal gender reassignment, following psychiatric assessment.

- Surgical reassignment after completion of a two year, 'real life' test.

There are clear parallels here to the criteria for the panel that a person who has gender dysphoria, has lived as the other gender for two years and intends to continue to do so.

The Home Office working group report notes that there is no single point at which a person becomes the other gender. In *Bellinger*, the point at which a person should be recognised as one gender rather than the other was considered a matter for Parliament, not the courts. One of the arguments in *Goodwin* was the apparent lack of consistency displayed by, on the one hand providing gender re-assignment on the NHS, and therefore recognising the condition of gender dysphoria, but on the other, not giving legal recognition to people in their acquired gender.

CHANGING CULTURE

The assessment of someone's gender for legal purposes is based on the case of *Corbett v Corbett* (1970). This provided a list of biological factors present at birth which determined gender, and this remained someone's gender despite any later intervention. It was noted in *Bellinger* that the decision in *Corbett* 'has attracted much criticism, from the medical profession and elsewhere' (Bellinger HL para 13) the 'reductionist' approach ignores 'the compelling significance of the psychological status of the person as a man or a woman.' In *Goodwin* the Strasbourg Court noted that a scientific debate continued about the causes of transsexualism, but found the wide international recognition of the existence of gender identity disorder to be a more significant factor (Goodwin para 81). There is a growing shift away from considering purely biological factors in determining gender to a recognition of psychological and social factors.

Although the Strasbourg Court has noted the growing acceptance of the general principle of legal recognition of change of gender status, it has also noted a wide variety of responses in reflecting this in practice. However, they recognise a wide margin of appreciation in resolving within their domestic legal systems the practical problems created by the legal recognition of post-operative gender status. The interdepartmental working group in 1999 noted some of the differences between states. For example, in New Zealand only those who are not currently married can be recognised in their acquired gender. In Ontario, there is recognition but no right to marry in their acquired gender. In Austria, the acquired gender is recognised, but any pre-existing marriage must be dissolved. In Denmark, the acquired gender is recognised and people can marry in that acquired gender (Home Office 2000 annex 4).

Press for Change, a campaigning group for the rights of transsexuals, has commented that

"The draft bill as published in July would make a better law than any other country has passed to recognise its trans people. Where in the world do trans people get such clear protection of privacy? Where else does the law make it clear that surgery is not a requirement for recognition? Which country's laws say clearly that the change of gender will be recognised for all purposes?" (Press for Change 2003).

DEVOLVED ISSUES

Marriage

In Scotland, as in England only people of the opposite gender to each other can marry.⁵ In England, the case of *Corbett* (see above) requires that gender is defined according to certain biological characteristics at birth. However as noted in Clive (1997 para 07.016), 'although the

⁵ Marriage (Scotland) Act 1977 in Scotland and the Matrimonial Causes Act 1973 in England and Wales.
providing research and information services to the Scottish Parliament

case does not seem to have arisen for decision in Scotland as it has in England [...] there can be no doubt that a purported marriage would be held to be void if the parties were not respectively man and woman.'

In the ECHR case of *Goodwin*, the Strasbourg Court found that the UK was in breach of article 12, - the right of a man and woman to marry and found a family. The Court found that there was 'no justification for barring the transsexual from marrying in any circumstance' (*Goodwin* para 103).

Although the draft bill will allow someone who has a full gender recognition certificate to marry someone of their birth gender, it provides that, in England, this will have the consequence of making voidable any existing marriage to someone of the opposite birth gender. A person may get an interim certificate, and, if the couple then choose to dissolve the marriage, a full certificate will be issued.

This issue was in fact raised by the Government in their arguments in *Goodwin*; (*Goodwin* para 96) 'legal recognition would potentially invalidate existing marriages and leave transsexuals and their partners in same sex marriages,' and it has become a key issue in the response of campaign groups to the draft bill proposals. The Transgender Issues Forum 'strongly oppose' the proposal that a marriage must be dissolved before full gender recognition can be granted (*Transgender Issues Forum 2003 p3*). They state that:

"Apart from the principle that it is wrong to force two people to end a happy marriage, there are financial and legal consequences to both partners if they dissolve the marriage" (*Transgender Issues Forum 2003 p3*).

The Scottish Executive is currently consulting on civil partnerships legislation (*Georghiou 2003*). By registering a same sex civil partnership, it is likely that a couple would be able to benefit from many of the legal and social security benefits of marriage. However, the Forum felt that civil partnerships were 'very much a second choice'.

It has been suggested by some that the issue would be resolved by recognising same sex marriage. (See for example *Bellinger HL para 47*). However, Article 12 of ECHR specifically states the right of a man and woman to marry. It was however noted by the Strasbourg Court that the European Charter of Fundamental Rights provides 'no doubt deliberately' simply for a 'right to marry'⁶ (*Goodwin*, para 100). The Court held no view about same sex marriage, stating that it is for states to establish the circumstances under which previous marriages would cease to be valid' (*Goodwin* para 103).

In the draft bill, same sex marriage is avoided by adding to a number of conditions which, in English law can make a marriage voidable. However, in Scotland, although there are a number of grounds on which a marriage may be void, there is only one ground on which a marriage is voidable - incurable impotency (*Clive 1997*, para 07.007). Unlike England, therefore, it is unlikely that the Scottish provisions would be able to allow the element of choice in this way, and other means will need to be found to achieve the same effect.

Birth Certificates

The use of birth certificates as proof of identity for many purposes such as insurance and loans has meant that transsexual people can be deterred from applying for such loans. One of the

⁶ Article 9 states: The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

arguments against changing the system is that the birth registration system is a historical record. The Strasbourg Court was not convinced that the need to 'uphold rigidly the integrity of the historic basis of the birth registration system' is as important an issue as it had been in previous cases (Goodwin para 87). The change to the system in the UK for the small number of transsexual people, would not, in the Court's view, 'pose the threat of overturning the entire system.'

Although the birth register remains an historical record, the birth certificate - compiled from it and the new Transsexual Person's Register, will show the new gender. However, it will not show any marking that it has been compiled from the Transsexual Person's Register (Department for Constitutional Affairs 2003a para 27).

Sexual Offences

The Equality Network (2003a) note the differences between legislation on sexual offences in England and Scotland. In Scotland the offence of rape is gender specific, whereas in England it is gender neutral. Recognition of someone's acquired gender would, in Scotland mean for example that a person might be a victim of rape before gender reassignment but the same act after gender reassignment would be considered indecent assault.

Age of Application

The age of application for gender recognition is proposed as 18. The Equality Network (2003a) has proposed that it should be 16 in line with the age of legal capacity. It should be noted however, that one of the conditions for application is that a person has lived in the acquired gender for two years.

RESERVED ISSUES

The reserved issues relate mainly to the right to respect for private life which arose particularly in respect of employment law, national insurance, pensions and social security records. The draft bill at clause 14 makes it an offence for someone in an official capacity to disclose someone's previous gender without consent. Exceptions to this include disclosure by the order of courts and tribunals or disclosure in the course of official duties. The Equality Network (2003a) 'welcome the strong provisions in the bill on non-disclosure' but have concerns that it will not always prevent the disclosure to those who do not need to know.

Prior to the proposed legislation, the government had taken administrative steps to protect the privacy of transsexual people and prevent their previous gender becoming known. (See Goodwin para 73). This had included for example, issuing new passports and driving licences, allowing someone to make NI contributions direct to the contributions agency rather than via an employer, and marking their DSS files 'sensitive' to restrict the number of people who can potentially access information about a previous gender. However, in Goodwin the Court noted that; 'she nonetheless has to make use of a special procedure that might in itself call attention to her status' (Goodwin para 76). One of the issues in the Goodwin case was the fear that an employer could trace someone's gender history through National Insurance records although the government made clear that National Insurance numbers do not refer to gender (Goodwin para 66).

Two recent developments in employment law, in the areas of discrimination law and pensions, are particularly relevant to the treatment of transsexual people. Since 1999, it has been illegal to discriminate in employment on the grounds that someone is transsexual. The Sexual Discrimination (Gender Reassignment) Regulations 1999 were issued to comply with the ruling of the European Court of Justice in *P v S and Cornwall County Council*. They provide, in general, that transsexual persons should not be treated less favourably in employment because

they are transsexual. The Equality Network have proposed that this be extended to cover discrimination in the provision of goods and services (Equality Network 2003a).

On the issue of pensions, the government has announced plans to harmonise the retirement age of men and women by 2010 (Department of Work and Pensions 2003). By removing this gender difference there would be no issue that someone's gender could be identified by looking at their pension contributions.

SOURCES

Bellinger v Bellinger [2003] 10th April 2003 [UKHL 21] Available at:

<http://www.publications.parliament.uk/pa/ld200203/ldjudgmt/jd030410/bellin-1.htm>

Bellinger v Bellinger [2001] 17th July 2001 EWCA Civ 1140 Available at:

<http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2001/1140.html&query=bellinger&method=all>

Clive E. (1997) *The Law of Husband and Wife in Scotland* 4th ed. Edinburgh: W. Green

Corbett v Corbett (1970) All England Law Reports, 1970 vol 2 p 32 - 51

Department of Constitutional Affairs (2002) Government Announcement on Transsexual People [online] 13th December 2002. Available at:

<http://www.dca.gov.uk/constitution/transsex/statement.htm> [Accessed 10th November 2003]

Department of Constitutional Affairs (2003) *Draft gender recognition bill* CM 5875, London: TSO. Available at: <http://www.lcd.gov.uk/constitution/transsex/index.htm>

Department of Constitutional Affairs (2003a) *Draft gender recognition bill – explanatory notes*. London: TSO Available at: <http://www.dca.gov.uk/constitution/transsex/legs.htm>

Department of Work and Pensions (2003) *Simplicity, Security and Choice; Working and Saving for Retirement* London: TSO Available at:

<http://www.dwp.gov.uk/consultations/consult/2002/pensions/index.asp>

Equality Network (2003) *Proposals for the legal recognition of the gender identity of transsexual people in Scotland*. [online accessed 4th November 2003] Available at: <http://www.equality-network.org/policy/resources.shtml>

Equality Network (2003a) *Gender Recognition bill – outstanding issues identified*. [unpublished paper]

European Council (2000) *The Charter of Fundamental Rights of the European Union* OJ 364/01. European Council: Brussels. Available at:

http://www.europarl.eu.int/charter/default_en.htm

Georgiou, N. (2003) *Civil Partnership Registration* SPICe Briefing 03-83. Scottish Parliament: Edinburgh. Available at: <http://intranet/speir/services/spice/rbrblist.html>

Goodwin v United Kingdom European Court of Human Rights 11th July 2002 Application Number 28957/95, Available at:

<http://hudoc.echr.coe.int/hudoc/default.asp?Cmd=Page&Page=84&RelatedMode=1>

Home Office (2000) *Report of the interdepartmental working group on transsexual people* London: Home Office. Available at: <http://www.lcd.gov.uk/constitution/transsex/transpeo.htm>

House of Commons (2002) Written Answers 23rd July 2002 Col 1080W. Available at: http://www.publications.parliament.uk/pa/cm200102/cmhansrd/vo020723/text/20723w52.htm#20723w52.html_sbhd0

Liberty (2002) *A comparative study of European, Commonwealth and International law and practice regarding the civil status of transsexual people* [online]. Available at: <http://www.liberty-human-rights.org.uk/resources/interventions/goodwin.shtml> [Accessed 10th November 2003]

Press for Change *Gender Recognition: The Best We Can Get*. [online] Available at: <http://www.pfc.org.uk/gr-bill/grb-best.htm> [Accessed 10th November 2003]

P v S and Cornwall County Council, (1996) European Court of Justice, Judgement of the court of 30 April 1996, European Court Reports Page I-02143, Case C-13/94. Available at: http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61994J0013

Sheffield and Horsham v. United Kingdom (1998) European Court of Human Rights 30th July 1998 Application Numbers: 00022985/93 and 00023390/94. Available at: <http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=0&Action=Html&X=1110170637&Notice=0&Noticemode=&RelatedMode=0>

Scottish Needs Assessment Programme (SNAP), (2001) *Transsexualism and gender dysphoria in Scotland* Glasgow: Public Health Institute of Scotland. Available at: <http://www.phis.org.uk/about/pub.asp?p=ec>

Transgender Issues Forum (2003) *Minutes of meeting August 2003*. [online accessed 4th November 2003] Available at: <http://www.equality-network.org/policy/resources.shtml>

Justice 1 Committee

Criminal Procedure (Amendment) (Scotland) Bill

Seminar with Legal Practitioners – 9 January 2004

Note by the Clerk

Group 1

This paper attempts to capture some of the key points that were raised in discussion.

1) Preliminary hearings and related matters

a) The written record

The following points were raised:

- Defence practitioners raised the importance of advocate deputes (ADs) being familiar with the case.
- Crown Office participants discussed current plans to allocate responsibility for a case to a specific AD throughout, who would manage the Crown case in much the same way as defence counsels.
- There was some discussion about whether managed meetings ahead of the preliminary hearing would be face-to-face, over the telephone or by email. Some participants expressed concern in relation to the volume of such meetings in a given week, which could be as many as 25, and the distance. It was felt that continuity of AD was more important than the mode of communication between the AD and defence counsel, which could be a mix of face-to-face, phone and email, depending on the complexity of the case. It was also noted that phone meetings can be formalised by being diaried.
- In favour of face-to-face meetings being the norm, it was suggested that such meetings in relation to apparently simple cases may reveal unexpected complications, which may remain undetected by a phone meeting.
- It was also suggested that, in some cases, the Crown Office is ready for trial before the defence counsel is; the managed meetings would reveal this and Crown Office may be able to help the defence counsel.
- In relation to culture change, it was felt that judges will need to be part of the culture change and that success and uniformity in this area would depend greatly on judges' attitudes.

b) Disclosure

The following points were raised:

- Prosecution practitioners recognised arguments in favour of early disclosure, noted that it is likely defence counsels currently

precognosce more witnesses than necessary and explained that the Crown Office is currently working jointly with the police with the aim of making information collected early in the process available for disclosure to the defence.

- It was also recognised that there are currently quality issues affecting this, particularly as practice varies between police forces.
- Defence practitioners expressed the view that it is desirable to have early and prompt disclosure of what was actually said to the police at the time of giving the statement. Prosecution practitioners argued that such statements sometimes contain observational comments inserted by the police. It was explained that the aim was not to “sanitise” statements, but to produce accurate statements containing pertinent facts only from the outset. The Crown Office emphasised its commitment to achieving this position, but is still working on systems to make it possible.
- It was noted that significant potential cost savings could be made from early and full disclosure, by only paying defence counsels for precognition work where it is absolutely necessary. It was also noted that, currently, police officers’ own statements to precognition agents are generally copies of the statement provided to the Crown Office.
- It was noted that, as the Crown Office was already undertaking work in relation to this matter with police forces, the proposal in Lord Bonomy’s report that a working group be established to consider the matter had effectively been superseded.

c) Fixed trial diets v. sittings

The following points were raised:

- Prosecution practitioners explained that there is an expectation that there will be a mixture of fixed and “floating” trial diets. Reference was made to the system in England and Wales being well established and refined to the point of being able to schedule witnesses at specific times through the course of a specific day. It was felt that this was a result of years of pro-active judicial management.
- There was some discussion of how cases would be classified and it was felt that there may be a risk of conflicting priorities.
- It was argued that, if 100% of cases were to be allocated a fixed trial date, it would inevitably lead to court time being wasted when some trials didn’t proceed and couldn’t be replaced by a “floating” trial. It was suggested that this could be resolved by allocating fixed trial dates to all cases, some of which could be moved forward to fill a vacant slot left by a case that didn’t proceed to trial at the last minute. It was noted that this already operates in relation to appeals. It was thought that this suggestion of fixed dates and “tentative” fixed dates would need to be pursued further with the Criminal Procedure (Amendment) (Scotland) Bill team.
- Finally, it was commented that the mixture of fixed and floating dates could prove problematic if different judges adopt different policies.

