

# **Chapter 28**

## **Scotland**

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# **1 HISTORICAL DEVELOPMENT OF THE PROBATION SERVICE SYSTEM**

## **1.1 The start of probation in Scotland**

The criminal justice system in Scotland, along with much of the law and procedural rules relating to it, is different from that in the rest of the United Kingdom (England, Wales and N. Ireland). In 1999 Scotland re-established its own Parliament for the first time since 1707 and has sole responsibility for its own criminal law and procedures. The origins of probation in Scotland lie in the efforts of penal reformers and religious charities such as police court missionaries of the late nineteenth century. The Probation of Offenders Act 1907 enabled the appointment of salaried probation officers. However it's only in relatively recent years that professional social workers have become central in providing services to the criminal courts. For practical purposes this began with the Criminal Justice (Scotland) Act 1949 that required the establishment of probation areas for every local authority burgh in Scotland. The original concept of probation involved holding back from punishment for a period of time and putting a person under the supervision of a helping person responsible to the court for providing both supervision and help. This combination of a legal device ('a bond with the court') and supervision by a helping individual remains an important ingredient of probation work in Scotland. Even today a probation order in Scotland, though following from a conviction, retains this historical basis and is an order of the court made 'instead of sentencing'.

## **1.2 Important developments**

The Morison Committee<sup>1</sup> reviewed the nature and functions of probation and the probation services in the United Kingdom in 1962. The Committee defined probation, as the submission of an offender while at liberty to a specified period of supervision during which time he or she, if not of good conduct, remains liable to be otherwise dealt with by court. The Committee emphasised the dual function of the probation officer in assisting the individual offender change while protecting the public: the 1966 government White Paper 'Social Work in the Community', concerned to avoid a multiplicity of services carrying out essentially similar work in the same community, or even in the same family, proposed the re-organisation and integration of social work services. As a consequence the Scottish Probation Service was disbanded as a national service following legislation in 1968 and the role and responsibilities of probation officers were inherited by local authority social work services. All the statutory functions and responsibilities for probation services were transferred to Scottish local authority social work agencies in what is now known as criminal justice social work.

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<sup>1</sup> Morison Report (1962), Report of the Departmental Committee on the Probation Service. Cmnd 1650, London: Her Majesty's Stationery Office.

Under the arrangements introduced in 1968, social work services to the adult criminal justice system were paid for in large part by local authorities from their own income, supplemented by grant aid from central government. The practical consequences of these arrangements meant that criminal justice social work had to compete for time and resources with other parts of the social work services, including childcare and protection and services to older people. By the 1980s criminal justice social work in Scotland was generally perceived as restricted in resources compared to other social services and carried out by 'general practice' social workers who lacked the specialist knowledge required to deliver an appropriate or effective service. As a result, from 1 April 1991, government introduced a system of 100% central funding for core social work services to the adult criminal justice system throughout Scotland. This was accompanied by a nationally agreed document of policy objectives, priorities and service standards ('National Standards'). Some services continue to be funded by local government as part of their crime prevention and community safety responsibilities but most services are directly funded by central government. Criminal justice social work is now an established specialisation within social work and a national government funded training programme (MSc and PQ programmes) for practitioners and managers was established in the Universities of Edinburgh and Stirling in 1993. The Criminal Justice Social Work Development Centre for Scotland, based at the University of Edinburgh, funded by central government to promote research led intervention, was established in 2000 to promote the use of research evidence in probation related practice.

The changes in 1968 also included a radically new system of juvenile justice in Scotland known as the Children's Hearing system to deal children and young people outside of the criminal justice system. The central philosophy was to deal with children who offend aged 8-16 (and in some circumstances up to age 18) and children in need of care and protection within the same integrated non-criminal system, where social need as much as offending behaviour determined any compulsory measures of supervision. The age of criminal responsibility in Scotland is eight but nearly all children under the age of 16 and some under the age of 18 are decriminalised and dealt with by the Children's Hearing system in Scotland. Probation services are, generally, reserved for those people over the age of 16 dealt with by the criminal courts. A pilot Youth Court was established in June 2003 dealing with persistent young offenders aged 16-17 on summary prosecution.

Despite these developments and a very significant increase in the use of community disposals in recent years, the custody rates in Scotland have remained inordinately high - among the highest in Europe - and re-offending rates for those returning from prison unacceptably high. Following the re-establishment of a Scottish Parliament, the Scottish Government (Scottish Executive) produced an options paper for a new structure for criminal justice social work. Following national consultation, the idea of a national corrections or probation agency was rejected in favour of strengthening the existing community based model. Eight specialist Community Justice Authorities were established in April 2006 with powers to require co-operation from Health, Police, Prisons, and Voluntary providers to assist local authorities fulfil their

legal responsibilities to deliver probation services to their communities and courts, with a view to transforming the way local authorities, the Scottish Prison Service and other local organisations work together to tackle re-offending. This is consistent with government policy on greater social inclusion and its emphasis on co-ordinated and better integrated community responses to the social problems of poverty, unemployment, poor housing, low educational attainment, safer communities and specialist crime focused provision.

### **1.3 Probation activities in a nutshell**

Criminal justice social work operates at almost every level of the justice system in Scotland in exercising its legal duty to promote social welfare and community safety. These duties are broadly four fold – providing advice and assessment to criminal courts in their deliberations on sentencing; providing supervision and help towards personal change to offenders subject to diversionary measures or formal compulsory community disposals; providing supervision for prisoners returning to the community subject to licence; and contributing to risk assessment and risk management planning for high risk offenders on the violent and sex offender register (VISOR) who are subject to monitoring in the community as part of multi agency public protection arrangements (MAPPA).

Probation services in Scotland incorporate a wide range of provision including the preparation of social work reports for courts (Social Enquiry Reports) and for the Parole Board (Home Background Reports), diversion services, bail advice and supervision, community supervision (probation - standard, with conditions, and intensive and alternatives to custody, unpaid work and community service orders, supervision and treatment orders, drug treatment and testing orders, supervised attendance orders, community reparation orders, restriction of liberty orders, fine supervision); supervision following release from custody (parole licence, non parole licence, supervised release orders, extended sentence supervision, home detention curfew orders, orders of life long restriction); and voluntary assistance to offenders and their families.

## **2 LEGISLATIVE BASIS AND MISSION**

### **2.1 Legislative basis**

The Scottish criminal system is based on common law and statute and although technically crimes are breaches of common law and offences breaches of legal statute, the system operates as a one-track system in which the prosecutor decides whether or not a legal infringement should result in prosecution. The legal framework for social work services in the criminal justice system in Scotland is to be found in a wide range of legislation. The important legislative provisions are listed below.

The Social Work (Scotland) Act, 1968 (section 27) requires every local authority to provide 'a probation and community service scheme' which includes a wide range of services (see above). Under this Act (section 12), the local authority has a duty to 'promote social welfare' both community and individual welfare and it is within this legal framework that criminal justice social work provides supervision and assistance for offenders as part of community welfare. The 1968 Act empowers central government to make grants to local authorities for the provision of 100% funded core services. Both local authorities and central government provide grants to independent and voluntary organisation to provide a range of specialist services to victims, as

well as to offenders and their families. From April 2008 these core grants are made to Community Justice Authorities who disburse them to local authorities to meet their operational commitments.

The Criminal Procedures (Scotland) Act 1995 (as amended) provides the main legislative framework for the criminal justice system and community disposals. It consolidates all previous legislation. The Prisoners and Criminal Proceedings (Scotland) Act 1993 contains provisions for the supervision of prisoners subject to early release from detention and imprisonment, including parole licences, other forms of supervision on release and voluntary assistance. This is to be replaced by provisions under the Custodial Sentences and Weapons (Scotland) Act 2006 which will introduce changes to the system of prison through care and aftercare including the removal of automatic early release requiring most prisoners to be subject to supervision and monitoring on release. The Mental Health (Scotland) Act 1984 contains provisions in respect to mentally disordered offenders and the Bail etc. (Scotland) Act 1980 provides the framework for social work services in respect of those released on bail.

