



Probation in Europe

Scotland

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1. Introduction

1.1 Probation organisations

Whilst Scotland does not have a single probation agency, the country is divided into 32 local authority (local government) social work departments who provide statutory criminal justice services (referred to as *Justice Social Work*¹) on behalf of the Scottish government. Guided by legislation, policy and national standards, each authority is required to provide a range of services, which include statutory criminal justice social work reports to Scottish courts; provision of supervision for offenders subject to community sanctions and measures; throughcare support and supervision to prisoners; and provision of accredited interventions for particular types of offender. Local authorities are public organisations in Scotland. Private and voluntary sector organisations do provide services to offenders, but they do not have the same statutory obligations or legal duties as local authority social work departments.

1.2 Probation activities in a nutshell

Activities in Scotland are broadly four fold: providing advice and information to criminal courts to inform deliberation on sentencing; providing supervision and support to people subject to statutory and voluntary sanctions and measures; providing supervision for people leaving prison and returning to the community; conducting risk assessments and contributing to risk management planning for those subject to monitoring in the community. Each of these areas will be discussed in more detail later.

1.3 General remarks about the implementation of Probation Rules

Scottish policy, legislation, standards and practices have been reviewed and amended extensively since 2006. The majority of changes have emerged from recommendations put forward by a number of national consultation exercises. There is no evidence to suggest that any change was made to bring Scotland in line with European Probation Rules (EPR). In the process of writing this chapter, the authors sought more direct confirmation on this point from the Scottish Government. Our initial enquiry was passed to a department responsible for parole. We sent a subsequent request for our question to go to a more relevant department, i.e. community justice. We are still waiting for a reply.

Whilst we are unable to confirm that the Scottish Government is at least aware of EPR, we can say more generally that our jurisdiction does comply with the majority of Rules as they currently stand. On reviewing a range of literature, we found no explicit reference in policy documents to either the implementation or monitoring of EPR in Scotland.

¹ Also known as *Criminal Justice Social Work* (CJSW); however, recent debates on terminology found that 'criminal' had too many negative connotations and subsequently many local authorities have dropped it from the title of teams and departments. This chapter will refer to CJSW in its historical context, but most references will be to *Justice Social Work* (JSW) to reflect more recent developments.

2. Historical development of the probation system

2.1 History of the origins until 2008

The criminal justice system in Scotland, along with much of the law and procedural rules relating to it, is different from 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 Scottish Government and its non-departmental public bodies are responsible for the administration, regulation, inspection and strategic leadership of all criminal justice services across the country.

The genesis of community-based criminal justice services in Scotland can be traced back to efforts of penal reformers and religious charities in the late nineteenth century. Early probation practice was principally informed by wider religious and philanthropic efforts to reform and address errant and 'sinful' behaviour amongst largely disadvantaged groups in Scotland at the time. Excessive use of prison for fine defaulters in the late nineteenth and early twentieth centuries became a particular issue of concern to local politicians and members of the public. In 1904, around 43,000 people were received into prison in Scotland for fine defaults (approximately 16,000 from Glasgow). In 1905, Glasgow became the first area of Scotland to replace charity-organised services with a state-led probation service for criminal courts. According to a short history of probation in Glasgow published by the *City of Glasgow Probation Committee* in 1955, a local government councillor, *Bailie* John Bruce Murray, travelled to America where he observed a number of probation schemes in operation. Murray returned to Glasgow and managed to convince other members of the Glasgow Corporation (later known as Glasgow City Council) to consider a pilot probation scheme in Glasgow in 1905. A committee of police court judges and magistrates was established to examine the issue. For financial and largely practical (organisational) reasons, the first probation officers in Glasgow were recruited from the existing police force. Six male and three female officers (to work with child offenders) were appointed as 'police probation officers' between 1905-1906. By 1919, Glasgow had eleven male and five female officers. These early probation officers attended court on a daily basis. They made enquiries in relation to the social circumstances of offenders, as well as to the nature and circumstances of offences committed. They composed reports for district court magistrates to help inform sentencing decisions, and they subsequently observed and supervised probationers during fixed periods with methods suggested by sentencers.

However, the Probation of Offenders (Scotland) Act 1931 helped to formalise arrangements for the training, recruitment and organisation of probation officers in Scotland. The Act created a Central Probation Council and established probation committees in each local authority area. Police officers were now prohibited from entering the probation service, as this practice was seen to be outdated. The new service was influenced by an emerging 'science of treatment' (drawn largely from American casework theory and psychology) in the early twentieth century. According to the *City of Glasgow Probation Committee* at the time, the probation officer 'studies the habits and surroundings of the Probationer and, by impact of his personality, every-ready advice and the force of example, tries to influence the offender towards the normal in life and conduct. The Probationer is helped to sustain natural relations with his fellows – relationships

of employment, of friendships and of home ties' (City of Glasgow, 1955: 8). However, developments in the service were slow at this point – mostly due to pre-, inter-, and post-war activity at the time.

In response to emerging concerns about post-war crime, the Criminal Justice (Scotland) Act 1949 was introduced to amend the law related to the probation of offenders, and to amend the powers of court in relation to children and young people. It sought to reform existing methods and provide new means of dealing with offenders. The Act introduced a requirement on sentencers to consider reports before imposing *any* sentence of detention on those under the age 21 (it also stipulated that detention must only be used as a measure of last resort). It placed a duty on probation services to provide pre-trial reports on children. As a result of increasing confidence in what was seen as the effectiveness of probation, the number of people made subject to it in Glasgow had increased from 1313 in 1931 to 2019 in 1954 (City of Glasgow, 1955). However, probation at this point was being used mostly for juveniles than adults – prompting the Scottish Office to take steps to promote the use of the measure with adults throughout the post-war period (Scottish Office, 1955). Although modest increases were noted between 1951 and 1959 (Scottish Office, 1961), the pattern was uneven – suggesting that Scottish courts were yet to be fully convinced about the merits of community supervision. However, subsequent developments in the 1960s led to significant and lasting changes to the way Scotland deals with offenders.

In 1962, the Morison Committee reviewed the nature and functions of probation and probation services in the United Kingdom². The Committee defined probation as the 'submission of an offender while at liberty to a specified period of supervision by a social caseworker... during this period the offender remains liable, if not of good conduct, to be otherwise dealt with by court (Home Office, 1962: 2). The Committee emphasised that probation officers have a dual function: to assist offenders while protecting the public at the same time. The Morison Report made a number of recommendations on the organisation, recruitment and training of probation officers in Britain. And whilst the influence and impact of the Committee was felt across the UK, two separate publications north of the border had a significant (and lasting) impact on the philosophy and structure of criminal justice services – taking Scotland in a very different direction to the rest of the country.

The first important publication was a report of the Committee on Children and Young Persons (Scotland) 1964³. This committee was led by Lord Kilbrandon with a brief to review the treatment of juveniles in the Scottish criminal justice system. Among a number of recommendations, the committee emphasised the need for separate arrangements to deal with young offenders. This particular recommendation recognised that neglect and social issues were significant factors in offending behaviour, and such that a focus on *needs* rather than *deeds* ought to be the default position when dealing children and young people who become involved in criminal behaviour. The Kilbrandon Committee also influenced later decisions made on the configuration and structure of integrated social work departments following legislation introduced in 1968 (the Social Work (Scotland) Act, 1968).

² Home Office (1962), Report of the Departmental Committee on the Probation Service. Cmnd 1650, London: Her Majesty's Stationery Office.

³ Kilbrandon Report (1964), Children and Young Persons, Scotland, Cmnd 2306. Edinburgh: Her Majesty's Stationery Office.

The second influential publication was a 1966 government white paper, '*Social Work in the Community*', which proposed the re-organisation and integration of social work services amid concerns about a multiplicity of services carrying out essentially similar work in the same community (or even in the same family). The white paper introduced a number of proposals recommended by the Kilbrandon Committee – generating terms such as 'children's hearing' and 'children's panel' (which later underpinned the formation of the Scottish Children's Hearing system in 1971). Crucially, the white paper framed a link between juvenile justice, the existing Probation Service, and various social work services offered by local authority councils (e.g. children's departments). It favored an integrated approach where the needs of both adult and child offenders could be addressed by one service. As a consequence, the existing Scottish Probation Service was disbanded following legislation passed in 1968 (discussed later). All statutory functions and responsibilities for probation services were transferred to local authority social work departments.

In contrast to the rest of the UK, the changes made in 1968 introduced a radically new system of juvenile justice in Scotland, namely the Children's Hearing system (operational in 1971). This new process meant that children and young people would now face a 'panel' of laypeople to decide the outcome of their case, rather than a judge in court. The aim here was to keep children and young people away from adult criminal justice processes (as per Kilbrandon recommendations). The central philosophy was to deal with children 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). More recently however, and following global concerns about the minimum age at which a child could be prosecuted (initiated by the United Nations Committee on the Rights of the Child), significant debate occurred in Scotland which led to the age of criminal responsibility being raised from eight to twelve (following the introduction of the Age of Criminal Responsibility (Scotland) Act 2019). In general, most cases involving children over the age of twelve are referred to the Children's Hearing system for deliberation and disposal. Only the most serious cases, e.g. murder, remain in the adult system (but conducted in closed courts).

Under new arrangements introduced in 1968, criminal justice social work services were paid for, in large part, by local authorities from their own income – although supplemented by grant aid from central government. The practical consequences of these arrangements meant that criminal justice social work had to compete with other divisions of social work for resources (e.g. children & families; older adults; disability services). Throughout the 1970s, a number of academics highlighted that probation skills and knowledge were being diluted and subsumed within generic social work departments (see Moore, 1978; Moore and Whyte, 1998) – resulting in concerns raised about the quality and delivery of probation supervision. By the 1980s, criminal justice social work was thought to be losing credibility as a specialism. This was due, in part, to a lack of resources (most funding went to children & families and adult social work), compounded by the fact that criminal justice work was being carried out by 'generic' social workers who lacked specialist knowledge and practice experience of supervising offenders. Many departments were struggling to cope with increasing numbers of child protection issues, which meant that probation cases were often left unallocated and certainly not prioritised. Increasing numbers were also receiving

custody rather than community sentences at the time, which suggested a growing lack of faith in the ability of criminal justice social work to provide effective supervision of offenders in the community.

However, in response to increasing numbers in custody, the Scottish Secretary at that point – Malcom Rifkind – launched a new approach in his paper *‘The Way Ahead’* (Rifkind, 1989). Rifkind sought, among other things, to promote the merits of community sentencing. He proposed that criminal justice social work should receive its own protected revenue stream to ensure that resources would not be used by other divisions of social work. He advocated the introduction of national guidelines and standards for criminal justice social work to ensure consistency and quality assurance of service provision across Scotland. As a result, from 1 April 1991, the government introduced a new system of 100% ring-fenced funding for core criminal justice social work services. This was accompanied in 1991 by *National Objectives and Standards for Social Work Services in the Criminal Justice System*. The new ‘Standards’ became the key guidance document, giving form and structure to the strategic and operational delivery of criminal justice social work services in Scotland for the first time. It is argued elsewhere that community sentences became more credible and effective in the eyes of the Scottish Judiciary during the early 1990s – leading to increased use of community-based disposals across Scotland. However, the practical impact of community-based disposals on reducing prison numbers and reducing reoffending was negligible, as each successive administration struggled to meet national targets in both areas.

A turning point in penal policy and practice is noted in the 2000s after a number of serious case reviews found that failures to share information between agencies, and failures to perform (or even do) adequate risk assessments, contributed to a number of child deaths. Pressure for organisational accountability, risk minimisation and public safety emerged as key drivers for policy and legislative change over this period. As a result, the Criminal Justice (Scotland) Act 2003 was introduced to provide the legislative basis for a national non-departmental public body, the Risk Management Authority (RMA), to oversee current standards of risk practice and to enhance risk assessment and risk management processes across all criminal justice agencies in Scotland. The Act also focused on setting standards for risk assessment, risk management and risk planning. This signaled a clear message from the Scottish Government that risk and protection had become significant priorities. Further measures to ‘improve’ how Scotland dealt with categories of risk in the community were taken further by the Management of Offenders (Scotland) Act 2005. This Act focused on the creation of Multi Agency Public Protection Arrangements (MAPPA) which placed responsibility on a number of agencies (known as ‘Responsible Authorities’: Scottish Prison Service; Police Scotland; National Health Service; and Criminal Justice Social Work) to manage risk by holding regular multi-agency meetings to discuss risk management plans and to agree action points for each agency involved in a single case. The Act also created the provision for eight Community Justice Authorities (CJAs) covering regional areas of Scotland (which meant that some CJAs had two or three local authorities in their portfolio). Like the RMA, CJAs were also established as non-departmental public bodies – in this case responsible here for strategic planning, financial management, monitoring and reporting of local authority criminal justice services. The broad objective of CJAs was to recognise and respond to local needs – moving away from centralised control of budgets

and priorities. However, CJAs were formally disbanded in Scotland on 31st March 2017 following the launch of a new model for community justice (discussed later).

Indeed, whilst a number of policy changes were implemented from the 1990s into the 2000s, including a string of new legislation, new public bodies and new governance arrangements for community-based justice services, a key problem remained: Scotland's prison population was still growing. Community sentences – although more credible and effective than previous measures in the 1980s – were still not being used as widely as they could be. Existing arrangements and options were having little impact on prison numbers.

2.2 Recent history from 2008 to 2017

In 2007, the Scottish Government commissioned a review of community penalties. The first output from this exercise - *Reforming and Revitalising: Report of the Review of Community Penalties (2007)* – suggested that the range of sanctions and measures available to Scottish courts was more complicated than it needed to be. The second stage of this review focused on the use of imprisonment in Scotland. The Scottish Prisons Commission (SPC) was established in 2007 to consider the use of incarceration as punishment, and to assess the impact of early release provisions for courts, prisons and community justice services. In 2008, the SPC published its report: *Scotland's Choice*. Among a series of recommendations made to the Scottish Government, the Commission emphasised two particular action points: (1) to better target imprisonment and make it more effective - reserved for people whose offences are so serious that no other form of punishment will do, and (2) to move beyond a reliance on imprisonment as a means of punishing offenders. The Commission recommended that '*paying back*' in the community should become the default position in dealing with less serious offenders. The Commission recommended that existing community sanctions (probation, community service, community reparation orders and supervised attendance orders) be replaced with a single community sentence.

Also in 2007, The Scottish Government launched a review of *National Objectives for Social Work Services in the Criminal Justice System* (1991). However, during performance inspections of criminal justice services between 2003-2007, it was found that existing 'standards' failed to reflect developments in risk management and research. It also lacked reference to new statutory functions, such as Multi-Agency Public Protection Arrangements (MAPPA). The Scottish Government concluded its review with the publication of new guidance: the *National Outcomes & Standards for Social Work Services in the Criminal Justice System* (2010). This document provided a new framework for practice – designed to assist practitioners and authorities meet broader policy outcomes: (a) Community safety and public protection; (b) The reduction of re-offending; and (c) Social inclusion to support desistance from offending.

In 2011 however, a review of Scotland's criminal justice system was completed by Audit Scotland - an independent public body responsible for auditing public organisations. Their report, *An overview of Scotland's criminal justice system* (Audit Scotland, 2011), highlighted that whilst the number of recorded crimes and offences was falling, the number of people in prison and the number of people

placed on community sentences was increasing. Other findings highlighted a complex landscape of service provision – referring to services having multiple accountabilities, poor leadership, disparity in quality, and widespread inconsistency in delivery. Around the same time in 2011, the Scottish Government also established an independent Commission on Women Offenders – led by a former Lord Advocate (Scotland’s chief legal officer) and tasked with investigating the particular needs of women involved in the criminal justice system. The Commission’s report, published in April 2012, highlighted a number of concerns about criminal justice services across Scotland. It too found a widespread lack of strategic leadership and accountability; a cluttered landscape of services; inconsistent service delivery within and between local authority areas; but crucially it found little evidence of existing provision having had *any* significant impact on outcomes for women subject to criminal justice sanctions and measures. The Commission suggested that radical reform was necessary. Among a series of recommendations made to the Scottish Government, the Commission called for specific community justice centres to be established across Scotland (‘one-stop’ projects where women could access a range of services in one place); that problem solving courts are used more widely (targeting persistent offenders with complex needs – providing quicker access to services); that Scotland’s only dedicated women’s prison, Cornton Vale, is closed (as ‘not fit for purpose’) and replaced with smaller custody units; and that a single community justice service be introduced to ensure consistency of service provision and delivery across the country.

Compounding matters further, the Scottish Parliament’s Public Audit Committee took further evidence from stakeholders on the findings from the first Audit Scotland report in 2011. The Committee then asked Audit Scotland to assess the efficiency and effectiveness of approaches taken to reduce reoffending. Audit Scotland published a second report, *Reducing reoffending in Scotland* (November 2012), which found significant differences between the evidence base for approaches to reducing offending and actual practice delivered in the community. It also flagged concerns about a lack of leadership at national level, and highlighted a lack of strategic delivery of services with consistency across Scotland. A key observation highlighted in the report was that Community Justice Authorities had made little progress in reducing reoffending.

The findings from two Audit Scotland reports (2011 & 2012) - alongside significant concerns raised by the Commission on Women Offenders (2012) - prompted the Scottish Government to respond with a national consultation on the future shape of community justice (launched in December 2012). Three options were put to stakeholders: *Option A*: enhanced Community Justice Authority (CJA) model (i.e. changes made to existing CJA membership and functions); *Option B*: local authority model (i.e. local authorities assume more responsibility for the strategic planning, design and delivery of justice services in their own area); or *Option C*: single service model (i.e. a new social-work-led national service). The consultation closed in April 2013. Analysis of responses revealed no consensus between stakeholders. This resulted in renewed efforts by the Scottish Government, in partnership with stakeholders this time, to develop an alternative: *Option D*. This new proposal put forward that strategic planning and delivery of services is done by ‘local justice partners’, and that a new national agency be created with responsibilities for providing national, professional and strategic leadership for community justice in Scotland. Further consultation on

the detail of this new option followed from April to July 2014. The Scottish Government's response to this short period of consultation formed the basis of draft legislation – The Community Justice (Scotland) Bill – which was laid before the Scottish Parliament in May 2015. This Bill received royal assent on 21st March 2016, thus providing the legislative basis for a new model for community justice in Scotland. What followed was the creation of a national non-departmental public body: Community Justice Scotland; the publication of a National Strategy for Community Justice (2016); and the publication a national Outcomes, Performance and Improvement Framework for Community Justice (2016). This new model for community justice in Scotland was formally launched in 2017. Indeed, complimenting these recent developments, the Scottish Government are currently reviewing the *National Outcomes & Standards for Social Work Services in the Criminal Justice System* (2010) and associated *Community Payback Orders Practice Guidance* (2011) (discussed in more detail later).