Group 2

This paper attempts to capture some of the key points that were raised in discussion.

1) *Trial in the absence of the accused*

The following points were raised:

- Defence practitioners were opposed to this measure as to comply with it would breach their duty of professional responsibility to their client.
- Prosecution practitioners argued that, although the absence of the accused was not a big problem in terms of numbers, the absence of the accused can have very significant implications for those cases which were affected.
- Prosecution practitioners emphasised that this provision would be used in only the most serious and extreme circumstances - the “interests of justice” clause in the Bill would help to ensure this. Both defence and prosecution practitioners thought that it would be difficult to be any more specific in the Bill as to when the provision allowing trial in absence could/should be used.
- The point in the trial at which the accused becomes absent was considered to be significant. If, for example, the accused becomes absent once all evidence has been led and closing speeches are being delivered it may be appropriate to conclude the trial in his/her absence. In these circumstances it is important to ensure that the trial is not prejudiced by the absence of the accused and that the jury are directed not to read anything into the absence of the accused. ECHR issues may arise if one tried to use a provision allowing trial in absence in a case where the accused is absent from the very early stages of the trial.
- A better deterrent to absconding might be to increase the penalty for breaching bail. An increased penalty, coupled with the possibility that the trial may continue *in absentia*, may deter the accused from absconding.

2) *Reluctant witnesses*

The following points were raised:

- Prosecution practitioners particularly welcomed these provisions and both defence and prosecution practitioners generally felt the current provisions were not sufficient and that any provision which clarified the position in relation to issuing warrants was welcome.
- In the case of a deliberately reluctant witness it was felt that the provisions would quicken up the process and would give the court more options and a greater degree of flexibility.
- It was felt that it should be possible to identify reluctant witnesses well in advance of the trial diet – at either the police inquiry or precognition stage.

- Some concern was expressed about issuing a warrant for the apprehension of a witness on the basis of what a witness is “likely” to do.
- Both defence and prosecution practitioners were clear that witnesses could be reluctant to give evidence for a variety of reasons and that any provision in this area had to take account of witness vulnerability. Continued support for the practice, in cases where a vulnerable witness might be involved, whereby a warrant for arrest is sought with an indication that the witness in question will be allowed to make arrangements to turn up rather than the police going out to arrest him/her.

3) *Sentence following a guilty plea*

The following points were raised:

- This provision was broadly welcomed by defence practitioners who could not, because of inconsistencies in the sentencing practices of the judiciary, currently give accurate estimates to accused persons about how much a sentence is likely to be discounted as the result of a guilty plea. Thus, the lack of clarity in current practice made it more difficult for a defence lawyer to advise a client on possible benefits of an early plea and anything providing more clarity was to be welcomed.
- Sentence discount was generally thought to be justifiable as guilty pleas free up resources and remove the burden from witnesses giving evidence (particularly in rape cases for example). It was noted that the justice system, as currently run, could not operate without some incentive for accused persons to plead rather than taking all cases to trial.
- Following *Du Plooy v H.M. Advocate* judges are beginning to state categorically what discount they are giving but the mechanics of sentence discount remain unclear and inconsistent. Following DuPlooy, there seemed to be a possibility that the courts would be clearer and more consistent in relation to sentence discounting for guilty pleas but that it was still too early to say. Also, practitioners were keen to have something enshrined in statute in case the High Court changed its decision in the future.]
- Practitioners sought clarification on the impact victim statements would have on sentencing and how such statements would relate to sentencing discount for guilty pleas.

4) Extension of the powers of the sheriff court

- Concern was expressed that serious cases which would once have been heard in the High Court will instead go to the sheriff court. As a result the legal aid board may be reluctant to fund counsel/senior counsel for what may be very serious crimes or complex crimes in the sheriff court. It was highlighted that firms of solicitors cannot get legal aid to instruct solicitor-advocates from others firms to act in sheriff court cases.
- Concern was also expressed that sheriff courts are struggling to cope with their current workload and this provision will only exacerbate that.
- Concern was expressed that these provisions could lead to an upward sentencing drift.

5) Time Limits

- Cases are becoming increasingly complex and it was generally felt that if extending the time limit meant that defence and prosecution practitioners were better prepared then it should be welcomed.
- It was considered that this provision will have considerable implications for counsel who will have to conduct more pre-trial briefings and meetings. Concern was expressed that such work is not currently recognized by the legal aid board.

Criminal Procedure (Amendment) (Scotland) Bill Team

CUSTODY CASE NEW PROVISIONS
EXPECTED TYPICAL CASE.**1ST JANUARY**

- Arrested tonight for Murder
- To appear before the Sheriff tomorrow

2ND JANUARY

- Appeared before Sheriff
- PF has further inquiries
- Remanded for further examination for 7 days [Bail refused]

9TH JANUARY

- Fully committed for trial
- Sheriff refused bail – must get my indictment by the 80th day or I'm entitled to bail.

23RD JANUARY

- Lawyer received provisional list of witnesses (re-enforced by protocol)

29TH JANUARY

- Lawyer received Crown witness statements today (protocol)
- Has already precognosed some witnesses from the provisional list

29TH MARCH – 80TH DAY

- Received my indictment today
- Must be a preliminary hearing by 110th day (28th April) or I'm entitled to bail
- Lawyer only has 1 forensic report to see

5TH APRIL - 87TH DAY

- Lawyer visited PF office for remaining copy productions
- Lawyer now has everything and we have instructed our own expert

20 MAY - 102ND DAY

- Lawyer sent my special defences to court (7 days before preliminary hearing)
- Lawyer intimated my witnesses to the Crown

24TH MAY - 105TH DAY

- Lawyer met with prosecution to discuss case

27TH MAY - 108TH DAY

- Lawyer prepared and submitted a note to the court about the meeting.

28 APRIL – 110TH DAY

- Appeared at Glasgow High Court
- Preliminary hearing was held
- Took about an hour to go through all the details
- Confirmed my plea of not guilty
- Trial is on 19 May (131ST Day) when my Advocate is available.

19TH MAY – 131ST DAY

- Trial begins.



CROWN OFFICE AND PROCURATOR FISCAL SERVICE

Policy Group

Morag McLaughlin, Head of Policy Group

Crown Office
25 Chambers Street
Edinburgh EH1 1LA

Pauline McNeill MSP
Convener
Justice 1 Committee
c/o Justice 1 Committee Clerks
Room 3.11 CC
The Scottish Parliament
EDINBURGH
EH99 1SP

Telephone: 0131 247 2705
Fax: 0131 247 2650
Rutland DX: 540310
Morag.McLaughlin@copfs.gsi.gov.uk
<http://www.crownoffice.gov.uk>

Your ref:
Our ref: MMcL/MRM

22 January 2004

Dear Convener

Thank you for your letter of 3 December. May I firstly apologise for the delay in responding?

As outlined in the Financial Memorandum, the Crown Office and Procurator Fiscal Service have identified non-recurrent costs of £250,000 for the first two years of the reformed High Court system. The planning assumption used in the preparation of the memorandum, which was based on calculations completed by SCS, was that the additional procedures would, in effect, require two additional courts. Accordingly, the figure of £250,000 represents the cost of two additional Advocate Deputes who will prepare for, and conduct, the managed meetings and preliminary hearings. This figure also includes the cost of providing both administrative and legal support for the Deputes during the new procedures.

As the committee has previously heard, if the Sheriffs' sentencing powers were to be increased, it is anticipated that around 20% of cases currently dealt with by the High Court could be dealt with by the Sheriff Court. It is anticipated that this change will present resource savings principally because High Court cases are more expensive to bring to court. There is an additional "layer" in preparation terms, being the detailed involvement of Crown Counsel in the marking, preparing and prosecution of these cases and the additional legal and administrative support required for that. Sheriff and Jury cases are indicted and prosecuted at local level and new arrangements for marking these cases following the COPFS QPRU report mean that Crown Counsel are no longer routinely involved in that process.

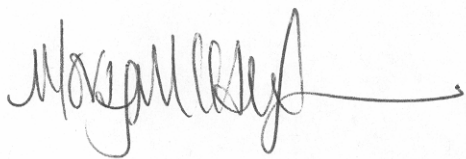
In addition we anticipate some scope for savings at least in the shorter term, because High Court cases are far more likely to reach a trial diet and thereafter more likely to proceed to trial than Sheriff and Jury cases. The most recent figures available show that for the year 2002/03, 43% of cases were concluded before the trial diet in the Sheriff and Jury court, which can be contrasted with the 3% of High Court cases. For that period 36% of High Court cases were concluded after a trial, compared with 24% of Sheriff and Jury cases. The possibility of savings depends, of course, on the cases transferring to the Sheriff and Jury court concluding in the same pattern as existing Sheriff and Jury cases, which may not be the case in practice.



You ask what types of offences will be marked for prosecution in the Sheriff Court. In June and July 2002, we carried out an assessment of cases that may be suitable for prosecution in the Sheriff and Jury court. 55% of these cases involved drug trafficking, 24% involved assault and robbery and 12% assault to severe injury. As I am sure you will appreciate, these are all types of offences that Procurator Fiscal Deputes are well experienced in prosecuting at present. I should stress that the decision as to the appropriate forum for any case requires an assessment of the full facts and circumstances of the case, which will include the accused's previous convictions, the background to, and nature of, the offence itself and also the views and sensitivities of the victim. Clearly, the anticipated sentence will also form an important part of this decision.

I hope this information is helpful.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Morag McLaughlin', with a long horizontal flourish extending to the right.

MORAG McLAUGHLIN
Head of Policy Group



WARWICKSHIRE MAGISTRATES'
COURTS SERVICE



Warwickshire CJC/CJIT BPI

VICTIMS AND WITNESSES

PAPER FOR NATIONAL REVIEW GROUP



NATIONAL PROBATION SERVICE
for England and Wales

National Review Group Paper

1. Introduction

As part of the planning for joined up justice in Warwickshire a number of projects are underway to facilitate the transition from the current working environment towards a more joined up approach within the new Criminal Justice Centres planned for the county.

One such project involves the examination of current business processes across the Warwickshire Criminal Justice Agencies with a view to identifying more efficient and effective working processes. This particular project is a joint one between Warwickshire Criminal Justice agencies and CJIT with the overall aim of providing improved technology in support of newly defined business processes in six priority areas as agreed by both parties.

One of the key priorities identified is that of providing an improvement in services to Victims and Witnesses in Warwickshire. Significant work has been undertaken to provide a culture in which collaborative working can commence in an integrated and joined up approach to Victim and Witness care. CJIT development of the secure portal will ensure that new processes are supported by new and efficient technology.

The proposed new Victim and witness code of practice provides an opportune time to join up the services in Warwickshire in an effort to provide a first class service not only to Victims but also to Witnesses who offer their valuable time to ensure that Justice is done in the County.

Given the overall objectives and the need to recognise the importance of Victims and witnesses within the Criminal Justice system a new and much improved multi-agency partnership will commence on 6th October 2003. This new service will be known as Warwickshire Victim and witness information partnership (VIP)

The Victim and Witness partnership will provide a cohesive approach to Victim and Witness care and will include some of the following services in an effort to improve the overall services to Victims and Witnesses ;

- Co-ordinated approach to information and interaction with Victims and Witnesses
- Call handling capability providing extended hours in order to meet Victim and Witness needs
- A drop-in facility whereby Victims and Witnesses can visit and seek personal interaction with one of the many practitioners located within the partnership
- Reception area to welcome visitors to the centre
- Private consultation/interview rooms to offer flexible services such as CPS direct communication and special measures interviews, offer private interaction with Victims and Witnesses and to offer a future option for witnesses giving evidence remotely and for Vulnerable/intimidated/reluctant witness interviews

- Public access to IT websites i.e. CJS on-line virtual site
- Joint Satisfaction surveys that will then identify joint performance targets in an effort to improve confidence in the Warwickshire CJS
- A more proactive service to Victims and Witnesses and regular updates on the progress of cases

2. OBJECTIVES

The Victim and Witness project has the following overall objective

- **To provide across all the justice agencies an integrated support service to victims and Witnesses and to ensure that this support is delivered in a proactive manner.**
- The project has concentrated on the Post charge/summons process whilst recognising that the pre-charge/summons activity requires a similar level of quality of service.

3. KEY ACTIVITIES AND ACHIEVEMENTS

The victim and witness information partnership is a unique service in as much as it brings together for the first time a number of criminal justice organisations who have a common purpose. To enable such an integrated working approach the following are examples of some of the activities that have taken place

Key activities

- Creation of a victim and witness forum (Multi-agency)
- Customer focus workshops
- Data protection and information security policy (Separately registered with information Commissioner)
- Partnership agreement
- Secondment agreement
- Communications strategy
- Evaluation plan including benefits and performance measures (Linked to PSA targets)

Key achievements

- Funding secured for a 12 month pilot
- New premises secured
- New processes identified
- Communication strategy implemented
- IT design completed
- CJIT secure portal designed and in advanced stage
- Health and safety inspection complete

4. KEY CHALLENGES

The project faces a number of challenges which are identified as being;

- Ensuring a fully integrated service within a multi-agency environment
- Developing a high performing team
- Integrating new technology i.e. secure e-mail and Portal with new business processes
- Ensuring an effective and independent evaluation of the pilot scheme
- Securing further funding in the event of a successful pilot
- Ensuring that the project is acknowledged and communicated to other CJS areas

5. CONCLUSION

The victim and witness information partnership is an innovative project and the outcome of some 18 months planning by Warwickshire CJS and offers a real opportunity to proactively improve the services to victims and witnesses. New technology in the form of the secure portal will enhance the business improvements and an evaluation plan will allow consideration to be given to exploring the potential for transferability to other CJS areas



WARWICKSHIRE MAGISTRATES'
COURTS SERVICE



WARWICKSHIRE CJC/CJIT PROJECT

VICTIM AND WITNESS PROJECT PROPOSAL DOCUMENT APRIL 2003

CONTENTS

1	MANAGEMENT SUMMARY	3
2	INTRODUCTION	4
3	OBJECTIVES	6
4	SCOPE	6
5	PROJECT APPROACH	7
6	BUSINESS REQUIREMENTS	8
7	ENVIRONMENT/RESOURCES/IT REQUIREMENTS	9
8	FINANCE/COSTINGS	12
9	BENEFITS	14
10	RISKS	17
11	PROJECT STRUCTURE	18
12	RECOMMENDATIONS	18
13...	APPENDIX A AGENCY RESPONSIBILITIES	19
14...	APPENDIX B VICTIM AND WITNESS CHARTER REQUIREMENTS.....	23
15	APPENDIX C PARTNERSHIP MODEL	29
16	APPENDIX D SITE LAYOUT	30
17....	APPENDIX E TECHNOLOGY REQUIREMENTS	31

J1/S2/04/4/1 1

MANAGEMENT SUMMARY

As part of the planning towards joined up justice and in preparation for Criminal Justice Centres (CJC) a joint project has been formed between Warwickshire Criminal Justice Organisations and Criminal Justice Information Technology (CJIT).

Some six priorities have been identified in terms of improving criminal justice processes to enhance the efficiency and effectiveness of service delivery. These improvements are to be supported by new technology developments delivered by CJIT in the form of secure e-mail (SeM) and the Exchange system designed to allow shared access to information across the criminal justice system.