The Management of Offenders (Scotland) Act 2005 contains the statutory framework for the operation of Community Justice Authorities. The legislation identifies probation as a social work provision and part of local authorities' duties to community safety. The underlying assumption is that community supervision is an effective means of protecting the public and victims of crime while protecting the rights and interests of the offender.

Probation supervision is available to the criminal courts for most crimes and offences and some community-based orders are available for people from the age of 12. In practice, because Scotland's non criminal Children's Hearing systems deals with most young people who offend up to 16 and some up to 18, most probation provision and other community disposals are available for young adults and adults over 16.

## **2.2 Mission and mission statement**

Government's National Plan sets the framework for criminal justice and probation services in Scotland. The current plan 'Supporting Safer, Stronger Communities: Scotland's Criminal Justice Plan' (<http://www.scotland.gov.uk/Publications/2004/12/20345/47602>) focuses on crime prevention, community safety, drugs, effective intervention, integrated management of offenders, and reform of the court system. National Objectives and Standards for Social Work Services in the Criminal Justice System (NOS) provide the direction and national mission for probation services. These were first established in 1991 and agreed in consultation with government policy makers, local authorities, the judiciary and other key interests and are updated regularly on the basis of findings from research, annual national inspections and on experience. In addition to aims and objectives, NOS provide detailed minimum benchmarks standards for social work services to the criminal justice system. The implementation of national objectives relies on professional interpretation for effective delivery within the local community context. The objectives are identified as:

- to enable a reduction in the incidence of custody, whether on remand, at sentence, or in default of financial penalty, where it is used for lack of a suitable, available community based social work disposal;
- to promote and enhance the range and quality of community based social work disposals available to the courts and ensure that they are managed and supervised in such a manner that they have the confidence of courts, the police, and the public at large;
- to ensure that social work disposals are provided to the courts or other agencies in such a way that the full range of disposals is available when required so that the most appropriate one can be used, particularly with the persistent offender;
- to give priority to the development of community based social work disposals and other services to young adult offenders;
- to promote the development of schemes to enable the courts to grant bail in an increased number of cases;
- to provide and facilitate services for prisoners, and their families, to help them prepare for release from custody, and to assist them to resettle in the community;
- to help offenders tackle their offending behaviour, assist them to live socially responsible lives within the law, whenever appropriate, through the involvement and support of their families, friends, and other resources in their community;
- to assist the families of offenders where family life suffers as a consequence of offending behaviour;
- to promote, provide, and facilitate the development of schemes for diverting accused persons from prosecution to social work in those cases where there is sufficient evidence to prosecute but it is not deemed necessary to do so in the public interest;
- to promote and assist the development of services to the victims of crime;
- to promote and assist action to reduce and prevent crime (NOS: General Issues, paragraph 13, 1991).

The mission incorporates a policy directive that prisons should be 'used sparingly' and only for the most serious offenders who present a severe risk to the public; that the service is provided to safeguard the public and the victims of crime; and that providing rigorous and constructive community based services can be an effective means of achieving these objectives. Each Community Justice Authority produces its own strategic plan for criminal justice social work interpreting the mission for its local authority area(s) and laying out strategic plans for service provision and development. The normal priority target groups for community supervision are medium to serious non-violent offenders; less serious violent offenders; young people under the age of 21 and people returning from prison. Special arrangements are available for the monitoring and supervision of very serious offenders in the community.

### **2.3 Crime prevention and community safety**

The location of the criminal justice social work service as part of local authority provision emphasises its role in crime prevention, in principle. In practice it



plays only a limited direct role in primary prevention. Most of its activity focuses on secondary prevention (diversion and community based services) and on tertiary prevention (prison through care and aftercare services). Government launched a Safer Scotland strategy for action on community safety in 1998 in agreement with the Convention of Scottish Local Authorities (COSLA), and the Association of Chief Police Officers in Scotland (ACPO(S), voluntary bodies and the business community. The strategy aims to encourage local authorities to take the lead in forming local partnerships between the police, local business interests, housing agencies, local enterprise companies, voluntary organisations and community groups. Since 2000 crime prevention campaigns supported by the Crime Prevention Unit of the Scottish Executive have addressed anti-social behaviour, street violence, drugs and alcohol related crime, public transport and public reassurance. Scotland's national criminal justice plan (2004-04) places particular focus on preventing hate and racially motivated crime, knife crime, sexual and domestic violence. A National Drug Strategy focusing on young people, communities, treatment services and availability of drugs is attempting to shift the focus more from reactive responses toward preventive action <http://www.scotland.gov.uk/Topics/Justice/criminal/CJResearch/Prevention>. Local Community Safety Partnerships are intended to plan and co-ordinate a range of activities including, for example, Close Circuit Televisions Schemes (CCTV) and neighbourhood crime prevention schemes. This partnership approach is part of government's social inclusion strategy, which aims to improve co-ordination, prevention and innovation in provision through local action funding.

## **2.4 Victim protection**

Criminal Justice Social Work operates on behalf of victims rather than directly with victims in Scotland. Direct services to victims are provided by Victim Support Scotland and government funded voluntary organisation. While reparative provision such as reparation and mediation, compensation and unpaid work have a long-standing history, restorative practices involving victims directly are only developing and are better established within the youth justice system. Criminal Justice Social Work in partnership with the police has the lead role in the risk assessment and risk management planning for violent and sexual offenders in the community co-ordinated through multi-agency public protection arrangements (MAPPA), specifically geared to protecting and safeguarding existing or potential victims.

A Scottish Strategy for Victims was launched in January 2001 with emphasis on the provision of appropriate information to victims; improving available emotional and practical support to victims; and on securing greater participation for victims in the criminal justice process (<http://www.scotland.gov.uk/Resource/Doc/26800/0024997.pdf>). A Victim Steering Group (VSG) chaired by a Justice Secretary (Minister) meets about three times a year and brings together key partners including criminal justice social work to work with the Scottish Government in reviewing the Scottish Strategy for Victims. Developments in recent years have included statutory

provision for victims of serious crimes to be notified about the release of offenders and the facility to make representations to the Parole Board, extending the Crown Office and Procurator Fiscal Service (COPFS) Victim Information and Advice Service to all areas to keep victims and witnesses up-to-date with what is happening in their cases and provide them with opportunities to discuss issues of concern.

### **3 THE ORGANIZATION OF PROBATION SERVICES**

#### **3.1 Main characteristics**

Scotland's First Minister, through the Cabinet Secretary (Minister) for Justice, is responsible for setting national objectives, priorities, targets and standards for the delivery of social work services in the criminal justice system and is accountable to the Scottish Parliament for the effective use of central government funds paid to local authorities to provide the services. A National Advisory Body for Offender Management shapes the long-term national strategy and provides a framework within which Community Justice Authorities, local authorities, Scottish Prison Service and other partners produce joint area plans. This is chaired by the Cabinet Secretary (Minister) for Justice and its membership comprises representatives from the prosecution services, prisons, police, local authorities and community justice authorities, the Association of Directors of Social Work, Voluntary Sector providers, Victim Support Scotland, the Parole Board, Scotland's Risk Management Authority, academic institutions, community representatives and others with relevant expertise. Local authorities are required by statute to provide probation services as part of their function in providing social services. In April 2006 eight Community Justice Authorities were created under the 2005 Act (above) to

- work with local authorities, the prison service and other partners to prepare local joint area plans focused on tackling re-offending to be submitted to the Cabinet Secretary (Minister) for approval;
- monitor and report on the effectiveness of joint working between all the local partners, including police forces, health, relevant voluntary organisations, the Scottish Courts Service and the Crown Office (prosecution service);
- support better information-sharing and the sharing of good practice;
- distribute funding for criminal justice social work services in local areas.