3. Legislative basis of the probation system

3.1 Legislative basis

The Scottish criminal system is based on common law and statute, and although crimes are technically breaches of common law, and offences technically breaches of legal statute, the system operates a one-track system in which the Crown Office and Procurator Fiscal Service decides whether or not to proceed with prosecution. The legal framework for justice social work services in the criminal justice system in Scotland is located within a wide range of legislation; however, there is little or no evidence of European Probation Rules (EPR) having any influence on the design and implementation of statutory functions. Nevertheless, the underpinning principles and dimensions of best practice found within the EPR's are similar to those exercised in Scotland. Where possible, we highlight where aspects of Scottish legislation, policy and practice align with EPR's throughout this chapter.

The **Social Work (Scotland) Act 1968** is primary legislation underpinning the provision of all statutory social work services in Scotland. Section 27 of the 1968 Act requires every local authority to provide a range of justice services, including the supervision of, and the provision of advice, guidance and assistance to, those made subject to community sanctions and measures from a Scottish court. This extends to those incarcerated or detained, and to those on release from prison or detention. The Act also empowers central government to make funds available to local authorities for the provision of these services within prison and community settings. In many ways, the 1968 Act aligns with *Rule 8* of the EPR, where roles, responsibilities and functions of probation are defined by national law.

The **Criminal Procedure (Scotland) Act 1995** provides the main legislative framework for the criminal justice system in Scotland. The Act has been amended by subsequent legislation - most notably by the **Criminal Justice Licensing (Scotland) Act 2010**. The 2010 Act introduced community payback orders to replace probation, community service, supervised attendance, and community reparation orders from 1st February 2011. Among a number of revisions to

community sentences, the 2010 Act provided a new framework for supervision, review and breach of community-based sanctions.

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. The Act has been amended by subsequent legislation, most notably by the **Criminal Justice (Scotland) Act 2003**. The 2003 Act introduced Risk Assessment Orders and Order of Lifelong Restriction, and also provides the legislative basis for introduction of the Risk Management Authority⁴.

The **Management of Offenders etc. (Scotland) Act 2005** provides the framework for Multi-Agency Public Protection Arrangements (MAPPA), as well as provision for Community Justice Authorities (discussed earlier).

The **Custodial Sentences and Weapons (Scotland) Act 2007** introduced changes to the system of prison throughcare, including the removal of automatic early release.

The **Mental Health (Care and Treatment) (Scotland) Act 2003** contains provisions in respect of mentally disordered offenders.

More recently, the **Community Justice (Scotland) Act 2016** provides the framework for a new model of community justice in Scotland (discussed below).

3.2 Mission and mission statement

In 2017, the Scottish Government published *Justice in Scotland: vision and priorities*. This document set out the Scottish Government's plan to meet a broader vision of Scotland as a '*just, safe and resilient*' country. It presents four key outcomes:

- We live in safe, cohesive and resilient communities.
- Prevention and early intervention improve wellbeing and life chances.
- Our system and interventions are proportionate, fair and effective.
- We deliver person-centred, modern and affordable public services.

Among a range of priorities, the Scottish Government states intent to address a number of areas:

- We will enable our communities to be safe and supportive, where individuals exercise their rights and responsibilities
- We will modernise civil and criminal law and the justice system to meet the needs of people in Scotland in the 21st Century
- We will work with others to improve health and wellbeing in justice

⁴ Established in 2005, the Risk Management Authority is an executive non-departmental public body of the Scottish Government with responsibility for setting standards, issuing guidance, and accrediting risk assessment tools.

- settings, focusing on mental health and substance use
- We will work to quickly identify offenders and ensure responses are proportionate, just, effective and promote rehabilitation
- We will improve the experience of victims and witnesses, minimising court attendance and supporting them to give best evidence
- We will use prison only where necessary to address offending or to protect public safety, focusing on recovery and reintegration

The *vision and priorities* document was prepared for all parties involved in civil, criminal and administrative justice in Scotland. It attempts to frame a shared approach to justice in Scotland, with agencies working in partnership meet policy objectives. Key to the vision is recognising that responsibility for criminal justice is not held by any single agency, but that collective efforts are required to achieve shared outcomes. Community justice services have a crucial part to play in the Scottish Government's vision of a 'just, safe and resilient' Scotland.

A new model for community justice in Scotland came into effect on the 1st April 2017 following a lengthy period of consultation from 2013 to 2016. Underpinned by new legislation (the Community Justice (Scotland) Act 2016), a new national agency – Community Justice Scotland (CJS) – was established as a non-departmental public body with a broad remit to provide leadership and improved outcomes for community justice across the country. The vision and aims of CJS include:

- Providing leadership, training and insight to support community justice partners prevent offending and reduce the number of future victims.
- Identifying worldwide expertise, best practice and opportunities for commissioning, and introduce fresh ideas which inspire innovation and change.
- Changing the conversation about community justice and prevention of offending, shift attitudes and increase understanding.
- Working with partners and driving change by identifying improvements and challenges in the community justice system.

Key functions of CJS are prescribed in Section 4 of the Community Justice (Scotland) Act 2016:

- Promoting the national strategy (discussed below) in relation to community justice.
- Monitoring, promoting and supporting improvement in, and keeping the Scottish Ministers informed of, performance in relation to the provision of community justice (particularly performance in relation to the achievement of the nationally determined outcomes).
- Promoting and supporting improvement in the quality and range of

community justice and the effective use of the facilities, people and other resources available for community justice.

- Promoting public awareness of benefits arising from persons who are convicted of offences being sentenced to community disposals rather than imprisonment or detention in penal institutions and from managing and supporting persons with a view to them not offending in the future or, if that is not realistic, reducing future offending by them.

A key task of CJS is to promote the Scottish Government's *National Strategy for Community Justice* (2016). The vision of this strategy is to prevent and reduce further offending by addressing underlying causes, whilst safely and effectively managing and supporting those who have committed offences to 'reintegrate' into the community. This aligns with *Rule 1* of the EPR in that agencies are tasked with promoting social inclusion and contributing to the fair administration of justice. The Scottish Government intends to achieve this by increasing the use of community-based interventions and reducing the use of short-term custodial sentences. The Strategy incorporates a range of principles to underpin this work:

- People must be held to account for their offences, in a way that recognises the impact on victims of crime and is mindful of risks to the public, while being proportionate and effective in preventing and reducing further offending.
- Re-integrating those who have committed offences into the community, and helping them to realise their potential, will create a safer and fairer society for all.
- Every intervention should maximize opportunities for preventing and reducing offending as early as possible, before problems escalate. Community justice outcomes cannot be improved by one stakeholder alone. We must work in partnership to address these complex issues.
- Informed communities who participate in community justice will lead to more effective services and policies with greater legitimacy.
- High quality, person-centred and collaborative services should be available to address the needs of those who have committed offences, their families, and victims of crime.

The National Strategy for Community Justice (2016) also provides - for the first time in Scotland - a definition of 'community justice':

'The collection of individuals, agencies and services that work together to support, manage and supervise people who have committed offences, from the point of arrest, through prosecution, community disposal or custody and alternatives to these, until they are reintegrated into the community. Local communities and the third sector are a vital part of this process which aims to prevent and reduce further offending and the harm that it causes, to promote desistance, social inclusion, and citizenship.'

This definition aligns with *Rule 12* of the EPR in that probation services will work in partnership with other agencies and local communities to promote social inclusion and to co-ordinate inter-agency efforts to meet the complex needs of offenders.

The 2016 strategy also highlights four key priorities for community justice in Scotland:

1. **Improved community understanding and participation:** this section is focused on increasing awareness of community justice issues to improve understanding and reduce stigma; as well as strengthening participation in the planning, delivery and evaluation of community justice services and policy.
2. **Strategic planning and partnership working:** the new model for community justice requires a wide range of statutory and non-statutory partners to work together to improve community justice outcomes. This section of the strategy focuses on how to ensure these partners work together effectively, that there is a strong leadership at national and local level, resources are used strategically, and that there is a well-trained and effective community justice workforce.
3. **Effective use of evidence-based interventions:** this section recommends improvement actions to ensure the delivery of effective, evidence-based interventions at all appropriate points in the community justice system, as well as adopting a person-centred approach, tailored to meet the differing demands of specific groups and focused on getting people into support.
4. **Equal access to services:** this section is focused on ways to make equal access to services a reality and to ensure that people who have committed offences and their families have equal access to the services that will help them to desist from offending such as health, housing and welfare.

Indeed, to help achieve this vision, the Scottish Government produced a *Community Justice Outcomes, Performance and Improvement Framework* (2016). This document was designed to guide and support 'statutory partners' (see below) in their efforts to address the priorities expressed in the National Strategy. It provides a quality statement for community justice that combines three *quality ambitions* with three *quality principles* (below).

Quality ambitions:

- Every person with lived experience of community justice has a positive story to tell of support for their desistance or integration into the community.
- All partners work together in delivering improved community justice outcomes to achieve lasting change across Scotland.
- Interventions have a sound evidence base and are proportionate to the need to prevent and reduce further offending and protect the public.

Quality principles:

- **Connected:** Services will be designed and delivered at a local level through partnership with the community and with people with lived experience, receiving advice and guidance from the national level as appropriate. People at different stages of the community justice pathway will, wherever possible, remain connected with existing services they use and with their communities, recognising that individuals will increase resilience and, wherever possible, move on from being supported by specialist services.
- **Person centred:** People will receive an individualised approach to identify and help address the circumstances that may lead to further offending and to support their desistance. Services will be delivered free from stigma and will be accompanied by the provision of appropriate information.
- **Effective:** Ambitious, collaborative methods will be championed to drive the improvement and development of services, where resources are used innovatively and efficiently. Services will be outcome-focused and based upon evidence of what works. A strategic approach will be taken to planning, commissioning and delivery so that activities undertaken will align with desired outcomes for community justice and all partners understand the contribution they have to make.

Central to the Scottish Government's vision for community justice is to adopt a community planning partnership approach and place duties on community justice partners (see below) to engage in local strategic planning and be accountable for this. Collaboration, partnership-working, innovation and outcome-focused practice appear to underpin the current model of community justice. The defined set of statutory partners include:

- Chief Constable of Police Scotland
- Health Boards
- Integration Joint Boards for Health and Social Care
- Local Authorities
- Scottish Courts and Tribunals Service
- Scottish Fire and Rescue Service
- Scottish Ministers (i.e. Scottish Prison Service, Crown Office and Procurator Fiscal Service)
- Skills Development Scotland

The current model for community justice in Scotland will be reviewed in five years (i.e. around 2021).

3.3 Crime prevention

In principle, the location of justice services as part of local authority provision underscores a general role in crime prevention. In practice however, it plays a

more indirect role in primary prevention. Most activity in justice social work is centred on secondary and tertiary prevention.

Primary prevention is not a central plank of the Community Justice (Scotland) Act 2016, as it requires a level of action and focus at population level. This includes addressing a wide range of social issues, such as poverty, unemployment, homelessness, substance misuse, gender-based violence and discrimination. Secondary prevention involves working with people deemed at risk of offending – usually through voluntary schemes, such as diversion from prosecution (discussed later). This type of work allows people to engage with justice services to help address criminogenic needs. Tertiary prevention aims to address recidivism among ‘designated persons’ (defined in the 2016 Act as anyone from the age of 16 who has committed an offence) by addressing specific factors linked to offending behaviour, such as substance misuse. However, Community Justice Scotland – in their corporate plan for 2017-2020⁵ – recognise that prevention should weave through all stages of the criminal justice process from primary to tertiary. They suggest that agencies should work on clear prevention at the primary stage (e.g. through early years education), reducing prevalence at the secondary stage amongst those already in the system (e.g. through diversion), and lastly, aiming for better outcomes for those at the post-sentence tertiary stage (e.g. by focusing on rehabilitation, desistance and reintegration). In some ways this approach aligns with *Rule 98* of the EPR where the experience of probation agencies should be used in helping to develop crime reduction strategies by making use of joint interventions and partnerships.

The Scottish Government have a number of current initiatives aimed towards crime prevention and community safety across a range of areas. These include:

- human trafficking
- serious organised crime
- violence against women and girls
- violence and knife crime
- hate crime
- the sharing of intimate images or video without consent
- cyber crime
- sexual offences committed against children

In helping to meet broader policy objectives on crime prevention and community safety – namely creating safer, just and more resilient communities - the Scottish Government set out its strategy for doing so in *Justice in Scotland: vision and priorities* (2017 to 2020). The Scottish Government are also keen to stress that root causes of crime (largely referred to as poverty and inequality) must be addressed at the same time. The *Fairer Scotland Action Plan*⁶ was published in 2016 – a document that provides fifty actions to address poverty, inequality, and issues of fairness and social inclusion.

⁵ <https://communityjustice.scot/wp-content/uploads/2018/01/CJS-Corporate-Plan-2017-2020-website.pdf>

⁶ <https://www.gov.scot/publications/fairer-scotland-action-plan/>

3.4 Victim assistance

Justice social work, on the whole, operate on behalf of victims rather than *with* victims in Scotland. Direct services to victims are provided by voluntary organisations, such as Victim Support Scotland, and statutory organisations, such as the Procurator Fiscal. The latter provides a Victim Information and Advice service (VIA) to child victims (of all crimes), and adult victims of crime in cases of domestic abuse, hate crime, sexual crime, or where it is likely that a case will go to trial with a jury. 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, and securing greater participation for victims in the criminal justice process. However, a number of developments have occurred since then.

In November 2004, the Victim Notification Scheme was launched. This is a statutory scheme where victims of offenders (specifically those sentenced for serious crimes and to a sentence of four years or more) now have the right to receive information about a person's progress within prison and details about eventual release. In 2008, this scheme was extended to victims of those sentenced to 18 months or more, and the Victims' Rights (Scotland) Regulations (2015) made provision in certain cases for those sentenced to fewer than 18 months. Indeed, to improve the overall experience of victims and witnesses of crimes in Scotland, and to provide a legislative basis for victims' rights in particular, a Bill was introduced and passed by the Scottish Parliament in 2013. This became the Victims and Witnesses (Scotland) Act 2014. This was followed by a *Victims' Code for Scotland* – published by the Scottish Government in 2015. This document sets out Victims' rights and standards expected of all agencies that work directly with victims during all stages of the criminal justice process. More recently (in October 2018), the Cabinet Secretary for Justice announced that a victims' taskforce will be established to improve support, advice and information for victims of crime in Scotland. The taskforce will be made up of senior figures from justice agencies, the legal profession, academia and the voluntary sector. It will be co-chaired by the Cabinet Secretary for Justice and the Lord Advocate. Whilst not under the direct auspice of probation services, Scotland's approach to victims' assistance aligns with *Rule 95* of the EPR where victims are informed about decisions made on sanctioning and progress in criminal cases.

3.5 Volunteers involvement

Whilst there is no national strategy for volunteers in criminal justice services in Scotland, a number of agencies provide opportunities for people to contribute where necessary. Examples include prison visit centres, victim support, family support services, youth projects and prison throughcare support. In most cases, volunteers do not play a part in the implementation of community sanctions, as this is typically reserved for statutory services. Most volunteers are based in third sector organisations who work in partnership with criminal justice agencies. Most receive training and supervision from paid staff. Indeed, whilst not volunteering directly with justice social work, it could be argued that volunteers do support the work of staff by providing another level of support for offenders in many cases. To some extent this would align with *Rule 34* of the EPR in that some volunteers may be involved in aspects of probation work.

4. The organisation of probation services

4.1 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 community justice 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 core services. The creation of Community Justice Scotland (CJS) under a new model for community justice (discussed earlier) has brought new structures of accountability and quality assurance. Community Justice Scotland is accountable to Scottish Ministers for policy delivery, compliance with statutory duties, and performance against agreed strategic objectives. It is known as a 'body corporate', i.e. established by government and subject to rules of public appointment where ministers appoint a chair and members of a board. The first chief executive of CJS was appointed by Scottish Ministers in 2016, and will report directly to them. CJS provides national, professional and strategic leadership for community justice services in Scotland, as well as promoting innovation, learning and development, and also providing assurance to Scottish Ministers and to the Convention of Scottish Local Authorities (COSLA) on the delivery of outcomes. Scottish Ministers will hold members of CJS to account for the delivery of its responsibilities, and will hold powers of direction over the organisation as a whole. Again, it is important to note from the outset that European Probation Rules have had little or no influence over the organisation of probation services in Scotland. However, organisational aspects do align with some Rules, and we will highlight these in the forthcoming sections.

As discussed earlier, there is a duty placed on statutory partners to become involved in the planning, delivery and reporting of community justice outcomes in their area. There is an expectation that planning will include input from members of the public in each local authority area, and the administration of planning and reporting will be the responsibility of community justice coordinators in each respective partnership. It should be stressed that no statutory partner is accountable to CJS for the operational delivery of their own services (each partner will have their own operational management responsibilities). However, CJS will review each local authority *Community Justice Outcomes Improvement Plan*⁷ and annual report. CJS will also benchmark progress made by community justice stakeholders across Scotland and publish its own annual report on progress overall. CJS will have powers to direct community justice partners to publish CJS assessments of their performance, and to notify CJS of action taken to deliver improvements.