This particular report focuses upon the key area of improving the standards of victim and witness care. During the past 18 months criminal justice system practitioners within Warwickshire have collaborated in an effort to improve the quality of service offered to its victims and witnesses. The focus of this project is on the post charge/summons process, however, close links have been made with Warwickshire police's "Public Contact Strategy" with a view to enhancing the pre-charge interaction with victims and witnesses..

The result of this collaborative and innovative approach is the proposal to formulate an *integrated Victim and Witness Information Partnership* (VIP) represented by all of the key criminal justice agencies. More recently interest has been shown from other partnerships e.g. Warwickshire Domestic Abuse Multi-agency Team and Warwickshire County Council(ASBO's)

The overall level of interest is encouraging and provides Warwickshire with a real opportunity to be the national lead in victim and witness care at a time when confidence in the criminal justice system is in need of significant investment. The new Victim's Code of Practice will demand a more positive and proactive response to victim and witness care and a national strategy will provide direction for Local Criminal Justice Boards (LCJBs)

The overall objective is to provide a first class (VIP) service to the many victims and witnesses who give their time to see justice done in our county. Improvement in services will feature multi-channel information and support including communication through telephone and e-mail, a drop-in facility and on site interview facilities for CPS direct communication. The delivery of information on the progress of cases and the handling of special measures and intimidated or reluctant witnesses will be co-ordinated and improved. A move to joined up performance targets and joint satisfaction surveys will provide an additional focus towards service delivery.

The Victim and witness Information Partnership will commence in October 2003, initially as a pilot scheme with a view to a fully integrated and multi-functional unit being located in the Southern Criminal Justice centre.

This project is being supported with funding by the Home Office and is the only current Victim and Witness model that seeks to integrate ALL interested parties in such an innovative manner.

INTRODUCTION

As part of the planning for joined up justice in Warwickshire a number of projects are underway to facilitate the transition from the current working environment towards a more joined up approach within the new Criminal Justice Centres planned for the county.

One such project involves the examination of current business processes across the Warwickshire criminal justice agencies with a view to identifying more efficient and effective working processes. This particular project is a joint one between Warwickshire criminal justice agencies and CJIT with the overall aim of providing improved technology in support of newly defined business processes in six priority areas as agreed by both parties.

One of the key priorities identified is that of providing an improvement in services to victims and witnesses in Warwickshire. Significant work has been undertaken to provide a culture in which collaborative working can commence in an integrated and joined up approach to victim and witness care.

Victim and witness care is now clearly defined as a key sub-project. To facilitate this activity all the interested agencies/parties have come together in forming a Victim and Witness Consultative Forum in order to assess current processes and performance with a view to enhancing customer care. This project is planned to develop joint working through an integrated approach; based upon a multi agency victim and witness care unit

The proposed Victims Code of Practice (anticipated in Summer 2003) provides an opportune time to join up the services in Warwickshire in an effort to provide a first class service not only to victims but also to witnesses who offer their valuable time to ensure that justice is done in the county.

Given the overall objectives and the need to recognise the importance of victims and witnesses within the Criminal Justice system *it is proposed to name the integrated unit;*

Warwickshire

V – Victim and witness

I - Information

P - Partnership

The VIP will provide a coherent approach to victim and witness care and will include some or all of the following attributes in an effort to improve the overall services to victims and witnesses:

Service

- A co-ordinated approach to information and interaction with victims and witnesses
- A more proactive service to victims and witnesses and regular updates on the progress of cases

Facilities

- Reception area to welcome visitors to the centre
- Call handling capability providing extended hours in order to meet victim and witness needs
- A drop-in facility whereby victims and witnesses can visit and seek personal interaction with one of the many practitioners located within the partnership
- Private consultation/interview rooms and video facilities to offer flexible services such as: CPS direct communication and special measures interviews; to permit private interaction with victims and witnesses and to offer an option for vulnerable/intimidated/reluctant interviews
- Public access to IT websites e.g. CJS on-line and generic information sites such as the Ipswich Crown Court virtual tour.

Feedback

- Joint Satisfaction surveys that will then identify joint performance targets in an effort to improve confidence in the Warwickshire CJS

The project has concentrated on the post charge/summons process whilst recognising that the pre-charge/summons activity requires a similar level of quality of service and that there will need to be tight integration between pre and post charge services. There are a number of reasons for this fundamental design decision:

- Pre-charge interaction with the victims and witnesses is almost entirely conducted by the police who are planning a more effective and coherent approach to these processes through their Public Contact Strategy.
- The point of charge represents a logical hand-over to the VIP
- Post charge, the complexity of the CJS process and the multiplicity of interacting agencies results in an experience for victims and witnesses characterised by confusion, lack of continuity, repetition of information, inconsistency of information and a perceived lack of care.

OBJECTIVES

The Victim and Witness project has the following overall objective

- **To provide across all the justice agencies an integrated support service to victims and witnesses and to ensure that this support is delivered in a pro-active manner.**

DETAILED OBJECTIVES

The views of Victims and Witnesses in Warwickshire have been sought in an effort to determine local needs whilst recognising the results of national surveys. The design of the VIP is a response to the following synthesis of these requirements.

- A consistent corporate premium (VIP) service should be delivered by all agencies involved with victims and witnesses rather than the differing standards employed depending upon the seriousness of the crime.
- A single point of contact should be made available to provide regular update and other essential information to the victim
- Agencies should be encouraged to provide more information to victims regarding criminal injuries compensation and post case support
- Business processes of the agencies should be amended to reflect a future joined up service.
- Co-ordinated contact with victims and witnesses should take place to remove the current duplication and confusion that currently exists
- Agencies should implement joint performance targets as part of a joint strategy to enhance customer care
- The priority will be to tackle the 'solved crime' rather than the 'unsolved' whilst recognising that close contact will be necessary with crime desks and Warwickshire Police public contact strategy.

SCOPE

The project consists of three phases

1. Identification of business requirements for an integrated unit identifying the technology and facilities necessary to provide a first class service.

2. A pilot scheme of the VIP to trial integrated working amongst key agencies where it is anticipated that the Partnership will co-locate secondments from the various criminal justice agencies with a view to progressing towards multi-functional skills and generic tasks.
3. A fully integrated Victim and Witness Information Partnership co-located within The Criminal Justice centre

PROJECT APPROACH

Activities undertaken to date.

Building Participation

- Formation of a Multi-agency Victim and Witness Forum involving all of the key agencies
- Following an extensive consultation process with practitioners and senior managers and executives, the following agencies are now committed to joint working within an integrated Victim and Witness unit. These agencies include: Warwickshire Police; Crown Prosecution Service; National Probation Service; Youth Offending Team; Warwickshire Magistrates Court Services; Court Services (Crown Court); Victim Support and Witness service , Domestic Abuse Multi-agency Team and Warwickshire Anti-social behaviour order partnership.

Analysis

- An in depth review of the current activities carried out across the agencies that relate to victim and witness support
- Recognition of the current flaws in the processes that relate to victims and witnesses that are the subject of 'solved' and 'unsolved' crimes
- Review of the business processes that relate to victim and witness support across all agencies that were the subject of the initial business process review project
- Customer focus groups with Victim and Witnesses to assess their service requirements and to learn from their experiences

Networking

- Establishing links with other agencies and organisations who may have an impact upon the overall quality of service provided for Victims and Witnesses
- Establishing close links with Home Office policy making units and research departments to ensure that Warwickshire's strategy is in line with future national policy and direction

Project Initiation

- An overall project initiation document defines the activities and deliverables for each phase of the overall project plan

BUSINESS REQUIREMENTS

The business requirements of the VIP are currently under development.

The various activities/responsibilities of each agency are shown at **Appendix A**. This will be developed over coming weeks to provide new integrated business processes in line with the proposed new victim and witness charter, a breakdown of which is shown at **Appendix B**

A new model for the Victim and Witness Information Partnership is shown at **Appendix C**

Whilst the initial pilot scheme will rely upon secondments from the various agencies, it is proposed to work towards a multi-skilled and multi-functional unit in advance of occupying the Criminal Justice centre.

The model will incorporate the many peripheral associations and organisations that impact upon the overall service offered to victims and witnesses to which key links will be made over the coming months.

The project team recognise that any change management process requires significant investment in resource management. It is proposed to develop a skills profile, training needs analysis, recruitment, selection and communication/consultative process.

ENVIRONMENT, RESOURCE AND IT REQUIREMENTS

Premises

It is essential that the environment and technology supports the new business requirements. Experience from other multi-agency projects has identified that the selection of neutral and independent premises promotes a culture of collaboration within the team and creates a new and distinctive brand in the eyes of the service users.

Whilst it was initially proposed that the site could be hosted within Leamington police station it is now apparent from the business workshops that this is no longer a viable option as it is an unsuitable environment for drop-in facilities and provides inadequate accommodation to host the various agency staff.

The planning phase has taken account of the business requirements and will offer a more proactive service. The proposed business requirements require the facilities described in the introduction above.

A conceptual plan of the proposed site requirements is shown at **Appendix D**

The Estates Department of Warwickshire police have been tasked with finding suitable accommodation in which such a partnership can flourish

Information Technology

This project assumes that the Exchange system will be available in Warwickshire in readiness for the Pilot commencement date of 1st October 2003. This would provide operatives within the VIP access to a relevant subset of information from agency systems in particular NSPIS Case Preparation.

All those working within the VIP would share access to a Contact Management System for tracking calls and providing continuity of service and relationship with clients of the service. This would be linked to an integrated telephony service.

J1/S2/04/4/11

Given the representation of the various agencies, *it is proposed that the authorised agency representatives within the VIP will have secured access to the following systems*

- NSPIS case preparation
- Equis
- YOIS
- Warwickshire Probation Service victim database
- STORM (Police command and control)
- Crime recording system

Other links will be made available as and when new systems are in operation in Warwickshire CJS e.g. Compass, Xhibit.

A plan highlighting the technology requirements is shown at **Appendix E**

In the event that Exchange is unavailable by 1st October 2003 then it is suggested that the Partnership could commence with agencies having continued access to the above systems, however it must be recognised that the overall service would be restricted in this initial phase owing to the inability to share data across the many agency representatives.

Resource requirements

Partner Agency	Resources	
PROBATION	1 x practitioner	1 x administrator(0.5)
YOT	3 x practitioners	1 x administrator(0.5)
POLICE	3 practitioners	
CPS	1 x practitioner	
DOMESTIC VIOLENCE	5.5 Practitioners(includes one manager)	
MAGISTRATES COURT	Financial contribution	
VICTIM SUPPORT & WITNESS SERVICE	1 x co-ordinator	
CROWN COURT	Financial contribution	
ASBO PARTNERSHIP	1 x co-ordinator (0.5FTE)	

J1/S2/04/4/11

FINANCE/COSTINGS

The initial business case dated 27th January 2003 identified the following requirements and costs.

Item	Description	Estimate
Project Manager	Project manager costs for the period between March 2003 and July 2004. These costs are based upon three days a week involvement at £350 per day for 200 days (This individual will also act as the manager of the implementation team from October 2003)	£ 70,000
Implementation Team	Funding for four full time temporary employees to act as the implementation team from October 2003 until October 2004. Four people at £22,000 per annum	£ 88,000
Equipment	One time costs for setting up the facilities such as desks and IT equipment for the implementation team at Leamington Police Station. This entails costs of approximately £550 per person's furniture requirement and Personal Computers and printers at £2000 each. Hence costs for five people of £2550 per person	£ 12,550
Software	Potential package software purchase and development costs	£ 9000
Training	Training costs associated with developing, documenting and educating the multi-agency personnel during 2004.	£20,000
Total	Overall budget required	£200,000

The original business case identified an estimated budgetary requirement of some £200K. This was based on information available at that time of the planning stage.

Since this time some comprehensive research and business process mapping has been conducted together with extensive consultation with Agencies

A dedicated joint Warwickshire CJC/CJIT has provided an opportunity to widen the scope of the proposed Integrated Victim and witness model.

It is therefore necessary to provide a revised plan with revised costings necessary to formulate a Pilot scheme for an integrated victim and witness unit.

Revised 1st Year set up and operation of pilot costs:

Item	Description	Estimate
Project manager	Project Manager costs for period 1 st may 2003 to September 2004. These costs are based upon the employment of a full time project manager seconded from the Courts services (Crown Court)	£ 60,000
Implementation Team	Funding for four full time employees to act in a call management role during the pilot scheme from September 2003 until September 2004. Four people at £22,000 per annum (includes on costs)	£ 88,000
Premises	Set up costs for rental of premises in Leamington Spa, including desks, chairs, telephone equipment	£ 53,000
Communication & Publicity.	Telephone bills, Photocopying & Printing etc.	£50,000
IT	Hardware, Local Area Network, Router/Firewall, Contact Management System and telephony integration, Switch to WAN.	£100,000
Training	Training costs associated with developing, documenting and educating the multi-agency personnel	£20,000
Total	Overall budget requirement for set up and first year operation from 1 st October 2003	£371,000

Consideration has been given to reducing the above costs in terms of premises rental, IT requirements etc, however it is considered that the above costs are representative of the minimum requirements to deliver an improved quality of service given full representation of the key agencies. *Consideration could be given to reducing the levels and hours of service by reducing staffing numbers however the project team consider that this would limit the overall improvements in service delivery.*

J1/S2/04/4/1

IT SHOULD BE NOTED THAT IT IS ANTICIPATED THAT WARWICKSHIRE CJO's WILL BE PROVIDING SOME 15 FULL TIME EMPLOYEES AS PART OF THE OVERALL CONTRIBUTION TO THIS INITIAL PILOT SCHEME *Based on an average £22k per post this equates to some £330k*

POST PILOT COSTS

Anticipated year 2 costs based on continued integration at site prior to build of Criminal Justice Centre

£240,000 (based on rental, management, staffing, training, telephone, photocopying etc)

Anticipated year 3 costs and onwards (assuming Criminal Justice Centre ready for occupation)

£138,000 based on Manager, staffing, training (Excludes contribution to running costs of CJC)

BENEFITS OF AN INTEGRATED VICTIM AND WITNESS UNIT

Introduction

A significant amount of long term change is occurring within Warwickshire as part of the CJC (Criminal Justice Centre) programme. Within such an environment proactively measuring and tracking the delivery of the benefits that arise is central to defining the success of the programme and the achievement of objectives.

At this stage high level benefits have been defined for the BPI component of this work, including those pertaining to the victims & witnesses content area. In order to develop these high level benefits further, in both the victim & witness content area and across other areas, a detailed benefits approach has been developed. This approach and the current list of benefits have been described below.

High Level Benefits – Victims & Witnesses Content Area

To date benefits have been defined at a preliminary level as part of the early work to define the scope of the victims & witnesses content area. These will be developed in much greater detail as the work progresses. The benefits which have been defined to date are set out below. We have described the causal chain by distinguishing between the beneficial outcomes, the service attributes which contribute to those outcomes and the mechanism by which this service will be delivered.

Outcomes

1. Victims and witnesses will have a better experience of the CJS and their confidence in it will be higher.
2. This enhanced experience will increase the probability that they will be willing to become witnesses again in future incidents and that they will be a positive influence on their associates who may be considering active cooperation as a witness.
3. The enhanced experience, the perception of being cared for and their higher confidence in the CJS will increase the likelihood of them fully cooperating with the CJS process thus reducing the number of ineffective trials or cracked trials as a result of witness non attendance.