#### **3.2 Internal organisation**

Scotland's eight Community Justice Authorities are led by a Chief Officer who is responsible to a Board of local politicians drawn from constituent local authorities. They are responsible for regional strategic planning. There are 32 local authorities in Scotland and each has its own organisational arrangements for delivering criminal justice services within the terms of the community justice strategy and local organisational framework for providing a range of social work services. Each local authority has a Director of Social Work or a Chief Social Work Officer and all authorities have a specialist head of service with responsibility for criminal justice social work. In some authorities a manager may hold the role of the head of service with responsibility for more than one specialism such as childcare and criminal justice. The Head of Service is responsible to the Director of Social Work or Chief Social Work Officer who, in turn, is accountable, through the authority's Chief Executive, to the locally elected council.

### **3.2.1 Probation workers**

Locally based specialist criminal justice social work teams in the main, provide delivery of services and direct work with offenders. These consist mainly of salaried professionally qualified social workers supervised by specialist team leaders who have responsibility for a range of criminal justice social work provision within a specific geographical area; each with its own administrative support. Staff from various backgrounds assist in the professional tasks ('para-professionals'). For example, many community service staff and residential hostel staff are not qualified social workers but have technical or social care qualifications to supplement these. Each local authority recruits its own staff, as do voluntary organisations responsible for delivering services on behalf of the local authorities. Official statistics for 2005 suggest that over 800 qualified social workers were employed by statutory services. It is likely that over 1100 professional, para-professional and administrative staff associated with the provision of criminal justice social work are employed in Scotland's 32 authorities. The exact number could be higher since central government does not pay for all the work undertaken by criminal justice specialists. No public national data is available giving details, for example, of the gender and qualifications of the different type of staff and actual numbers are not collected centrally. Volunteers do not have any formal responsibility for supervision of offenders on behalf of the court but can be used to work in support of the efforts of the service. Most are unpaid although expenses are often reimbursed. Volunteers undertake a wide variety of tasks concerned with the reintegration of offenders and support of victims through voluntary organisations including mentoring, alcohol counselling, reparation and mediation, prison visiting, education and literacy provision, victim support, and as members of voluntary organisation management committees.

Criminal justice social work caseloads vary considerably in volume and in constituent types of work across rural and urban local authorities. An average rural workload for a criminal justice social worker is likely to consist of around 20-40 cases on hand at any given time and a throughput of 5 to 10 assessment reports per month; an urban caseload is likely to be greater, particularly in the throughput of assessment reports for the court. Each practitioner will be supervised by an experienced and social work qualified manager or senior practitioner.

### **3.2.2 Education, training requirements and opportunities**

Professionally qualified social work staff are required to have a University degree in social work or its equivalent. Social Work is a legally protected title and all social workers, including criminal justice specialists, are required to register with the Scottish Social Services Council (SSSC) which is responsible for educational and continuing professional development (CPD). The social work degree is a 'general practice' award and prepares staff for work in a range of social work settings including child, adult and public care and protection services. New entrants to criminal justice will have induction training arranged within their own local authority.

Each Community Justice Authority is expected to have a training officer to draw up training plans for and with respective local authorities. Currently specialist post-qualifying awards exist. An advanced qualification in practice and management in criminal justice social work was established in 1993 with government funding as part of a two year MSc in Advanced Social Work Studies in Criminal Justice. A post qualifying award in criminal justice social work was introduced in 1999. These are provided by the Criminal Justice Social Work Development Centre for Scotland based at the Universities of Stirling and Edinburgh. The structure for post qualifying education and training in social work is subject to revision and the future post-qualifying framework is under development by SSSC. Fees for the MSc and PQ programmes are currently (2007) £6030 and £800 respectively. Skills for Justice, a training standards body for the justice sector for the whole of the UK is developing a range of vocational qualifications in criminal justice work for staff who are not required to be professionally qualified social workers but who are essential staff in the provision of probation services.

The performance of local staff and the implementation of National Objectives and Standards for Social Work Services in the Criminal Justice System are subject to ongoing monitoring by local authority management and by a national Social Work Inspection Agency ([www.swia.gov.uk](http://www.swia.gov.uk)). Regular performance inspection reports are produced on criminal justice social work and these are supplemented by research commissioned by the Scottish government. There are no national set requirements for volunteers in criminal justice social work, or any national strategy for training volunteers. Local Authorities set their own requirements. No formal training requirements are usually required although vocational qualifications are available (SVQ). Minimum training is usually provided by agencies. Some volunteers build on their experience as a platform for entering training in social care or social work. Children panel members, the key decision makers in Scotland's juvenile justice system are all trained volunteers and are an exception to the above in that a national training strategy and formal selection and review system operates.

### **3.2.3 Other organisations**

A range of voluntary organisations work in tandem with local authority criminal justice social work teams to provide services to offenders and their families; the range includes accommodation and employment services, specialist provision relating to drugs and alcohol, mental health services or some other specialist or intensive programme as part of supervision. Some of these providers are large national organisations; others are small local initiatives, each with their own organisational arrangements. Many rely on grants from central government or provide services on behalf of local authorities as part of service level agreements or some other management agreement. Many criminal justice social workers are members of the British Association of Social Workers (BASW) and subscribe to its code of ethics, and of UNISON, the local authority trade union. The Association of Directors of Social Work (ASDSW) is the professional association of senior management.



## 4 PROBATION IN DIFFERENT PHASES OF THE CRIMINAL PROCESS

### 4.1 General

A wide range of criminal justice social work services is available to the criminal court. Most are provided for under the Criminal Procedures (Scotland) Act 1995 as amended. All legal references below are to this Act unless stated otherwise.

**Table 1: Activities of probation during the different stages of criminal procedure**

	Pre-Trial Phase See: 4.2	Trial and Enforcement Phase See: 4.4	Post Release Phase See: 4.4
Preparing a Social Enquiry report	x	x	
Early help / intervention (during the period of arrest at the police station) Bail information and bail accommodation	x	x	
Supervision / assistance to pre-trial detainees. Bail supervision	x	x	
Supervision / assistance etc. to offenders whose cases were conditionally waived Diversion from prosecution services	x		
Supervision / assistance to offenders whose pre-trial detention has been conditionally suspended. Deferral of sentence		x	
Mediation/victim support			x
Supervising / organizing etc. community service and community reparation			x
Supervising / organizing training or learning projects			x
Supervising etc. drug/alcohol treatment programs			x
Supervising etc. electronic monitoring Restriction of Liberty Orders, Home Detention			x
Supervising etc. other community sanctions, namely:			

	Pre-Trial Phase See: 4.2	Trial and Enforcement Phase See: 4.4	Post Release Phase See: 4.4
<i>a. Restriction of Liberty Orders</i>			x
<i>b. Supervised Attendance Orders</i>			x
<i>c. Fine Supervision</i>			x
Pre - sentence report			
Supervising etc. sanction of probation			x
Supervising etc. semi-detention Home Detention Curfew			x
Supervising etc. the mentally ill or retarded offenders (in-out patient orders) Supervision and Treatment Orders Hospital Order		x	x
Supervising etc. special measures for drugs addicts Drug Treatment and Testing Order			x
Assistance / support to prisoners in prison Prison Through care and Social Work in Prison			x
Assistance / support to offenders in home detention. Home Detention Curfew			x
Supervising etc. conditional release/ parole Parole, Non Parole licence, Supervised Release, Extended Sentences			x
Advisory report with respect to amnesty / pardon			x
Assistance / support to persons who are granted amnesty / pardon.			x
Other activities, namely:			x
<i>1. Sex Offences Prevention Orders</i>			x
<i>2. Risk of Sexual Harm Order</i>			x
<i>3. Remittal to a Children's Hearing</i>		x	