Section 13 of the Local Government in Scotland Act 2003 places a duty on local authorities to 'make arrangements for the reporting to the public of the outcome of the performance of its functions'. The Community Empowerment (Scotland) Act 2015 helped to strengthen the role of Community Planning Partnerships (CPPs) in the discharge of this particular duty in relation to criminal justice services. CPPs and community justice partners must consult each other when creating an 'outcomes plan' for their area. All plans must align with national

⁷ <http://www.ccpscotland.org/cjvsf/hot-topics/community-justice-outcomes-improvement-plans-cjoips/>

outcomes fixed by the Scottish Government in its *National Performance Framework* (2018).

4.2 Internal organisation

There are 32 local authorities in Scotland, and each has its own operational arrangements for delivering statutory social work services. Each local authority has a Chief Social Work Officer with strategic and operational responsibilities. Section 3 of the Social Work (Scotland) Act 1968 requires local authorities to appoint a Chief Social Work Officer for the purposes of listed social work functions under Section 5(1b). These include matters relating to corporate parenting, child protection, adult protection and the management of high risk offenders. Some authorities have a specialist head of service with responsibility for justice social work, whilst others have heads with responsibilities for more than one specialism (such as childcare and justice together). Heads of service are generally responsible to either a Chief Social Work Officer or other local authority senior officer who, in turn, are accountable, through each authority's Chief Executive, to their locally elected council.

Justice social work services also sit within or alongside Health and Social Care Partnerships (HSCPs) created under the Public Bodies (Joint Working) (Scotland) Act 2014. Where a health board and a local authority agree to put in place a *body corporate* model, an *Integration Joint Board* (IJB) will be established. The integration of health and social care has been a major theme pursued by the Scottish Government in the last decade. Local authorities and health boards must now work together under the IJB model to meet local needs. Indeed, while most justice social work services are still located within traditional local authority structures, others are subject to different frameworks of governance and within some HSCPs. Statutory partners (local authorities and health boards in this case) can decide whether to include services such as justice or childcare in their integrated models.

4.2.1 Probation workers

Community-based justice social work teams consist mainly of professionally qualified social workers supervised by team leaders (sometimes called senior social workers). Other types of staff assist in delivering justice services, such as social work assistants or social care officers who often supervise 'unpaid work' requirements of community payback orders (discussed later). These staff are not qualified social workers, but some have social care qualifications (typically Higher National Certificates). All social workers must hold a degree or post-graduate qualification that meets the requirements of the workforce regulator (the Scottish Social Services Council) to practice in Scotland. In line with *Rule 22* of the EPR, all registered social services staff in Scotland must adhere to codes of practice⁸ which set out a range of behaviours and values that workers are expected to demonstrate. These include integrity, accountability, promoting rights, etc. Employers are also bound by codes of practice⁹ which state that they must recruit

⁸ See: <https://www.sssc.uk.com/knowledgebase/article/KA-02412/en-us>

⁹ See: <https://www.sssc.uk.com/knowledgebase/article/KA-02412/en-us>

people with ‘appropriate attitudes and values’ (SSSC, 2016: p6).

Latest official workforce data for Scotland¹⁰ suggests that 66,700 staff are employed by local authority social work services (SSSC, 2019). Around 5864 staff are recorded as qualified social workers. Around 2230 staff work in justice social work, but only 989 are recorded as qualified *criminal justice* social workers. There is no national data on management or executive staff, but either could be absorbed in qualified or non-qualified categories. It should be stressed that administrative staff associated with the provision of justice services are not reflected in these figures. There is also no official source of aggregate data in Scotland on other types of staff (and volunteers) working in third sector criminal justice organisations.

4.2.2 Education, training requirements and opportunities

Professionally qualified staff in justice social work services are required to have an undergraduate degree or postgraduate qualification in social work. All social workers are required to be registered with the Scottish Social Services Council (SSSC), who also regulate the education and post-qualification training of all social work staff. The social work degree and post-graduate diploma are 'general practice' awards, and both prepare staff for work in a range of social work settings, including children and families, community care and criminal justice services. This type of generic training allows staff to work in different areas of social work across their career.

At the present time in Scotland there are no SSSC-recognised post-qualifying courses for justice social work staff. At the moment, qualified social workers have just two accredited options for professional development: Mental Health Officers Award (for those seeking to specialise in the field of mental health) or Practice Learning Qualification (for those wishing to become practice teachers – responsible for supervising social work students on practice placements). The majority of training for justice social work staff is now delivered by learning and development officers under the umbrella of Community Justice Scotland's *National Hub for Innovation, Learning and Development*¹¹. Other training is offered in-house by local authority training officers or externally by bodies such as the Risk Management Authority (who provide national training on working with sex offenders, risk management of sex offenders / violent offenders, and risk assessment tools). This mix of provision aligns with *Rules 23, 24, 25 and 27* of the EPR where a range of training is provided to all staff, some of whom will engage in specialist work (e.g. domestic violence cases, sex offenders, high-risk violent offenders, etc.)

4.2.3 Other organisations involved in probation work

A range of voluntary sector organisations work in partnership with local authority justice social work teams to provide services which include temporary accommodation, specialist drug and alcohol interventions, mental health services, and employment support. A mixed provision of third sector support

¹⁰ <https://data.sssc.uk.com/images/WDR/WDR2018.pdf>

¹¹ https://communityjustice.scot/reports_and_stats/learning-development-innovation-strategy-2017-2020/

comes from large national organisations, regional projects, social enterprises, small local initiatives, community organisations, and recognised charities¹². Many rely on grants from national bodies and charities, and some provide services on behalf of local authorities as part of service level agreements. These arrangements align with *Rule 37* of the EPR where probation services are expected to work in co-operation with other agencies to help meet statutory duties and to help deliver effective interventions.

Some criminal justice staff (mostly senior management in local authority justice social work, but including senior management from third sector agencies) are members of Social Work Scotland (SWS). SWS is a professional leadership body for social work and social care professions. SWS facilitate a justice committee who meet bi-monthly to discuss operational and strategic matters relating to the delivery of criminal justice services. However, it is important to note that SWS and the justice committee have no statutory powers over any local authority or third sector activity. Indeed, like Community Justice Scotland, the SWS justice committee also aims to offer strategic leadership to the community justice sector as a whole.

4.3 Probation, transfers and offenders abroad

Two factors create complexity and uncertainty around transfer and mutual recognition of cases involving Scotland: first, Scotland's position as a separate criminal jurisdiction and devolved power within the UK, and second - the UK's ongoing exit from the EU.

Justice social work provides the same services to foreign national offenders as to those who are native to Scotland, including where necessary services tailored to specific nationality communities, in keeping with *Rule 63* of the EPR. Justice social work would not usually provide services to Scottish nationals detained or sentenced abroad; although a Scottish national returning from detention elsewhere would have the same right to seek support voluntarily as anyone else under Section 27(1A) of the 1968 Social Work (Scotland) Act. This is aligned - to a limited extent - with *Rule 65* of the EPR.

Transfer of prisoners under Council Framework Decision 2008/909 is in place in Scotland. The Scottish Prison Service (SPS), rather than justice social work, is the competent authority for the transfer process. Prison officers may travel abroad to retrieve Scottish nationals and escort them back to Scotland. Mutual recognition of pre-trial supervision under Council Framework Decision 2008/829 is also in place¹³. In Scotland, this would be provided by justice social work. It is not known how many cases annually require mutual recognition in either 'direction' between Scotland and EU countries – in fact, Scotland does not appear to gather data on the number of foreign nationals under supervision.¹⁴ Mutual recognition of probation under Council Framework Decision 2008/947 is provided for in Scots law under the 2010 Criminal Justice and Licensing (Scotland) Act (Section 27). However, the UK has not implemented this Framework Decision at the time of

¹² <http://www.ccpscotland.org/cjvsf/cjvsf/cjvsf-members/>

¹³ Mutual Recognition of Supervision Measures in the European Union (Scotland) Regulations 2014 (SSI2014/337)

¹⁴ See <https://rm.coe.int/foreign-offenders-in-prison-and-on-probation-in-europe/168099019b> p73

writing and is now unlikely to do so, leaving the legal picture (and Scotland's compliance with *Rule 64* of the EPR) unclear.

Transfer to other jurisdictions within the UK however, is more common¹⁵. The community payback order is held to have the same effect as a corresponding order in other UK jurisdictions (see the chapters of England & Wales and Northern Ireland). Reciprocal arrangements are also in place allowing Scottish authorities to supervise those sentenced to community orders in the other UK jurisdictions. In most respects, the arrangement functions as though the court in the new country of residence had imposed it, but some powers (particularly the power to discharge or revoke the order) are retained by the original Scottish court. However, Scottish local authorities are not *obliged* to accept transfers unless the sentenced person lived in that local authority area before their conviction. In all cases, transfers must be carried out in a way that ensures continuity and equivalence as far as possible. The supervising social worker or unpaid work case manager must be informed of any change of address.¹⁶

5. Different stages of the criminal justice process

There are two methods of procedure for the prosecution of crime in Scotland, known as solemn and summary procedure. Solemn procedure is reserved for more serious crimes and involves trial by jury. Summary procedure is reserved for less serious crimes and offences, with guilt determined by a Sheriff or a Justice of the Peace after evidence is presented. Again, as emphasized earlier with other dimensions of the Scottish system, there is no evidence here of the European Probation Rules having any influence over the different stages of the criminal justice process. Nevertheless, we will highlight where aspects do align.

Scotland has three levels of criminal court: High, Sheriff and Justice of the Peace. The High Court hears the most serious cases – always using solemn procedure. There are no limits set on the length of prison sentence, or the amount of fine decided by the High Court. The Sheriff Court hears both solemn and summary cases; maximum powers include up to five years custody on solemn procedure (or a fine of any amount), and twelve months custody on summary procedure (or a fine up to £10,000). The Justice of the Peace Court deals with minor summary cases, and has maximum powers of 60 days imprisonment, or maximum fine of £2500.

Responsibility for raising prosecutions in Scotland rests with the Crown Office and Procurator Fiscal Service (COPFS). The Lord Advocate or (mostly) their advocate deputes present evidence for the prosecution in High Court cases. The Procurator Fiscal or (mostly) fiscal deputes present evidence for the prosecution in Sheriff and Justice of the Peace courts. Police Scotland report crimes to COPFS, who then decide whether or not to proceed with criminal prosecution. It is for the Procurator Fiscal or Lord Advocate to decide whether solemn or summary procedure is used in criminal court proceedings. The Procurator Fiscal or the Lord

¹⁵ Schedule 13 of the 1995 Criminal Procedure (Scotland) Act (inserted by the 2010 Criminal Justice and Licensing (Scotland) Act)

¹⁶ The authors would like to thank Eve Mullins for her insights on these issues.

Advocate also has the discretion to take no action, issue a warning, impose a fine, impose a work order (of between 10-50 hours), impose a fixed penalty (only for certain motoring offences), or divert the case to social work.

5.1 Pre-trial / remand / trial stage

Table 1. *Sanctioning system and probation involvement in the pre-trial/trial stage*

Sanctions/Measures/Penalties/Conditions attached to a conditional decision or sentence	Provided in legislation?	Probation service involvement?	Main characteristics of the probation activity
Unconditional waiver by the public prosecutor	X		
Conditional waiver by the public prosecutor	X	X	Offenders may be offered 'Diversion', where the prosecutor refers the offender to Justice Social Work for assessment and intervention. Prosecutors may also propose a 'Fiscal Work Offer' of between 10-50 hours of unpaid work supervised by Justice Social Work.
Conditional suspension of the pre-trial/remand detention	X	X	The court may impose a 'Structured Deferred Sentence' where the offender is supervised by Justice Social Work for a short period before returning to court for sentence.
Pre-trial/remand detention	X	X	Some offenders may be remanded in custody for a Criminal Justice Social Work Report to be completed.
Police custody	X		
Bail	X	X	Some offenders may be bailed for a Criminal Justice Social Work Report to be completed. Court-based Justice Social Work staff may conduct address checks, as well as assessments for 'bail supervision'. The court may impose this for a short period before trial on condition that the

			offender meets with a Bail Officer (a member of Justice Social Work staff) on a weekly basis.
Caution	X		
Surety			
House arrest			
Electronic monitoring	X	X	Justice Social Work staff may conduct assessments for electronic monitoring as part of a Criminal Justice Social Work Report. However, monitoring of offenders is undertaken by a private company in Scotland.
Community service	X	X	Justice Social Work staff will assess offender suitability for unpaid work (usually as part of a Criminal Justice Social Work Report). If unpaid work is imposed by the court, Justice Social Work staff will arrange and manage work placements in the community.
Treatment order	X	X	As part of a Community Payback Order, the court may impose requirements which include provision for mental health intervention and treatment for drug & alcohol problems. Justice Social Work staff would typically provide supervision whilst monitoring offender progress in treatment. The court may also consider a Drug Treatment and Testing Order, which is supervised by Justice Social Work and involves regular testing and court reviews of progress.
Training/learning order	X	X	As part of a Community Payback Order, the court may impose a programme requirement, where an offender is typically ordered to attend an accredited intervention under supervision from Justice Social Work.
Drug/alcohol treatment program	X	X	See 'Treatment order' above.

Compensation to the victim	X		
Mediation	X	X	Depending on local arrangements within their own authority, some Justice Social Work staff may be involved in restorative justice projects.
Semi-detention			
Attending a day centre			
Liberty under judicial control	X	X	See 'Conditional suspension' above.
Interdiction to leave the country	X		
Interdiction to enter different cities/places	X		
Interdiction to carry out different activities	X	X	See 'Training/Learning order' above.
Interdiction to contact certain persons	X		
Psychiatric treatment	X	X	See 'Treatment order' above.
Deferment of sentence	X	X	See 'Conditional suspension' above.
Fine	X		
Other financial sanctions	X		

Diversion from Prosecution

Diversion from prosecution under Section 27 of the Social Work (Scotland) Act 1968 generally involves a referral from the procurator fiscal of an accused to justice 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 conditional diversion (deferred method) based on the satisfactory outcome of an agreement made between the procurator fiscal and the accused. In some cases, the procurator fiscal may impose a Fiscal Work Order of between 10-50 hours of unpaid work. In all cases however, the procurator fiscal reserves the right to proceed with prosecution if necessary. Over the last four decades, procurators fiscal have experimented with social work diversion schemes for a number of different service user groups, including young adult offenders (aged 16-21), mentally disordered offenders, those with drug and alcohol problems, and for cases where reparation and mediation is thought to be

most appropriate. Diversion schemes are currently available in most local authority areas in Scotland; although at the time of writing, diversionary measures are currently undergoing review, as the number of cases progressing through different schemes are thought to be inconsistent across the country.

Where appropriate, Early and Effective Intervention (EEI)¹⁷ is used with children and young people under the age of 18. EEI is a national framework for working with young people between the ages of 8 – 17 years who have been involved in offending behaviour. It was introduced in 2008 through *Preventing Offending by Young People: A Framework for Action*¹⁸. The purpose of EEI is to divert young people away from statutory measures, and to provide timely and appropriate interventions to address issues relating to offending behaviour. In practice, children and young people are diverted from referral to the Scottish Children's Reporter Administration (SCRA) and subsequently referred to EEI schemes throughout Scotland.

Bail Information and supervision

Three main types of bail service are available to courts under Section 27 of the Social Work (Scotland) Act 1968 (see below). These are mostly delivered by social work assistants, known as bail officers, sometimes based in court settings. In practice however, bail services require significant resourcing, and therefore tend to be limited to larger criminal courts in Scotland.

- **Bail Information:** schemes which 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 custody prior to a court appearance. This service is mostly used for domestic cases where the court often requires an alternative bail address for the accused. Other examples include the provision of information on progress made by the accused on existing court orders, or information about an accused who is known to mental health services – in some cases appearing in court as a result of behaviour relating to an existing mental health disorder.
- **Bail Accommodation:** some justice services provide assistance in finding suitable accommodation aimed at decreasing the rate of custodial remand. This typically involves a referral to homeless and housing services. In some cases, courts may attach a condition of residence to a bail order.
- **Bail supervision:** in cases where bail is opposed by the procurator fiscal, the court may – instead of remanding a person in custody – impose supervision as a condition of bail (if the person is assessed by bail officers as being suitable). Justice social work services would typically monitor and supervise the person for the duration of bail until the conclusion of a trial, and up to the point of sentencing. A range of support is offered to each bailee depending on circumstances and levels of need. Priority is given to all female accused and all males under the age of 21

¹⁷ <https://www2.gov.scot/Publications/2015/03/6818/1>

¹⁸ <https://www2.gov.scot/Publications/2008/06/17093513/0>

5.1.1 Pre-trial / pre-sentence reports

Reports are made available to criminal courts, children's hearing system, and procurator fiscal under Section 27(1)(a), (aa) & (ab) of the Social Work (Scotland) Act 1968. Each sub-section is dealt with below:

- Reports under S.27(1)(a) are known as Criminal Justice Social Work Reports (CJSWR), and provide criminal courts with information about social background, circumstances of each offence, analysis of offending behaviour, and risk assessment (more detail is provided below).
- Reports under S.27(1)(aa) are made available, in certain circumstances, to any children's hearing for young people aged between 16 and 17 years. In Scotland, the definition of a 'child' is a person below the age of 16. The majority of those aged between 16 and 17 are legally defined as adults; however, a young person who is aged between 16 and 17, and subject to a Compulsory Supervision Order, is legally defined as a child for the purposes of criminal procedure. This means that a sheriff must, or a judge may, request advice from a children's hearing before the disposal of a case in the Sheriff or High Court. In some cases, a sheriff or judge may remit the matter back to the children's hearing for disposal (Criminal Procedure (Scotland) Act 1995, S.49(3)). Other young people aged between 16 and 17 years and 6 months, but not subject to a Compulsory Supervision Order, may also be remitted to a children's hearing for advice and disposal – should the court determine this to be the most appropriate way to deal with the case (Criminal Procedure (Scotland) Act 1995, S.49(1)).
- Reports under S.27(1)(ab) are made available to the Lord Advocate or any procurator fiscal depute in relation to anyone charged with an offence. These reports often assess a person's suitability for schemes such as diversion from prosecution. Other reports include review and completion reports on those subject to schemes led by the procurator fiscal.