Service

1. The VIP will seek to build a relationship with victims and witnesses based on an understanding of their case and of their personal circumstances and requirements.
2. The VIP will interact with victims and witnesses in a consistent way and provide them with correct, timely and consistent information.
3. The VIP will significantly enhance access of victims and witnesses to the CJS through the communication channel of their choice (telephone, fax, email, the Internet and face to face visits)

Delivery Mechanism

1. The VIP will make use of a contact management system to ensure ownership and consistent management of the contact, and the provision of clear and regular updates.
2. Integrated Technology within the Victim and Witness information partnership will allow instant access to Crime reports (Victim Support) and Domestic Violence referrals
3. More interaction with the Criminal Justice Agency professionals in terms of offering pro-activity in progress updates.
4. Drop-in facilities will allow flexibility for Victims and Witnesses to seek reassurance, information and personal updates on the progress of cases

J1/S2/04/4/11

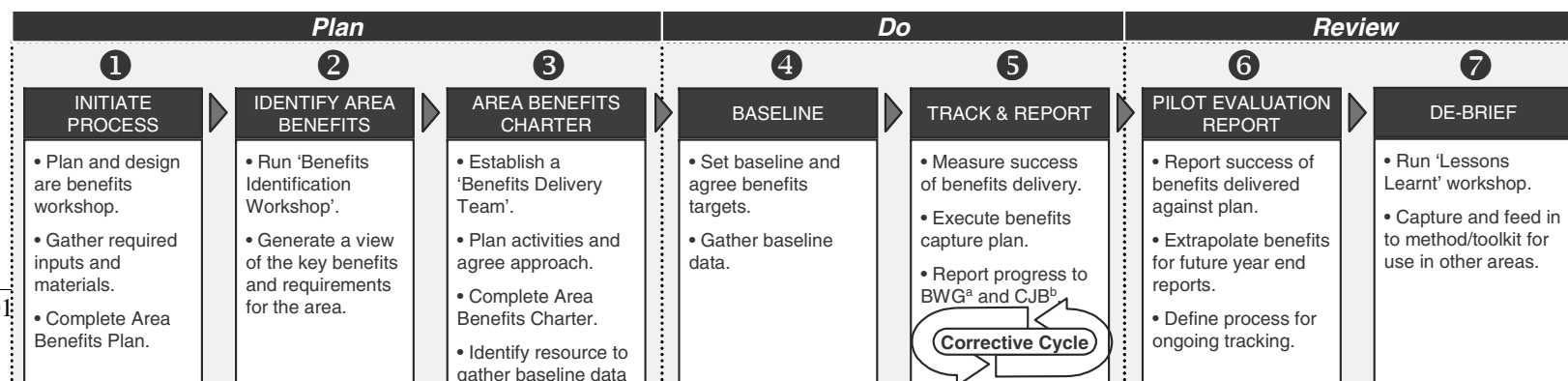
5. Interview room facilities will allow private consultation, and flexibility for other additional interaction e.g. CPS Direct communication, vulnerable and intimidated/reluctant witnesses
6. Better information for witnesses, through use of leaflets, on the possible outcomes of giving a statement would increase the likelihood of witnesses agreeing to go to trial, and reduce incidents whereby a witness refuses to go to court as expectations were mismanaged early in the process.
7. Having case information available at all points of contact (Police and VIP) would allow for a better deployment of resources in intimidation cases (i.e. intimidation is added to the case file as opposed to becoming a whole new case).
8. A reduction in the number of 'cracked cases' attributable to non-attendance could be achieved by making the list of required Witnesses by case available to both the Police and the new Victim and Witness service.

As the future processes are defined a detailed analysis will be undertaken to ascertain the differences between the current state and proposed future state, and through this both identify additional benefits, and build the detail for existing benefits.

As the list of benefits grows it will be necessary to adopt a pragmatic approach as to which will be measured and tracked. Resource and time will not permit the measurement to a detailed level of each and every benefit. As a consequence only 'Priority Benefits', that is benefits of greatest value from both a tangible and intangible benefit perspective, will be measured and tracked. Ultimately these 'Priority Benefits' will constitute the major portion of total achievable benefit. It should be noted that although the 'priority' list will not encompass all benefits this does not exclude those which are not selected from implementation.

Benefits Approach

A seven step benefits approach has been developed for use as part of this work by drawing upon best practice benefits management and tracking from both the private and public sector. The use of a pre-defined method will facilitate the completion of benefits work to the pressing timescales that are in effect. The objectives and activities for each step in this process have been defined; a detailed description will be available shortly.



Seven step benefits approach.

RISKS

The key risks are:

- Reliance upon the Criminal Justice IT agency, (CJIT), developing a piece of software that will enable the justice agencies in Warwickshire to exchange case based information that relates, specifically, to victims and witnesses generated within specific agency case handling software such as NSPIS. (The CJIT software in plan is currently referred to as the 'Criminal Justice System Exchange')
- That the Warwickshire Criminal Justice Agencies are unable to fund the ongoing costs of running the service post pilot scheme
- Inability to secure suitable premises for such an integrated unit
- That the unit fails to maintain a focus upon post charge/summons activities and a focus on information delivery as opposed to an investigative approach
- That agencies will fail to adopt an integrated victim and witness service culture. A training and communication strategy will be therefore be vital

J1/S2/04/4/11

Project Structure

- Business Process Improvement Project Board – Chaired by Diane Johnson (Head of YOT) and member of the CJC Programme Board
- BPI project team leader (Jeff lennox)
- Project Lead for Victims and Witnesses (Superintendent Neil Brunton)
- Project Manager for Victims and Witness support activity (Jan Killigan)
- Project team made up of Senior Warwickshire CJO members and CJIT representatives

Any specific additional resource requirements will be developed by the Project Manager e.g. Human resource management, Training manager

RECOMMENDATIONS AT THIS TIME

The Project team requests that the **BPI board approve the following recommendations**

1. That the integrated unit be named ‘The Warwickshire Victim and Witness Information Partnership’ (emphasis on VIP)
2. That the proposed model for integrated services (as appendix C) be agreed as the Pilot implementation
3. That the minimum requirement for Information Technology (as appendix E) be approved by the Board
4. That the minimum resources required from each agency for a Pilot implementation be agreed

APPENDIX A

Proposed agency activity within a Victim and Witness information partnership

MAGISTRATES COURTS

- Ensure that witnesses are only called to Court when absolutely necessary
- Once attendance is necessary establish availability
- Ensure that Court is convenient in terms of time, location and date
- Ensure that Witness has sufficient information prior to attending Court and whilst at Court
- Ensure quality facilities at court
- Ensure waiting times are kept to a minimum for the witnesses
- Ensure Victim notification for cases involving compensation
- Victim and Witness satisfaction survey (To include defence witnesses)
- One witness availability date for ALL witnesses i.e. co-ordinated on behalf of Court
- Mobile telephone/pager facility for witnesses to reduce waiting times
- Proactive contact with Victims to avoid reactive contact by courts staff
- A more efficient special measures notification and Co-ordination
- Staggered witness calling to reduce waiting times

PROBATION SERVICE

- Interaction with Victims where a custodial sentence of 12 months or more is given to a defendant
- Notification of outcome of a case (as above) to a victim with an offer of support and further interaction/information on progress of sentence
- Notification sent to Victim by the Crown Court unit of Probation service
- Require information exchange with Police to facilitate service
- Notification of prison release
- Assume Victim 'opt out' i.e. appointment date provided on outcome notification in event of no response.
- Outreach work in the form of Probation Service Officer visiting Victims around the County
- Deal with cases where case is outside of Warwickshire but the Victim resides in Warwickshire. Similar situation occurs where Warwickshire case involves a Victim living outside of the County
- Offer a more proactive service to Victims

J1/S2/04/4/11

YOUTH OFFENDING TEAM

- Continue with Final warning and referral order processes in an efficient manner
- Seek to increase Victim take up in other intervention areas (Currently lower priority)
- Ensure close working links with Police staff and systems to ensure prompt receipt of information
- Ensure close working links with probation support Officer where sentences involve 12 months or more
- Co-ordination of outcome letters to avoid duplicity
- Unit to send outcome letters to Victims
- Out reach workers to be located within an integrated unit
- Receive general Victim enquiries
- Offer a more proactive service i.e. greater telephone contact to encourage take up

Police

- Update on progress of case post charge/summons
- Premium service for sensitive victims
- Notification of charge decision, bail conditions etc
- Outcome notification to be co-ordinated with other agencies
- Efficient witness availability system
- Overall increase in proactivity to include face to face contact
- Ability to utilise virtual site for face to face interaction i.e. Ipswich crown court site

CROWN COURT

- Close links with Partnership to facilitate pre-court visits
- Continued close links to establish witness availability to assist listing
- Co-ordinated and convenient dates to be provided for all witnesses
- Joint survey contribution and joint performance targets across Warwickshire CJS

CROWN PROSECUTION SERVICE

- LWAC to be raised by lawyer and sent to Integrated unit by fax/secure E-mail
- Unit to warn witnesses and obtain co-ordinated dates to assist Listing Managers/Officers
- Obtaining availability of all witnesses in full/contested files will assist with listings
- Provide Integrated unit with updates on special measures cases
- Facilities available within unit to use for direct communication or special measures meetings
- Copy of direct communication letter to be sent to Unit for case history purposes and notification of any personal interaction with Victims by CPS
- Unit to be notified of the fact that interpreter booked for a particular witness
- Unit will facilitate obtaining compensation applications from Victims only as part of a reactive service. Proactive receipt of compensation (MG19) will continue to be obtained as part of operational role i.e. OIC/case handling unit
- CPS will continue to pay witness expenses, however the unit will facilitate interaction with CPS if a call received within the unit
- Leaflets and information on the agencies various complaints processes will be available upon request within an integrated unit
- CPS will wish to be part of any overall satisfaction surveys and joint performance targets and monitoring

DOMESTIC VIOLENCE MULTI-AGENCY TEAM

- provide clients with additional contact number for victim and Witness Unit
- Utilise drop-in facilities of Victim and Witness Unit
- Victim and Witness unit to provide a consultancy service for special measures issues with domestic Violence Victims
- Domestic Violence services to be an integral part of Victim and Witness Unit
- Outreach work operated from within the unit

J1/S2/04/4/11

Victim Support and Witness Service

- Part of the overall Victim and Witness partnership
- Part of a radical pilot scheme in which Significant improvements to the overall standards of service are anticipated
- Raising the profile of Warwickshire Victim Support
- Access to crime recording system which will be available within such unit
- Ability to be part of Joint strategic and Policy planning
- Full representation on Formal meeting structures
- Co-ordinator representing both victim support and witness service to be located within the unit
- Pilot a more proactive approach to Victim referrals within the unit using Leamington area as a pilot initiative. Will require a number of volunteers to make initial contact with Victims and out-reach capability
- Close links with the partnership in terms of facilitating pre court visits and in-court support for Victims and Witnesses

1 VICTIM & WITNESS CHARTER

1.1 National Probation Service

Contact victims of crime where offender:

- a) Has been sentenced to 12 months or more
- b) Has been convicted of a violent or sexual offence.

The victim should be contacted to see if they wish to make representations and/or receive information.

Contact the victim with an offer of face-to-face contact. This is to be within 8 weeks of the sentence.

The NPS should provide information about the Criminal Justice Process and the key stages of the sentence or record why not.

Establish if the victim wishes to make representation re conditions of release.

Allow victim to see relevant parts of the parole **xxx** probation document.

Establish if the victim wishes to receive **xxx** and info re condition.

Inform the victim if the offender is to be the subject of conditions and requirements on release.

Inform the victim re any conditions re contact with the victim.

Provide whatever information is considered appropriate.

Ensure the information held by the NPS about a victim is secure and separate from the offender's case record.

[NB. By the time the code comes into being this will apply to **xxx**'s and **xxx**'s.

1.2 Prison Service

Maintain a telephone helpline to ensure that victims (or families in homicide cases) have a number to ring if:

- a) They receive unwanted contact from the prisoner
- b) They have any concerns about temporary release
- c) They want to be informed when the prisoner is finally released.

In mandatory life cases (i.e. adults convicted of murder) the Prison Service will, as a matter of course, pass details of eventual tariff set by the Judge to the relevant probation office.

Respond within 20 working days if the victim enquires personally in a life sentence case about the minimum period that will be served.

Issue release licences for prisoners having considered any additional conditions requested by the NPS or recommended by the Parole Board because of information offered by the victim.

1.3 Criminal Injuries Compensation Authority

Process efficiently, fairly and consistently all claims made under the scheme.

Respond to all correspondence within 4 weeks.

Ensure that appropriately full explanations are given to victims or families.

1.4 Victim Support Service

Contact victims within 2 days.

Offer services to victims and appropriate relatives and friends.

Liaise with colleagues in WSS to ensure continuous service.

Identify victims that are eligible to claim compensation and assist in the claim.

Refer victims to appropriate local services.

[NB. VSS National Office – provides victim support line.]

1.5 Witness Service

Make information about its services available.

Facilitate pre trial court visits with Family Liaison Officer or witness liaison office (from court).

Provide support and practical information as requested.

Where appropriate, put witness in contact with VSS.

1.6 Courts

Liaise effectively with the Police and CPS.

Ensure that information about decisions is passed promptly:

a) Sensitive cases within 1 day

b) Others within 3 days

If not possible then record why!

Ensure that victims have separate waiting area and keep them away from the defendant's family etc.

Ensure the availability of special measures.

J1/S2/04/4/11

Ensure that waiting time is no more than 2 hours.

Provide facilities (pagers etc.) to allow victims and witnesses to leave court.

Provide an information point.

Inform the Police of appeals within 2 days of the appeal and 1 day of the result.

1.7 CPS

Inform the victim (with the FLO) if a decision is made to drop or substantially alter the charges and explain why.

Offer to meet and explain decisions in the following cases (unless the prosecutor records in writing the reasons why not):

- a) Death
- b) Child Abuse
- c) Sexual Offence
- d) Racially Aggravated

Have systems in place to ensure that prosecutors take proper account of VPS and record the outcome of considerations.

Have systems in place to enable prosecutors in appropriate cases **xxx** to make applications for Special Measures.

Ensure that the WSS has advance notice if the victim is required to attend court or record in writing if this was not possible and why.

Ensure prosecutors, when circumstances permit, meet and greet the victims, explain the process and the likely timescales.

Explain any delays and the reasons.

Pay any expenses due within 10 days of receipt of the claim.

1.8 Parole Board xxx

Consider any concerns that victims have offered to the NPS or the conditions to be included in the release licences of prisoners serving sentences of 4 years or more and reflect these considerations in the parole 'reasons'.

Consider any information that relates directly to the current risk presented by a prisoner in deciding whether or not to grant or recommend parole and reflect this in the parole 'reasons'.

1.9 Criminal Cases Review Commission

Ensure that the Police and CPS are informed - within 10 days - of a major re-investigation of a case is to take place.

Ensure that the Police and CPS are informed of the outcome of the re-investigation within 10 days if NFA (No Further Action) or within 2 days if referred to the court of appeal.

1.10 Police

Notify Victim if suspect is a) Arrested b) Charged c) Cautioned (No names to be released) within 1 day for Sensitive Victims and 3 days for all others.

Notify Victim if undetected i.e. NO Arrest, Charge or Caution - Monthly until the case is closed.

Notify Victims of Sensitive crime if suspect is charged a) Bail b) Conditions Timescale 1 Day.

Notify Victims of outcomes of a) Pre Trial Hearings b) Verdicts within 1 day.

Notify Victims of dates of all court hearing within 1 Day for Sensitive Victims and 4 days for all others.

Notify Sensitive Victims if person convicted - Appeals against a) Conviction or b) sentence – within 2 Days of being informed by the court that the appeal has been lodged and within 1 day of being informed of result.