#### **4.2 Pre-trial phase**

There are two methods of procedure for the prosecution of crime in Scotland, known as solemn and summary procedure (i.e. trial and non trial), and three levels of criminal courts, High court, Sheriff Court and District court. The High Court is Scotland's Supreme Court and hears the most serious cases only on



solemn procedure; it also hears all criminal appeals and can issue sentencing guidelines. The Sheriff Court can hear cases using both methods; maximum powers include three years custody on solemn procedure and, with a few exceptions, three months on summary. The District Court hears cases only on summary procedure and has maximum powers of 60 days imprisonment. The system of courts is subject review and up to date details can be found at <http://www.scotcourts.gov.uk/>. Since the 19th century the whole system of prosecution in Scotland has been under central control; private prosecution is all but unknown, though it is technically possible. The Lord Advocate and Crown Office is responsible for the prosecution system and the local officers of the Lord Advocate are called Procurators Fiscal, who, in effect are public prosecutors. It is to the Procurators Fiscal that the police report alleged offences. It is for the Procurator Fiscal to decide which of the two methods for the prosecution of crime, if any, are to be used once s/he has decided that there is a prima facie case, and that the circumstances justify the mounting of a prosecution. The Procurator Fiscal has the discretion to take no action or to drop charges, to impose a fine as a means of reducing the pressure of criminal business in the lower courts, or to divert, conditionally or unconditionally, to social work. Powers for prosecutors to be able to order unpaid work as an alternative to prosecution are under consideration.

Diversion from prosecution under section 27 of the Social Work (Scotland) Act 1968 generally involves the referral of an accused to social work or other agencies where it is believed that formal criminal justice proceedings are not necessary (i.e. where there is no overriding public interest for a prosecution). Schemes were initiated in the late 1970s involving unconditional diversion (waiver method), or diversion conditional on the satisfactory outcome of an agreement made with the Procurator Fiscal (deferred method). Procurators Fiscal have experimented with social work diversion for young adult offenders (aged 16-21), for mentally disordered offenders, for those with drug and alcohol problems, and for reparation and mediation purposes. Diversion schemes are available in all local authority areas to 'explore the potential of social work service for reducing the costs to the criminal justice system' but remain underdeveloped. The introduction of Scotland's Children's Hearings system in 1971 was a major diversionary measure in itself and took the responsibility for dealing with children in trouble with the law away from the juvenile and criminal justice systems, and established an alternative welfare based tribunal system with compulsory powers, presided over by trained lay panel members who are representatives of the community.

Three main types of bail services are available to courts provided by criminal justice social work under section 27 of the 1968 Act. Bail Information schemes involve the provision of verified information to assist courts in decision-making. The aim is to provide independent, factual, verified information about accused persons held in police custody prior to a court appearance the following day. The Bail Accommodation service provides assistance in finding suitable accommodation aimed at decreasing unnecessary custodial remands. Courts can attach a condition of residence to a bail order. Bail supervision aims to identify and provide services for those people on, or at risk of, a custodial remand who, if subject to supervision, could be considered for bail. This can be before trial or

before sentence. As well as supervision, the custodian also provides services that facilitate the protection of the public by addressing the potential risk of the accused person re-offending while on bail. Priority is given to those with mental health problems, women accused, single parents and young people aged between 16 and 17

#### **4.2.2 Pre-trial report**

Social Work reports are available to the Lord Advocate, to Procurators Fiscal and to Children's Hearings (section 27(1) (aa) and (ab) of the 1968 Act) to assist diversion decision-making. There is no national format for these reports. Reports for prosecutors will normally outline the background characteristics of the offender, previous convictions, their attitude to the offence and their willingness to comply with a diversionary agreement. Reports for Children's Hearings are intended to examine 'all the circumstances' of the young person including family background, education and health, on the previous offences and attitude to the offence, as well as offering professional opinions designed to assist the tribunal make a decision in the best interests of the young person.

### **4.3 Trial and enforcement phase**

#### **4.3.1 General**

Each local authority is required to make "arrangements for the attendance of officers of the local authority at court" and for "co-operation ... with the courts" (section 27, Social Work (Scotland) Act, 1968). Court based social workers provide assistance to a wide range of people attending courts, including professionals, offenders and their families and victim/witnesses. Most social work activity follows from the establishment of guilt and the court may initiate social work enquiries to assist in establishing the most appropriate disposal in all the circumstances. Bail Information and accommodation are available to the court with the option of bail supervision under section 27 of the 1968 Act and section 252 of the Criminal Procedures (Scotland) Act 1995.

Scotland's courts have no powers of suspended sentence; however under section 202 of the Criminal Procedures (Scotland) Act 1995, they have the power "to defer sentence after conviction for a period and on such conditions as the court may determine" which can include social work supervision and assistance. A deferment of sentence is technically not a disposal but follows conviction and is linked with the general condition 'to be of good behaviour'. Sentences can be deferred for a variety of reasons and involve social work supervision and assistance to test behaviour over a specified period of time; to see how a person responds to supervision; to enable the person to perform a specific task or service e.g. restoration or to receive help or treatment. Supervision and Treatment Orders are available under section 57 of the 1995 Act for those who are assessed as 'unfit to plead' because of mental disorder

#### **4.3.2 Pre-sentence report**

The Criminal Procedures (Scotland) Act 1995 section 201 requires the criminal courts to obtain social work reports where a person is facing custody for the first time; where anyone under 21 is facing detention; before imposing a probation, community service order and drug treatment and testing order, and before disposing of a case involving anyone already subject to social work supervision under section 27(1)(b)(i) to (vi) of the Social Work (Scotland) Act 1968, which includes probation, community service, supervised attendance orders and post-prison licences or orders). Courts may also request reports at any time and oral or stand down reports and supplementary reports can be provided. These Social Enquiry Reports are available to the offender and their legal agent as well as to the court. The purpose of these reports and the tasks associated with their completion is set out in National Objectives and Standards for SERs as are requirements for any community disposal involving social work. There is no standardised format for an SER but they are expected to deal with five areas:

- introduction - the basis of the report; offender, court and offence details; brief social history including current domestic and social circumstances;
- information relevant to offending behaviour – offence history; current offence; offender's view of the offence; personal/social factors contributing, sustaining or supporting offending;
- information relevant to sentence/disposal – offender's response to previous disposals; financial circumstances; health, physical and mental; substance dependence; family and social networks; education and employment; resources available to the offender;
- review and conclusions – feasibility of community based options; consequences of specific disposals; summary of offending needs/risks to be addressed, offender's motivation;
- Proposals – community based options available; author's preferred option; explanation if no preferred option; initial action plan; offender's consent to the plan ([www.scotland.gov.uk/Publications/2004/12/20474/49335](http://www.scotland.gov.uk/Publications/2004/12/20474/49335)).

Best practice assumes that a standardised assessment framework such as Level of Service Inventory – Revised (see <http://www.mhs.com>) will be used to assist in assessing suitability for a social work disposal and in assisting planning supervision. The Level of Service Inventory is a combined and integrated risk/needs assessment instrument for use with general populations of offenders. Using a 54 item schedule, it provides an estimate of risk of reconviction for individual offenders over twelve months and a profile of criminogenic needs. It is used at the pre-sentence stage in the preparation of SERs and in the process of supervision planning. It can also be used to assess changes in risk and need at various points during the supervision process and can provide data about risk and need to help inform decisions about the design and delivery of services to offenders. A special version of Level of Service / Case Management Inventory customised for Scotland will be a required assessment instrument in 2008. Specially designated social workers, along with police, are trained in the use of Thornton's Risk Matrix 2000 (RM 2000) to carry out assessments for sex offenders. Special protocols exist to ensure all offences with a sexual element will be subject to specialist assessment.