Criminal Justice Social Work Reports (CJSWR)

Under S.203(1) of the Criminal Procedure (Scotland) Act 1995, where a person specified in section 27(1)(b)(i) to (vi) of the Social Work (Scotland) Act 1968 commits an offence, the court shall not dispose of the case without obtaining a report from the local authority on the circumstances of the offence and the character of the offender. Reports must be requested in cases where a person is facing custody for the first time; where anyone under the age of 21 is facing detention; before imposing a Community Payback Order with a supervision requirement or level 2 unpaid work requirement (over 100 hours); and before imposing a Drug Treatment and Testing Order. A total of 28,400 reports were provided to Scottish criminal courts in 2017-18¹⁹.

These reports, known as Criminal Justice Social Work Reports (CJSWRs), were introduced in February 2011 (replacing Social Enquiry Reports). The purpose of

¹⁹ <https://www.gov.scot/publications/criminal-justice-social-work-statistics-scotland-2017-18/>

a CJSWR is to assist all levels of criminal court with the sentencing process. These reports typically provide the following information:

- Analysis of offending behaviour, including previous and current matters;
- Assessment of risk in terms of pattern, nature, likelihood and seriousness²⁰.
- Analysis of personal and social circumstances;
- Assessment of criminogenic needs;
- Assessment of protective factors;
- Assessment of suitability for a range of community sanctions and measures.

*National Outcomes and Standards for Social Work Services in the Criminal Justice System: criminal justice social work reports and court-based services practice guidance*²¹ (2010) provides direction on how to complete a CJSWR for court. Annex A of this guidance provides a national reporting template to be used by all local authorities (please see Annex 2 of this chapter for a copy of this template). This was introduced following concerns about inconsistency of information provided to criminal courts across Scotland. The guidance makes clear that reports should be briefer, concise and focused.

The practice guidance on CJSWRs also directs authors to include specific information in particular circumstances. For example, if a Community Payback Order is thought to be a viable option in a particular case, the report author must provide a case management plan within the body of the report. According to guidance, ‘The plan should identify the necessary actions required in order to promote reparation to the community and/or victims, to address offending behaviour and to motivate change. The objectives within the plan should be based on SMART principles (as far as this is possible at the report stage) – Specific, Measureable, Achievable, Realistic and Time bound.’

Courts may also request same-day reports – delivered orally or written as short supplementary reports by court-based social work staff. These reports enable courts to proceed with sentencing without the need for deferment. A total of 4200 same-day reports were provided to Scottish criminal courts in 2017-18.²²

Arrangements and processes for preparation of reports align with *Rules 42, 44, 45* and *46* of the EPR. Opinions and views of the offenders are incorporated into the narrative of most reports, and all parties are provided with a copy prior to sentencing diets. As stated, reports provide detailed advice on sentencing options in each case.

Risk assessment tools

Among a range of validated risk assessment tools endorsed by the Risk Management Authority (RMA)²³, the primary risk assessment tool used by justice

²⁰ <https://www.rma.scot/standards-guidelines/frame/>

²¹ <https://www2.gov.scot/resource/doc/925/0110144.pdf>

²² <https://www.gov.scot/publications/criminal-justice-social-work-statistics-scotland-2017-18/>

²³ <http://rated.rmascotland.gov.uk/risk-tools/>

social work in Scotland is the Level of Service Case Management Inventory (LS/CMI). Since 2010, it has become a core social work assessment and case management instrument. This particular tool was developed by three Canadian psychologists: Don Andrews, James Bonta, and Stephen Wormith (see: Andrews, Bonta and Wormith, 2004). The tool itself was normed on 157,947 youth and adult offenders in North America, and 97,791 community and institutionalised adult and youth offenders in Canada. Interestingly, the tool has not been normed on a European sample, but criminal justice social workers in Scotland are nevertheless obliged to complete an LS/CMI with every CJSWR.

The tool itself was introduced across Scotland between 2010 and 2012, and is used to assess levels of risk and individual needs of service users. It follows a tiered and proportionate approach in scanning, examining and analysing risk - providing a profile of criminogenic needs and assessment of risk in terms of reconviction and harm. The screening component is used at the pre-sentence stage in the preparation of CJSWRs, and a subsequent (fuller) version is produced during the process of supervision-planning and review. 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 in the course of a particular community sanction and measure (in most cases during a Community Payback Order). The LS/CMI also informs discussions about levels of risk at multi-agency meetings (MAPPA) where public protection is central to decision making.

Other risk assessment tools used by local authority justice social workers include Risk Matrix 2000 (RM2000) and Stable and Acute 2007 (SA07). Both tools are used in cases where sexual offences have been committed. The first, RM2000, is an actuarial tool, and only predicts risk of sexual and non-sexual violent offence reconviction within a 15-year period. The second, SA07, combines actuarial and dynamic elements. The 'stable' part estimates risk of reconviction risk as a proxy measure for likelihood of reoffending. It also provides a profile of needs that may be used to inform supervision and interventions. The 'acute' part monitors critical risk factors that can signal imminent and concerning changes to levels of risk in a particular case.

In cases of domestic violence, local authority criminal justice staff can also use the Spousal Assault Risk Assessment Guide (SARA). This covers 20 items that focus on criminal history, psychosocial adjustment, spousal assault risk, and the most recent offence. It aims to assess the level of risk posed specifically by perpetrators of domestic violence, and can be used in conjunction with other risk assessment tools.

The Risk Management Authority (RMA) (an executive non-departmental public body of the Scottish Government) is responsible for accrediting risk assessment tools and providing training and guidance to frontline staff involved in the assessment and management of risk. The RMA also accredits practitioners (mainly forensic psychologists) involved in the assessment of offenders for an Order for Lifelong Restriction (OLR). This order was introduced by the Criminal Justice (Scotland) Act 2003 and is a unique type of 'order' as it is not imposed for the crime committed but for the risk that the individual is assessed to present to the public. The order requires the offender to be monitored for the rest of their life after leaving prison. It is reserved for the most serious incidents of violent and sexual

crimes. In these cases, RMA accredited professionals (and not local authority social workers) assess risk and provide the court with a risk management assessment. If an RLO is imposed, the RMA will produce a risk management plan that includes arrangements for managing risk within prison and, after further assessment, how risk should be managed in the community.

5.2 Enforcement stage

A wide range of sentencing options are made available to Scottish criminal courts (see below). However, in response to criticism about inconsistency in sentencing across Scotland, the Criminal Justice and Licensing (Scotland) Act 2010 offered powers to create an advisory non-departmental public body in Scotland that produces sentencing guidelines for use in the high court, sheriff courts and justice of the peace courts. After a lengthy period of consultation, the Scottish Sentencing Council (SSC) was eventually established by the Scottish Government in 2015. All judges, sheriffs and justices of the peace must use the guidelines produced by the SSC to inform their approach to sentencing. Any deviation from these guidelines must be explained by sentencers in open court.

Table 2. *Sanctioning system and probation involvement in the enforcement stage*

Sanctions/Measures/Penalties/Conditions attached to a conditional sentence	Provided in legislation?	Probation service involvement?	Main characteristics of the probation activity
Imprisonment	X	X	Some Justice Social Work staff are based in prisons. They work with community-based Justice Social Work staff on assessing prisoners at the pre-release stage – mostly for those who will be released on licence. Prison-based Justice Social Work staff also provide structured programme interventions to serving prisoners.
Suspended sentence	X	X	Justice Social Work staff provide support and supervision to offenders made subject to a Structured Deferred Sentence.
Conditional sentence	X	X	Justice Social Work staff provide supervision and monitoring of requirements added to a Community Payback Order.
House arrest	X	X	Electronically-monitored curfews and restrictions may be part of a Home Detention Curfew or the Restriction of Liberty Order, an

			electronically-monitored sentence similar to a house arrest. Justice Social Work are only likely to be involved with house arrest where a Restricted Movement Requirement is imposed as part of a CPO where a breach has occurred. (See Electronic Monitoring).
Electronic monitoring	X	X	Justice Social Work staff will conduct assessments of suitability, but monitoring is done by a private company.
Community service as sanction	X	X	Justice Social Work staff will conduct assessments of suitability, as well as organise and supervise offenders on community unpaid work placements. Work placement supervisors are not usually qualified social workers, however.
Semi-liberty			
Semi-detention			
Treatment order	X	X	Justice Social Work staff will conduct assessments of suitability for mental health or drug & alcohol treatment options. They may supervise and monitor progress, but they typically do not provide the treatment.
Training/learning order	X	X	Justice Social Work staff will conduct assessments of suitability and provide interventions – mostly accredited groupwork programmes.
Drug/alcohol treatment program	X	X	See ‘Treatment order’ above.
Educational measures	X	X	Justice Social Work staff may organise educational input as part of ‘other activity’ requirements of those subject to a Community Payback Order with an unpaid work requirement.
Compensation to the victim	X		
Mediation	X	X	Justice Social Work staff may provide restorative justice services, but this depends on local arrangements within each

			authority. There is no obligation to do so.
Attending a day centre			
Interdiction to leave the country	X		
Interdiction to enter different cities/places	X		
Interdiction to carry out different activities	X	X	See 'Treatment order' and 'Training/learning order' above.
Interdiction to contact certain persons	X		
Fine	X		
Day fine			
Other financial penalties	X		
In/out patient order (psychiatric treatment)	X		
Security measures			
Combined order			
Community punishment			
Conditional release / Parole	X	X	Justice Social Work staff are involved in the assessment of prisoners at the the pre-release stage, and provide support and supervision to those released on licence.
Automatic release	X	X	Offenders sentenced to more than 4 years are eligible for parole at the half-way stage. They are typically supervised by Justice Social Work staff for the remainder of their sentence. However, offenders sentenced to less than 4 years do not typically receive supervision (exceptions include those sentenced on sex offences).
Open prison	X	X	Scotland has one open prison. Prison-based Justice Social Work staff provide support, intervention and assessment services.

Table 3. *Other probation activities in the enforcement stage*

Providing support to the families of the offenders/detainees	This is typically provided by charities and other types of voluntary sector agencies. There is no obligation on statutory Justice Social Work to do so.
Coordinating volunteer prison visitors	This is managed by the Scottish Prison Service. Justice Social Work has no locus here.
Preparing offenders for (conditional) release	Justice Social Work staff are involved in the assessment of prisoners at the pre-release stage in certain circumstances (i.e. mostly those sentenced to 4 years or more).
Preparing prisoners for home leave and/or providing support during home leave	As above; however, Justice Social Work would not typically provide support during periods of home leave.
Providing support to persons that have been pardoned or amnestied	Mostly provided by charities and voluntary sector agencies. There is no obligation on Justice Social Work to provide this.
Providing advisory report with respect to amnesty or pardon	This may be provided by a range of agencies, but there is no obligation or duty placed on statutory Justice Social Work to do so.
Other tasks that are not included here.	Justice Social Work staff may provide progress reports to court if required as part of a Community Payback Order. This extends to reports for the prosecutor for those on 'diversion', and to the court for those on Structured Deferred Sentence. In all cases, Justice Social Work staff may be required to give oral updates directly to court and answer any specific questions posed.

Structured Deferred Sentence

A Structured Deferred Sentence (SDS) is regarded as a low-tariff measure that enables the provision of social work support for offenders at the stage of post-conviction, but prior to final sentencing. In practice, it is intended for people with underlying problems, such as substance misuse, mental health issue or any other difficulty that could be addressed with social work support. Section 202 of the Criminal Procedure (Scotland) Act 1995 allows for sentences to be deferred 'on such conditions as the court may determine.' This provision is mostly used for procedural purposes, such as when a person fails to present at court, or when the court requires a report before sentencing. However, it is also used to defer sentence in cases where the court determines someone would benefit from social work intervention for a short period of between 3 and 6 months. In such cases, justice social work staff provide support and intervention during this period, as well as

providing the court with a supplementary report on the progress made at the end of deferment. Indeed, if satisfactory progress is made during the course of structured deferred sentence, the court may decide to admonish the case. Alternatively, the court may impose a further period of SDS or any other sentence as appropriate. It should be noted that SDS was originally introduced as a pilot scheme to a limited number of local authorities in 2008. The scheme was never rolled out nationally, and remains restricted to authorities with adequate resources to provide such a service to their local criminal courts.

Community Payback Order (CPO)

As indicated earlier, Community Payback Orders (CPOs) were introduced in Scotland from the 1st of February 2011 as part of a package of measures to streamline and enhance community sanctions and measures made available to sentencers. The new CPO replaced probation, community service and supervised attendance orders. Section 14 of the Criminal Justice and Licensing (Scotland) Act 2010 inserted new provisions (sections 227A to 227ZN) into the Criminal Procedure (Scotland) Act 1995, which officially introduced the CPO as a new community sentence in Scotland. CPOs comprised 92% of the 19,434 community-based orders issued in 2017-18.²⁴

The CPO is underpinned by the notion of ‘paying back’. Reparation is achieved through undertaking periods of unpaid work (if imposed as a requirement of a CPO) where various activities are carried out by offenders to enhance the material conditions of local communities. Ultimately, desistance from offending is the outcome sought through structured supervision and support provided to the supervisee during the course of an order.

A CPO can be imposed on any offender over the age of 16. As with the Probation Order that preceded it, the CPO requires the offender’s consent to its requirements (except when imposed following a fine default). A further offence is not necessarily a breach of the order, unless it specifically breaches one of the requirements. In such cases, the court may impose a different sentence, including a fine, custody, or a Restriction of Liberty Order (discussed later).

When the court imposes a community-based order like a CPO, the relevant local authority has a duty to allocate the case to a supervising social worker. In all cases, the criminal justice social worker takes responsibility for a number of areas: promoting desistance by engaging with the offender; administering or ‘serving’ orders; establishing minimum frequency of contact; confirming action plans; enforcing compliance and initiating breach proceedings when required; conducting formal reviews; liaising with other professional disciplines; and completing relevant reports for court.

The court may impose any of *ten* requirements available to the court as part of a CPO (see below). The most commonly imposed requirement, appearing in 75-80% of cases, is unpaid work, either at *Level 1* (20-100 hours) or *Level 2* (101-300 hours). The average is 122 hours with just over half of unpaid work requirements

²⁴ CJSW statistics 2017-18 - <https://www.gov.scot/publications/criminal-justice-social-work-statistics-scotland-2017-18/>

being at Level 1. Around half of all CPOs have a supervision requirement, usually ranging from six to twelve months. Level 1 requirements can be imposed without a CJSWR, as can unpaid work requirements imposed in place of an unpaid fine.

The ten *requirements* available to criminal courts are:

1. Unpaid Work
2. Supervision
3. Programme
4. Conduct
5. Compensation
6. Alcohol Treatment
7. Drug Treatment
8. Mental Health Treatment
9. Residence
10. Restricted Movement

(1) Unpaid Work

A person made subject to an unpaid work requirement (UPW) may carry this out as part of a group assigned to a given project, or as an individual placement. The court may impose 20-300 hours of unpaid work - prescribed as Level 1 (20-100 hours) or Level 2 (101-300 hours). Up to 30% of a Level 1 requirement can consist of 'other activity'. In practice, this means that a proportion of hours may be used for purposeful activity other than unpaid work. This may include attendance at training, education or leisure courses. Case managers are responsible for deciding on the nature and extent of 'other activity' elements in each instance. In Level 2 cases, the maximum period of 'other activity' must not exceed 30 hours.

UPW projects may, for example, include clearing snow, removing graffiti, repairs/maintenance work to public spaces, or workshop activity producing items like tables and fences. Individual placements often include working in charity shops and residential establishments (e.g. sheltered housing for elderly people). Following recommendations from the Commission on Women Offenders Report (2012), consideration is also given to gender. Many local authorities have women-only services and specific UPW opportunities for female offenders.

Unlike other jurisdictions, people made subject to unpaid work in Scotland are not required to wear jackets or other clothing that marks them out as being subject to punishment. In general, there is relatively little public knowledge of UPW projects; although local authorities are encouraged to showcase examples of achievements here. Members of the public can suggest projects for their local authority to consider.

Unpaid work in this context is similar to community service as stated in European Probation Rules. The arrangements and processes for unpaid work in Scotland align with *Rules 47, 48, 51 and 52*. Social inclusion, skill development and the notion of 'paying back' to the community underpin the Scottish approach. Different types of work are considered to meet the diverse needs of offenders (including gender-specific projects).

(2) Supervision

Methods of intervention used in supervision vary with the type of order being supervised and, in principle, will often be tailored to the individual needs and risks associated with the offender. For the bulk of community supervision, the supervisor typically provides one-to-one contact with a focus on building relationships. This may include elements of pro-social modeling, application of motivational interviewing, counselling, cognitive behavioural inputs, skill-based approaches and, more rarely, structured family work. These aspects align with *Rules 55* and *56* of the EPR where supervision is not seen as simply a controlling task.

For CPOs, supervisors are required to develop a management plan for all cases. A draft version of the plan is usually determined at the CJSWR stage. Where a CPO with a supervision requirement is imposed, the supervising social worker should meet the person within five working days of sentence to develop and expand on this plan. This should be informed by a full LS/CMI risk assessment, which must take place within 20 working days of sentence. The case management plan should be agreed and shared with the person under supervision.

Structured groupwork and individual programmes may also feature as part of case management plans in some instances. Official accreditation for programmes at national level is provided by Scottish Advisory Panel on Offender Rehabilitation (SAPOR).