J1/S2/04/4/11

Inform all Victims of a major reinvestigation or referral to Court of Appeal or CCRC within 10 days of being notified by CCRC.

Inform all victims of outcome of reinvestigation within 10 Days if NFA or 2 Days if referred to Court of Appeal.

Discuss with all Victims the need for protection from intimidation or threats by use of V.P.S.

Consider, in the event of a trial, if the Victim is eligible for Special Measures.

Pass Victim contact details to V.S.S. within 2 days.

Advise Victims when taking statements of their rights to make a V.P.S. and consider the content when making decisions.

Provide Victims with current "Victims of Crime" leaflet.

Provide relatives of Homicide victims with current pack "Information for Victims of Homicide".

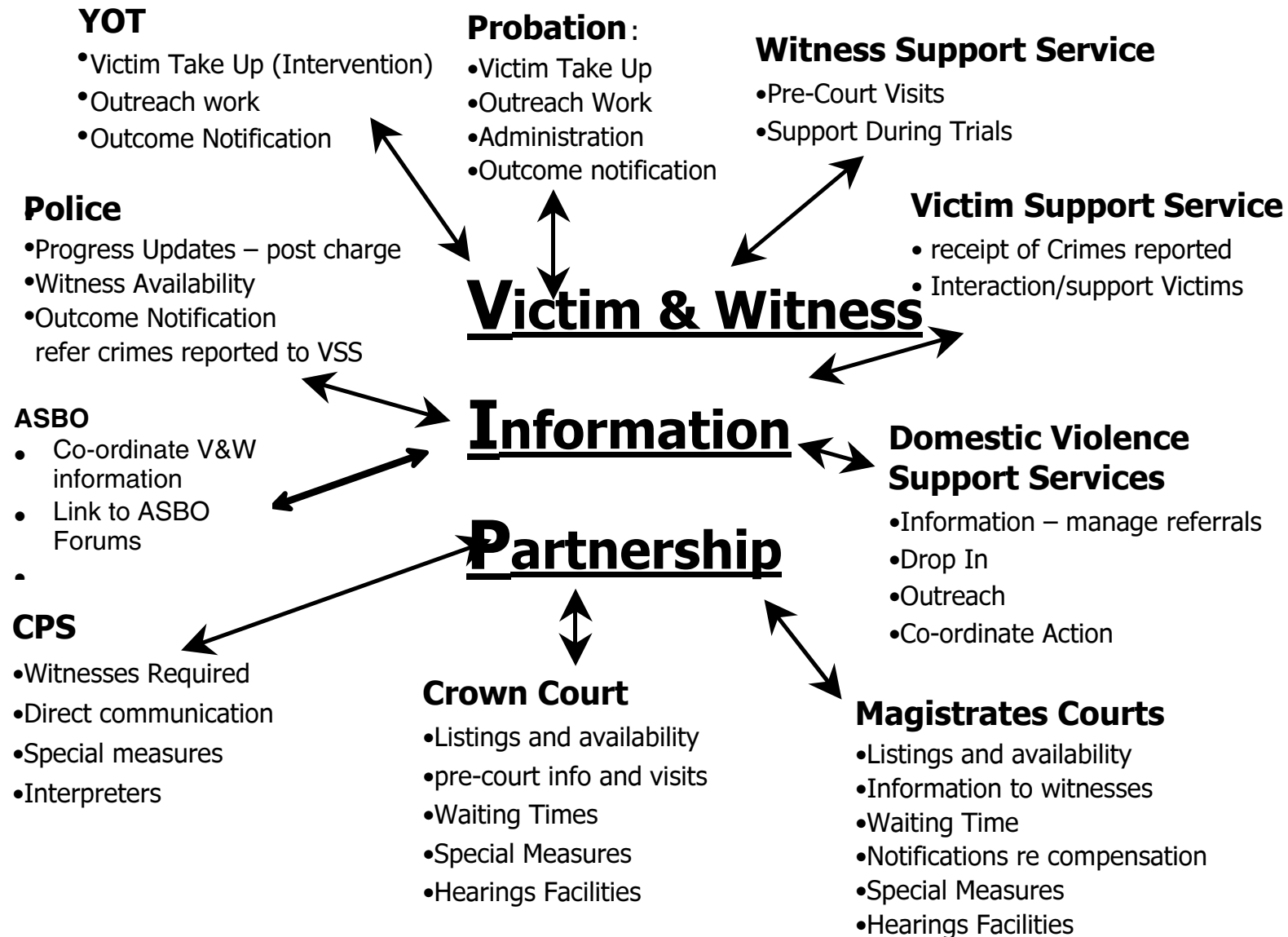
Identify appropriate relatives and assign a F.L.O.

Where the offender is sentenced to 12 months or more, provide Victims of Sexual Offences or Violent Offences with the current "Release of Prisoners" pack.

Refer Victims details to Probation Service within 10 Days of the expiry of opt out scheme date AND WITHIN 20 Days of receiving the sentence decision from Court.

Provide Child Witnesses and parents etc with current "Child Witness" pack.

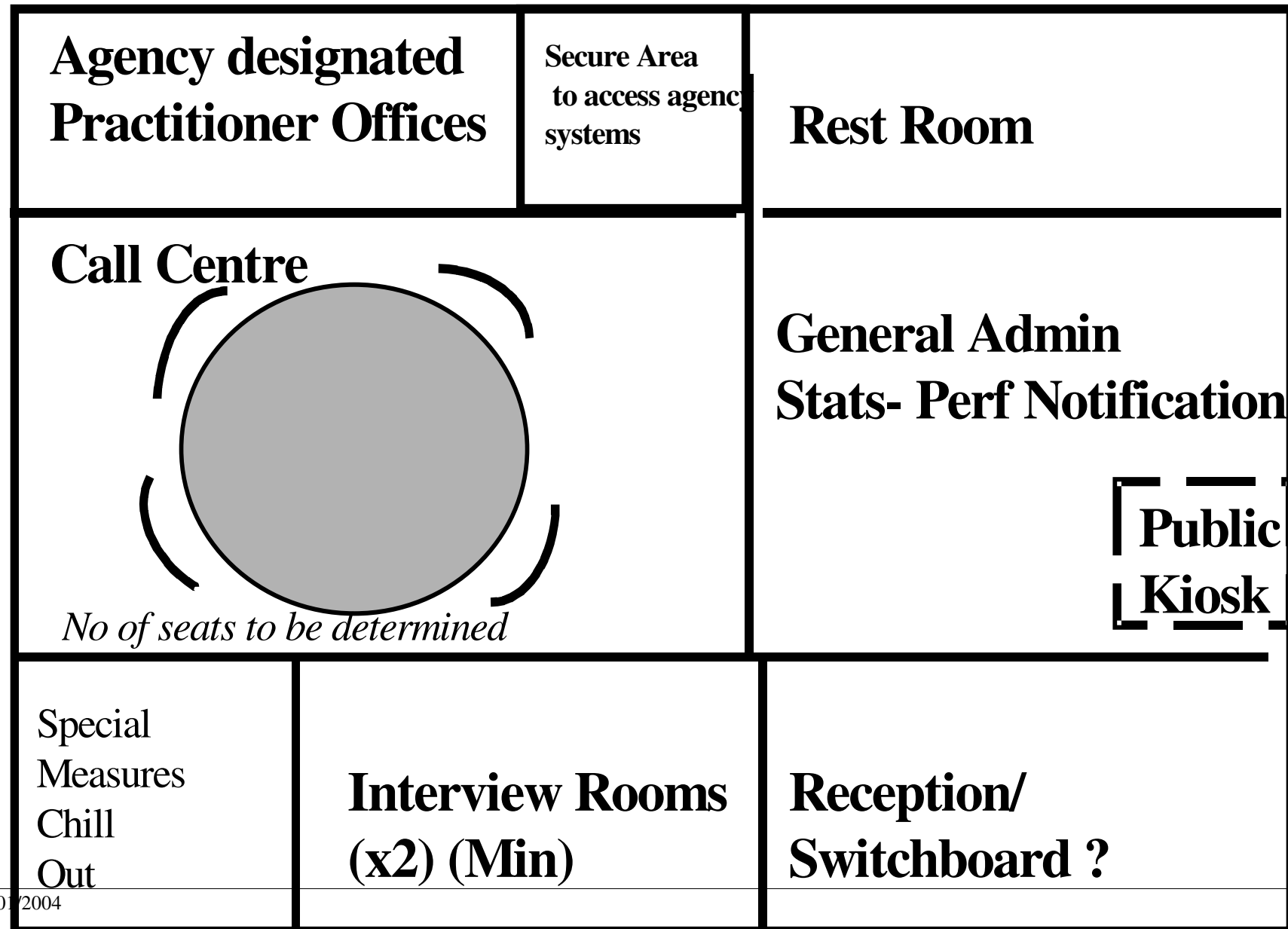
If the offender is under 18 years, explain the role of the YOT and pass on details for Restorative Justice etc.

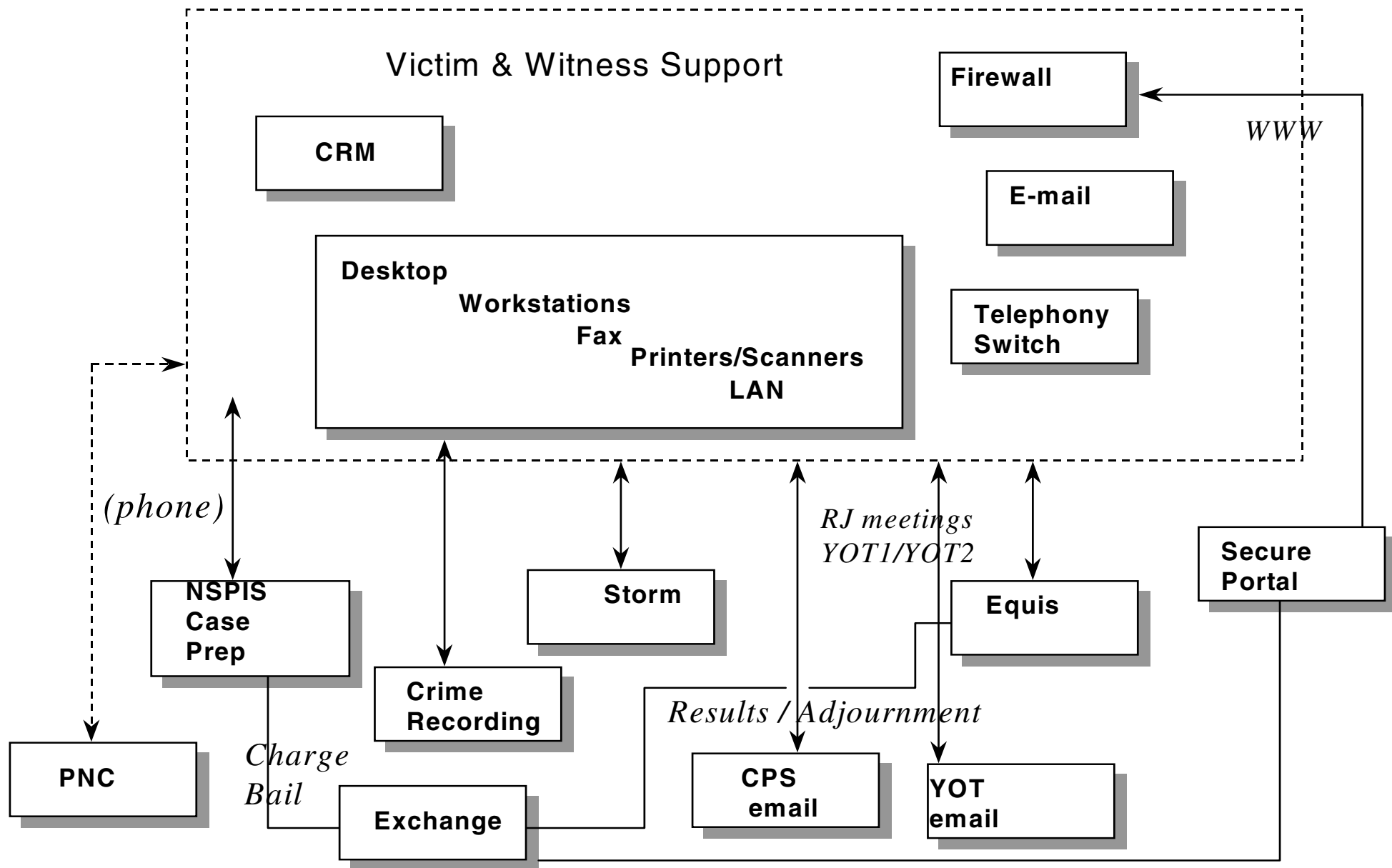


V&W INTEGRATED MODEL

APPENDIX D

LAYOUT OF UNIT





Exchange Secure portal 1st Release



WARWICKSHIRE MAGISTRATES'
COURTS SERVICE



Warwickshire CJC/CJIT BPI Project

Victims & Witnesses



Evaluation Plan

Version:	1.0
Date:	19 th June, 2003
Author:	Neil Brunton, Ben Gilchrist, Jan Kilgallon, Colin John
Approved:	Neil Brunton
Date:	19 th June 2003

Warwickshire Youth Offending Team



J1_S2_04_4_12 Warwickshire Victims and Witnesses evaluation plan.doc

23 January 2004

1. Document Control

1.1 Document Location

The CJC BPI Programme Management Office will keep the master document.

1.2 Revision History

Revision date	Version	Summary of Changes
11-06-03	0.1	Initial document structure and content added.
13-06-03	0.2	Addition of models and templates. Additional content added.
13-06-03	0.3	Reviewed by Jan Kilgallon: additional benefits detail added.
16-06-03	0.4	Updated sections 4, 5, and 6.
17-06-03	0.5	Comments from Jan Kilgallon incorporated. Additional detail added to 'Benefits Identified' section.
18-06-03	0.6	Further detail added to 'Benefits Identified' section.
18-06-03	0.7	Balanced Scorecard model updated.
19-06-03	1.0	Comments from final approval incorporated. Version 1.0 issued for distribution.

1.3 Quality Review

Name	Role
Neil Brunton	BPI Victims & Witnesses Project Lead
Jan Kilgallon	BPI Victims & Witnesses Project Manager

J1_S2_04_4_12 Warwickshire Victims and Witnesses evaluation plan.doc

23 January 2004

2. Contents

1.	Document Control	2
1.1	Document Location	2
1.2	Revision History	2
1.3	Quality Review	2
2.	Contents	3
3.	Introduction	4
4.	Evaluation Structure & Strategy	4
5.	Evaluation Process	6
5.1	Identify	7
5.2	Baseline	7
5.3	Set Targets	7
5.4	Track	8
5.5	Evaluate & Report	8
5.6	Who does the Evaluation?	8
6.	Benefits Identified	8
7.	How we will manage new benefits	14
8.	Evaluation Timeline	14
9.	Knowledge Transfer	14
10.	Annexes	16
10.1	ANNEX I: Opportunity Charts	16
10.2	ANNEX II: Proposed Elements of Victim & Witness Satisfaction Survey	17
10.3	ANNEX III: Processes in scope [INITIAL DRAFT – TO BE CONFIRMED]	18

J1_S2_04_4_12 Warwickshire Victims and Witnesses evaluation plan.doc

23 January 2004

3. Introduction

The BPI (Business Process Improvement) work forms part of the over-arching CJC Programme (Criminal Justice Centre) being run locally within Warwickshire. This is being supported at a National level by the CJIT (Criminal Justice Information Technology) programme. The BPI project is split into six priority areas:

1. Warrants
2. Persistent Offenders & Persistent Young Offenders
3. Court Listings
4. Court Results
5. Police – CPS Interaction
6. Victims & Witnesses

This document relates to the evaluation of the latter of these, the Victims & Witnesses BPI Priority area. The crux of this work is the formation of a joint centre to manage key interactions between the CJS and all post-charge victims and witnesses. This will be characterised by the creation of the VIP pilot (Victim & Witness Information Partnership), a physical location tasked with the management of contact with these individuals. Although full details of the proposed scope of this unit is given in other documentation an overview of the processes that will be used is available in [Annex III](#).