#### **4.3.3 Probation procedures and processes**

National objectives and service standards or national guidance exists for the wide range of community based social work disposals (see [www.scottishexecutive.gov.uk](http://www.scottishexecutive.gov.uk)). Few will have been imposed without a social work report proposing some course of action. Scotland's Risk Management Authority has responsibility for disseminating best practice in risk assessment and risk management as well as playing an active role in overseeing these procedures with certain high-risk offenders (i.e. those subject to an Orders of Lifelong Restriction – see [www.rmascotland.gov.uk](http://www.rmascotland.gov.uk)). In some authorities social workers specialise in assessment; others in the delivery of structured intervention programmes. In general, however, criminal justice social workers carry 'generic' duties within their criminal justice activities. When the court imposes a community-based order, the relevant local authority has a duty to allocate a supervising social worker whose responsibilities include administering or 'serving' orders, establishing minimum frequency of contact, confirming action plans, enforcing compliance and breach proceedings when required, formal reviews, liaison with other professional disciplines, and completion reports for the courts.

Supervisors are required to develop a supervision plan for all probation orders. The plan is prepared in collaboration with the probationer in the first six weeks of supervision and must be signed by the supervisor, their manager and the offender. These responsibilities are directed by national standards and include the requirements for regular reviews of progress. Courts have power, in their own right, to ask for reviews of orders. Supervisors will often adopt motivational interviewing and pro-social modelling techniques as tools to assist supervision. Increasingly structured group work programmes of intervention are delivered directly by the supervising social worker or by other colleagues or may be provided by specialist staff from voluntary/independent organisations. The decision on which programmes to implement generally lies with individual authorities. However since 2001, the Scottish Accreditation Panel for Offender Programmes is responsible for national accreditation of supervision programmes which are being rolled out as part of national policy. At the time of writing (2007) two programmes are approved nationally – Community Sex Offender Group Work Programme (C-SOGP) which is delivered by specially trained and accredited staff and 'Constructs', a general offending programme, which can be delivered by all appropriate staff. A national programme for dealing with domestic abuse is being piloted. In most situations criminal justice social workers combine assessment work, supervision and programme delivery within their workload. However in some authorities some staff specialise in assessments only. The main non-custodial disposals available under the Criminal Procedures (Scotland) Act 1995 as amended are discussed below.

A Probation Order (section 228) can be made in respect of any person who has attained the age of criminal responsibility in respect of any offence for which the penalty is not fixed by law (e.g. murder carries a fixed penalty as do certain road traffic offences). The law makes no reference to previous convictions as a bar to the use of probation. However probation and imprisonment are incompatible so that where any person is convicted of more than one charge on the same complaint or indictment, he should not be

imprisoned on one charge and placed on probation for another. The governing legislation that allows for the making of probation orders states that the court, having obtained a report may, "have regard to the circumstances, including the nature of the offence and the character of the offender". "if it is of the opinion that it is expedient to do so," make a probation order. Legislation provides for orders of not less than six months and not more than three years. National guidance provides for three types of orders: standard probation; probation with conditions; and intensive probation.

Scottish legislation has remained sympathetic to the original concept of probation as holding back from punishment/sentencing for a period of time through the use of a legal device or 'bond' to the court, making the person, with their agreement, subject to supervision in the community. In Scotland a Probation Order follows conviction but (unlike other UK countries) is imposed with consent "instead of sentencing" (section 228) and requires the offender to express his willingness to comply with all the requirements. The court has wide ranging powers to impose additional requirements within orders such as carrying out unpaid work, paying compensation to the victim, receiving psychiatric treatment or residing in designated accommodation. Consequently the court is required by law to explain the effect of probation to the offender "in ordinary language" especially where additional requirements are made. This must specifically refer to the offender's liability to be sentenced for the original offence if he either commits another offence whilst on probation, or fails to comply with any of the requirements (standard or additional) of the order. Standard requirements common to all orders are that the offender should be of good behaviour, conform to the directions of the supervising officer; and inform the supervising officer, at once, of any change in place of residence or place of employment. The first six weeks of a probation order are intended to confirm the initial action plan with the agreement of the offender, identifying duties and responsibilities, contact frequency, who will do what etc. Successful completion of the order means, in principle, that the probationer receives no sentence for the original offence. Minimum frequency of reviews is set out in national standards.

Community Service Orders (section 238) were formally introduced in Scotland in 1978 although in practice unpaid work as a condition of probation had existed informally for many years before. The prime purpose for its introduction was that it should constitute an alternative to a short prison sentence. A Community Service Order can be made by any court on an offender "of or over 16 years of age convicted of an offence punishable by imprisonment, other than an offence for which the penalty is fixed by law". The philosophy of community service is a fine on time in the way that a traditional fine is on income. The punishment element is contained in the time required on the activities in the essential discipline or regular attendance, prompt time keeping and satisfactory performance. There is also the sanction of prompt application of disciplinary or court proceedings for breaches of the requirements which can result in the imposition of a custodial sentence.

Before imposing an order, the court must have a social work assessment on the offender's suitability and have the offender's consent. The order must specify the number of hours, which may not be less than 80 and may not

exceed 240 in summary procedure (300 in cases heard on solemn procedure). The hours must be completed within 12 months. The order remains in force until the hours have been completed or the order is revoked or breached. The order contains a number of detailed requirements to be adhered to: the central one is to perform the specified number of hours of service at such times as the supervising officer may instruct. Other requirements derive from this, and include reporting to the local authority officer appointed for community service purposes; and notifying any change of address or in the time of hours of employment. The order can be accompanied by other disposals including paying compensation or forfeiture. The responsibility for providing and supervising work placements lies with local authority criminal justice social work services.

Community Reparation Orders (section 245K) are for relatively minor offences containing an element of antisocial behaviour, which run from between 10 and 100 hours. The orders, which are currently being piloted and evaluated (see Curran et al 2007<sup>2</sup>) requires the offender to engage in unpaid activities designed to increase awareness of the harm done by the offence, reduce the likelihood of future offending, and to encourage personal and social responsibility and self respect and/or develop life problem solving skills.

Supervised Attendance Order (sections 235-237 and Schedule 7) was introduced in 1990 as a response to Scotland's problem of high rates of custody for fine default. The philosophy of SAOs, like community service, is a fine on time. There is also the sanction of breach proceedings that can ultimately result in the imposition of a custodial sentence. The order must normally be completed within 12 months. National objectives indicate that the activities should be of an educational nature broadly relevant to the offender's personal circumstances; and/or designed to stimulate interest and encourage the constructive use of time; or unpaid work in the community. An order can only be made where the offender is of or over 18 years of age and a financial penalty has been imposed and, either the court has ordered imprisonment in default, or there has been a failure to pay, either in whole or in part, where "the court considers a supervised attendance order more appropriate than serving a period of imprisonment". Where an SAO is made the effect of the order is to discharge the fine. The order requires an offender to attend a place of supervision for not less than 10 hours and not more than 50 hours for level 1 fines (currently £200) and not more than 100 hours for other fines. In its original form the legislation required the court to obtain consent of the offender prior to making the order and following a social work assessment report. The offender's consent is not required; nor is a pre-sentence assessment required, creating practical difficulties for social work in matching the offender to a suitable programme since social work has no say in who gets this disposal.

Fine supervision (section 217) can be ordered in relation to an offender of any age where the court is of the view that they may have problems in making payment. The law requires, in principle, that young offenders (aged 16 but under 21) must be placed on fine supervision before any period of

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<sup>2</sup> Curran, J. MacQueen, S. Whyte, B. (2007) *Forced to Make Amends: An Evaluation of Community Reparation pilots*. Edinburgh: Scottish Executive.

imprisonment can be ordered in default of payment (section 217(4) of the Criminal Procedure (Scotland) Act, 1995). The use of this provision varies greatly between courts and has largely fallen into disuse.

Restrictions of liberty orders (sections 245 A to F), which can include curfews, restrict the offender's movement and electronic monitoring (tagging – section 245C). It requires, up to a total of “12 hours in any one day”, the person to be in a specified place, such as at home, for set periods of time in each day or in each week; or equally to be absent from specified places, such as a football ground, for similarly specified periods of time. The offender must consent to the imposition of the order.