At the time of writing, SAPOR have approved the following programmes for delivery in the community:

- **Moving Forward: Making Changes (MF:MC):** a programme aimed at adult men who have committed sexual offences and who present as medium or high risk of reoffending. MFMC is delivered in community and prison settings by specially trained professionals. However, it should be noted that accreditation of this programme expired in October 2018. The programme remains in place with funding from the Scottish Government and the Scottish Prison Service, and will continue for 24 months in a ‘non-accredited’ phase. An expert advisory group was established in January 2019 to consider either replacing the programme altogether, or to consider making changes to meet accreditation standards over the next two years.
- **The Caledonian System:** an integrated approach to domestic violence which involves a two-year groupwork programme for adult men, services for partners/ex-partners and children, and an emphasis on multi-agency working. Men referred to the programme have usually been convicted of more than one domestic related offence, and would be assessed as medium or high risk of offending.

These programmes are largely based on a combination of cognitive-behavioural and social learning principles, all of which follow an ‘evidence-based’ approach in the delivery and design of programme effectiveness (also referred to as ‘programme integrity’).

(3) Programme requirement

Imposed in approximately 5% of CPOs, this requires offenders to participate in a particular programme designed to address offending behaviour. 'Programme' is defined by Section 227P(2) of the Criminal Procedure (Scotland) Act 1995 as 'a course or other planned set of activities, taking place over a period of time, and provided to individuals or groups of individuals for the purpose of addressing offending behavioural needs'. This can be a SAPOR-accredited programme (see above) or an alternative one, but it must be recommended by the supervising social worker.

(4) Conduct requirement

Appears in approximately 5-7% of CPOs. This option requires the offender to do (or refrain from doing) something specified in the requirement. This might include restrictions on visiting a particular place, or refraining from contact with a given person / group of people. Conduct requirements exist specifically to fill 'gaps' left by other requirements, and must not be imposed where another requirement could meet the same objective, e.g. a conduct requirement for attending a drug treatment programme where a drug treatment requirement could be used here instead. The use of conduct requirements has declined following a 2012 appeal court judgment (*Kirk & Hunter v Procurator Fiscal*, 2012: HCJAC 96) which required conduct requirements to be specific and, in particular, to be more than general injunctions to refrain from further offending or simply to "stay out of trouble". The Court found that such a conduct requirement would be substituting the end (desistance from offending) in place of the means (the CPO itself and community punishment in general).

(5) Compensation requirement

Imposed in approximately 3% of CPOs. These require the offender to pay compensation to the victim as a lump sum or instalments within a period of 18 months, or a period of two months less than that of the supervision requirement, whichever is shorter. Payment is monitored by the supervising case manager and non-payment triggers a breach. Compensation requirements exist independently of *compensation orders*, which are stand-alone financial penalties also available to the court, but governed by some of the same legislation (Sections 249 and 251-3 of the Criminal Procedure (Scotland) Act 1995). Like compensation orders, compensation requirements may not normally exceed £2500 if imposed by justice of the peace courts, or £10,000 if imposed under summary procedure in sheriff courts. There is no upper limit set under solemn procedure.

(6) Alcohol treatment requirement ; (7) Drug treatment requirement

Each appear in approximately 1% of CPOs. Both require the offender to participate in residential or non-residential treatments to address substance misuse. Although alcohol and drug problems are widespread among people convicted of offences in Scotland (as elsewhere), people made subject to CPOs may also be attending these services as part of their supervision requirement, or be in treatment / attending programmes voluntarily (regardless of whatever requirement they may be subject to at the time). A crucial point here is that authors of CJSWRs must obtain and provide confirmation that adequate and appropriate resources are available to

provide treatment before recommending this particular requirement to court.

(8) Mental health treatment

These are extremely rare, imposed in less than 0.5% of cases. This is because offenders are often in treatment or receiving input by mental health professionals at the point of sentencing (or prior to). In some cases, mental health agencies have not been able to provide, or have not been in agreement with the suggested treatment requirements for particular individuals. In all cases where this requirement is being considered, the offender must consent to treatment, otherwise it cannot be made part of an order. However, the Criminal Procedure (Scotland) Act 1995, as amended by the Mental Health (Scotland) Act 2015, offers a range of treatment and assessment options that do not involve or require the imposition of a CPO to meet the needs of the offender.

(9) Residence requirement

The offender is obliged to live in a specified place for a specified period, not exceeding the length of supervision. This requirement is intended to assist offenders who lack settled accommodation; however, and much like mental health treatment requirements, these are hardly ever used in practice.

(10) Restricted movement

Until very recently this requirement could only be imposed after a CPO had been breached. However, the 2019 Management of Offenders (Scotland) Act changed this by amending the Criminal Procedure (Scotland) Act 1995 – inserting a *tenth* requirement now available at the sentencing stage of a case (although it can still be imposed at breach). This is a new and very recent development, and one that is yet to take full effect. In many ways this amendment aligns with Rule 57 of the EPR, where electronic monitoring should be combined with supervision to support desistance. However, it remains to be seen how sentencers will use this new requirement.

Breach of CPO

Criminal justice social workers carry responsibility for reporting breaches of CPO conditions and providing evidence of this to court. In response, the court may decide to alter a CPO (including adding more unpaid work, or imposing a restricted movement requirement), or revoke it completely and impose another sentence instead (which could include a custodial sentence). It is important to note that the commission of a further offence does not constitute an automatic breach (as it did in older probation orders). In 2017-18, around 18% of CPOs were revoked due to breach of conditions. At the start of each order, offenders are made aware of what is expected in terms of compliance and they are fully informed of consequences of non-compliance (this aligns with *Rules 85 and 86* of the EPR).

Drug Treatment and Testing Orders

Drug Testing and Treatment Orders (DTTO) were introduced to Scotland by

Sections 89 to 95 of the (UK-wide) Crime and Disorder Act, 1998. After pilot schemes in 1999-2000, they were rolled out nationally in 2003. DTTOs are intended to assist the courts in dealing with people who commit offences in order to fund personal drug use. The DTTO is available as a free-standing order, or used concurrently with a CPO and/or a Restriction of Liberty Order (see below). It can last between 6 months and 3 years, with an average length of 18 months. While the court is able to specify some aspects of treatment to be provided, as well as holding power to review progress through monthly court hearings, it has no authority over treatment content as such. Regular and random drug testing is an integral part of the order, but evidence of further drug taking is not necessarily grounds for breach. Relapse and periods of instability are expected in most cases. Indeed, each case is monitored closely by social work and medical staff, with progress charted by the supervising officer (in most cases, a criminal justice social worker).

Consent of the offender is required before a DTTO can be imposed. In recognition of the invasiveness of the DTTO, and its demands on the offender's time, it can only be imposed where an offender has a significant offending history, and/or is facing the possibility of a prison sentence. This latter requirement has been seen as problematic for offenders who may be in a position to benefit from intensive drug treatment, but whose offences are not sufficiently high-tariff to qualify.

The drug treatment requirement of a CPO has no such obligation to consider offending history in this way, and so provides *one* alternative to DTTOs for lower-tariff offenders with substance misuse problems. Another such alternative is afforded by what is known as 'DTTO II' - a less intensive version of the DTTO, with the intention of intervening early before a person's substance misuse leads to more serious offending. DTTO IIs are shorter (no longer than 12 months), with court reviews every 6-8 weeks rather than monthly. They can be imposed by Justice of the Peace Courts as well as Sheriff Courts. DTTO IIs have been available on a pilot basis since 2008; however, at the time of writing, it is not certain whether they will be rolled out nationally.

Despite initial enthusiasm from a range of public authorities, the number of DTTOs imposed by Scottish courts has been in long decline with a low point of 439 DTTOs imposed in 2016-17, around half as many as ten years previously.²⁵ More recently the numbers have increased slightly – 541 DTTOs were imposed in 2018-19.

Restriction of Liberty Orders (RLOs) and Electronic Monitoring

Restriction of Liberty Orders (RLOs) were introduced under Sections 245A-F of the Criminal Procedure (Scotland) Act 1995. The RLO can require a person to be in a specified place, usually a home address, for set periods of time (up to 12 hours in any one day); or to be absent from specified places, such as a football ground, for similarly specified periods of time (although such 'away from' requirements are rare). Most RLOs function as curfews, compelling the offender to remain at a specific address – typically at night. Best practice indicates it should be used in conjunction *with* a CPO (as *Rule 57* of the EPR also suggests), especially with

²⁵ Criminal Proceedings in Scotland, 2016/17; 2018/19

younger adults. In all cases, the offender must consent to the imposition of the order. The RLO can be imposed concurrently with a DTTO.

Electronic monitoring (EM) or ‘tagging’ was first piloted as a means of monitoring RLO compliance in 1998. This was subsequently rolled out in 2002²⁶. EM is also used for supervising Home Detention Curfews (HDC) (see below). EM can be imposed in other situations, but is typically used either for RLOs or HDCs. The 2019 Management of Offenders (Scotland) Act was passed with the aim of expanding the use of EM (as indicated above with a new requirement made available to sentencers); however, it is too early to say what the impact of this might be.

Electronic monitoring is the one of the very few aspects of Scottish criminal justice managed entirely by the private sector. Since 2013, the company G4S have held the contract to deliver EM services across the country. EM in Scotland uses Radio Frequency (RF) technology. This monitors compliance using radio communication between the monitored person’s ankle tag and a Home Monitoring Unit (HMU) installed at their home and connected by phone to a G4S monitoring office. The office is alerted if the monitored offender breaches the conditions of their order, or if the tag or HMU are tampered with.

RLOs currently account for approximately 12% of people receiving community sentences in Scotland. Their use has nearly doubled in the last few years. There is wide political interest in extending the use of EM in Scotland at the current time; this could potentially include the wider adoption of GPS tracking technology (which allows for more precise and sophisticated tracking than RF).

Legacy Orders

Although Probation Orders, Community Service Orders, and Supervised Attendance Orders were replaced by CPOs in 2011, there remain a few orders that were imposed for offences committed before the Criminal Justice and Licensing (Scotland) Act 2010 came into force. Indeed, any offence committed before the 1st February 2011, may still be dealt with by way of measures otherwise available to the court on, or before this date. However, legacy orders are increasingly rare - around 50 were completed in 2017-18.

Other non-custodial sentences and orders

CPOs, DTTOs and RLOs make up the bulk of community sentences in Scotland, accounting for approximately 20% of the total number of criminal sentences imposed. Around half of convictions result in financial penalties, i.e. fines (Sections 211-223 of the Criminal Procedure (Scotland) Act, 1995), and compensation orders (Sections 249-253). These can be imposed alongside a CPO as separate sentences. Additionally, a CPO can be imposed where an offender ‘defaults’ on the payment of a fine or compensation order. The CPO serves in place of the unpaid fine or fine instalment (which is then discharged). CPOs imposed in

²⁶ For a comprehensive overview of EM in Scotland see Graham and Mclvor, 2015: <http://www.sccjr.ac.uk/wp-content/uploads/2015/08/Scottish-and-International-Review-of-the-Uses-of-Electronic-Monitoring-Graham-and-Mclvor-2015.pdf>

these cases (under Section 227M of the Criminal Justice and Licensing (Scotland) Act 2010 must include a supervision requirement and an unpaid work requirement, and may include a conduct requirement. Indeed, In line with longstanding concerns about the numbers of people sent to prison for fine default, the 2010 Act (above) allows a CPO to be imposed *instead* of imprisonment in any case of fine default, and *requires* a CPO to be imposed instead of imprisonment for default on any fine of Level 2 (£500) or under. Notably, fine default is the only instance in which the CPO does not require the offender's consent; however, the offender can prevent a CPO being imposed if they pay the outstanding fine.

As mentioned earlier, in criminal cases where mental health is a particular feature, the court has a number of options it may consider, depending on the circumstances in each case. If a person is convicted, the court may impose an Interim Compulsion Order (Section 53 of the Criminal Procedure (Scotland) Act, 1995) to keep a person in hospital for up to 12 weeks for further examination by two doctors. The court may impose a full Compulsion Order (Section 57 of the Criminal Procedure (Scotland) Act, 1995) where, instead of prison, a person must comply with treatment either in hospital or in the community (for up to a period of six months). The court has the power to add a Restriction Order to a Compulsion Order (under Section 59 of the Criminal Procedure (Scotland) Act, 1995) if the court determines that a person presents a serious risk to the public. This addition to a Compulsion Order means that a person would be detained in a hospital setting without limit of time (cases are reviewed annually by psychiatrists, and decisions on discharge or lifting a Restriction Order are taken by the Mental Health Tribunal for Scotland). Indeed, if the person is given a prison sentence, the court can impose a Hospital Direction (also under Section 59) where the person receives treatment in hospital for the duration of their prison sentence. However, these options are often regarded as excessively complex for criminal cases, and most are rarely used in practice. The Mental Welfare Commission for Scotland state that many professionals involved in criminal proceedings find it difficult to understand and assess which option would be best in particular cases.²⁷

Civil Orders

Civil orders can be imposed on people who have no convictions for criminal behaviour. The standard of proof for civil orders is different to criminal orders in that cases are decided on the 'balance of probabilities' rather than 'beyond reasonable doubt'. They are used when there is adequate concern expressed about the potential risk posed by a person in particular circumstances – mostly relating to sexual behaviour, domestic incidents, anti-social behaviour, and harassment.

There are four main types of civil orders which are designed specifically to minimise the risk of sexual harm:

- **Sexual Offences Prevention Order:** this order places restrictions or requirements on the behaviour of an individual. This may include preventing access to areas populated by children, or areas where adult victims are known to frequent.

²⁷ <https://www.mwscot.org.uk/>

- **Risk of Sexual Harm Order:** these orders are determined by the chief constable of Police Scotland if certain criteria are met - namely if any person of any age has engaged in a course of conduct, on at least two occasions, involving specific acts towards a child under the age of 16, and there is reasonable cause to believe that an order is necessary to protect a child or children from them.
- **Notification Order:** this order can be granted to make a person from outside the UK subject to notification requirements (i.e. the sex offender register) as if they had been convicted or cautioned in the UK for a relevant offence.
- **Foreign Travel Order:** this type of order can stop a person from travelling outside the UK, except to a named country or countries, or stop the person named in it from travelling to a named country.

In other cases, **non-harassment orders** can be used to prevent behaviour that causes alarm or distress to an individual. These are typically used in cases where domestic violence is a feature. This may include abusive texts or phone calls from a previous partner. However, the criteria for this type of order requires that the behaviour in question has occurred *twice*. This must be established before a non-harassment order is made.

Anti-social behaviour orders (ASBOs) can be imposed on anyone over the age of twelve years. ASBOs are ‘preventative orders’ designed to protect victims of certain types of anti-social activity, i.e. behaviour that causes or is likely to cause alarm or distress. Local authorities and Registered Social Landlords (RSLs) (in consultation with the police) can make applications to the sheriff court for an ASBO to be imposed. The court may impose an interim ASBO until evidence is gathered for a full application. It is a criminal offence to breach the terms of this particular order.

Prison Throughcare

For cases that result in custodial sentence, a range of social work and associated services are provided to prisoners and their families from the point of sentence or remand, during the period of imprisonment, and following release into the community. Criminal justice social workers provide a number of core services within the prison estate in Scotland. Some of these activities include involvement in sentence planning (to co-ordinate social work activity in partnership with prison staff); assessment of risk and dangerousness; the provision of action plans; delivery of structured programmes; preparing prisoners for release (liaising with appropriate services, including education, health, housing, etc.); and perhaps most significantly, supervision of individuals released on licence (see below). In essence, these activities are designed to assist prisoners cope with incarceration, prepare for release, and resettle in the community – as well as more broadly addressing and managing levels of risk in relation to public protection.

In recognition that prison-based programmes and services are best complemented by community-based provisions, an Integrated Case Management (ICM) system has been developed by the Scottish Prison Service (SPS) in partnership with justice

social work. Integrated Case Management is a process for all prisoners where programmed work is undertaken to address areas of risk whilst in custody, and where other agencies who work closely with SPS give prisoners help and support to deal with their social or personal difficulties. At the current time, there are 15 prison establishments in Scotland (13 of which are publicly managed, and 2 run by private sector companies). Most prisons now have dedicated prison-based social workers or teams attached to them. In addition, SPS have recently appointed some prison officers as 'Throughcare Support Officers' (TSOs) who work with directly with prisoners to encourage and aid reintegration back into the community before and after release.

Different categories of prisoner are subject to statutory throughcare provision, which includes supervision in the community after release, but usually begins *at the start* of a custodial sentence. In total, around 1000 people commence statutory throughcare within prison every year, and about 3000 prisoners are under statutory throughcare at any one time. Prisoners who are not subject to statutory throughcare can still request voluntary throughcare from justice social work at any point in their sentence, or up to 12 months following release. However, statutory throughcare would typically apply in the following cases:

- Any prisoner serving a determinate sentence of four years or more (who account for just over 40% of statutory throughcare cases)
- Life-sentenced prisoners, who account for a small proportion of new throughcare cases, but around a quarter of the statutory throughcare caseload.
- A small number of offenders made subject to an Order for Lifelong Restriction (OLR), which is an indeterminate sentence for high-risk violent and sexual offenders introduced by the Criminal Justice (Scotland) Act 2003 and imposed only after specialist risk assessment in consultation with the Risk Management Authority.
- Sex offenders sentenced to a prison term of six months or more are also subject to throughcare under Section 15 of the Management of Offenders etc. (Scotland) Act 2005.

For those considered to present as *high risk* on their return to the community, statutory throughcare can also be imposed at sentence through two additional disposals:

- **Supervised Release Order (SRO):** (under Section 209 of the Criminal Procedure (Scotland) Act, 1995) This 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. SROs account for around 10% of the caseload in custody, and about a quarter of statutory throughcare commencements on average every year. SROs can last no longer than the original period of the prison sentence, or twelve months after release on licence, whichever is shorter.

- **Extended supervision or ‘extended sentence’:** introduced by the Crime and Disorder Act, 1998 and allows 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. A further amendment under the Criminal Justice and Licensing (Scotland) Act 2010 extended this to any offender whose original offence had a “significant sexual aspect”, whether or not it is categorised as a sexual offence. The period of extended supervision can be up to ten years.

If a person on throughcare supervision, such as extended sentence or SRO, is found to be in breach of the conditions of their licence, this can – after application to the Parole Board for Scotland - lead to being *recalled* back to prison (where the remainder of the sentence will be served). Breach processes are often initiated by criminal justice social workers.