The VIP looks to deliver a whole range of benefits to a variety of different groups, principally the victims and witnesses, though also extending beyond this to the CJS as a whole. We have identified a series of benefits relating to each of these groups. However, it is not enough that we only identify benefits. It is critical that we also determine how these benefits are delivered, and to whom, given the distinctive nature of this initiative. Thus, the purpose of the evaluation plan is to:

- o Describe the benefits which we envisage the VIP initiative will deliver.
- o Provide a detailed view of the approach we will adopt to ensure a robust evaluation of this work to determine how successful the pilot has been.
- o Define a knowledge capture approach that will ensure this unique project can be replicated in other CJS areas should they chose to do so.

This document provides detail on each of these areas.

4. Evaluation Structure & Strategy

The identification of benefits of the VIP and their subsequent evaluation will be structured around three categories, the Balanced Scorecard, Other Benefits, and Operational Measures. Each of these is described below:

- (1) **Balanced Scorecard:** this structure will be used to identify and evaluate benefits of the VIP. Using such a method provides a linkage between strategic objectives and actual changes made; in essence allowing one to measure the extent to which strategic objectives have been met. We have defined four sub-categories to this as shown in Figure 1. We will identify and capture benefits around each of these.

**J1_S2_04_4_12 Warwickshire Victims and Witnesses evaluation
plan.doc**

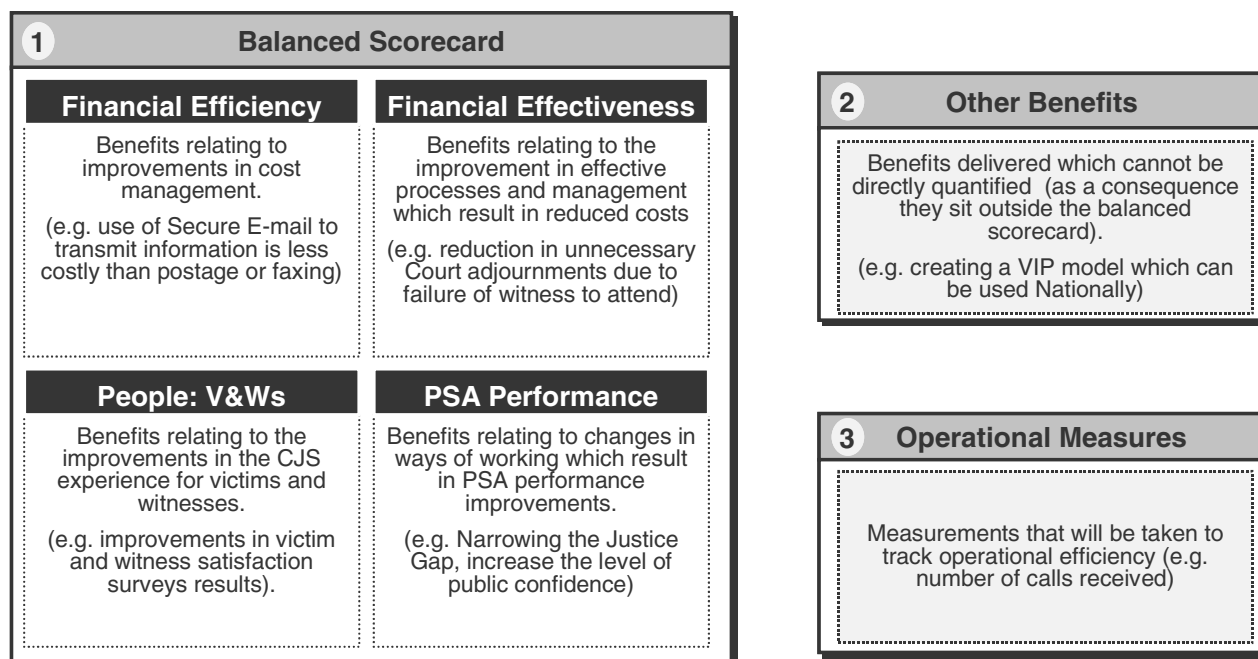
23 January 2004

- (2) **Other Benefits:** some benefits have been identified which are not directly quantifiable and thus sit outside of the balanced scorecard. Such benefits will be captured, however, since they are not quantifiable no data will be collected for them.
- (3) **Operational Measures:** the final area around which data will be collected to determine the success of the VIP is 'Operational Data'. These are measures which will be collected as part of the day-to-day business as usual activity (e.g. number of calls received). These will act as a measure of the success of the VIP at an operational level; benefits as described in (1) and (2) above are more holistic and relate to the VIP project as a whole. At present we only have a high level view of these measures. As the detailed processes and procedures for the VIP are defined the extent of these operational measures will become clearer.

J1_S2_04_4_12 Warwickshire Victims and Witnesses evaluation plan.doc

23 January 2004

Figure 1: aspects around which measures will be captured. This is split into three parts; the four point 'Balanced Scorecard' for quantifiable benefits relating to the VIP initiative, 'Other Benefits' which are not quantifiable, and 'Operational Measures' which assess the day-to-day efficiency and usage of the VIP.



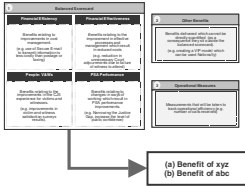
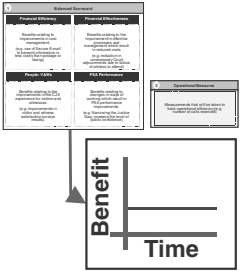
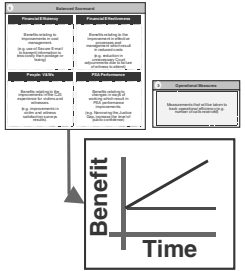
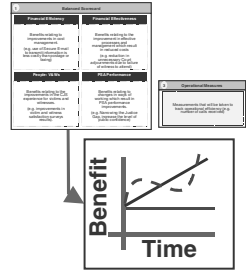
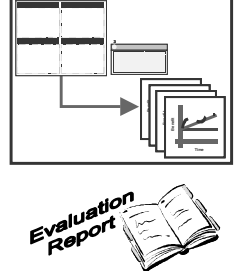
5. Evaluation Process

We have defined a five step process to structure our evaluation approach based on best practice from the private and public sector (see Figure 2). This approach will ensure a robust assessment of the success of the VIP work. The core of this process is the balanced scorecard, as described above, which defines the criteria around which the evaluation is made. It should be noted that we are at Step 1 (Identify) in the process and thus still have further information to gather on the benefits.

Figure 2: proposed approach to evaluating the VIP work. The entire process runs from the point at which benefits are identified through to the evaluation of these benefits following implementation. Details of each step in the process are provided in the main text. Note: although this is described as a linear process some steps occur in parallel (see Section 8: 'Evaluation Timeline' for timings of each step).

J1_S2_04_4_12 Warwickshire Victims and Witnesses evaluation plan.doc

23 January 2004

	1 Identify	2 Baseline	3 Set Targets	4 Track	5 Evaluate & Report
Model					
Objective	<ul style="list-style-type: none"> Identify benefits: <ul style="list-style-type: none"> - Quantifiable = Balanced Scorecard - Non-quantifiable = Other Benefits 	<ul style="list-style-type: none"> Set a baseline for each measure 	<ul style="list-style-type: none"> Set a target for improving against the baseline 	<ul style="list-style-type: none"> Track progress of benefit delivery against target 	<ul style="list-style-type: none"> Evaluate overall success
Question it Answers	<ul style="list-style-type: none"> What benefits will we deliver and how will we measure them? 	<ul style="list-style-type: none"> What is the current status of the measure? 	<ul style="list-style-type: none"> How much better do we want to make it? 	<ul style="list-style-type: none"> How much better is it? How well are we doing against our target? 	<ul style="list-style-type: none"> How well has benefit delivery done against what we expected?
Benefit Type	Balanced Scorecard Operational Measures Other Benefits				

Each of the steps in the process is designed to capture the relevant information to allow a detailed assessment of the success of the benefits of the VIP. These steps are described in further detail in the following sections. It should be noted that only 'Step 1 – Identify' is relevant to 'Other Benefits'; these type of benefits cannot be robustly quantified so other steps are not applicable.

5.1 Identify

This step focuses on defining the benefits in detail. This includes a detailed description of the benefit, how it will be measured, and how we expect the benefit to be delivered over time. We are using a pre-defined template ('Opportunity Chart') in order to achieve this. This form contains all the fields for driving out this information for each of the benefits (see **Annex I** for details).

As much as possible we will use data which is currently gathered as part of normal CJS business in order to measure benefits (e.g. number of unnecessary Court adjournments and the reasons for this is collected by CPS), however, this may not be possible in all instances. Where this is the case a unique process will be put in place to gather measurement data.

5.2 Baseline

During this stage, and using the agreed measure for the benefit from the previous step, the baseline for the benefit is taken. This determines the current status of the measure. Where existing data is available this will be gathered from the relevant CJO. In those cases where new data is needed this will also be measured (e.g. some Secure E-Mail processes require a unique measurement to be taken).

5.3 Set Targets

In this step targets are set for each of the benefits (where appropriate). These targets define how much of an improvement we envisage the VIP delivering against the baseline. As a unique project this is one of the main challenges being faced since there is nothing against which we can benchmark the work. To overcome this we will define targets with a series of assumptions to support the rationale behind it. Given that some of these assumptions may

J1_S2_04_4_12 Warwickshire Victims and Witnesses evaluation plan.doc

23 January 2004

not transpire it may be necessary, in some instances, to re-evaluate the target which has been set at one of the three evaluation points (see Section 5.5).

It should be noted that it is not appropriate to set a target for all benefits since some will be "one-off" benefits which will not vary over time as a result of the VIP (e.g. having the risk assessment carried out by the VIP will negate the need to train 1,000 Police in this. In addition, it saves Police time since they do not need to carry out this risk assessment. Both these benefits are "one-off" savings that will not vary over time so it is not appropriate to set a target against these).

5.4 Track

Following the implementation of the VIP initiative each of the measures will be tracked against the baseline (to define how much of an improvement is being made) and the target (to observe how well we are achieving our targets). We will evaluate these targets on a regular basis. Since there is nothing against which we can benchmark this work this will be a key requirement to ensure the targets are realistic, achievable, and serve the public interest.

5.5 Evaluate & Report

The final step in the process is the evaluation of the success of the programme against targets and baseline. We will take an holistic view of overall success for each of the benefits at three, six, and twelve months following implementation:

- (1) *Three month evaluation:* the implementation timeline is set such that initially only victims (post-charge) are included within the scope of the VIP. We will evaluate the success of the programme for benefits relating to victims and the CJS at this time. This will also be an opportunity to determine whether staffing levels and targets are realistic as we move into the next phase (when witnesses (post-charge) are brought into scope). The movement of targets can be either upwards or downwards.
- (2) *Six month evaluation:* this interim evaluation will assess the success of the pilot from a victim & witness (post-charge), and CJS perspective. Progress of all benefits of the VIP will be reviewed as part of this evaluation. Targets, and progress against these, will also be assessed to ensure they are realistic, achievable and serve the public interest.
- (3) *Twelve month evaluation:* the final evaluation of the success of the pilot against all benefit criteria (as per six month evaluation).

In addition to these formal evaluations, and in the spirit of continual improvement, a monthly forum will be held involving all the organisations included within the VIP. These forums will assess the function of the unit as a business and recommend changes to processes and procedures as required.

5.6 Who does the Evaluation?

The evaluation, as described above, will be carried out by the VIP team, led by the Project Manager. In addition to this internal assessment of the VIP we will seek to obtain an independent viewpoint from an organisation external to the CJS (for example, a Higher Education institute).

6. Benefits Identified

A series of benefits have been identified that it is envisaged the VIP work will deliver to victims, witnesses, and the CJS as a whole. These have been split into two parts, those

**J1_S2_04_4_12 Warwickshire Victims and Witnesses evaluation
plan.doc**

23 January 2004

which are directly quantifiable and thus relate to the balanced scorecard (Table 1), and those which are not quantifiable and thus fall under the category of either 'Other Benefits' which cannot be quantified, or 'Operational Measures' which define the throughput of the VIP (see Table 2).

These lists are currently not exhaustive and will undergo additional refinement as the specifics of the VIP unit become clear; this is for a number of reasons. Firstly, we have yet to define the detail and scope of the processes of the VIP unit (for example, we will not know which processes will be enabled by Secure E-Mail until 30th June). Secondly, resource is limited so a pragmatic approach to benefits management is critical to ensure we focus efforts gathering and analysing data on those benefits which will provide the greatest return. As a consequence we may choose to measure and track new benefits, yet to be identified, in place of those on the existing list. A process has been set to manage these as they arise and ensure we concentrate our efforts on those benefits which will provide the greatest returns (see Section 7).

Table 1: detailed benefits information for VIP work for those benefits which relate to the Balanced Scorecard. In some instances the benefit that results is direct and thus setting a target is not appropriate (e.g. "FE4, cost to train 1,000 Police" is a one off saving that will not vary so a target cannot be set against this). Note: targets have not been set yet since it is not possible to agree the level of improvement we envisage delivering until we have a clear view of the status quo (i.e. the baseline).