Compensation Orders (sections 249-253) allow for financial compensation to be paid to a victim. The order can be imposed in its own right, or, in certain circumstances, in addition to other community disposals such as probation.

Drug Testing and Treatment Orders (section 72, Crime and Disorder Act, 1998) are intended to assist the courts deal with drug misusers who commit offences in order to fund their misuse. Consent of the offender is required. The DTTO is available as a free standing order or concurrently with Probation and/or a Restriction of Liberty Order. While the court is able to specify some of the terms surrounding the treatment and to review of progress through pre-determined court hearings, it has no power over the treatment content as such. Regular and random drug testing is expected to be an integral part of order.

Supervision and treatment orders (section 57(5) and Schedule 4) may be imposed where an accused is found unfit to plead or stand trial because of insanity. The order requires the “supervised person” to be under the supervision of a social worker of the local authority in which he resides, while subject to treatment, for such period, not being more than three years, as is specified in the order. The order must contain a treatment plan by or under the direction of a medical practitioner. Courts have the power to impose Hospital Orders with or without further restrictions on mentally disordered offenders.

Methods of intervention used in supervision vary greatly with the type of order and, in principle, will be tailored to the individual needs and risks of the offender. Some orders such as DTTO specify individual treatment and supervision and those involving unpaid work usually operate in a group setting, though some individual placement work is arranged. For the bulk of probation work the supervisor provides one to one contact that may involve motivational interviewing, counselling or cognitive and behavioural and skill-based approaches and more rarely structured family work. The roll out of an accredited general offending programme (Constructs) is underway and most male offenders, except mentally disordered, sexual or serious violent offenders, are likely to be involved in this programme as part of their supervision in the future. Specialist group work programmes (C-SOGP) are also available for sex offenders and are being rolled out across the country. These programmes are based on cognitive –behavioural and social learning principles. The use of structured assessment tools, drug testing, and psychometric and other measurements are increasing in use to evaluate progress and outcomes.

For those facing custodial sanctions, National Objectives and Standards on Prison Through care provide a practice framework for the provision of a range of social work and associated services to prisoners and their families from the point

of sentence or remand, during the period of imprisonment and following release into the community. These services are concerned to assist prisoners cope with incarceration, prepare for release, and to help them resettle in the community within the law. The Scottish Prison Service is responsible for programme delivery within prison. An Integrated Case Management system has been developed by SPS in partnership with criminal justice social work to ensure that prison-based programmes and services are complemented by community - based provisions (see: <http://www.scotland.gov.uk/Publications/2006/12/newpage>). The intention is to ensure that prison-based services are complemented by community- based provisions including the provision of adequate accommodation and employment opportunities for prisoners returning to the community and specialist accommodation for high-risk offenders. The use of nationally accredited programmes by SPS staff and criminal justice social work, such as CSOGP and Constructs, are intended to allow programmes begun in custody to be completed or continued on return to the community. Four accredited hostels are planned for this purpose in the future. The core activities of social work in prisons include involvement in sentence planning to co-ordinate social work activity with that of prison staff; assessment of risk and dangerousness and the provision of action plans; programme provision and co-ordination to prepare prisoners for release and to assist resettlement; supervision in the community on release and family work to assist re-integration by connecting offenders to appropriate service including education, health, housing. A number of additional forms of community supervision disposals can be imposed along with custody for those considered to present very high risks on their return to the community. These include:

- supervised Release Order (section 209 of the Criminal Procedure (Scotland) Act, 1995) is a form of supervision on release from custody, ordered by the court at the time of sentencing, for those (excluding sex offenders) sentenced on solemn procedure to "not more than four years" in custody;
- extended Supervision, (introduced by the Crime and Disorder Act, 1998) will allow for extended supervision on release from custody for violent offenders convicted on solemn procedure to four or more years imprisonment and to sex offenders who receive any custodial sentence.

Traditionally consent was required for all community based social work disposals imposed by the courts and this is still the case for a Probation Order (with or without conditions), a Community Service Order, and Drug Treatment and Testing Orders. However in the last decade a range of new community disposals involving social work supervision do not require the offender's consent. These include: Community Reparation Orders, Supervised Attendance Orders, and Restriction of Liberty Orders. Breaches of orders are themselves criminal offences with the consequence of further sentencing. Social work carries responsibility for reporting breaches of orders and providing evidence of breach to the court. National Objectives and Standards and practice guidance notes provide the practice framework and case management requirements for supervision including minimal time requirements for frequency of contact, home visits, planning and reviewing cases. Community supervision must be case managed by fully qualified social workers Each local authority has its own quality



assurance system and is subject to performance inspection by the Social Work Inspection agency ([www.swia.gov.uk](http://www.swia.gov.uk)).

#### **4.4 Post- release phase**

Supervision on return to the community must be case managed by fully qualified social workers', who are expected to operate as an integral part of local authority social work services taking into account their statutory responsibilities before and after the release of prisoners. Each prisoner will have an Integrated Case Management Plan or a Community Integration Plan prepared prior to release. Those subject to statutory supervision will be supervised by criminal justice social work directed by an agreed plan. The Kincaid Report (1988) led to the introduction in 1993 of a system of unconditional early release for most prisoners, supplemented by a more focused and restricted system of conditional early release on licence. Anyone serving less than four years is released unconditionally when one half of the sentence has been served, providing they are not subject to a supervised release order or to extended supervision (above). The release is not entirely unconditional as the prisoner can be returned to serve the unexpired period of the sentence on commission of an offence "punishable by imprisonment".

A long-term prisoner, defined as a prisoner serving four or more years in aggregate, qualifies to apply for discretionary release on parole licence "after half sentence" and the prisoner can be considered for parole annually, thereafter, until he has less than 16 months to serve. Parole requires the offender to be subject to the supervision of a criminal justice social worker. This discretionary release requires a decision from the Parole Board. In any case, the long-term prisoner, who is not released on parole licence, will be released on licence (supervision) on completion of two thirds of sentence; the residue is served in the community under the supervision of a criminal justice social worker authorised in the terms of a licence granted by the Secretary of State for Scotland. This licence is referred to as a non-parole licence. Prison licences can include specific conditions and offenders can be recalled to custody at any time, usually for the commission of a further offence. The licence remains in force until the 'entire period specified in the sentence' has elapsed unless the offender is subject to extended supervision (above). Special release licences are provided for those sentenced to life imprisonment for their release on a 'life licence'. The sentencing court may determine a minimum period of custody; otherwise they are released at the discretion of the Secretary of State following consultation with, for example, the Parole Board and judicial officers.

The Custodial Sentences and Weapons (Scotland) Act 2007 makes provision for those subject to custody and detention for more than 15 days to be made subject to supervision on release. These provisions have not been implemented at the time of writing (2007). Scottish Ministers have the power to release a prisoner early on compassionate ground, normally in consultation with the Parole Board, and following a criminal justice social work report. Similarly the right of pardon lies with Scottish Ministers.

#### **4.5 Care and aftercare outside of the criminal justice system**

While National Standards stress a primary concern with the safety of the public, the service objectives and standards intend to promote a re-integrative approach in that “successful resettlement of an offender within the community is probably the best guarantee against offending” (Scottish Executive, 2004: paragraph 3). Local authorities have a duty under section 27 of the 1968 Act for “the provision of advice, guidance, and assistance for persons in their areas” on a voluntary basis in general and specifically for those “within 12 months of their release from prison or any other form of detention” who request advice, guidance, or assistance. In practice criminal justice social work provision beyond periods of statutory supervision is often limited. However large national voluntary agencies, such as Sacro, NCH and Apex, provide a range of personal assistance and family support beyond statutory requirements.