Releasing offenders on licence

The Kincaig Report (1988) led to the introduction in 1993 (under the Prisoners and Criminal Proceedings (Scotland) Act, 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 though, as the prisoner can be returned by recall to serve the unexpired period of the sentence if found to be in breach of licence conditions.

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 they have served at least half of their sentence. The prisoner can be considered for parole annually until they have less than 16 months to serve. Parole conditions often require the offender to be subject to the supervision of a criminal justice social worker. This discretionary release requires a decision from the Parole Board for Scotland, who are advised in this process by both community- and prison-based criminal justice social workers.

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 their sentence. The remainder 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. This type of licence can include specific conditions and offenders can be recalled to custody at any time (in most cases due to further offending). The licence remains in force until the ‘entire period specified in the sentence’ has elapsed, unless the offender is subject to extended supervision (see above).

More recently, the Prisoners (Control of Release) Act 2015 introduced a process whereby long-term prisoners who do not qualify for parole will not be released on licence until six months before the end of their sentence. This affects prisoners sentenced after 1 February 2016 only. At the time of writing however, many of

those serving long-term sentences will still qualify for non-parole licence after two thirds of their sentence is served.

In other cases, special release licences – known as ‘life licences’ - are provided for those sentenced to life imprisonment. The sentencing court may determine a minimum period of custody (sometimes known as the ‘punishment part’) which the offender is expected to serve before release. After liberation, he or she is expected to be supervised in some capacity for the rest of their lives. Those on life licence are subject to recall to prison at any time if they breach its terms (typically by committing further offences).

In 2017-18, non-parole licences and supervised release orders respectively accounted for about a fifth and a quarter of statutory throughcare cases commenced in the community. The remainder of commencements were accounted for by extended sentences (16%), parole licences (12%), short-term (Section 15) sex offenders (9%) and life sentenced prisoners (5%). For obvious reasons, the actual daily statutory throughcare caseload has a much higher proportion of life sentenced prisoners.

Under the Custodial Sentences and Weapons (Scotland) Act 2007, as amended by Section 18 of the Criminal Procedure and Licensing (Scotland) Act 2010, those subject to custody and detention are supposed to receive mandatory supervision in the community. However, neither the relevant parts of the 2007 Act, nor their amendments by the 2010 Act, have been brought into force. These ‘new’ provisions around post-release supervision have still not been implemented at the time of writing. This system would, if it were operational, replace the categories of short- and long-term prisoner discussed above.²⁸

Scottish Ministers also have the power to release any prisoner on compassionate grounds, normally in consultation with the Parole Board. This process came to global attention in 2009 when Abdelbaset al-Megrahi, the only man convicted in the 1988 Lockerbie bombing, was released by decision of the then Justice Secretary, Kenny MacAskill, under Section 3 of the Prisoners and Criminal Proceedings (Scotland) Act, 1993. The right of *pardon* also lies with Scottish Ministers, but is rarely used.

It follows that the provision of services offered to prisoners before and after release in Scotland aligns with *Rules 59, 61 and 62* of the EPR. Integration and resettlement are supported by a combination of statutory and voluntary provision in the community.

Home Detention Curfew (HDC)

The Prisoners and Criminal Proceedings (Scotland) Act 1993 (as amended by the Management of Offenders (Scotland) Act 2005) gives power to the Scottish Prison Service to release prisoners on Home Detention Curfew (HDC) in Scotland. Prisoners released under these arrangements are made subject to curfew conditions and monitored by way of electronic tag. The maximum period for home detention in Scotland is 180 days, and the minimum period is 14 days.

²⁸ See http://www.parliament.scot/ResearchBriefingsAndFactsheets/S4/SB_1439.pdf

These provisions came into force in 2006 for those sentenced to less than 4 years' custody. The scheme was extended to include those serving longer sentences (over 4 years) in 2008.

5.3 Care and after-care outside the criminal justice system

Please see above for more detail on voluntary aftercare. In essence, offenders that are not subject to statutory supervision upon release will be eligible for support for up to one year from the date of liberation. Other forms of support are available from charities and other third sector organisations, but statutory throughcare is limited in the provision of support after the conclusion of a sentence or period of licence.

6. Probation Methodology

Without conscious or overt adoption, the Scottish approach to probation largely conforms to European Probation Rules. As noted above, and in line with *Rule 6* of the EPR, the main community sentences – the CPO as well as the DTTO and RLO – require the convicted person's consent to be imposed (with the exception of CPOs imposed for fine default). A criminal justice social worker is expected to use pre-sentence and post-sentence contact with offenders to inform them about what is required and the likely consequences of breach. Guidance also requires social workers to assess consent to individual CPO requirements in the report (CJSWR) prepared for court. An application to the court to vary the terms of a CPO will also only be considered if the offender consents to the variation. The principle of informed consent, an important part of social work ethics, runs through the entire system.

Scottish probation supervision is subject to stringent reporting and reviewing requirements at all stages of a community sentence – pre-sentence, post-sentence, and after completion of the order. These requirements broadly conform with *Rules 66 and 70* of the EPR.

When a CPO is imposed, a criminal justice social worker is typically designated as a 'responsible officer' for a case²⁹. In CPOs where only unpaid work is imposed, the responsible officer would be an unpaid work case manager. For RLOs, the responsible officer would usually be an employee of the electronic monitoring provider; the responsible officer for DTTOs is usually a social worker. While this accords with *Rule 80* of the EPR, it raises a question of who should be considered the responsible officer in cases where an RLO is imposed concurrently with a CPO; in practice this would likely be the supervising social worker.

Whether or not a CJSWR has been required by the court before sentence (i.e. even in cases where a Level 1 unpaid work requirement is included), any CPO with an

²⁹ Criminal Procedure (Scotland) Act 1995 s.227C

offender supervision requirement must include a case management plan (a ‘work plan’, in the language of EPR). This should include a formal risk and needs assessment, with the Level of Service/Case Management Inventory (LS/CMI) being the standard risk assessment tool. As mentioned earlier, the Risk Management Authority (RMA) governs the use of risk assessments and provides a shared framework for risk assessment and management.³⁰ Community Justice Scotland and the RMA also provide risk assessment training events. This conforms to *Rule 71* of the EPR.

The case management plan devised by the supervising social worker – including any risk assessment – must be reviewed regularly, in line with *Rules 69, 81 and 91* of the EPR. It is usually expected that all but the least onerous CPOs (those requiring only a Level 1 unpaid work or other activity requirement) would be periodically reviewed by the court. The date of the first progress review is usually set by the court at the point of imposing a CPO.

The practice guidance for CJSWRs requires them to be participative and broadly follow *Rules 67 and 68* of the EPR. The offender’s contribution should be sought in preparing CJSWRs and case management plans should be developed in consultation with the person under supervision in line with *Rule 73* of the EPR. The offender must agree to any variation proposed by the supervising social worker, and may also petition the court for a variation of the CPO *without* the responsible officer’s agreement (although this would require the offender to appear in court). In general it is expected that regular reviews enable a gradual decrease in intensity of supervision; guidance stresses the importance of a strengths-based approach and the explicit recognition of progress.

CPO supervision requires reports to be made to the court (with supporting evidence) in cases of breach, with specific procedures for breach of the Unpaid Work or Other Activity Requirement. Reports must also be provided for successful completion of a CPO, and for attendance at, and completion of, an unpaid work or other activity placement. The *Community Payback Order Practice Guidance* provides extensive direction, including template reports for these matters. In cases involving electronic monitoring, including RLOs, the private company providing the monitoring service (currently G4S) would report on compliance with the monitoring itself. In cases of concurrently-imposed RLO and CPO where either or both is breached, the CPO guidance provides specific procedures for liaising between G4S, justice social work and the court.

Justice social work must keep records of all the individuals they supervise, following *Rule 88* of the EPR. The provision of template reports as part of the practice guidance should facilitate consistency and information sharing between authorities. Records include offenders’ personal details, informed consent to supervision, post-sentence interviews, departmental reviews, case management plans and completion reports. For electronic monitoring under RLO, the responsibility for recordkeeping lies with the electronic monitoring provider.

As noted earlier, justice social work is subject to inspection by the Care Inspectorate. Furthermore, Community Justice Scotland can comment on Outcomes Improvement Plans produced by local community justice partner

³⁰ http://www.rma.scot/wp-content/uploads/2018/02/FRAE_policy.pdf

groups. These reports are made available to the public, therefore satisfying *Rule 103* of the EPR.

There is a wide range of interventions available for offenders under supervision, whether these are specified as a requirement of the sentence or subject to informal referrals by supervising social workers. Desistance and rehabilitation are the focus of most interventions (in line with *Rule 76* of the EPR), and the desistance paradigm has been widely adopted in Scottish criminal justice (see below). However, it is notable that the notion of ‘paying back’, including in the CPO, is sometimes positioned more punitively. It is also notable that sentencers make relatively little use of the extensive range of explicitly rehabilitation-oriented CPO requirements, and that unpaid work is most common and may be imposed on its own. Furthermore, there is concern that the planned expansion of electronic monitoring will lead to a situation in which EM is increasingly used as a standalone measure, rather than in combination with more rehabilitative interventions.

Justice social work and related agencies make extensive use of available research including work that cuts across academic boundaries of criminology, social work and sociology (meeting *Rule 77* of the EPR). The ongoing Reducing Reoffending project makes use of pilots and ‘what works’ approaches to develop, commission and test ‘evidence-based’ approaches to reducing reoffending. *The National Strategy for Community Justice* emphasizes developing and using an evidence base for interventions. Community Justice Scotland promotes this approach and may also commission research in some instances.

Philosophy

Broadly, probation practice in Scotland operates according to Risk-Need-Responsivity (RNR) principles (Andrews & Bonta, 2010). The desistance paradigm (Maruna, 2001) has become especially popular in Scottish criminal justice generally in the last decade, largely due to efforts by Scottish criminologists, most notably the work of Fergus McNeill and Beth Weaver. The influence of desistance is visible in the language of the *National Outcomes and Standards* and other strategy and policy documents mentioned so far in this chapter.

The focus of desistance on the (re)making of identity also informs an ongoing concern in Scotland around the language used to refer to offenders – increasingly, language like ‘person with convictions’ is preferred. The prominence of personal agency and individualization in desistance somewhat reflects a wider preoccupation with ‘co-production’ in social work and social care. Desistance is also influential elsewhere in Scottish criminal justice, including within the Scottish Prison Service. However, McNeill³¹ argues that the rise of desistance has not challenged an individualistic and personal conception of rehabilitation which continues to underpin Scottish probation practice.

³¹ McNeill, F. (2015) Desistance and criminal justice in Scotland. In Croall, H., Mooney, G. and Munro, M. (eds) *Crime, Justice and Society in Scotland*. London: Routledge.

Practice

Within probation *practice*, a variety of methods and theoretical paradigms are used; relatively wide discretion is available to criminal justice social workers regarding their approach, and the highly local nature of Scottish probation supervision means that there may be significant theoretical and practical variation.

In Scotland, as in many other jurisdictions, Cognitive Behavioural Therapy (CBT) underpins much of the actual work done with offenders. Many of the programmes delivered by social work and other providers, including group work, align closely with CBT principles. This includes an analytical focus on underlying thought processes that lead to offending. In line with the strengths-based approach advocated by the *Community Payback Orders Practice Guidance*, criminal justice social workers typically work towards reinforcing prosocial behaviour and attitudes. In one-to-one supervisory interaction, motivational interviewing is a commonly used technique. A point to note here is that the geographically dispersed nature of much of Scotland (with around a fifth of the population in relatively remote areas) can make the coordination of group work difficult.

Various forms of accreditation for probation practice are covered elsewhere in this chapter, but as a reminder - SAPOR accredits some specific offender programmes while the RMA provides accreditation for risk assessment systems. We have also noted the limited nature of post-qualification accreditation available to individual criminal justice social workers due to limited scope offered currently by the workforce regulator (SSSC).

In terms of specialisation, we also noted earlier that some criminal justice social workers are trained to deliver sex offender and/or domestic violence groupwork, as well as individual interventions in these specific areas of practice. Both are supplied with risk assessment tools and accredited materials to work from. Other areas of specialization, although not formally accredited, include working with service users on Drug Treatment and Testing Orders.

Scottish probation differs from other jurisdictions in that legislation underpinning the role and function of qualified staff extends beyond that which relates specifically to matters of supervision, breach, etc. As mentioned earlier, the Social Work (Scotland) Act 1968 places a duty on local authority social workers to promote the welfare of service users across all practice areas. This includes the provision of 'cash in kind' for those who meet the criteria for such – therefore meaning that supervision often occurs hand-in-hand with providing assistance for immediate material needs.

Scottish probation practice is also subject to national quality assurance and evaluation mechanisms (mentioned earlier and discussed below) – led by a range of agencies on behalf of the Scottish Government.

7. Finances, accounting, registration systems and evaluation procedures

7.1 Finances

The Scottish Government provides finance for justice social work services across 32 local authority areas in Scotland. This funding is ‘ring fenced’, i.e. it must be only be used for justice social work, and cannot be used for any other purpose by local authorities. As highlighted earlier, Section 27 of the Social Work (Scotland) Act 1968 makes provision for justice social work in Scotland. The money allocated to each local authority is colloquially known as ‘Section 27 funding’. Central government funding aligns with *Rule 10* of the EPR, as justice services are given appropriate and standing and recognition through direct and protected resourcing.

Indeed, under new arrangements put in place by the Community Justice (Scotland) Act 2016, the ‘ring-fencing’ of Section 27 funding has been retained, but funding for the delivery of justice social work services now streams direct from Scottish Ministers to local authorities, whereas previously it was delivered via eight *Community Justice Authorities* prior to their dis-establishment. Ring-fenced funding has been identified in a number of reviews to be essential for maintaining levels of service across Scotland.

Local authorities in Scotland have responsibility for setting their own spending priorities for criminal justice through a local needs analysis and a *Community Justice Outcomes Improvement Plan* (CJOIP – sometimes known as *Reducing Reoffending Outcomes Improvement Plan* or RROIP). These plans form part of each authority's *Local Outcome Improvement Plan* and must be aligned to the outcomes of the *National Strategy for Community Justice* (2016). The strategy makes clear that local partners may commission services from a range of third sector providers, but they must also include third sector organisations in planning and decision-making processes. The new strategy expects that partnership arrangements will improve efficiencies, including the opportunity for sharing resources between local partners. In most cases however, ring-fenced funding from central government is insufficient, and has to be supplemented by local authority finance drawn from local taxation.

Although ring-fenced funding was retained, structural changes introduced by the Community Justice (Scotland) Act 2016 were accompanied by modifications to the funding formula for justice social work. The previous formula had been largely unchanged since 1999, but was widely regarded as disproportionate, inflexible and characterised by short-termism. Historically, calculations were based on two-thirds statutory workload and one-third ‘need’, which was calculated by court throughput and the proportion of unemployed males in an authority between the ages of 16 and 24. Allocation of funds occurred annually, with no guarantee of consistency in amounts given each year³². In August 2016, the Scottish Government and the Convention of Scottish Local Authorities (COSLA) negotiated and agreed a new funding model, which came into effect on 1st April 2017. This new formula is based on an even combination of a three-year rolling average of criminal justice workload, and an estimate of the social and economic

³² http://www.audit-scotland.gov.uk/docs/central/2012/nr_121107_reducing_reoffending.pdf

costs of crime in each area. The latter includes the estimated costs associated with anticipation, consequences and response to crime, with additional weighting given to rural authorities to reflect the complexity of delivering services in particular parts of Scotland.

The new model abolishes the previous grant provision for core funding of services, e.g. for assessment reports and community disposals, and non-core funding for initiatives provided by local authorities for particular areas of practice, i.e. accredited programme delivery; drug and employment related work; development work; pilot projects and new initiatives. Within new funding arrangements there remain protected lines of funding targeted at specific types of work, such as specific community sentences (mostly CPOs) and women's services.

The new formula is intended to be fairer and less restrictive in allowing local authorities greater control of where money is spent, as opposed to adhering to specific budget lines. Application of this new approach means that some local authorities have recently experienced a significant reduction in their funding grant whilst others have enjoyed a significant increase. With a view to mitigating this variation in funding level in the first year, the new formula has been phased in gradually, commonly known as 'dampening', to be completed in 2021. At the time of writing, it remains to be seen what effect the new funding formula will have in the longer term; although there is some evidence that it may cause difficulties with longstanding local authority partnerships with the third sector (as funding for elements of criminal justice provision will no longer support wider initiatives). Also at the time of writing, a new framework for strategic commissioning is under development by Community Justice Scotland, which may bring added layers of complexity to an already complex system of financing³³.

Other funding

While government ring-fenced funding remains the primary source of financing for justice social work services in Scotland, other sources of income exist for community justice provision. At the time of writing, this currently includes a £13m 'top-up' for justice social work from a central 'offender services' budget as part of the current Local Government Finance Settlement for 2018-19³⁴.

Some pilot services have been funded by the European Union for limited periods as a means of testing new approaches, or by specific packages of funding from the Scottish Government, usually focused on specific projects or particular areas of practice. For example, the *Reducing Reoffending Change Fund*, which ran from 2013 to 2015, aimed to develop and test a *Public Social Partnership* model of service delivery - developed jointly by the public and third sectors. A total of £18m was invested in six Public Social Partnership projects with a particular focus on mentoring. Another example here would be a time-limited package of funding for sixteen women's offending projects between 2013-15 – largely in response to recommendations made in the report published by the Commission on Women Offenders discussed earlier³⁵.

³³ <https://communityjustice.scot/news/strategic-commissioning-framework/>

³⁴ <https://www.gov.scot/publications/local-government-finance-circular-42018/>

³⁵ <https://www2.gov.scot/Resource/0048/00484422.pdf>

Funding has also been made available by the Scottish Government to aid reorganisation and transition arrangements for criminal justice services under changes introduced by the Community Justice (Scotland) Act 2016. Each local authority is provided with £50,000 year-on-year (an annual total of £1.6m) transitional funding (most authorities using this to employ community justice coordinators) for three years from 2015/16. At the time of writing, it is possible that this transitional funding will continue, but confirmed on a yearly basis.