FE1	Reduced transmission and processing costs through the use of CJIT Exchange. i.e. reduced photocopying, postage etc. and resource time costs (at this time we do not have the details of the multiple flows of information Exchange will enable for the VIP. This scope will be defined by November 2003. Once this has been done we will have a clear view as to the Financial Efficiency benefits the VIP will deliver via Exchange).	Cost of process (current) – cost of process by Exchange = saving	Targets will be agreed with the relevant CJOs once the scope of Exchange has been defined.	The National Exchange Benefits team will provide support for the Financial Efficiency benefits that relate directly to CJIT Exchange.
FE2	Reduced transmission and processing costs through the use of CJIT Secure E-Mail. i.e. reduced photocopying, postage etc. and resource time costs (at this time we do not have the details as to which information flows will be enabled by Secure E-Mail. This scope will be defined by 30 th June. Once this has been done we will have a clear view as to the Financial Efficiency benefits the VIP will deliver via Secure E-Mail).	Cost of process (current) – cost of process by Secure E-Mail = saving.	To be confirmed post-30 th June.	The National Secure E-Mail Benefits team will provide support for the Financial Efficiency benefits that relate directly to CJIT Secure E-Mail.
FE3	Having the risk assessment carried out by the VIP saves Police resource time and reduces the amount of training needed. It should be noted that since the risk assessment will continue to be carried out by the VIP this benefit accrues year-on-year for the duration of the VIP involvement in this process.	(1) Estimated time Police would spend on risk assessment x no. of victims and witnesses. (2) Cost to train 1,000 Police in the use of V&W risk assessment.	Not applicable.	-
FE4	Co-ordinated approach to V&W communication reduces costs (e.g. the same letter sent to the same individual from multiple agencies).	No. of duplicate letters to victims & witnesses x cost of letters (time and material cost)	To be confirmed.	(1) 'x' V&Ws per annum (to be confirmed). (2) Each agency sends at least one letter to each of these V&Ws for each case. (3) Material cost of these letters = "b" (4) Processing cost of these letters = "c" (5) A CRM system will be in place to manage V&W contact.
FE5	Carrying out a joint survey for Victims & Witnesses reduces the current cost to the CJS for doing this work (i.e. at present Witness Services, Victim Support, Police, the Courts etc. all carry out similar surveys, having this carried out by a single unit, the VIP, reduces the cost of obtaining this data)	No. of surveys currently being run (plus cost of surveys) – Cost of VIP survey	To be confirmed.	
FET1	Improve the effective trial rate through proactive management of victims and witnesses. This includes the ability to re-categorise V&Ws as they move through the system if required (i.e. to intimidated or vulnerable).	Total no. of incidences of V/Ws non-attendance in Court . Total no. of effective trials/total no.	To be confirmed.	-

		of trials.		
FET2	Reduced incidence of costly consequences of known problems (e.g. unnecessary Court adjournments due to victim or witness not attending) that result from the use of Exchange by the VIP (at this time we do not have the details of the multiple flows of information Exchange will enable for the VIP. This scope will be defined by November 2003. Once this has been done we will have a clear view as to the Financial Effectiveness benefits the VIP will deliver via Exchange).	The National Exchange Benefits team will develop a logic which links the use of Exchange for certain processes to the reduction in consequences of known problems. Measures for this will also be defined.	Targets will be agreed with the relevant CJOs once the scope of Exchange has been defined.	The National Exchange Benefits team will provide support for the Financial Effectiveness benefits that relate directly to CJIT Exchange.
FET3	Reduced incidence of costly consequences of known problems (e.g. unnecessary Court adjournments due to victim or witness not attending) that result through the use of Secure E-Mail to transmit information by the VIP (at this time we do not have the details as to which information flows will be enabled by Secure E-Mail. This scope will be defined by 30 th June. Once this has been done we will have a clear view as to the Financial Effectiveness benefits the VIP will deliver via Secure E-Mail).	To be confirmed post-30 th June.	To be confirmed post-30 th June.	The National Secure E-Mail Benefits team will provide support for the Financial Effectiveness benefits that relate directly to CJIT Secure E-Mail.
P1	Improved confidence of V&Ws in the CJS through having a seamless V&W experience through the CJS process.	V&W satisfaction survey. This survey will cover multiple aspects (see Annex II).	To be confirmed.	-
P2	Reduced number of V&W complaints.	No. of V&W complaints.	To be confirmed.	-
P3	Using the risk assessment ensures intimidated or vulnerable victims or witnesses are identified early. In addition, victims and witnesses can be re-categorised part way through the process if needed.	V&W satisfaction survey. This survey will cover multiple aspects (see Annex II).	To be confirmed.	-
P4	The VIP will significantly enhance joined-up, multi-agency diversity work by improving awareness of the various services available through its proactive approaching to calling victims and witnesses.	To be confirmed.	To be confirmed.	-
P5	Multi-agency unit creates a one-stop-shop that allows all services that need to be accessed to be accessed within the same location (e.g. ASBO, Witness Service, Domestic Violence, Victim Support). This ensures individuals receive the services they require and reduces incidences of individuals being lost in the system.	V&W satisfaction survey. This survey will cover multiple aspects (see Annex II).	To be confirmed.	-
P6	Better and more timely information for Victims & Witnesses through a proactive service.	Usage of CJS-online in VIP. No. of leaflets distributed.	To be confirmed.	-
PSAP1	PSA-3, sub-PSA3d: Narrowing the Justice Gap. Victims proactively informed of changes to charge in case.	No. of proactive calls to Victims to inform them of changes to charge in case.	To be confirmed.	-
PSAP2	PSA-3, sub-PSA3f: Narrowing the Justice Gap. Increased support to witnesses.	No. of reactive and proactive calls to witnesses.	To be confirmed.	-
PSAP3	PSA-2, sub-PSA2a: Increase the level of public confidence. V&W	V&W satisfaction survey.	To be confirmed.	-

	satisfaction (linked to P1)			
PSAP4	PSA-2, sub-PSA2d: Increase the level of public confidence. Reduction in the number of cases discontinued by CPS post-charge.	No. of instances where case is discontinued as a result of V or W non-attendance.	To be confirmed.	-
PSAP5	PSA-2, sub-PSA2i: Increase the level of public confidence. Tracking pressure points and overall management of the CJS.	Use of evaluation criteria.	To be confirmed.	-
PSAP6	PSA-2, sub-PSA2n: Increase the level of public confidence. Reduce the proportion of witness no show at courts.	Total no. of incidences of witness non-attendance in court.	To be confirmed.	-
PSAP7	PSA-2, sub-PSA2n: Increase the level of public confidence. Reduce ineffective trials.	Total no. of incidences of witness non-attendance in court. Total no. of effective trials/total no. of trials.	To be confirmed.	-
PSAP8	PSA-5, sub-PSA5c: Increase value for money. Reduce overall CJS costs.	No. of unnecessary court adjournments resulting from V or W non-attendance.	To be confirmed.	-
PSAP9	PSA-1, sub-PSA1a: Reduce crime and the fear of crime. Provide witnesses with information about services available.	No. of witnesses provided with information on CJS services.	To be confirmed.	-
PSAP10	Improvements in PSA performance as a result of the use of Exchange in the VIP (at this time we do not have the details of the multiple flows of information Exchange will enable for the VIP. This scope will be defined by November 2003. Once this has been done we will have a clear view as to the PSA Performance benefits the VIP will deliver via Exchange).	The National Exchange Benefits team will develop a logic which links the use of Exchange to sub-PSA measures.	Targets will be agreed with the relevant CJOs once the scope of Exchange has been defined.	The National Exchange Benefits team will provide support for those PSA Performance benefits that relate directly to CJIT Exchange.
PSAP11	Improvements in PSA performance resulting from use of Secure E-Mail to transmit information by the VIP (we do not have details as to which information flows will be enabled by Secure E-Mail at this time. This scope will be defined by 30 th June. Once this has been done we will have a clear view of PSA Performance benefits the VIP will deliver via Secure E-Mail).	To be confirmed post-30 th June.	To be confirmed post-30 th June.	The National Secure E-Mail Benefits team will provide support for the PSA Performance benefits that relate directly to CJIT Secure E-Mail.

Table 2: detailed benefits information for VIP work for both benefits that are evident though not quantifiable, and data which will be collected to assess operational success.

OB1	The VIP sets the template for future joint working across the CJS. It defines the first step to achieving a truly co-location of multiple agencies.	N/a	N/a	
OB2	As a multi-agency initiative there is a clear benefit in the transfer of skills between individuals.	N/a	N/a	
OB3	Creating a VIP implementation package for use at a National level; creating this transferable means of addressing victim and witness needs in a truly multi-agency initiative is enormously valuable at a National level. Having	N/a	N/a	

	the process flows, costs, and approaches ready defined will make it far easier for other areas to bring together similar initiatives.			
OB4	Joint Performance targets: this will be one of the first multi-agency initiatives with joint performance targets. The lessons which can be learnt from this (in line with the governments drive towards unification of performance targets) will be valuable.	N/a	N/a	-
OM1		No. of proactive calls.	To be confirmed.	-
OM2		No. of reactive calls.	To be confirmed.	-
OM3		No. of victims and witnesses using the facilities.	To be confirmed.	-

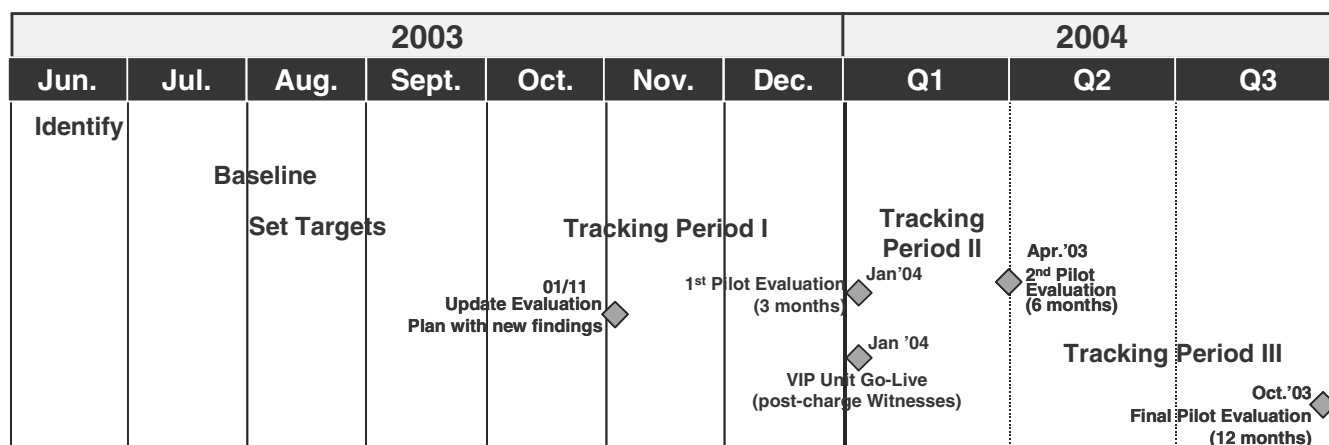
7. How we will manage new benefits

As the detail of the VIP initiative grows, and the scope of Secure E-Mail and Exchange within this becomes clearer, we will identify additional benefits. Any such benefits that arise will be captured using the 'Opportunity Charts' (see Annex I for details). This form will gather all the information we require in order to fully assess the new benefit against those which have already been defined. Given that we have limited resource and time available we may choose to measure and track these new benefits in place of those on the existing list. This is a requirement to ensure we make best use of available resource and focus it on those benefits which will provide the greatest return. Alternatively, in some instances, we will decide not to measure the new benefit since the time and effort needed to measure it may out-weight the benefit it delivers. In such cases we will record the details but not baseline, track, measure, and evaluate the benefit

8. Evaluation Timeline

The timeline for the evaluation runs from June 2003 to the end of the VIP Pilot in October 2004 as shown in Figure 3 below.

Figure 3: Proposed timeline for the evaluation of the VIP work. Note that there are three evaluation points at three, six, and twelve months following initial go-live (as described in Section 5.5).



9. Knowledge Transfer

A critical component of the success of the VIP is the 'packaging' of all the elements that constitute it, from initial inception through to implementation. This will allow the work to be adopted by other areas should they so wish. This 'packaging' of the VIP solution forms the basis of one of the key non-quantifiable benefits of this work. Although it is not envisaged that this would form a blueprint against which other areas would work to directly, having this knowledge will save a great deal of time and allow other areas to move more rapidly towards a 'VIP solution' to suit their needs.

This knowledge package will include:

- o The 'Journey'; an account of the overall process to building the VIP including the obstacles to achieving the joint-working model, how these were overcome, and the consultation requirements.
- o Legislative and statutory requirements.
- o CJIT Exchange and Secure E-Mail linkages.
- o Engagement and consultation timeline (including parties involved in this process).

- o Processes for the VIP.
- o Building and IT requirements (based on the volumes of calls / visits expected).
- o Organisational structure (including roles and responsibilities).

The information needed in order to build this will be gathered as the VIP work progresses.

10. Annexes

10.1 ANNEX I: Opportunity Charts

These forms will be used to capture the detail required to define the exact nature of the benefit for the VIP. It captures all elements needed for describing, assessing, and measuring the extent of the benefit.

This form has been used to define all existing benefits and will be used in future to gather information on any new benefits as they are identified.

Figure 4: Opportunity chart for the definition of benefits relating to the VIP work. There are two parts to this form. Part I summarises key information about the benefit whilst Part II gathers information about translating this benefit over time (e.g. the phased approach to implementation means that benefits relating to witnesses will not occur until January 2004 since they are not in scope until this time).

PART I

Opportunity name:		Submitted by:	
1. What is broken/could be improved by the VIP?	Process	[IDENTIFY]	CJOs involved
2. How do we know it's broken?	How is 'good' measured for this process?		[IDENTIFY]
	How good/bad is it today?		[BASELINE]
	Measure 1 /KPI	⇒	Quantify
	Measure 2 /KPI	⇒	Quantify
3. What do we need to change to address the opportunity (key drivers)?			
4. How good could/should the process be? <small>(Lead : How we will know if we are doing what we intended Lag : How we will know if it's working)</small>	How could/should 'good' be measured for this process?		To-Be Targets: [TARGET]
	Lead / Lag Measure 1	⇒	Quantify
	Lead / Lag Measure 2	⇒	Quantify
	Lead / Lag Measure 1	⇒	Quantify
KPI Logic Developed With			
5.	Name:	Dept./Title:	Complete:
	Name:	Dept./Title:	Complete:

PART II

Opportunity name:		Submitted by:	
--------------------------	--	----------------------	--

6. What impact will addressing the opportunity have?

- Improving the KPIs can have one (*or more*) of four main benefit affects:
 Tick as relevant:

<input type="checkbox"/> Improve <u>PSA Performance</u> (helps address a PSA target)	<input type="checkbox"/> Improve the <u>Financial Effectiveness</u> of the process (reduces costly problems e.g. unnecessary court adjournments)
<input type="checkbox"/> Improve the <u>Financial Efficiency</u> of the process (reduces the cost of the processes).	<input type="checkbox"/> <u>People: V&W</u> benefits (improves the CJS experience for Victims and Witnesses).
<input type="checkbox"/> Other Benefit (non-quantifiable benefit: please record details of the benefit in the bottom part of this section only).	
- **FINANCIAL BENEFITS:** How big could the potential Financial benefit be?
- Key assumptions in the analysis/Other comments (attach logic/calculation sheet, sources, contacts etc.)
- **PSA PERFORMANCE BENEFITS:** Which PSA (if any) does this benefit relate to and how might it impact it (attach logic separately if required)?
- How much impact would improving the KPIs have on it?

Financial Benefit	£	PSA Performance Benefit	%
-------------------	---	-------------------------	---
- How quickly would the benefit be delivered? (is it reliant on any technology or process being in place before the benefit can be delivered?)

Date												
Benefit % delivered												
- Record any non- quantifiable benefits (i.e. 'Other Benefits')

7. Financial Logic Developed With:

Name:	Dept./Title:	Complete:
Name:	Dept./Title:	Complete:

10.2 ANNEX II: Proposed Elements of Victim & Witness Satisfaction Survey

One of the cornerstones of the evaluation of the success of the VIP from an end user perspective, that being the victims and witnesses, will be the Victim & Witness Satisfaction Survey. Some additional work remains to be done on this. Investigations into the existing National survey have indicated that area level information cannot be gathered for Warwickshire from this. This is a result of the size of Warwickshire as an area and the concurrent low number of returns received from it by the National survey. Other, larger areas, may find this to be less of a constraint so should investigate the use of area level returns from the National survey to serve their needs.

Given the low number a locally designed and run survey will have to be used. This would look to measure a variety of criteria, including:

- Overall satisfaction.
- % of witnesses attending Court who actually give evidence.
- % of victims / witnesses who feel intimidated by the environment or process.
- % of victims / witnesses who feel intimidated by an individual.
- % of witnesses who would be happy to become a witness again.

The criteria for the local survey will be defined in line with the National survey though may contain some additions to meet the unique needs of the VIP.

10.3 ANNEX III: Processes in scope [INITIAL DRAFT – TO BE CONFIRMED]

The table below describes the proposed processes flows which will be in scope for the VIP unit. These require validation by the project lead and require further work to define more detail before they are complete. This work will be carried out over the coming months.