## **5 FINANCES, REGISTRATION, EVALUATION AND OUTSIDE OPINION**

### **5.1 Finances**

The Scottish government centrally finances most criminal justice social work services. Funding is generally divided into ‘core’ funding for the costs of provision of services agreed with government e.g. for assessment reports and community disposals, and ‘non core’ funding which relates accredited programme deliver, drug and employment related work or to development work and new initiatives. Community Justice Authorities have flexibility in setting local spending priorities agreed with government. This expenditure is often supplemented by local authority finance drawn from local taxation, which is used to meet local priorities. Public bodies largely fund voluntary organisations providing services to the criminal justice system but have the flexibility of generating additional funding through other means. Some pilot services have been funded by access to European Union funding for limited periods as a means of testing new approaches.

**Table 2: Expenditure on Criminal Justice Social Work for the year 2004-05: comparison with other services**

	Criminal Justice Social Work	Prison Services	Police	Prosecutors service
Total expenditure £sterling (millions)	£75m	£343m	£977m	£84m

## 5.2 Accounting

Community Justice Authorities (CJAs) are statutory bodies created by the Management of Offenders etc. (Scotland) Act 2005 to be strategic planning and monitoring authorities for the provision of community justice services. Each Community Justice Authority is accountable to The Scottish Government for annually planned expenditure for those core criminal justice social work service funded by central government. Each CJA is required to produce a strategic plan for their area in consultation with statutory and non-statutory partner bodies and are responsible for the disbursement of central funds to local authorities for community based criminal justice social work services and monitoring the operational delivery of the services provided in accordance with the strategic area plan. Plans are scrutinised by a National Advisory Board that provides advice to government ministers. The Chief Officer is required to report to Scottish Ministers as and when required on the activities and performance of the CJA, appropriate local authorities, the Scottish Prison Service (SPS) and partner bodies in complying with the CJA's plan. Where it appears to the Chief Officer that a CJA is failing, or has failed, to exercise its functions satisfactorily, or SPS or others are failing to comply with the plan, the Chief Office is required to report the failure to Scottish Ministers. Audit Scotland also has powers to carry out financial audits in the public section including local authorities.

## 5.3 Registration and evaluation procedure

Social Work is a legally protected title and all criminal justice social workers are required to register with the Scottish Social Services Council (SSSC) which is responsible for registering people who work in social services and regulating their education and training. Government produces an annual statistical bulletin on criminal justice social work activities (see <http://www.scotland.gov.uk/Publications/2007/01/29151512/0>). Each local authority publishes an annual report on its criminal justice social work activities; this function is likely to be completed by Community Justice Authorities from 2008. All services are subject to regular inspection and performance evaluation carried out by the Social Work Inspection Agency, an independent executive agency and reports are available to the public at [www.swia.gov.uk](http://www.swia.gov.uk).

A Scottish Violent and Sexual Offenders' Register (VISOR) provides national data available to the police and to criminal justice social work. Individual case

records are kept on all offenders. Section 27(3) of the Social Work (Scotland) Act, 1968, requires from each local authority to make "arrangements for the keeping of adequate records and statistics regarding the performance of functions under this section by each local authority criminal justice service". Most local authorities have developed their own separate information gathering systems. Only a few however have developed IT systems which integrate individual case recording with management information systems in order to provide information that can be used both to enhance the individual supervisor's professional performance and provide adequate data for strategic and policy planning purposes. Record and information storage is now subject to provisions of the Data Protection and the Freedom of Information (Scotland) Act 2002, which provides a set of guidelines that govern the way people gather, store and process personal information that is identifiable to the individual.

Most systems are subject to development and a few good examples provide supervisors with regular reports on the actual outcomes of their SER assessments against their predicted or recommended disposal, for example; some allow examination, at a glance, of the pattern of attendance of particular types of offenders. Aggregated data is now regularly used to monitor the operation of court decision making against social work assessment, important in liaison discussions with sheriffs, and is beginning to be used to identify key characteristics of groups of offenders, including type of offending, drug and alcohol usage and other problem indicators. Despite their limitations, standardised prediction scores, such the Level of Service Inventory - revised (LSI-R) (Bonta, 1995), are now more widely available as additional aids to practitioners and managers in monitoring individual and agency provision and performance. Efforts have been made by the Scottish Executive to develop an integrated national core database (ISCJIS) but this has still to be fully established.

Scottish government social researchers support the development, implementation and evaluation of the Scottish Government's policies and their Criminal Justice Research Team commissions research on criminal justice social work and related services, for example, on risk assessment, the management of violent and sexual offenders, community disposals, alternatives to custody, and youth crime. Most evaluative studies are relatively short-term studies (1-2 years) evaluating the implementation of policy. Recent studies have included Supervised Attendance Orders, Time out for women offenders, Recidivism amongst Serious Violent and Sexual Offenders (2002), Community Approaches to Youth Crime (2001) Drug Treatment and Testing Orders (2002), Drug Courts (2002), Youth Courts (2004), Arrest Referral Schemes (2005), Community Reparation Orders (2006), Home Detention Curfews (2007), Routes out of Prison (2007) (see <http://www.scotland.gov.uk/Topics/Justice/criminal/CJResearch/Intro>). Very few longitudinal or experimental design studies have been commissioned to provide robust results on effectiveness.

#### **5.4 Societal views and clients' view**

There is no systematic data available on client's views although the Scottish Crime Survey (SCS), which is a repeat cross-sectional survey measuring the incidence and prevalence of victimisation among the Scottish population, has been carried out on a 3-4 yearly since the early 1980s. In addition to establishing a victim perspective, SCS has highlighted that until recently the fear of crime, has continued to rise as officially recorded crime has fallen. The data also highlights that the typical victim and the typical offender often have very similar profiles. Research on community attitudes and views (MRUK<sup>3</sup> 2004 - [www.scotland.gov.uk/Topics/Justice/19008/MRUKreport](http://www.scotland.gov.uk/Topics/Justice/19008/MRUKreport)) gathered as part of community consultation on the national Criminal Justice Plan, found expectations from members of the public that they should have a say and contribute in some way to community justice processes. For example, 40 per cent of respondents felt they should have a say in deciding what types of community service work offenders should do locally and 19 per cent felt they should have a say in supervising offenders in the community. Few had any realistic understanding of what was actually involved. There was little public knowledge of alternatives to prosecution and many respondents confused them with alternatives to custody. While public attitudes varied enormously, there was a strong view that diversionary compensation or community work and "not going to court" or "not getting a criminal record" would be like "getting off". When explanations about community-based responses were offered, most respondents expressed belief that some forms of community measure would work but may depend upon the age of offender, acts of contrition and the nature of the offence. Respondents further refined their views to suggest that crimes that involved violence were deserving of a prison sentence.

## **6 PROBATION CLIENTS' RIGHTS**

In principle the rights of those supervised by criminal justice social work are the same as any other citizen; in practice the situation is complex. The Scotland Act 1998 (establishing the Scottish Parliament) incorporated the Human Rights Act 1998 making the European Convention on Human Rights (ECHR) part of Scots law applicable in Scottish courts. Anyone, including offenders, whose rights have been breached by a public authority, can enforce their rights in court. The statutory rights of an accused person to legal representation and appeal are well established in law in Scotland. Guidance and statute provide a range of rights for offenders in regard to aspects of criminal justice social work practice. For example all reports prepared for the courts "shall be given by the clerk of the court to the offender or to his solicitor" (section 203(3) Criminal Procedure (Scotland) Act, 1995); social work orders must be explained in "ordinary language" by the court so that the offender can offer informed consent, where this is required; regular 3 and 6 monthly reviews of supervision involving the offender are required by national standards.

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<sup>3</sup> MRUK (2004) *Research on Community Involvement and Alternatives to Prosecution* Edinburgh: Scottish Executive.