Community Justice Scotland (discussed earlier) is funded by the Community Justice Services budget of the Scottish Government, and not by ring-fenced funding allocated to local authorities. It had a budget of £1.2m in 2017/18, rising to £2.2m in 2018/19. This is likely to increase during 2019/20 as it starts to commission community justice services. This particular budget also funds electronic monitoring of offenders on Restriction of Liberty Orders (RLOs) and Home Detention Curfews (HDCs).

Table 4. *Prison / Probation expenditure*

	Probation Services	Prison System
Total current yearly expenditure ³⁶	£35.4 million (2018/19)	£345.2 million
Average number of employed staff ³⁷	2230 in total (SSSC, 2019) 989 qualified social workers	4000 (approx.)
Daily average number of offenders/clients dealt with ³⁸	19,400 (social work orders – 2017/18 figures)	8267 (August 2019)

7.2 Accounting

As mentioned earlier, Community Justice Authorities (CJAs) ceased operation in April 2017. Under the new model for community justice introduced in 2016, local community justice partners are now directly accountable to the Scottish Government for their expenditure, and (as local government-led bodies) to their electorate, and/or their respective regulators (e.g. the Office of the Scottish Charity Regulator; the Scottish Social Services Council).

Community Justice Scotland will review local community justice plans, advise and support local partners, report on performance and make recommendations for improvement. If necessary, Community Justice Scotland can advise Scottish Ministers on further action if serious problems emerge at local levels.

Audit Scotland has powers to carry out financial audits in the public sector, including that of local authorities and Community Justice Scotland.³⁹ Justice

³⁶ <https://www.gov.scot/publications/scottish-budget-draft-budget-2018-19/pages/11/>

³⁷ <https://data.sssc.uk.com/data-publications/22-workforce-data-report/216-scottish-social-service-sector-report-on-2018-workforce-data>

³⁸ <https://www.gov.scot/publications/criminal-justice-social-work-statistics-scotland-2017-18/>

³⁹ See <http://www.audit-scotland.gov.uk/report/the-201718-audit-of-community-justice-scotland>

social work in Scotland is subject to regulation by the Scottish Social Services Council and formal inspection by the Care Inspectorate. These arrangements align with *Rule 15* of the EPR.

7.3 Registration systems and evaluation procedures

‘Social Worker’ is a legally protected title in Scotland, and all social workers must have a university-level qualification. Criminal justice social workers are required to be registered with the Scottish Social Services Council (SSSC), who is responsible for regulating the conduct, education and training of the social services workforce as a whole.

For a number of years, statutory criminal justice services were formally scrutinised by the Social Work Inspection Agency (SWIA). However in 2011, under the Public Services Reform (Scotland) Act 2010, the responsibilities of SWIA transferred to Social Care and Social Work Improvement Scotland - known as the *Care Inspectorate*. It is important to note that the last inspection of criminal justice social work in Scotland took place in 2007 – leaving a significant gap in terms of formal scrutiny. More recently, and following a range of new developments in community justice since 2016, the Care Inspectorate established a new scrutiny team for criminal justice in May 2018. Two key areas of work have been identified: the first will focus on supporting the implementation of the new approach to community justice through a supported and validated self-evaluation of community justice. The second will provide scrutiny through an inspection of justice social work services, with a particular focus on community payback orders.

Unit level data on justice social work activity is collected by all local authorities in Scotland and supplied to the Scottish Government each year. This data is used to produce an annual statistical bulletin on criminal justice social work activities⁴⁰. Local community justice partners may produce reports on their activities, as well as outcome improvement plans. Community Justice Scotland also produces an annual report each year on community justice activity by each local partnership groups across Scotland⁴¹.

Under the Community Justice (Scotland) Act 2016, the new *National Strategy for Community Justice* was accompanied by the publication of the new *Outcomes, Performance and Improvement (OPI) Framework for Community Justice*. As discussed earlier, these documents comprise of common quality principles, outcomes, indicators and evaluation processes for both local partners and Community Justice Scotland.⁴² This is in line with the National Strategy’s emphasis on self-evaluation at local level.

Section 27(3) of the Social Work (Scotland) Act 1968, requires 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”. Several different IT systems for holding and managing justice social work case information are currently used by Scottish local authorities (e.g. CareFirst, SWIS). There is no nationally agreed or centrally

⁴⁰ <https://www.gov.scot/publications/criminal-justice-social-work-statistics-scotland-2017-18/>

⁴¹ <https://communityjustice.scot/news/community-justice-activity-across-scotland-annual-report-2017-18/>

⁴² <https://www.gov.scot/publications/community-justice-outcomes-performance-improvement-framework/>

located system for holding and managing this information. However, the LS/CMI system is a standardised electronic platform that allows information on risk to be shared between local authorities, and with the Scottish Prison Service if necessary. The Risk Management Authority supports the management and development of the LS/CMI system across Scotland. The supervision of high-risk offenders under MAPPA makes use of the Violent and Sexual Offenders' Register (ViSOR), which is a secure database developed by the UK Home Office and used across UK jurisdictions. ViSOR holds individual case records for all offenders and is intended to facilitate cooperation by allowing information to be shared between police, prisons and justice social work. However, the Care Inspectorate have raised concerns about the effective use of the system by local authorities.⁴³ Staff who require access to ViSOR must undergo an extensive vetting process, which includes detailed enquiry into family members and financial history. This, along with strict controls over access and use of the system itself, is proving difficult for local authorities to resolve with any consistency.

Information sharing across 32 local authorities and their associated partners is a challenging task in a system which is described in a number of reports as both complex and fragmented. Although the Integration of Scottish Criminal Justice Information Systems (ISCJIS) project has been ongoing since 1994 with the intention of 'joining up' IT systems across criminal justice in Scotland, different agencies continue to use their own versions.

In terms of further evaluation and enhancement, the Justice Analytical Services division (JAS) of the Scottish Government supports the development, implementation and evaluation of justice policies by commissioning and carrying out research on criminal justice topics, some of which include research on risk assessments, the management of violent and sexual offenders, community disposals, alternatives to custody, and various dimensions of youth crime. Some of this work is carried out by, or in partnership with, academic organisations such as the Scottish Centre for Crime and Justice Research (SCCJR) or the Centre for Youth and Criminal Justice (CYCJ). Some of this research includes short-term evaluations of particular policies or programmes, as well as longer-term research focusing on specific crimes⁴⁴. JAS also take responsibility for managing the Scottish Crime and Justice Survey (SCJS).

8. Societal support and clients' views

8.1 Societal support and public opinion

The Scottish Crime and Justice Survey (SCJS) investigates social attitudes towards the criminal justice system. It is a national repeat-measure cross-sectional survey conducted annually. It attracts a typical sample size of approximately 6,000 Scottish adults. As well as the incidence and prevalence of victimisation, the survey includes questions on public perceptions of crime, attitudes to community sentencing, and attitudes to other systems and processes

⁴³ http://www.careinspectorate.com/images/documents/4009/Joint_Thematic_Review_of_MAPPA_in_Scotland_-_Progress_Review.pdf

⁴⁴ <https://www2.gov.scot/Topics/Research/by-topic/crime-and-justice/publications>

relating to the administration of criminal justice in Scotland.

For some time, SCJS reported that fear of crime continued to rise as officially recorded crime fell, but the most recent results suggest that fear of crime is now declining too. SCJS data on public knowledge of, and attitudes to, justice suggests that public confidence in the overall criminal justice system is high, but awareness of community penalties remains relatively low. In the 2016/17 results, 77% of the public believed that community sentencing was effective for some crimes, but there was less consensus regarding the rationale for community sentencing or whether it achieved these aims (e.g. making amends for harms caused by crime).

The 2016 National Strategy requires local partners to develop communication strategies to raise public awareness about community justice in their local areas. A number of agencies are currently engaged in campaigns, including public events in community spaces, online videos and social media activities. This aligns with *Rules' 17 and 106* of the EPR, where competent authorities should inform the public about the work of justice services to encourage better understanding.

8.2 Clients' views

There is little systematic data available on service user views of supervision and justice social work. An evaluation of CPOs in 2015 found that individuals generally had positive experiences of supervision provided by criminal justice social workers, and of the CPO process in general - particularly when this was tailored to individual needs.⁴⁵

9. Probation clients rights

In principle the rights of those supervised by justice social work are the same as any other citizen; in practice however, the situation is more 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 Scots law. The Scottish Criminal Cases Review Commission (SCCRC) has the power to investigate alleged miscarriages of justice, and can refer these to the High Court of Judiciary (in its capacity as an appeal court).

Complaints

Social work has been required by statute since 1990 to provide a complaints procedure with established protocols, timescales for response, and appeal mechanisms under the Social Work (Representations Procedure) (Scotland)

⁴⁵ <https://www2.gov.scot/Resource/0047/00472126.pdf>

Order 1990 (The Directions), and a subsequent set of Directions issued in 1996, both underpinned by Section 5B of the Social Work (Scotland) Act 1968 (as amended by the National Health Service and Community Care Act, 1990).

However, as part of ongoing integration of health and social care in Scotland, the legislative framework has recently been amended under the Public Services Reform (Social Work Complaints Procedure) (Scotland) Order, 2016. This Order, which applies to any complaint made after it came into force on 1 April 2017, repeals the previous legislation and brings the social work complaints procedure into line with similar procedures for the NHS and other local authority services. The Order abolishes the system of local authority *Complaints Review Committees*, which had previously been the next 'step' for complaints not resolved at the investigation stage (see below). Under the new system, the Scottish Public Services Ombudsman (SPSO) provides guidance on complaints handling, as well as being the investigating body on the most serious matters. Each local authority has its own complaints procedure, but should follow guidance set out by SPSO.

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, and/or halting an action. The procedure is not used to review a practice decision that is required in law to be tested either in court or a Children's Hearing, nor is it used for requests made under *Freedom of Information* legislation (Freedom of Information (Scotland) Act, 2002) or data protection law (Data Protection Act, 2018). A complaint can be made by a person in receipt of a service, or by any legitimate representative of that person. It can also be made by *anyone* affected by a social work service (including members of the public who are inconvenienced by social work activities). Guidance allows for complaints to be made anonymously under certain circumstances. Leaflets and online guidance are available to advise offenders of their rights and to explain the steps of each agencies complaints procedure⁴⁶.

Efforts are typically made to resolve complaints quickly and, where possible, informally. The complaint must be made within 6 months of the problem arising. Most complaints should be resolved at 'frontline' level – such as through an apology and explanation in person – within five working days. If the complaint cannot be resolved this way, or is particularly complex or serious, it escalates to an 'investigation' stage in which a council officer, under the supervision of senior management, investigates the complaint further. The complaint should normally be resolved in 20 working days, although more time may be necessary. However, If the complainant is still not satisfied, and no more than 12 months has passed after the original problem arose, they can escalate the complaint to SPSO.

Complaints made about registered care services (including offender accommodation services) can be made to the Care Inspectorate, while concerns about specific registered social workers can be raised with Scottish Social Services Council. In both cases, SPSO also functions as the next 'step up' for complaints that cannot be resolved locally. The 2016 Order allows these organisations to share information in the process of investigating and acting on the most serious complaints. Civil court procedures are also available to anyone who wishes to

⁴⁶ <https://www.citizensadvice.org.uk/scotland/family/help-for-adults-in-the-community-s/making-a-complaint-about-social-work-or-social-care-services-on-or-after-1-april-2017-s/>

pursue a remedy against a local authority in the operation of its statutory responsibilities.

The above arrangements align with *Rules' 14, 100 and 101* of the EPR, where clear procedures should be accessible, fair and impartial.

Privacy and confidentiality

The right to privacy and sharing information highlights particular complexity in law and policy when applied to offenders in Scotland. Although criminal trials and their outcomes are, in effect, matters of public record, people subject to supervision by justice social work have broadly similar rights to privacy and confidentiality as other social work service users (i.e. information should not be disclosed to the public).

Protection is given here by a common law duty of confidentiality, and the European General Data Protection Regulation (GDPR). The Data Protection Act 2018 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 six enforceable principles of good practice included in the statute. Every organisation that works with offenders supervised in the community (including but not limited to local authorities) must have its own data protection procedures. Under Chapter 3 of the Data Protection Act 2018, a slightly modified set of the six principles apply to the use of personal data for 'law enforcement purposes', i.e. the punishment as well as the detection and prevention of crime.

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 law, or where failure to disclose would prejudice the prevention or detection of crime or the apprehension or prosecution of offenders.

Interviews between offenders and social workers are normally confidential. Criminal justice social work reports prepared for court are technically confidential, but within limits – the content of these reports can be shared with the court and hence made public. Therefore, social workers must exercise careful judgment when considering whether to include highly sensitive information. Organisations offering unpaid work placements as part of a CPO must also comply with confidentiality and data protection, where information is provided to facilitate the safe running of the placement.

In practice there is now a presumption to share information between agencies in regard to high-risk offenders. In MAPPA cases this sharing of information – including the ViSOR database – is vital, and underpins the effective management of high-risk cases. However, this information must still be collected and processed

in line with the GDPR principles, and this should never interfere with or prevent information being shared with regards to child and adult protection.

The above arrangements align with *Rules' 41, 89 and 92* of the EPR, where principles and rules around confidentiality, management and access to information are made clear to all parties.

10. Developments to be expected

10.1 Developments in coming years

Since the last edition of this title, significant changes to law, procedures and institutional structures have occurred in Scotland. At the time of writing, it still remains to be seen what the long-term impact of these changes will be. This chapter has covered some key developments in detail – most occurring around 2010, and again in 2016.

One of the most significant and wider developments in recent years has been the adoption of 'austerity' policies by the UK government which led to substantial cuts in public services. The Scottish Government's policy response has been to attempt to mitigate the cuts while preserving levels of public service. It aims to do this by making local authority services more efficient – in particular, by promoting more partnership and 'joined-up' working practices, and by attempting to reorient these services around preventing rather than reacting to adverse outcomes. The ongoing integration of health and social care services at local authority level has been a key part of this process and has informed the structuring of the new local partnerships. Despite these efforts to mitigate austerity, and the new funding formula which followed the 2016 Act, levels of funding are likely to remain a problem for justice social work for some time to come.

Although crime has continued to fall in Scotland, the prison population remains high. Unforeseen challenges are emerging too, such as an aging prison population where complex health and social care needs are placing additional demands and strain on the Scottish Prison Service. Yet efforts to reduce incarceration are still ongoing. This includes a plan to extend further the presumption against short prison sentences from 3 to 12 months (first introduced by the Criminal Justice and Licensing (Scotland) Act, 2010). Other developments include plans for new community custody units for women – aiming to meet the needs of female offenders by creating spaces with closer connections to local communities, with resources deployed to address complex needs⁴⁷. Also on the agenda is an upcoming government review into the system of parole in Scotland, which may affect plans to reduce the overall prison population if stricter criteria for release are recommended and applied.

As part of wider concerns with improving the experiences of victims and witnesses in the criminal justice system, there is also current interest in adopting a co-

⁴⁷ <http://www.sps.gov.uk/Corporate/News/News-5137.aspx>

ordinated national strategy for restorative justice, with a view to making this widely available nationwide by 2023. This could involve considerable additional responsibilities for community justice partners.

The recently passed 2019 Management of Offenders (Scotland) Act makes provision for three key areas: new arrangements and functions for the Parole Board for Scotland; expanding electronic monitoring (EM); and reducing requirements for the disclosure of previous convictions. The Act allows the use of GPS tagging (as opposed to traditional radio-frequency technology) and transdermal alcohol monitoring as part of EM, as well as aiming to expand its use with offenders temporarily released from prison (while also creating a new offence of remaining unlawfully at large for those who fail to comply). Since EM in Scotland is managed by the private sector (G4S), it is not clear what role, if any, justice social work will have here in terms of monitoring compliance. Changes to the restricted movement requirement (see section 5.2 above) are unlikely to significantly increase the use of EM in probation.

The 2019 Act also reforms the Rehabilitation of Offenders Act, 1974. The latter Act provides the legal framework that requires people with criminal convictions to disclose this information in certain situations, such as applying for a job. However, the Scottish Government agreed that the Act is outdated, over-complicated and presents a significant barrier to rehabilitation processes. The 2019 reforms mean that anyone who has been sentenced to a custodial period of 48 months or less (an increase from 30 months) can become a person who is not required to disclose their convictions, and that previous disposals from a Children's Hearing should be spent immediately.

10.2 Implementation of EU Framework Decision 947

Despite Scotland's progress over the last 20 years, we find it difficult to say with certainty that implementation of EU Framework Decision 947 has occurred fully within our jurisdiction. We found no specific plans or explicit steps taken by the Scottish Government to implement this. However, we can say that mutual recognition of the aims and objectives of probation can be located in policy and legislative developments which reflect the need to strike a balance between protecting the public and recognising the importance of re-integration and rehabilitation in the community. In contrast to England & Wales, Scotland has retained criminal justice services within the range of social work services available to the public. This means that principles of welfare and social justice continue to underpin all probation practice. The durability of justice social work in Scotland is longstanding, and there are no plans to significantly change this in the immediate future.

11. Important publications

Croall, H., Mooney, G. and Munro, M. (eds.) (2015) *Crime, Justice and Society in Scotland*. Abingdon, Oxon: Routledge.

- *Although not focused specifically on community justice, this book provides a comprehensive and critical overview of the Scottish system of criminal justice.*

Guthrie, T. (2018) *Social Work Law in Scotland*. 4th edition. Edinburgh: Bloomsbury Professional.

- *This is the most up-to-date guide to the legal framework in which Scottish social work operates. It is aimed at students as well as practitioners, and covers the full range of social work activity in Scotland.*

McNeill, F., and Beyens, K. (2013) *Offender Supervision in Europe*. Houndmills: Palgrave Macmillan.