No	Requirement	Information Source(s)	Business Processes	Benefit(s)
Police				
1.	Identify Witnesses (cold call)	NSPIS Case Prep, Crime Desk NSPIS Custody	Validate – Get crime number D.o.b. Ring back Set up password (secret question) / no	OM2, OM3
2.	Identify Victims (Cold Call)	NSPIS Case Prep, Crime Desk NSPIS Custody	Validate – Get crime number D.o.b. Ring back Set up password (secret question) / no	OM2, OM3
3.	Initial notification following charge	NSPIS Case Prep, Crime Desk NSPIS Custody	On receipt / notification of charge Get name/dob/phone no of all Victims & Witnessss Set up proactive contact where contested case likely Contact &/or send out witness pack Notify of Police bail conditions and when/where bailed to if requested	OM1, PSAP2, P4
4.	Carry out Witness risk assessment		On early contact: Carry out risk assessment Flag up vulnerable / intimidated / sensitive Give higher level of attention	FE3, PSAP2, PSAP6, FET1,
5.	Check for updates to all cases	NSPIS Case Prep, Notification from MC of Judge in Chambers Bail Application	Start of day / fixed time – check for updates to live cases for new Victim/Witness info If new Victim then set up contact requirement within 1 day. Set alert to get back at regular intervals for potentially lengthy investigations.	PSAP1, PSAP2, FET2
6.	Notify Victim of sensitive crime of Bail/conditions	Police Bail from NSPIS Mags Court Bail from Equis CC Bail – faxed?	MG4, MG4A, MG4B (Ideally – notification from MC when results available) (Ideally CC results by secure e-mail)	PSAP2

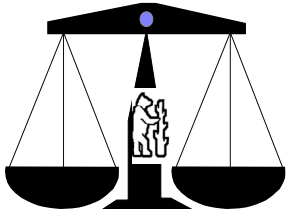
No	Requirement	Information Source(s)	Business Processes	Benefit(s)
			Check results vs list of 'sensitive' cases Identify required notifications Notify (within 1 day) Similar checks for variations in police bail conditions	
7.	Notify Victim of outcome of all hearings	MC Results from Equis CC Results faxed or SeM?	(Ideally – notification from MC when results available) (Ideally CC results by secure e-mail) Check results vs list of 'sensitive' cases Identify required notifications Notify (within 1 day) If sentence > 12 months and NPS available then NPS rep to contact (see 22 below)	FE2, FET3, P5
8.	Notify sensitive Victim (& others) of dates of hearing	MC Listings from Equis CC Listings – amendments only	Identify changed dates Pick out priority Vs Notify priority Victims Notify others If wish to attend Court then send Attendance at court confirmation slips	P1, FET2, FET3
9.	Notify sensitive Victim of appeal (2days)	Appeal Notification from MC & CC	For all appeals: Check if any sensitive Victim's involved Notify	P1, PSAP2
10.	Notify sensitive Victim of appeal outcome (1day)	Same as 6	Same as 6	P1, PSAP2, P4
11.	Reinvestigation / referral to Court of Appeal by CCRC notified to Victim (10 days from notification by CCRC)	Notification from CCRC	Receive Notification from CCRC Extract all Victim/Witness/contact details (may be archived) Chase up & notify? Make case 'live' again until outcome known	P1, PSAP2
12.	Notify Victims of outcome of CCRC investigation (10 days for NFA, 2 days for Court of Appeal)	Notification from CCRC	Receive Notification Get case details Notify	P1, PSAP2
13.	Discuss need for protection from intimidation	Victim details	Checklist/Question on first call If required then record Follow up requirements Notify other parties (CPS, Police etc .)	PSAP2, P3

No	Requirement	Information Source(s)	Business Processes	Benefit(s)
			Give appropriate information Diarise for further contact If intimidation reported Record Pass to Police for action Update risk assessment Flag on CRM	
14	Consider if Victim is eligible for Special Measures	Victim Details	If already identified then discuss what & how if necessary If think may be appropriate then note and contact police/CPS If discussed with Victim then must get back with outcome (diarise)	PSAP2, P3
15	Pass Victim contact details to VSS (2 days)	Police to continue doing this	Police to continue doing this	P1
16	Relatives of homicide victims to get leaflet	Police to continue doing this	Police to continue doing this	P5
17	"Release of Prisoners" pack	Police to provide	Check it has been provided by police	P5
18	Probation Service to deal with Victim (qualifying and not opted out)	NPS to inform	On contact from Victim then be able to advise on NPS contact	P1
19	'Child Witness' pack	Police to provide	Check it has been provided by police	P1, P5P
20	Youth offender	(Police should have done so already)	For young offenders check if police have informed Victim of YOT role / RJ etc Pass details to YOT for RJ if appropriate	P1, P5
NPS				
21	Identify Victims where sentence is > 12months	MC & CC results NPS from other area inform of qualifying Victim YOT notify if youth	CC & MC court presence will pick up almost all Check none missed out (NPS business as usual) NPS enter onto Victim contact spreadsheet/db	P5
22	NPS make contact offer to Victim where qualifying	NPS Victim contact system	Inform of sentence (if not already done) Make contact offer Diarise contact confirmation and date	P1
23	Get case details from police for NPS contact	NSPIS full case file details	Extract details from Case Prep (police rep) Hard / soft copy to NPS rep	FE1
24	Contact Victim	NPS Victim contact system	NPS business as usual Record contact on CRM (including opt-out, no response etc.	P1

No	Requirement	Information Source(s)	Business Processes	Benefit(s)
25	Changes in prisoner circumstances	Prison inform NPS	NPS business as usual (inform Victim) Record contact on CRM	P1
26	Release / Licence Issues		NPS business as usual (inform Victim) Record contact on CRM	P1
YOT				
27	Receive Notification from police of Youth being charged / receiving final warning	YOT1 / YOT2	Receive YOT forms by SeM For Final Warning Check if Victim wishes to be involved If so then letter to Victim (recorded on CRM) Diarise appointment For Court case Diarise court date/time	FE2, P1
28	Post-court contact	Court result	YOT business as usual Check if Victim wishes to be involved If so then letter to Victim (recorded on CRM) Diarise appointment If > 12 months then notify NPS	P1, P5
CPS				
29	Get witness requirements	LWAC sent from CPS offices	Receive LWAC from CPS by SeM Contact Witnessss to get availability (record on CRM?) Inform Witnessss of Witness Service, court procedures etc. Auto note to recheck if trial not soon	PSAP2, PSAP6, PSAP7
30	Confirm witness availability when listed	Listings info from MC / CC	Contact once date / week known For CC Check availability when warned for trial Inform CC office & CPS of status Reconfirm with Witnessss when fixed For MC Check availabilty when date set (previous hearing/ amendment / confirmed on listing?) Inform MC office & CPS of status	PSAP2, PSAP6, PSAP7, PSAP8
31	Special Measures required & agreed / refused	OIC / CPS informs VIP of SM agreement / refusal	CPS/OIC handles proactive contact (business as usual) VIP to know provisions & explain where necessary Diarise / book where video to be done from unit	PSAP2, PSAP6, PSAP7

No	Requirement	Information Source(s)	Business Processes	Benefit(s)
32	Changed or dropped charge	CPS to inform VIP of decision	CPS will notify victim (Business as usual) VIP will know decision but may not know reasons – gives info as appropriate	PSAP1, P1
33	Requirement for interpreter	CPS to inform VIP	CPS will notify (Business as usual) VIP to be aware of situation	PSAP2, P1
34	Provide information on compensation		If Victim/Witness enquires on compensation then be able to help in process (filling in MG19 etc.) Refer to crib-sheet (electronic or paper) Record contact	PSAP2, P1
35	Provide information on expenses		If Victim/Witness enquires on expenses then be able to help in process Refer to crib-sheet (electronic or paper) Record contact	PSAP2, P1
36	Risk assessment	Witness details OIC / CPS notify of potential reluctant witnesses.	On initial contact with Victim/Witness then go through script to identify potential probs If identified as at risk then flag for special attention	FE3
Court Service				
37	Give advice on expenses	Leaflet / guidance document on h2 claim	Pass on information / contact nos etc	PSAP2, P1
38	Compensation	Court results Notify where not paid	Receive info on awards and payment status	PSAP2, PSAP3
39	Commendations / Letters of reward	CCResults	Check results Where awarded, record against Victim/Witness	PSAP2, PSAP3
Prison				
40	Give advice on unwanted contacts / licence / release issues		Respond to requests for info	PSAP2
Other				
Domestic Violence				
41	Get referrals from Police	Storm referrals	Business as usual plus Record all contacts (CRM) (including visits, enforcement etc.) Use of drop-in etc. facilities Distribution of leaflets	P1
Victim Support				
42	Provide support services		On contact with Victim	PSAP2,

No	Requirement	Information Source(s)	Business Processes	Benefit(s)
			Pass on VS contact info Advise on VS role Record contact Pass details to VS to deal with	P1
43	Provide info on VictimS & offences	CRM Case Prep	VS ask for info relating to Victim Pass on allowed info	P1, P5
Witness Service				
44	Provide support services		On contact with Witness Pass on WS contact info Advise on WS role Record contact Pass details to WS to deal with	FET1, PSAP2, P1
ASBO Coordinators				
45	Receive information on nominated individuals	Names / details received from co-ordinator	Record those nominated Record those subject to ASBO Have facility to obtain info on current status	PSAP3
46	Pass on nominations to the forum	Pass possible names to co-ordinator	Names identified in contact with Victim/Witness Check against existing nominations If present then pass info to co-ordinator If not present then check against 'possibles' and pass on to co-ordinator if meets criteria	PSAP3
47	Keep Victim & Witness informed on ASBO process		Receive call Check on current status Pass on allowed info Pass on any leaflets etc.	P1, P5
Other				
48	CICA (Criminal Injuries Compensation Authority)		On inquiry give info & contact details	PSAP3, P1
49	Parole Board		On enquiry inform on role and how to make representations	PSAP3, P1
50	CCRC (Criminal Cases Review Commission)	CPS/Police inform VIP of intervention	On enquiry from Victim (& Witness?) inform on CCRC and give any possible indications as to future course	PSAP3, P1



July 2003

Warwickshire - The Centre of Excellence for Justice Update

Warwickshire Justice Agencies working in partnership to provide:

- Greater confidence in the delivery of Justice
- Improved access to services
- Improved support for Victims and Witnesses
- Improved working environment

Northern Justice Centre a New Partners Reality

Harriet Harman Solicitor General in a mechanical digger performed the ground breaking ceremony on site in Nuneaton during May. Many months of planning, legal and procedural work has gone into the development of the countries first Justice Centre. Work is going to plan and it should be completed in September next year with agencies moving in before the end of the year

The Programme Partnership now includes the Prison Service who are now represented on the Strategic board, IT board and Business Process Improvement board. We will be developing new ways of improving more accurate and timely information to the Prison Service. Relying on prisoners on arrival to tell staff why they are there is not the most reliable source of information!

Another first for Warwickshire

The Warwickshire Criminal Justice Agencies have been awarded new funding to pilot an integrated and co-located victim and witness support service (VIP- Victim and Witness Information Support). This will be based in independent offices in Leamington Spa and the pilot will operate for a year (see over for details). The Unit will provide a single point of communication to and from witnesses (post charge), with telephone, Email and personal drop in facilities.

Southern Site

All of the agencies have agreed a short list of sites for the Southern Centre, which will include the Crown Court. This information is commercially sensitive but we will announce details as they develop more certainly.

Keeping you informed Presentations

Staff Associations (all CJ Agencies)
September 25th HQ 10am

Judicial Services (South), CPS, Police
September 16th L/Spa 3pm

For more details contact Debbie Topham
01926 415049

Word is spreading

We are attracting more enquiries on our new approaches to Joined up Justice from Wales, Canada, Scotland, America, Home Office and other Criminal Justice Areas.

Inside this edition:

Programme update

Spotlight on VIP

Secure email

The BPI Team

VIP - A New Deal for Victims & Witnesses



Spotlight on VIP!

Victims & Witnesses Information Partnership

Warwickshire is leading the way in a groundbreaking initiative that will provide the only fully integrated service to victims and witnesses in the county



During the past 18 months criminal justice practitioners within Warwickshire have joined forces in an effort to improve the quality of service offered to its victims and witnesses of crime.

The result of this collaborative and innovative approach is the creation of a new and integrated **Victim and Witness Information Partnership (VIP)**. This unique service will incorporate representatives from the key criminal justice agencies as well as specialist units such as the Warwickshire Domestic Abuse Multi-agency Team and Warwickshire County Council (ASBO's)

The overall objective of this team is to provide a premium (**VIP**) service to the many victims and witnesses who give their time to see justice done in our county. Improvement in services

will feature multi-channel information and support including communication through telephone and e-mail, a drop-in facility and on site interview facilities for the CPS.

The Victim and witness Information Partnership will commence in October 2003, initially as a pilot scheme and then as a fully integrated and multi-functional unit located in the Southern Justice Center.

For further information please contact Jan Kilgallon, Project Manager on 01926 834 507

Secure email

So how can it help me?

Whether policing the streets, administering courts or working with offenders in prison, the need to communicate effectively with each other and across CJOs is vital.

Since March this year Leamington YOTS have started to use a new "add-on" service that is helping to make their job easier.

While Secure eMail (called such as messages can be encrypted in such a way as to make them secure) is a key component of delivering joined up justice and will help to facilitate successful of the Warwickshire CJC Program, it can deliver a range of benefits to us here in Warwickshire, that include;

Secure communication channel between CJP and CJO

- Faster –enables us to communicate quickly, timely, and with multiple recipients
- Ease of use and an auditable trail
- Cheaper, efficient and more flexible compared to other methods of communication, e.g. fax, courier, telephone

Secure eMail is primarily about supporting the operation of criminal justice more effectively and delivery of this will begin in earnest this month.

For more details, please contact Anup Rajput, Project Manager, on 01926 834 507

The Business Process Improvement Team

What is it and why is it here?

The Business Process Improvement (BPI) team is one of the teams tasked with making the Warwickshire Criminal Justice Centres a reality. The objective of the BPI team is to identify and implement process improvements identified within the key local priorities.

The team's activities are focused on identifying and implementing improved business processes that deliver real benefit (and which contribute to narrowing the justice gap) across six main priority areas.

These priority areas are:

- To design and implement an integrated approach to victim and witness care;
- To improve Court Listings;
- To improve Resulting;
- To enhance the interaction of the Police and Crown Prosecution Service;
- To design and implement improved processes for the effective handling of Persistent Offenders and Persistent Young Offenders; and
- To identify and implement process improvements for the management of warrants.

Based in Leamington Spa, the project provides a great example a

successful project working across agencies and with a variety of partners

For any queries please contact Lucy Hirst on 01926 834 507



SCOTTISH COURT SERVICE

Headquarters
Hayweight House
23 Lauriston Street
EDINBURGH EH3 9DQ

Alison Walker
Clerk to Justice 1 Committee
Room 3.11
Committee Chambers
Edinburgh EH99 1SP

23 January 2004

Dear Ms Walker

CRIMINAL PROCEDURE (AMENDMENT) (SCOTLAND) BILL

Thank you for your letter of 19 January requesting statistics relating to the duration of High Court trials where a custodial sentence of 5 years or less was imposed.

I regret that this information is not readily available. We do not routinely collect such statistics and it would require a manual search of the High Court records. If the Committee feel that the information is imperative to their report a sampling exercise of records would require to be carried out but it may not be possible to do that within the timescale that the Committee are working to.

Yours sincerely

JOHN EWING

From The Chief Executive



INVESTOR IN PEOPLE

MPA14801
Telephone: 0131 229 9200

Fax: 0131 221 6895

DX: 545309 ED39
Legal Post 1, Exchange 9