Each local authority is required by statute to provide a complaint's procedure with established protocols, timescales for response and appeal mechanisms under the Social Work (Representations Procedure) (Scotland) Directions, 1990 (The Directions). The term "complaint" is used to cover more than simply expressing dissatisfaction and includes seeking clarification, gaining a second or new opinion, making comments or recommendations, halting an action. The procedure is not used to review a practice decision that is required in law to be tested either in a court of law or a Children's Hearing. A complaint can be made by the offender in receipt of or seeking a service or by any legitimate representative of that person. Guidance allows for complaints to be made anonymously under certain circumstances. Leaflets are available to advise offenders of their rights and to explain the steps of the complaints procedure. The Directions emphasise that every effort should be made to resolve complaints speedily and where possible informally.

Where formal complaints are made, these are normally dealt with initially by a Complaints Officer on behalf of the Director of Social Work. A complaint may result in the appointment of an internal investigation officer or, exceptionally, in the appointment of an external investigator. Normally the complainant will be interviewed within 5 calendar days from the point of receipt of a complaint and a substantive response made within 28 days. The complainant is asked to reply formally in writing. The complainant has a statutory right under these Directions, if dissatisfied, to have the matter referred to a Complaints Review Committee, which is normally a sub-committee of the local authority's Social Work Committee, whose members are locally elected politicians. For a Review Committee to be convened notice must be lodged with the local authority's Chief Executive within 28 days of the complainant's reply to the substantive response. Both the Social Work Department and the complainant are represented at a Review Committee and witnesses may be called.

There are no formal supervision boards in Scotland, however all complaints against local authorities are reported to The Scottish Government. In principle, all issues not resolved under the local authority complaint's procedures can be referred to the Local Authority Ombudsman for consideration. Civil court procedures are available to anyone who wishes to pursue a remedy against a local authority in the operation of its statutory responsibilities.

The situation involving right to privacy and sharing information highlights the complexity of law and policy in relation to offenders in Scotland. There is a common law duty of confidentiality and the Data Protection Act 1998 is intended to safeguard the rights of individuals whose personal data may be collected during the course of day-to-day business activity. Any organisation, which holds paper or electronic information relating to living persons must adhere to the legal requirements and must comply with eight enforceable principles of good practice included in the statute. At the same time the Freedom of Information (Scotland) Act 2002 gives a general right of access to all types of recorded information held by Scottish public authorities. The legislation sets out certain exemptions in relation to "the prevention or detection of crime" and "the apprehension or prosecution of offenders". This is a non-absolute exemption whereby a public interest test is applied to disclosing information which would contribute to the administration of justice and enforcement of the law or where failure to disclose

would prejudice the prevention or detection of crime or, the apprehension or prosecution of offenders.

In practice there is now, particularly in regard to serious violent or sex offenders, a presumption to share information between agencies. There is as yet no presumption of sharing this information with the general public. A National Concordat on sharing information was established in 2005 to provide guidance in relation to sex offenders. (<http://www.scotland.gov.uk/Publications/2005/10/3195049/50507>). However, the legality of this, even in relation to sex offenders, is not clear-cut, except in limited cases such as the detection of crime and the administration of justice. Current advice from Scottish Government solicitors is that this exemption must be applied on a case by case basis. It cannot be taken to be a blanket exemption for criminal justice purposes and careful decisions have to be taken when sharing of the data in a way which would be 'disproportionate to the achievement of a legitimate aim and unnecessary in a democratic society'. This would infringe rights under Article 8 of the European Convention on Human Rights

## **7 NEW DEVELOPMENTS**

The development and change since the re-establishment of a criminal justice social work as a specialism in Scotland in 1990 has been significant and funding will have increased from approximately £9 million in 1990 to £89 million in 2007. While the mission and objectives of the service have not changed, eight specialist Community Justice Authorities were established in April 2006 with powers to require co-operation from Health, Police, Prisons, and Voluntary providers to assist local authorities fulfil their legal responsibilities to deliver probation services to their communities and courts. The aim is to transforming the way local authorities, the Scottish Prison Service and other local organisations work together to tackle re-offending. This is consistent with government policy on greater social inclusion and its emphasis on co-ordinated and better integrated community responses to the social problems of poverty, unemployment, poor housing, low educational attainment, safer communities and specialist crime focused provision.

The Social Work profession itself is facing change. Social work has been established in law as a registered legal title and a regulatory body. The Scottish Social Services Council is responsible for registration and education. Changing Lives, a report of the recommendations made by the 21<sup>st</sup> Century Social Work Review Group (Scottish Executive 2006) sets out proposals for increasing the capacity, roles and responsibilities of social workers. A Criminal Justice Social Work Development Centre for Scotland was established in 2000 based at the University of Edinburgh, with the remit of promoting effective research led practice. The Centre supports national practice development groups, carries out practices related research and development work, offers advice and consultancy and provides post qualifying and continuing professional development (CPD) education and training for criminal justice and youth justice social workers. The National Community Justice Accreditation Panel and its prison equivalent have merged to form the Scottish Accreditation Panel

for Offender Programmes. Two national programmes are approved – Community Sex Offender Group work Programme (C-SOGP) that is delivered by specially trained and accredited staff and Constructs, a general offending programme, which can be delivered by all appropriately training staff. Programmes relating to domestic violence and women offenders are in the pipeline.

Major developments in regard to the supervision and monitoring of serious violent offenders and sex offenders are in their early stages. Multi-agency public protection arrangements (MAPPA) are in place from 2006 and a new lifetime supervision order – Order of Lifelong Restriction – is available to the High court. The Risk assessment requirements for the orders must be carried out by registered assessors trained by a newly established Risk Management Authority, a national centre for expert advice on offender risk assessment and management.

(<http://www.rmascotland.gov.uk/home.aspx>)

## **8 IMPORTANT PUBLICATIONS**

### **National authors**

F. McNeil, B. Whyte, *Reducing Re-offending: Social Work and Community Justice in Scotlan*, 2007, Cullompton: Willan

This is the most up to date book providing a critical overview of social work with offenders in Scotland. It examines the challenges currently faced by community justice in Scotland and links a review of available empirical and practice evidence to probation in a Scottish context. It provides an account of the legal context of criminal justice social work services in Scotland, analysing professional responsibilities, role and functions of social work in the sentencing process and the legal basis for community disposals.

G. Moore, B. Whyte, *Social Work and Criminal Law in Scotland*, 1998, Third edition, Edinburgh: Mercat Press.

This was the first book (third edition) to outline the legal and professional responsibilities of newly established criminal justice social work in Scotland and youth justice provisions, examining directing philosophy, role and functions, national service objectives and standards and the legal and policy basis for them.

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This paper sets out the policy framework by the (then) Secretary of State for Scotland and established the direction for subsequent policy and practice for criminal justice social work and other associated criminal justice provision. Sections of this paper are still cited in national objectives and Standards re-issued in 2004.

Other authors:

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## ANNEX 1

The Scottish Executive Statistical Bulletin: Criminal Justice Series are available at <http://www.scotland.gov.uk/Publications/>

*e.g.* Statistical Bulletin Criminal Justice Series: Criminal Justice Social Work Statistics

Criminal Procedure (Scotland) Act Section 306: Costs Sentencing Profiles and the Scottish Criminal Justice System

### Criminal Statistics Published 2006 and 2007

Recorded <b>2004/05</b>	Crimes: 438,093	Offences: 632,982		
Persons Proceeded against in court	172,556			
Penalties Imposed	Custody 16,531 (12%)	Community 16,952 (13%)	Financial 85,253 (63%)	Other 15,723 (12%)
CJ Social Work Reports 2005/06	Social Enquiry 42,43	Stand down Reports 1,589	Home Circumstances 1,361	Bail Information 8,052
CJ Social Work Disposals 2005/06	Probation 8,402	Probation with Unpaid work 2,692	Community Service 5,927	Supervised Attendance 3,849
	Drug Treatment and Testing 599	Restriction of Liberty 984	Prison Throughcare 1,105	Voluntary assistance 1,523