- *The first of two books published as part of the COST Action 'Offender Supervision in Europe' looks at supervisory punishments thematically and comparatively across Europe.*

McNeill, F. and Whyte, B. (2007) *Reducing Re-offending: Social Work and Community Justice in Scotland*. Cullompton: Willan

- *Although it predates many of the major structural reforms to the system, this provides a critical overview of social work with offenders in Scotland. It examines the challenges faced by community justice in Scotland, and draws from a range of empirical and practice evidence.*

McNeill, F. (2019) *Pervasive Punishment: Making Sense of Mass Supervision*, Bingley: Emerald Publishing Limited.

- *Provides a rich and innovative analysis of community-based sanctions and measures, with particular reference to practice in Scotland.*

Maruna, S. (2001) *Making Good: How Ex-Convicts Reform and Rebuild Their Lives*. Washington, DC: American Psychological Association.

- *A key text for the 'desistance' movement which has been highly influential in Scottish criminal justice and penal policy.*

12. Main addresses

APEX Scotland
9 Great Stuart Street
Edinburgh EH3 7TP
Tel. 0131 220 0130
admin@apexscotland.org.uk
www.apexscotland.org.uk

British Association of Social Workers
Wellesley House
37 Waterloo Street
Birmingham B2 5PP
Tel: 0121 622 3911 (for Scotland, 0131 221 9445)
www.basw.co.uk/contact

Care Inspectorate
Compass House
11 Riverside Drive
Dundee DD1 4NY
Tel: 0345 600 9527
enquiries@careinspectorate.com
<http://www.careinspectorate.com>

Community Justice Scotland
Saughton House
Broomhouse Drive
Edinburgh EH11 3XD
Tel: 0300 244 8420
info@communityjustice.scot
<http://communityjustice.scot>

Criminal Justice Voluntary Sector Forum
Norton Park
57 Albion Road
Edinburgh EH7 5QY
www.ccpscotland.org/cjvsf/

Parole Board for Scotland Saughton House Broomhouse Drive Edinburgh
EH11 3XD
Tel: 0131 244 8373
paroleboardforscotland@gov.scot
<http://www.scottishparoleboard.gov.uk/>

Risk Management Authority
7 Thread Street
Paisley PA1 1JR
Tel: 0141 278 4478
info@rmascotland.gsi.gov.uk
www.rma.scot

Sacro
29 Albany Street
Edinburgh EH1 3QN
Tel: 0131 624 7270
www.sacro.org.uk

Scottish Advisory Panel on Offender Rehabilitation
sapor@gov.scot

The Scottish Prison Service
Calton House
5 Redheughs Rigg
Edinburgh EH12 9HW
Tel: 0131 244 8745
gaolinfo@sps.pnn.gov.uk <http://www.sps.gov.uk>

Scottish Sentencing Council
Parliament House
Parliament Square
Edinburgh EH1 1RQ
Tel: 0300 790 0006
sentencingcouncil@scotcourts.gov.uk

Scottish Social Services Council
Compass House
11 Riverside Drive
Dundee DD1 4NY
Tel: 0345 603 0891
www.sssc.uk.com

Social Work Scotland
Mansfield Traquair Centre
15 Mansfield Place
Edinburgh EH3 CBB
Tel: 0131 281 0853
admin@socialworkscotland.org
www.socialworkscotland.org

Turning Point Scotland
54 Govan Road
Glasgow G51 1JL
Tel: 0141 427 8200
info@turningpointscotland.com
www.turningpointscotland.com



General Information

- Number of inhabitants: 5.44 million
- Prison population rate per 100,000 inhabitants:
- Link to Probation Service: no probation service; see <https://socialworkscotland.org/>
- Links to websites: see <https://www.mygov.scot/organisations/>, <https://www.gov.scot/policies/reducing-reoffending/> and
- Member of CEP since 2001

Characteristics of the Probation Service

- No probation service since 1968 Social Work (Scotland) Act; social work departments in local authorities provide probation services (known as justice social work).
- Probation in Scotland is therefore arguably more ‘social work’ than ‘criminal justice’ oriented.
- Local government occupies a position of some importance by virtue of duties and powers conferred by legislation.
- Since the 1980s there has been some criminal justice (re)specialisation within social work, meaning specialist ‘criminal justice social workers’ (CJSWs) are the main probation employees.
- As in many other jurisdictions, voluntary sector projects and organisations play a significant role in delivering additional services to rehabilitate offenders in the community.
- Community justice services coordinated and planned by strategic local partnerships
- Community Justice Scotland provides leadership and shares best practice for the sector.
- The main community sentence since 2011 is the Community Payback Order (CPO) which accounts for 93% of community sentences.
- Other community sentences are the Drug Treatment and Testing Order and Restriction of Liberty Order (DTTO and RLO).

Tasks

- Justice social work (JSW) performs probation service tasks.
- The first of these is the provision of information to criminal courts to inform sentencing, largely through Criminal Justice Social Work Reports.
- JSW supervise people subject to community sanctions and measures, except RLOs.
- JSW also provides throughcare supervision to people returning from

the community after a prison sentence.

- CJSW conducts risk assessments and contributes to risk management planning for offenders in the community.
- The desistance paradigm has been highly influential on the development of probation methods and *National Outcomes and Standards*.
- Methods used in supervision include motivational interviewing, cognitive-behavioural therapy and group-based work.
- Risk assessment (LS/CMI) underpinned by RNR principles and supported by Risk Management Authority (RMA).

Number of staff (average numbers)

- Probation Officers: 989 qualified CJSWs
- Probation Managers, all grades: n/a
- Administrative support staff, all grades: unknown
- Community Service Supervisors: unknown (*numbers are counted differently by different local authorities*)
- Total: 989+**

- Daily average number of offenders dealt with: 19,400 (2017/18)

New developments

- New *National Outcomes and Standards for Social Work Services in the Criminal Justice System* (2010) [although this is currently under review, with new standards expected in 2020].
- Sentencing reform under 2010 Criminal Justice and Licensing (Scotland) Act: Community Payback Order replaced the Probation Order, Community Service Order, Supervised Attendance Order and Community Rehabilitation Order.
- Restructuring under 2016 Community Justice (Scotland) Act: abolition of eight regional Community Justice Authorities (CJAs) and replaced with local partnership framework aligned with Community Planning and integrated health and social care arrangements. Creation of national body Community Justice Scotland with responsibility for providing leadership and ‘championing’ community justice.
- Management of Offenders (Scotland) Act 2019: expansion of electronic monitoring and reforms to disclosure of criminal records.

Probation during the different stages of the criminal procedure

	Pre-Trial phase	Trial and Enforcement phase	Post Release phase
Preparing pre-sanction report	x	x	X
Supervising etc. sanction of		x	X

probation			
Supervising etc. conditional sentence		X	
Supervising etc. special measures drug addicts		x	
Supervising etc. community service		X	
Supervising training or learning projects		x	x
Interventions with young offenders	x	x	
Supervising etc. suspended sentence		x	
Assistance/support of offenders in prison/detention		x	
Preparing pre-release reports, prisoners			x
Supervising conditional release/parole			X
Supervising post custody, sex offenders			X
Preparing victim impact reports			

ANNEX 2

Criminal Justice Social Work Report (CJSWR) - TEMPLATE

1. Personal Details			
URN:		SW Ref:	
Name			Gender:
D.O.B			Age:
Address			
Post code			
Court status	Bailed <input type="checkbox"/>	Remanded in custody <input type="checkbox"/>	Ordained <input type="checkbox"/>
Comments			
Current court order/Licence:			

2. Court details	
Court	
Date of Court	
Comments	

3(a) Current Offence Details	
Offence(s)	Date offences committed

3(b) Outstanding Matters
This covers offence matters yet to be heard by the Court/ Breach matters/ Appeal applications.

4(a) Basis of Report/Verification of Information
Please state all sources to your report: Scottish Criminal Records Office Interview with the client Second interview with the client to discuss the content and recommendations of the report. (If this was not discussed with the client please state this and record why it was not.) Discussion with named Community Service Officer Discussion with Alcohol/ Drugs service Discussion with Programme Manager Discussion with GP Employment Assessment Assessment Tools Assessment meetings Were there any significant information gaps? It is vital that as much information as possible is subject to verification in one of the following ways:

Interviewing members of the family
 Visiting the individuals home
 Contacting third parties including other agencies who may be able to contribute to any proposed action plan
 Further interview with the individual in cases which are complex, high profile and present public safety concerns

Offence analysis is based on the complaint and client report only (if no other information was available)
 The analysis of the risk of re-offending was undertaken utilising an assessment tool. This tool is based on extensive research and has been recommended for use by the Scottish Government

Please see Standards 6.9: for advice on how to protect the identity of victim informants to reports.

4(b) Verified Sources of Information	
	Tick as appropriate
Complaint/Indictment	<input type="checkbox"/>
Departmental information/service records	<input type="checkbox"/>
Medical Information	<input type="checkbox"/>
Criminal History Check	<input type="checkbox"/>
Summary of Evidence	<input type="checkbox"/>
Risk Assessment Tool(s) LSIR/ LSCMI RA 3/ 4 RM2000/ SA07 SARA SPECCSSS	
Comments: Optional - the writer can expand upon a particular point highlighted previously and where is appropriate. Were there any significant information gaps?	

5(a) Offending analysis - current
Analysis of current offence(s)
Context: Potentially this is a very expansive area of the report. Brevity will be a challenge. The Court will have versions of the offence from the 'fiscal and the defence. It is the report

author's task to be impartial and to provide their analysis to the Court.

Interview in this area will require the author to challenge the offenders version and to provide the Court with the writer's assessment of the client's views on their behaviour. The offender should be encouraged to consider how they might put matters right and what punishments they think would be appropriate for them. In order to test motivation and to assist the offender to take responsibility for their behaviour and for change they should be encouraged to take the lead in informing the report author the ways in which they need to change to reduce the likelihood of repeat behaviour.

Offender view of seriousness

The extent to which the offender is or could be motivated to try and change their behaviour

Any strengths in this situation

What is the level of responsibility for the offence?

The extent to which the offender takes responsibility for his or her behaviour (culpability)

What is the level of planning?

To what extent was the offence premeditated/planned

What is the individual's attitude and insight into the offence(s)?

Offender attitude to the offence and explanation for it (minimisation/ cognitive distortions)

What is the level of recognition by the offender on the impact/consequences of the offence(s) on the victim/community?

Analysing the individual's attitude toward the victim and the degree of victim empathy and remorse.

5(b) Offending Analysis – Previous offending

What is the pattern/history of previous offending?

Extent of previous offending

Analogous previous offending

Offender attitude to previous offending

Patterns to previous offending (offender and report writer view)

e.g impulsivity/ planned

under influence of substances.

Is there any change to this pattern
Existence of any strengths
Extent to which this is a risk area
Identify victim groups
Identifying offence free periods

6. Personal and Social Circumstances Relevant to Offending Behaviour and Sentencing

Remember- Relevant to the index offence(s) and (or) sentencing.

The report writer seeking brevity might wish to interview in brief and comment only on the recent past, assessing areas that will assist a decision to refer to other agencies or to make the case for maintaining intervention within the service. Previous and relevant contact with Criminal Justice or the wider Social Work department might be most usefully stated here.

Accommodation

Although instability of previous living arrangements may be stated, it will not usually be necessary to list the client's extensive housing history. (The LSi-r only assesses the client movement in the previous twelve months).

Under this heading consideration for any RLO assessment may usefully begin. The RLO discussion with the householder might allow an opportunity to assess the strengths and risks within the offenders living arrangement.

Significant Relationships/Background

Focus here should be on current circumstances and any expansive reporting of development relationships should only take place where directly linked to the index offence(s).

Training/Education/Employment

Consider the individual's educational and employment pattern and the nature of relationships in these settings. The client response will enable an assessment of the degree to which they are prepared to accept authority and to fit in with colleagues and employers/teachers.

Financial Circumstances

The LSi-r assessment tool assess in this area since financial pressures may be correlated with offending. National Standards request assessment in this area to assist the Court in consideration of a financial penalty. This is an important area in our assessment since fines are a means by which client can be diverted from higher tariff disposals. **Failure by the offender to pay a fine can impact heavily on the offender (Note CPO level 1, Compensation requirement).**

Health

An individual's health status is often a factor in the sentence of "compassionate probation order" and in this area we perhaps have to be quite active in referring on to other agencies before the report goes to Court.

In assessing emotional health and family circumstances, consider whether there are any child care or child protection issues.

Health status

Links to the offence

Relevance to any sentencing options: (particularly community service and custody)

Any risks presented by the person to vulnerable others e.g. children.

Any risks presented to the person due to the offenders own vulnerability.

Any action required by the report author to protect the offender or to protect vulnerable others (e.g. children or vulnerable adult)

Risk of self harm. (where there are current or previous indicators of self harm this should be highlighted on the attached notification to the Scottish Prison Service. This form should be made available to the Court Social Worker.)

Any risks to the person that might be exacerbated by custody.

Presence of strengths in the situation.

Extent to which this is a risk area

Any action that the author or client can take to relive an unsatisfactory situation.

Leisure/Recreation

In extending this section to include Leisure and Recreation, and Companions, the report writer is seeking to advise the Court what the client currently does with their time.

Use of leisure time

Pro or anti-social influence of companions

Identification of any strengths in these areas.

Extent to which this is a risk area.

Identification of any action that can be taken by the offender or the report author that will reduce risk in this area. (e.g. refer to leisure service)

Drugs/Alcohol use

Since most people drink alcohol and many people use drugs it may be appropriate here to comment only if there is an assessed correlation between the person's substance misuse and their offending.

In assessing substance misuse and family circumstances, consider whether there are any child care or child protection issues. Separate guidance is contained in the ser templates file.

Types of Substances Used

Quantity

Frequency

Method of Use

Physical and Psychological effects of use

Consequences of use
Method of financing use
Extent of dependence
Triggers to use
Links to other report areas (e.g. family/marital, accommodation, finance, employment, etc)
Previous response to treatment
Response to any current treatment
Risk to vulnerable others e.g. vulnerable adults and children due to substance misuse.
Strengths in current situation
Extent to which this is a risk area
Any action that the offender and report author can take to relieve an unsatisfactory situation

7. Risk Assessment

Risk factors

Protective factors

Analysis from risk assessment Serious Harm/Imminence Suitability for community disposal/public protection issues

This paragraph should very concisely describe the client's status according to the risk assessment tool/ screening used. It might also indicate the nature of the predicted re-offending. Risk of harm statements are not back by a validated assessment tool and report authors should describe the process by which they have reached this conclusion (LSCMi will provide greater evidenced risk of harm assessment).

Risk of harm considerations should consider risks to those who the offender has close contact with and who might be considered to be vulnerable. Such individuals would include partners and children in domestic violence cases, the children of substance misusing parents, and those who live with adults who might be considered to be vulnerable.

Standard Risk

No significant indicators of risk or harm to victim or family, No immediate concerns for the victim or family.

Medium Risk

Identifiable indicators of risk of harm present. The offender has the potential to cause harm to victim or family but is unlikely to do so unless there is a change of circumstances. This may involve a repeat victim. Children present within the home and may have witnessed the incident. Incident has occurred which has resulted in victim or family receiving minor injury.

High Risk

There are identifiable indicators of risk of serious harm. The potential incident could happen at any time and have a serious impact on the victim or family. A serious incident may already have occurred and may also have involved children. Intelligence

held alludes to violent character or tendencies of the abuser. Child within household may be on the Child Protection Register. Repeat offender where there may also be evidence of escalation.

Very High

There are identifiable indicators of immediate risk of serious harm or homicide of victim and/or family member.

(May be worth re-stating the full definitions at this point)

Risk of re-offending. (High, medium, low)

Risk of what and who are likely to be the victims

Risk of harm (very high, high, medium, standard)

Risk of what, to whom, and in what circumstances.

Risk to any vulnerable groups such as children or vulnerable adults.

Action taken in response to the identified risks

Presence of any strengths/ Protective factors in the situation.

Gaps in the information

Serious Harm/Imminence

Suitability for community disposal/public protection issues

8. Review of Relevant Sentencing Options

Community Payback Order

Only the CPO requirements that most suitably address the identified criminogenic/ need areas should be discussed here.

Where a Supervision Requirement is recommended the initial appointment date/time should be provided.

Where a Programme requirement is recommended potential commencement dates should be provided.

Where an Unpaid Work requirement is recommended induction appointment time/date should be provided.

Where an Alcohol Treatment requirement is recommended the service should be named and potential start dates provided.

Where a Drug Treatment requirement is recommended the service should be named and potential start dates provided.

Where a Mental Health treatment requirement is recommended the Mental Health worker should be named and treatment provision described.

Where a Criminogenic/ need area is identified in the body of the report and the most suitable CPO requirement is not available or deemed unsuitable at this stage the author should explain these reasons.

DTTO – Suitable/unsuitable – (only where DTTO criteria applies)

9. Conclusion

The conclusion should draw together the different risk areas identified. It might be useful at this point to distinguish those assessment areas that are linked to the offence or history of offending, and those that are not relevant. It should also highlight the strengths in the client's circumstances and attitude that might protect against further offending. Any actions intended or taken may be listed.

The key here is **proportionality** and the author should match the sentencing to the seriousness of the current offending.

Are CPO requirements asked for proportionate, relevant and outcome focussed
Young people under 18 years require a supervision element to a CPO in addition to any other requirements

A restriction of movement requirement can only be imposed when the court is considering sanction following breach

Minimum length of Order is 6 months

CPO by Justice of the Peace court is restricted to supervision, level 1 unpaid work and other activity/residence requirement/compensation/ conduct requirement

Client must consent to CPO

Where the report refers to the possibility of a community disposal involving Criminal Justice – details of the first appointment should be contained within the report – perhaps in the conclusion

Initial action plan must be completed at report stage

Does the report suggest periodic reviews to promote compliance – If not, should it?

10. Report writer details:

Name:

Position:

Office Address:

Office telephone/Fax:

Signed:

Date: