

**Community Justice Scotland  
The past, present and future**

**A report**

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# Community Justice Scotland

## The past, present and future

### 1. Terms of reference

1. Community Justice Scotland (CJS) commissioned Professors Andrew Coyle and Jacqueline Tombs to write a concise report which would:
  - focus on community justice and provide a perspective on potential pitfalls for the future and opportunities for positive and constructive system change,
  - include some aspirational thinking about how Community Justice Scotland and the new model of community justice could potentially influence system change,
  - touch on examples of good practice or excellence from Scotland and internationally and
  - help to answer the ‘so what?’ and ‘what next?’ questions.
  
2. This report fulfils these terms of reference by examining the past, the present and the possible future of community justice in Scotland:
  - taking the Kilbrandon Report of 1964 as a starting point, before describing briefly developments since then and analysing responses to these initiatives,
  - considering the statutory remit of Community Justice Scotland and how steps have been taken to implement this since the 2016 Act, and
  - offering some indicators for the future of community justice in Scotland.

## 2. Introduction

3. Historically the prison population in Scotland has always included a relatively high proportion of individuals who have been sent to prison on repeated occasions for short periods following conviction for relatively minor offences. Over the years there have been a variety of reports from official and other sources which have sought to grapple with the 'revolving door' of recurring short prison sentences for 'persistent petty offenders'. In more recent times the focus has been on legislation to limit the courts' powers to impose short prison sentences.

4. The establishment in 2017 of Community Justice Scotland is the latest governmental initiative to deal with what has proved until now the intractable problem of bridging the gap between custodial and community justice in a manner which acknowledges and responds to the harm caused by individuals in and to their communities while at the same time seeking radical solutions for the benefit of the community.

5. If Community Justice Scotland is to be successful in the future it will need to build on the firm foundations which have been laid by previous initiatives. This will be helped by the creation of an 'institutional memory' which can help all stakeholders to be aware of work which has been done in recent decades by national and local government, independent bodies and other players. This will assist in identifying previous successes as well as some pitfalls.

### 3. The past

#### Kilbrandon Report 1964

6. Throughout the 1950s there was increasing public concern about young people ‘in trouble’. In May 1961 the Secretary of State for Scotland set up a committee under the chairmanship of Lord Kilbrandon, a senior Scottish judge, to review arrangements for dealing with young people involved in offending and those in need of care or protection. The Committee’s remit was:

to consider the provisions of the law of Scotland relating to the treatment of juvenile delinquents and juveniles in need of care or protection or beyond parental control and, in particular, the constitution, powers and procedure of the courts dealing with such juveniles, and to report. (Kilbrandon Report 1964: 5)

7. In its deliberations the Kilbrandon Committee stressed the importance of social education and argued that it was not helpful to separate young people who offend from those offended against. In both cases something had gone wrong in the young person’s upbringing, reflecting unmet needs for protection, control, education and care. The Committee found that similarities in the underlying situation of juvenile offenders and children in need of care and protection – a ‘failure of upbringing’, of ‘social education’ – ‘far outweigh the differences’ and that children and young people appearing before the courts, whether they had committed offences or not, had common needs. The Committee considered that the existing juvenile courts were not suitable for dealing with these issues because they had to combine the characteristics of a criminal court with an agency making decisions on welfare. Instead the Committee recommended a new national integrated system to deal with children in need of compulsory measures of care which separated adjudication from disposition and emphasised the importance of early intervention.

8. The Kilbrandon Report was presented to the UK Parliament in April 1964. Though its innovative and radical recommendations were far from universally supported at the time, the Children’s Hearings System was introduced by the Social Work (Scotland) Act 1968 and in April 1971 Children’s Hearings took over from the courts most of the responsibility for dealing with children and young people under 16 years and in some cases up to 18 years who had committed offences or were in need of care and protection.

9. To support the Children’s Hearings Kilbrandon recommended the creation of a new ‘matching field organisation’, a Department of Social Education, to be located within each local authority Department of Education and to be staffed mainly by social workers. These departments were to provide the focus for co-operation between different local authority departments, between the local authority and other services, such as the police and the National Health Service (NHS), and between the local authority and voluntary organisations working with children.

10. Though social education departments never got off the ground, Kilbrandon’s vision and core values, which drew on longstanding principles at the heart of the Scottish cultural tradition, have had profound and enduring effects on adult as well as youth justice. Kilbrandon’s emphasis on working in partnership with the wider family and community influenced proposals in the 1966 white paper, Social Work and the Community (Scottish

Education and Scottish Home and Health Departments 1966). The white paper, concerned to avoid a multiplicity of services carrying out essentially similar work in the same community, or in the same family, proposed the re-organisation and integration of social work services into autonomous generic departments serving all age groups and many other community needs including the provision of reports and supervision duties for the Children's Hearings.

#### Social Work (Scotland) Act 1968

11. These proposals were given legislative effect through the Social Work (Scotland) Act 1968, a watershed in the history of community justice. The Act disbanded the probation service as a national service and all responsibilities for probation were transferred to local authority services. Under section 27 every local authority had to provide 'a probation and community service scheme' to include a wide range of services. Offenders were placed alongside others thought to be in need of social work services which, under section 12, had a duty to 'promote social welfare', both community and individual welfare. Within this legal framework social work supervision and assistance for offenders was conceived as part of community welfare. (McNeill and Whyte 2007)

12. Under the arrangements introduced by the 1968 Act, social work services to the adult criminal justice system were financed in large part by local authorities from their own income, supplemented by grant aid from central government. As a consequence criminal justice services had to compete for resources with other parts of social work services. By the 1980s concerns grew about restrictions in resources for criminal justice work and whether generic social workers had the specialist knowledge required to deliver an effective service. Related to this was concern about Scotland's high use of imprisonment, especially of short prison sentences. The then Secretary of State for Scotland was clear that prisons may not be the most appropriate environment in which to deal with less serious offenders (Rifkind 1989).

#### Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

13. These concerns led to the emergence of criminal justice social work as a distinct specialism through provisions in the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. This Act provided for the development of National Objectives and Standards for Social Work Services in the Criminal Justice System (NOS) (Social Work Services Group 1991) and from April 1991 central government introduced ring-fenced 100 per cent funding for core social work services to the adult criminal justice system. The NOS were developed in partnership with central government, local authorities, the judiciary, the police, professional social work, the voluntary sector and other interested parties. Though some services continued to be funded by local government in relation to their crime prevention and community safety responsibilities, ring-fenced funding for most services meant that provision was no longer an autonomous local authority responsibility. Nonetheless, partnership at a local level remained central to the policy and since local government reform in 1996 there has been greater emphasis on partnership with those working in education, health and justice and in the public, private and voluntary sectors.

14. The main policy objectives of these developments were to reduce the use of custody and to reduce reoffending (Paterson and Tombs 1998). Under the new arrangements criminal justice social workers were expected to make a range of *community disposals* available to the courts, specifically for non-violent and less serious offenders. More serious and violent offenders were likely to face custody unless credible *alternatives to custody* were made

available should the court decide to use them. The NOS also emphasised reparation and anticipated that criminal justice social work would operate on behalf of victims by helping offenders to change behaviour thereby protecting the community. Overall, through its contributions to reducing custody, reducing reoffending and improving community safety, it was intended that criminal justice social work would fulfil its duty under section 12 of the 1968 Act to promote the welfare of the community and the individuals within it.

#### Scottish Labour's 2003 Manifesto plan for a 'single agency' and responses

15. Notwithstanding these developments, as well as a decrease in recorded crime and a significant increase in the use of community disposals during the 1990s, the prison population continued to expand and the rate of re-offending by those released from prison remained high. In the early 2000s the Home Office announced its intention to amalgamate the Prison Service and the Probation Service in England and Wales by creating a new National Offender Management Service. Following this lead, the Scottish Labour Party's 2003 Election Manifesto included the following commitment:

We will set up a single agency – the Correctional Service for Scotland – staffed by professionals and covering prison and community based sentences to maximise the impact of punishment, rehabilitation and protection offered by our justice system. (Scottish Labour 2003)

16. After the Scottish elections in May 2003 the coalition Labour and Liberal Democrat Scottish Executive published a joint agreement, A Partnership for a Better Scotland. This included the following commitment:

We will publish proposals for consultation for a single agency to deliver custodial and non-custodial sentences in Scotland with the aim of reducing reoffending rates. (Scottish Executive 2003)

17. In response to these proposals, the Convention of Scottish Local Authorities (COSLA) took the view that the criminal justice services currently delivered by local government were of value and refused to enter into any consultation with the Scottish Executive in which the removal of these services from local government control would be a pre-determined outcome. However, it indicated a willingness to discuss all options for improving outcomes within the criminal justice system in an open manner.

18. Considerable opposition to the proposed single agency approach was also expressed from a wide range of other sources and the Scottish Executive published a subsequent consultation document in March 2004 which broadened the debate beyond the single agency approach to consider views on how criminal justice services might better be structured to manage offenders in prison and in the community and to minimise the likelihood of their reoffending.

#### Scottish Executive 2004 Consultation and Responses

19. The new consultation, Reduce, Rehabilitate, Reform: A Consultation on Reducing Reoffending in Scotland (Scottish Executive 2004), sought responses from anyone with an interest in the criminal justice system, including those agencies working within the system, those who provide services, communities (victims, those affected by crime and the general

public), offenders and their families. Analysis of the responses underlined a widespread lack of support for bringing together criminal justice social work services and the Scottish Prison Service (SPS) within a single correctional agency structure (Scottish Executive 2004a). To summarise, responses argued that a single agency would not be any more effective in tackling reoffending, that it would fail to address the complex needs of offenders and that it would reduce the ability of relevant agencies to manage risk. At an organisational level, the proposed arrangements were thought unlikely to reconcile differences between organisations while excluding other parties and would result in a loss of accountability, responsiveness and independence at the local level.

20. Despite rejection of the single agency approach, the responses agreed that there were weaknesses inherent in the system at the time indicating the need for closer integration at a local level. These included a lack of shared objectives (and thus accountability) for reducing reoffending, poor communication and integration between criminal justice agencies, inconsistent delivery of services across Scotland and the lack of effectiveness of short term prison sentences in reducing reoffending.

#### Scottish Executive Consultation 2005 and Responses

21. In the event the Scottish Executive abandoned its plan to establish a single agency and published its Criminal Justice Plan, Supporting Safer, Stronger Communities, in December 2004 (Scottish Executive 2004b) setting out proposals for the creation of Community Justice Authorities (CJAs).

22. A subsequent consultation on the proposed functions, structure and constitution of CJAs and the role of partner organisations was issued in 2005. The consultation, Supporting Safer, Stronger Communities: Consultation on Community Justice Authorities (Scottish Executive 2005), proposed options for the boundaries of each CJA and how their membership and operation would complement the work of the SPS. The proposed new framework had a particular focus on reducing reoffending. Analysis of responses to the consultation underlined widespread support for the concept of CJAs as strategic bodies though concerns were expressed about the lack of clarity surrounding the nature of the SPS/CJA relationship. (Scottish Executive 2005a)

#### The Management of Offenders (Scotland) Act 2005

23. The Management of Offenders (Scotland) Act 2005 provided for the creation of eight CJAs across the country “to bring all agencies together, to create a more coherent and flexible system of offender management, building services round the offender”. The aim was to assist local authorities to fulfil their legal responsibilities to deliver criminal justice social work services to their communities and courts, with a view to transforming the way local authorities, the SPS and other local organisations worked together to reduce reoffending.

#### Community Justice Authorities 2006

24. In April 2006 the eight CJAs were created, each consisting of one or more of the 32 Scottish local authorities as well as their statutory partners which included the police, courts, prosecution, prisons, Victim Support Scotland, Health Boards and relevant voluntary agencies. The role of each CJA was to plan, co-ordinate, monitor and report on the delivery of community justice services and to produce a strategic plan for their area in consultation

with statutory and non-statutory partner bodies. The 2005 Act also placed a greater corporate responsibility on local authorities and the SPS for the management of serious and violent offenders. As a result, Multi-Agency Public Protection Arrangements (MAPPA) to coordinate local accommodation, risk assessment and management arrangements through joint working protocols in each local authority area were established in each CJA.

#### National Advisory Body on Offender Management 2006

25. The 2005 Act also established a National Advisory Body on Offender Management (NAB) to shape long term national strategy to achieve a reduction in reoffending. Its roles were to review the national strategy for managing offenders, to provide advice on enhancing offender management practice and to support the work of the new CJAs, including the approval of their local plans. The NAB was to be chaired by the Justice Minister with membership including representatives from the Scottish Executive (including the SPS), COSLA, the Association of Directors of Social Work (ADSW), the voluntary sector, Victim Support Scotland, the Association of Chief Police Officers in Scotland, the Parole Board, the Risk Management Authority and a range of experts.

#### National Strategy for Offender Management 2006

26. The first National Strategy for Offender Management was published in May 2006 (Scottish Executive 2006). This encouraged a set of common objectives and expected outcomes aimed at increased public protection and delivering a consistent approach to managing offenders in prison and in the community. In setting the direction for the new CJAs, the strategy emphasised that “through working together locally and nationally, Scotland has the opportunity to create a new model for managing offenders characterised by a well-focussed, problem-solving approach”. It was envisaged that the success of the strategy would depend on “helping offenders and their families access the services they need, such as advice on financial services, benefits and sustainable support and also for these services to recognise offenders and their families as groups who should have equal access to their services.”

#### Scottish Government 2007 Consultation and Responses

27. In June 2007, just over a year after the CJAs had become operational, the new minority SNP Scottish Government announced plans to review the use and operation of community penalties. Committed to developing ‘a more coherent penal policy’, the Government believed that there was scope to improve and make more use of community sentences. In the context of an ever increasing prison population in spite of expansion in the use of community penalties and falling crime rates, the review focussed on reducing reoffending and the use of short prison sentences for offenders who did not pose a risk to the public. Throughout July and August 2007 meetings were held between officials and a range of organisations and key individuals involved in the community penalties field and focus groups were held with members of the public in order to gauge the level of public awareness of community penalties.

28. The report, *Reforming and Revitalising: Report of the Review of Community Penalties* published in November 2007 (Scottish Government, 2007), found that community penalties had an image problem insofar as the public often perceived them as ‘soft’. It concluded that a programme of positive change would be required to demonstrate that

community penalties could be tough; that they could involve more effort and punishment than imprisonment; that they were more effective in preventing reoffending than short prison sentences; and that (in the case of community service in particular) they could involve meaningful payback to the community by the offender for the harm inflicted. The public and the courts would have confidence in community penalties if they saw them working effectively in their communities.

29. Respondents to the review emphasised that the reform of community penalties should focus on developing a high performing service based on the principles of effective practice, that is, community penalties should be high quality, effective, immediate, visible, flexible and relevant.

#### Scottish Prisons Commission (McLeish Report) 2008

30. A further step in the Government's aim of developing a more coherent penal policy was taken in September 2007 with the establishment of an independent Prisons Commission. The Commission, chaired by former First Minister Henry McLeish, had a remit to:

- Consider how imprisonment is currently used in Scotland and how that use fits with the Government's wider strategic objectives.
- Raise the public profile of this issue, providing better information to allow a deeper understanding of the options, outcomes and costs.
- Assess the impact for courts, prisons and community justice services of early release provisions of the Custodial Sentences and Weapons (Scotland) Act 2007.

31. The Commission's report, *Scotland's Choice - report of the Scottish Prisons Commission*, was published in July 2008. The Commission found that:

- Scotland imprisoned more of its people than many other countries in Europe.
- The prison population had increased in every year of this century; it was projected to reach 8,700 inmates by 2016.
- Increased use of prisons was the result of using it for those who are troubled and troubling rather than dangerous.
- Prisons drew their inmates from the least well-off communities.
- High prison populations do not reduce crime; they are more likely to create pressures that drive reoffending than to reduce it.

The Commission concluded that the manner in which imprisonment is used is a matter of political and social choice, that gaining control over ever increasing prison numbers is the necessary first step to limit the damaging effects of high prison rates, and that communities should be at the heart of penal reform.

32. The Commission's report made 23 recommendations for action and argued that a significant reduction in the prison population could be achieved by avoiding the use of short prison sentences by implementing a comprehensive system of community-based sanctions for minor offenders. The Commission's final recommendation was that the Government should pursue a target of reducing the prison population to an average daily population of 5,000, guiding and supporting the efforts of relevant statutory bodies in achieving that target.

33. In relation to sentences in the community, the Commission recommended that judges should be provided with a wide range of options through which offenders can payback in the community but that where sentences involving supervision were imposed there should be one single Community Supervision Sentence (CSS) with a wide range of possible

conditions and measures. By payback, the Commission meant finding constructive ways to compensate or repair harms caused by crime. Payback involved making good to the victim and/or the community whether by unpaid work, engaging in rehabilitative work that benefits both victims and the community by reducing reoffending, or some combination of these and other approaches.

34. To reduce the use of short-term prison sentences, the Commission recommended that the Government should legislate to require a sentencing judge who would otherwise have imposed a sentence of 6 months imprisonment or less to impose the new CSS instead, except in particular circumstances. The Commission further recommended the establishment of a National Community Justice Council (NCJC) to provide leadership in implementing the CSS. As criminal justice social work and community justice services were pivotal to making the Commission's proposed reforms work, the NCJC should also provide the necessary leadership in boosting the integration and standing of these services within the criminal justice system, local authorities and local communities. This body was not set up.

35. The Commission was clear that the aim of its recommendations was to restrict the use of imprisonment to serious offenders. It recognised that prison did not reduce reoffending and that money invested in prisons could be better spent in communities and on nurseries, schools, youth services and hospitals as 'in the longer term, these institutions stand a better chance of reducing crime than prisons do'. The criminal justice system had a limited impact and resources should be allocated where they were most needed and most likely to make a difference through 'up-front investment in better services in and for Scotland's communities'. (Scottish Prisons Commission 2008)

#### Commission on Women Offenders (Angiolini Report) 2012

36. For many years there has been particular concern in Scotland about women who come into contact with the criminal justice system, especially about the treatment of those who are imprisoned. Details of recent initiatives as well as the Government's responses and latest proposals are provided as a case study in Annex 1 of this report. In 1964 the original terms of the Kilbrandon Committee had referred primarily to children and young people. However, as explained above, the subsequent report and responses to it had a profound influence on adult as well as juvenile justice. In a similar manner the 2012 report of Commission on Women Offenders, which is discussed in more detail in Annex 1, identified the need for radical reform of general arrangements for offender services in the community and recommended the establishment of a Community Justice Service 'to commission, provide and manage adult offender services in the community'.

37. Although its remit was restricted to improving outcomes for adult women in the criminal justice system, the Commission's report emphasised that many of its proposals 'may also benefit male offenders' and that some of its recommendations 'might be more appropriately applied across the whole offending population' (Commission on Women Offenders 2012). Similarly, while the case study in Annex 1 is focussed on recent initiatives and current proposals in relation to women offenders, the lessons to be drawn are more widely applicable. In particular, Annex 1 underlines the need for government to give clear and direct policy statements in order to promote penal reform by establishing the primacy of community justice.

### Scottish Government 2012 and 2014 Consultations and Responses

38. In December 2012 the Scottish Government launched *Redesigning the Community Justice System: A Consultation on Proposals*. (Scottish Government 2012) The consultation outlined three options for a new community justice model developed with input from key stakeholders. These were: Option A, an enhanced CJA model where changes would be made to CJA membership and functions; Option B, a local authority model where local authorities would assume responsibility for the strategic planning, design and delivery of offender services in the community; and Option C, a single service model where a new national social work-led service for community justice (separate to and sitting alongside the SPS) would be established.

39. None of the three options attracted significant support at the consultation events though elements of each gained support from respondents. Consequently, in its response in December 2013 the Government outlined the skeleton of a new model developed with support from the main stakeholders (Scottish Government 2013) and a further consultation, *Future Model for Community Justice in Scotland*, was launched in April 2014 to give stakeholders, practitioners and members of the public the opportunity to contribute to the development of the new model (Scottish Government 2014).

40. The 2014 consultation defined community justice in Scotland as: “The collection of agencies and services in Scotland that individually and in partnership work to manage offenders, prevent offending and reduce re-offending and the harm that it causes, to promote social inclusion, citizenship and desistance”. The key changes proposed for the new model included:

- Establishing local strategic planning, delivery and accountability for community justice services;
- Placing duties on a defined set of statutory community justice partners to engage in local strategic planning and delivery and to be accountable;
- Creating a new body, Community Justice Scotland, to provide leadership for the sector; enhanced opportunities for innovation, learning and development; improvement support where required; and independent professional assurance to Scottish Ministers on the collective achievement of community justice outcomes across Scotland;
- Establishing a national strategy to provide this coherent vision for community justice in Scotland to facilitate and drive improvement. This strategy would enable stakeholders to collaboratively address priority areas through a joint approach to delivery that is both outcomes-focused and evidence-based;
- A focus on collaboration, including the opportunity to commission, manage or deliver services nationally where appropriate.

41. The *Community Justice (Scotland) Bill* was introduced in the Scottish Parliament in May 2015. The content of the Bill was drawn from the Scottish Government’s response to the 2014 consultation and its purpose was to replace the existing CJA model for community justice services with the new model. The eight CJAs were to be abolished.

*Commentary on the Community Justice Authorities: successes and weaknesses*

42. Since the creation of CJAs in 2006 the terminology ‘community justice’ has been increasingly used in policy and legislation to refer to the relationships between the courts, those organisations that administer court disposals and the communities from which offenders come and to which they are likely to return after sentencing or on release. The CJA model was intended to emphasise that community justice is best achieved in partnership at local level, that problem-solving is central to its ethos, and that it is the community as a whole that is the ultimate beneficiary. The CJA model was intended to align itself with what were perceived to be Scottish cultural traditions, in particular with the Kilbrandon philosophy and the Social Work (Scotland) Act 1968, in supporting locally responsive community based services that promote social welfare and social justice for victims, offenders and communities.

43. The CJAs were successful in bringing organisations and services together and in promoting joint working. They also had an important role in relation to the management of serious and violent offenders under Multi-Agency Public Protection Arrangements (MAPPA) which coordinate local accommodation, risk assessment and management arrangements through joint working protocols.

44. At the same time, CJAs attracted critical comment from a number of sources. In 2008 the McLeish Commission commented that they needed to demonstrate ‘greater vision, visibility and leadership’, while also noting ‘their very limited powers and resources’. The Commission’s report also drew attention to the fact that “social workers supervising community sentences and released prisoners cannot tackle offenders’ complex and varied problems on their own”. It concluded that “it is in society’s interests that all public services - education, employment, health, housing and so on - play an active part in helping ex-offenders to lead a law-abiding life in the community”. The Commission went on to point out that the CJAs had no operational responsibility for the delivery of community justice services and concluded that what was needed was a “much broader series of partnerships with agencies, both statutory and voluntary”.

45. The report of the Angiolini Commission on Women Offenders in 2012 had similarly noted strong evidence that there were “still inherent barriers in the structural and funding systems for criminal justice social work, and working practices which inhibit greatly the potential to reduce reoffending.” It heard about “the lack of opportunity for strategic leadership and accountability in the delivery of offender services in the community; about short-term funding and difficulties in measuring impact; about inconsistent service provision across Scotland; and that interventions delivered in prison very often cease at the gate.” The Commission’s report identified a ‘grossly cluttered landscape’ of more than 200 organisations and partnerships with an interest in community justice services (including CJAs, alcohol and drug partnerships, community planning partnerships, health boards, police and third sector organisations).

46. In 2012 Audit Scotland produced a report, Reducing reoffending in Scotland (Audit Scotland 2012), which repeated many of the concerns raised in the 2008 and 2012 reports. The Audit Scotland report recognised that the way that CJAs had been set up had significantly limited their effectiveness and noted that there were no nationally-agreed measures to assess their performance. The report also emphasised that the range of bodies involved and the structure of the public sector in Scotland created a complex landscape and

that there was limited alignment between the priorities of CJAs and those of other local partnerships such as community planning partnerships and alcohol and drug partnerships. Audit Scotland identified a number of specific inhibitors:

- The effectiveness of CJAs was limited by a lack of operational responsibility for the delivery of community justice services and the fact that statutory partners were not accountable to CJAs.
- There were variable levels of engagement and understanding amongst CJA board members, with some councillors finding it difficult to separate responsibilities to CJAs and their local authorities.
- There was variable attendance of statutory partners at CJA board meetings, with some indicating that attendance at meetings was not always considered a good use of time.
- There was limited capacity within CJAs to undertake their full range of work, for example, in monitoring how effectively funds were being used.

## 4. The present

### The Community Justice (Scotland) Act 2016

47. The Community Justice (Scotland) Act 2016 which provided for the abolition of Community Justice Authorities and for the establishment of Community Justice Scotland was passed by Parliament on 11 February 2016 and received Royal Assent on 21 March 2016.

### Community Justice Scotland (CJS)

48. The Act creates CJS as a national body with a key role to play in the new model for community justice. Local delivery, partnerships and collaboration are central to the new model with CJS:

- providing national, professional and strategic leadership for community justice in Scotland;
- providing assurance to Scottish Ministers through oversight of the national outcomes, performance and improvement framework;
- promoting and providing enhanced opportunities across the sector through establishing and running a national hub for innovation, learning and development; and
- promoting a focus on collaboration, including the opportunity to commission, manage or deliver services nationally and strategically where appropriate.

49. The main functions of CJS are to promote the national strategy in relation to community justice prepared by the Scottish Ministers; oversee and keep the Scottish Ministers informed about performance in the provision of community justice; promote and support improvement in the provision of community justice and in making best use of resources; and promote public awareness of the benefits community justice. CJS published its first Corporate Plan for 2017 – 2020 in December 2017.

### Community justice partners

50. The Act places responsibility for local planning and monitoring of community justice services with a defined set of local community justice partners. The community justice partners are local authorities, health boards, Police Scotland, the Scottish Fire and Rescue Service, Skills Development Scotland, Health & Social Care Integration joint boards, the Scottish Courts and Tribunals Service, and the Scottish Ministers (in practice the Scottish Prison Service). A duty is placed on these statutory partners to co-operate with each other and act jointly in carrying out planning activities, delivering and reporting on their local area.

### National and local accountability

51. A key issue highlighted by the consultation process on the new model was the need for clarity around the respective roles of the national body and local arrangements. The Act makes CJS accountable to the Scottish Ministers for policy delivery, compliance with statutory duties and performance against agreed strategic objectives. Existing accountability lines for individual community justice partners remain. Community justice partners are not accountable to CJS for operational delivery; responsibility for resolving any local issues rests with the community justice partners of that local area.

52. Although community justice partners are not accountable to the national body, the Act requires that community justice partners (other than the Scottish Ministers) comply with any reasonable request from CJS to provide information, advice or assistance in any connection with any of CJS's functions.

#### National strategy for community justice

53. The National Strategy for Community Justice was published by the Government on 24 November 2016 (Scottish Government 2016). The vision for community justice set out in the strategy is that Scotland should be a safer, fairer and more inclusive nation where we:

- prevent and reduce further offending by addressing its underlying causes; and
- safely and effectively manage and support those who have committed offences to help them reintegrate into the community and realise their potential for the benefit of all citizens.

54. CJS has a key role in promoting the vision set out in the strategy by working with partners, stakeholders and communities to improve the understanding of community justice and the benefits it can bring while maintaining public protection.

#### National performance framework

55. The CJA model was criticised for its lack of measures to understand success and cost. The 2016 Act establishes a national performance framework for the new model against which local partnerships can plan and report. The framework is required to set out 'nationally determined outcomes' for community justice to be achieved in each local authority area and 'national indicators' for measuring performance in relation to these outcomes.

56. While the responsibility for improvement and delivering outcomes rests locally, under its assurance function CJS has a duty to monitor the performance of community justice partners against the national performance framework and must report to them individually on its assessment of their performance.

#### Community justice outcomes, performance and improvement framework

57. The Community Justice Outcomes, Performance and Improvement Framework (OPI) (Scottish Government 2016a) and Guidance for Local Partners in the New Model for Community Justice (Scottish Government 2016b) were published alongside the National Strategy for Community Justice. Statutory community justice partners are required to plan and report against the nationally-determined outcomes and to report using the national indicators specified in the OPI framework.

#### Community justice outcome improvement plans

58. Local community justice partners are responsible for preparing, delivering and reviewing a Community Justice Outcomes Improvement Plan (CJOIP) for their local area. The Act places a duty on community justice partners to plan against the national strategy and the nationally and locally determined outcomes and to publish a report at the end of each reporting period setting out progress made towards the nationally and locally determined outcomes set out in the CJOIP. A copy of this report must be sent to CJS.

59. Third sector, other partnerships, community-based organisations and local communities all have important roles to play in preparing local plans. Where community justice issues affect multiple local authority areas they may choose to work together for shared expertise, economies of scale etc. Details of such collaborative working should be included in the CJOIPs.

#### CJS and performance improvement in relation to community justice outcomes

60. The Act places a duty on CJS in relation to each local authority area to monitor performance in the achievement of the nationally determined outcomes and each locally determined outcome and, from time to time, report to the community justice partners for the area on its assessment of that performance. Community justice partners must comply with any CJS issued direction. CJS can direct community justice partners to publish CJS's assessment of their performance, notify CJS of the action that will be taken in light of that assessment to deliver improvement or confirm that they will not be taking any action.

61. CJS has a specific role in relation to Multi Agency Public Protection Arrangements (MAPPA). Although the Act abolished CJAs, arrangements for MAPPA continue on a regional basis with MAPPA co-ordinators working across the former CJA defined areas. Instead of submitting a report to the relevant CJA, the responsible authorities must now submit a report to CJS. CJS must send a copy of the report to the Scottish Ministers.

62. The Act requires CJS to provide assurance to the Scottish Ministers about the delivery of community justice outcomes and to publish an annual report 'as soon as reasonably practicable after 31 March in each year' which sets out its assessment of performance in Scotland as a whole in relation to the achievement of the nationally determined outcomes. CJS must lay a copy of its report before the Scottish Parliament.

#### Learning, development and innovation strategy

63. CJS is required to publish a strategy for innovation, learning and development. In preparing the strategy CJS must refer to the national strategy and the national performance framework and must consult each of the community justice partners, third sector bodies involved in community justice and other persons it considers appropriate. CJS issued its first draft Learning, Development and Innovation (LD&I) strategy for consultation in December 2017 which notes that CJS will operate 'as a national Hub for Learning, Development and Innovation' for professionals within the community justice sector.

## 5. Commentary on CJS to date and in the future

### What has been achieved so far

64. In terms of governance and accountability Audit Scotland's 2012 report had recommended that the Scottish Government should review current arrangements for managing offenders in the community to ensure that:

- there were clear and shared objectives to reduce reoffending;
- those working to reduce re-offending had appropriate powers;
- there was clear accountability and a mechanism to promote collective responsibility for reducing re-offending;
- arrangements promoted and supported what worked in reducing re-offending and allowed flexible service delivery;
- there was a more co-ordinated and strategic approach to working with the third sector.

65. The new model for community justice introduced by the Community Justice (Scotland) Act 2016 responded to these requests through the creation of Community Justice Scotland as a new strategic national body providing oversight, monitoring performance and promoting awareness of community justice with the delivery of community justice services remaining under local authority control. The creation of CJS also responded to a recognition that the system of community justice needed an increased status and a more unified 'voice' with greater potential to drive forward meaningful change. The success of the new structures and performance frameworks for community justice introduced by the Act depends on several factors including whether CJS will be able to provide real national profile and leadership and how the legislative powers granted to CJS and community justice partners work in practice.

66. In its first year of activity CJS has achieved a great deal. It already has a significant public profile, both in its own right and in terms of enhancing public understanding of what constitutes 'community justice'. Its user friendly website provides a convincing overview of the reach of its activities and the partnerships which it is in the process of developing. Its work is underpinned by a cooperative ethos which balances its obligation to provide leadership in the field while at the same time avoiding any risk of undermining the operational independence of its statutory and other partners. CJS is still in the process of developing its statutory monitoring responsibilities. This involves evaluating the operating efficiency of partners in a manner which is rigorous without being oppressive.

### What might be achieved in the future

67. The terms of reference for this report invited us to include some aspirational thinking about how Community Justice Scotland and the new model of community justice could potentially influence system change. We conclude by offering examples of the kind of applied research which CJS might usefully undertake in the future.

### Justice Reinvestment

68. Recent work on what has become known as 'justice reinvestment' began in the United States of America at the turn of this century. It had its roots in a realisation that public well being and safety was not improved by government strategies which were premised solely on criminal justice activity against particular individuals. In the USA that approach had resulted

in ever increasing rates of imprisonment, with the vast majority of prisoners coming from narrowly identified neighbourhoods. In addition, almost three quarters of a million men and women were being released from prison each year; of these more than half returned to prison within three years. The primary aim of justice reinvestment was to redirect financial and other resources which were being spent on prisons onto community-based initiatives to deal with the underlying causes of crime. In the words of its early advocates, it sought “to invest in public safety by reallocating justice dollars to refinance education, housing, healthcare and jobs.” (Tucker and Cadora 2003)

69. At about the same time research data on the link between social exclusion and imprisonment was being produced in the United Kingdom. The best known example of this was the 2002 report by the Social Exclusion Unit, *Reducing re-offending by ex-prisoners* (Social Exclusion Unit 2002). Building on the Social Exclusion report, Roger Houchin, a former Governor of Barlinnie Prison, published a ground-breaking report on the situation in Scotland (Houchin 2005). Using tools including the Scottish Index of Multiple Deprivation, Houchin reported that there were 1,222 local government electoral wards in Scotland. He found that 25 per cent of all prisoners in Scotland came from just 53 of these wards, 35 of which were within the City of Glasgow. A further 25 per cent came from another 102 wards. He concluded:

The strategy (for social inclusion) should be pursued in the community. It is not a strategy for working with offenders. It is a strategy for working in communities that are estranged for the benefits of our society and extending membership to them. (Houchin 2005)

70. The justice reinvestment initiative has gained traction in a number of countries over the last decade or so. It was also the subject of a positive report by the House of Commons Justice Select Committee in 2010. The Committee made the following recommendation to the UK Government:

The Government should implement a holistic approach across central and local agencies and authorities in order to shift resources from the provision of custody for its own sake to the prevention of crime and the reduction of re-offending; This is nothing new: ‘prevention’ is not just better, more effective and cheaper, than ‘cure’ but is right in principle. Victims want to see fewer crimes. A genuinely victim-based approach to crime should therefore go wider and deeper than providing supportive and responsive services for victims of crime, and be focused on crime reduction and prevention as well as justice. (House of Commons Justice Select Committee 2010)

71. The CJS Corporate Plan 2017-2020 includes a commitment ‘to promote thinking around justice reinvestment’. CJS might wish to consider giving a high priority to this subject. In the first instance, it may wish to explore the possibility of updating the data contained in Roger Houchin’s 2005 report and also of reviewing the considerable experience which is now available from other jurisdictions. It might also consider engaging with relevant partners to sponsor one or more pilot justice reinvestment initiatives.

### Restorative Justice

72. In some respects justice reinvestment is a young relation of the earlier concept of restorative justice, which recognises that for justice to be complete it should include not only

retrospective punishment of an offender for harm done but should also look forward to provide some restoration to those who have suffered or otherwise been affected.

73. In recent years many restorative justice initiatives have appeared to focus exclusively on interaction between individual victims and offenders to consider the harm which has been caused and finding a way to repair it. This is the situation in Scotland where the Victims and Witnesses (Scotland) Act 2014 defines restorative justice services as “any process in which [the victim of an offence and the person who has, or is alleged to have, committed the offence] participate with a view to resolving any matter arising from the offence or alleged offence with the assistance of a person who is unconnected with either person or the offence or alleged offence.” (Scottish Government 2017)

74. The individual and specific nature of this form of restorative justice is extremely important and should never be lost sight of. However, there can in addition be a wider and more general aspect to the concept of restorative justice which recognises that some criminal and other socially unacceptable forms of behaviour also cause harm to communities as a whole, which in turn need to be restored. Some of the earliest experiments in restorative justice in the United Kingdom began a generation ago in the Thames Valley and this area continues to be a leader in this work, notably through the Thames Valley Partnership which:

... works in partnership with the statutory, private and voluntary sectors to provide long-term sustainable solutions to the problems of crime and social exclusion. We work to protect victims and reintegrate offenders. Our strength is in collaborative working and integrated approaches across sectors, particularly linking Criminal Justice services to voluntary sector and Local Authority providers. Our broad spectrum of work includes programmes around the needs of [families of offenders](#), work in the field of domestic abuse, [support for victims](#), [restorative justice](#), community cohesion, mental health issues, early interventions & initiatives around young people and arts related projects. (Thames Valley Partnership 2018)

75. When developing future initiatives CJS may wish to consider the possibility of expanding the principles of restorative justice to include a more general application similar to that of the Thames Valley Partnership. Such an initiative could be developed alongside work done on justice reinvestment.

#### A final word

76. In the spirit of the ‘aspirational thinking’ which we were asked to provide, we end by placing the work of CJS in a global context. In December 2015 the United Nations General Assembly approved a set of Sustainable Development Goals (SDGs) which all its member states committed to achieving within 15 years.

77. An important feature of the new SDGs is the inclusion of a goal which is specifically related to justice. Goal 16 is a commitment to “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”. This goal recognises that there is a significant interrelation between the rule of law and development and that their mutual reinforcement is essential for sustainable development at national and international levels. Goal 16 has ten targets, one of which is a commitment to “strengthen relevant national institutions, including through

international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime” (United Nations 2018).

78. The fundamental importance of Goal 16, and one which should be noted by CJS, is that the issue of justice now has its place alongside those such as poverty, hunger, health, education, equality and productive employment. This has important implications for the way that criminal justice systems operate and specifically for the way that imprisonment is used. If this model gains traction in the future then it should become possible to restrict the remit of criminal justice to its core business of preventing and responding to serious crime. Many of the related personal and social problems which currently often take individuals through the doorway of the criminal justice system and into the prison will instead be seen as matters to be dealt with through human development structures and mechanisms.

79. The strapline on the face of the CJS website states:

We want Scotland to be the safest country in the world.

The United Nations Sustainable Development Goal 16 could provide CJS with a vehicle to seek to achieve this worthy and ambitious aim.

## **Annex 1**    A case study: women offenders

### Social Work Services and Prisons Inspectorates for Scotland 1998

1.1 In 1998 the Social Work Services and Prisons Inspectorates for Scotland produced a joint report, *Women Offenders – A Safer Way*, in response to public outcry following the seventh suicide in thirty months from 1995-97 at Scotland's only women's prison, HMP Cornton Vale. The suicides took place at a time when the average daily female prison population was around 170; in 1998 the number of women in prison in Scotland had risen to 199. The death of these young women (all were under 30 years old) became the subject of the longest running fatal accident inquiry in Scottish legal history and provoked the first comprehensive official review of community disposals and the use of custody for female offenders in Scotland. (Social Work Services and Prisons Inspectorates for Scotland 1998)

1.2 Like many other contemporary penal reform and policy documents on female offenders, many of the conclusions reached in *A Safer Way* are familiar ones:

- that women's offending and the needs of female offenders are different from those of men;
- that women tend to commit minor, mainly property, offences;
- that their backgrounds are characterised by emotional, physical and sexual abuse;
- that they suffer disproportionately from drug and alcohol misuse.

Importantly, the report also stresses that women's offending is often rooted in poverty; extreme social and economic deprivation. Where *A Safer Way* makes a distinctive contribution is in its impetus towards decreasing the use of imprisonment through setting specific targets with dates.

1.3 In relation to the main aim of the review, "to see whether a significant change in emphasis might help to reduce incidences of suicide in custody", the report concludes that the "only relatively sure method of reducing the number of suicide attempts in custody is to make a significant reduction in the number of women being imprisoned, via a twin track strategy". The twin track strategy envisaged would involve 'more options in the community' and 'fewer prison places'. The aim of that strategy should be to "limit the female population at Cornton Vale from over 170 to 100 or less on a daily basis by the end of the year 2000" and to ensure that by 2000 young women under 18 years of age are not held in prison establishments.

1.4 *A Safer Way* made seven recommendations to effect action to meet its targets for decarceration. The Government's response endorsed "extending the provision of options for dealing with women offenders in the community" but noted that there "will, however, continue to be a demand from the courts for prison places for women" (The Scottish Office 1998:7). The penal custody debate thus shifted from a focus on government policy making to the individualised decision-making of the judiciary. As a consequence one aspect of the twin-track strategy, reducing the number of prison places, was lost. Instead of a strategy to ensure that the female prison population was limited 'to 100 or less on a daily basis by the year 2000', a commitment was made to monitoring the targets set.

1.5 Subsequent developments further diluted the report's decarceration impetus. The Inter Agency Forum on Women's Offending (IAF) established in August 1998 to take forward the policy had a narrower understanding of the factors associated with female offending. Where *A Safer Way* noted that women's offending is 'often rooted in poverty' and other socio-

economic circumstances, the IAF emphasised that women who offend, “share three characteristics, namely Addiction, Abuse and Anxiety or other forms of psychological distress”. (Inter Agency Forum on Women’s Offending 2000)

1.6 Moreover there was no mention in either of the two IAF reports of the twin track strategy envisaged in *A Safer Way*. Instead the IAF developed five strategic goals. These were, “a decrease in women becoming involved in offending; a decrease in the severity of women’s offending; a decrease in the number of women in custody; evidence of women being helped to desist from criminal activity; and the development of alternative methods for dealing with female offenders”. These *five strategic goals*, however commendable, were translated into *the targets* but they were not the time and number targets set in *A Safer Way*’s twin track strategy of fewer prison places and more options in the community. The only time targets set by the IAF were in relation to information (within the first year) and communication (within the first 6 months). In concluding its work, the IAF made thirteen recommendations aimed at reducing the use of imprisonment for female offenders but these recommendations were *all about processes*; they were not about targeted, time specific outcomes and there was no mention of the limit on numbers to be held in penal custody. (Inter Agency Forum on Women’s Offending 2001)

1.7 Similarly, the Deputy Minister for Justice in informing Parliament’s Justice 2 Committee on 12 September 2001 about the work of the Ministerial Group On Women Offenders, an inter-agency group set up in December 2000 in response to both *A Safer Way* and the work of the IAF, made no mention of the ‘fewer prison places’ track of the twin track strategy recommended in *A Safer Way* and no comment on the decarceration targets it had set out. On the other hand it was emphasised that ‘there will always be a need for a women’s prison’. And, in relation to the ‘more options in the community’ track, the Minister argued that, “We can provide alternatives to custody but it is the sentencers who will decide whether those alternatives are used generally, and in specific cases.” Again the responsibility for limiting the incarceration of women was shifted from government policy to the exercise of judicial discretion in individual cases.

#### Ministerial Group on Women’s Offending 2002

1.8 *A Better Way*, a report from the Ministerial Group on Women’s Offending (Scottish Executive 2002), was published in 2002 when the number of women in prison in Scotland had risen to 257, an increase of 24 per cent on 2001. The report reviewed progress made by the IAF since the publication of *A Safer Way* and used statistics to suggest where action should be focused ‘if overall numbers are to be reduced’. The report, which would “take forward and implement a package of measures designed to reduce significantly the number of women held in custody in Scotland”, identified four key action points and estimated how reductions in the numbers of women imprisoned could be achieved.

1.9 The first action point concerned the high numbers of women received into custody for short prison sentences and suggested that, if the courts used prison only for women who commit violent and supply of drug offences, there could be ‘a reduction of up to 11 in the average daily population of these women’. The second action point related to the high number of female remand prisoners and suggested that if 25% of those currently held on remand were given bail there could be a reduction of 11 in the average daily population of these women. The third action point concerned women imprisoned for fine default and suggested that if supervised attendance orders were used in courts identified as imposing high

levels of custody for fine default, there could be a reduction of up to 2 people in the average daily population of these women. And the fourth action point suggested that by “targeting measures on young women offenders who do not require a custodial environment [there could be...] a reduction of up to 3 people in the average daily population”. In total *A Better Way* estimated a potential reduction of 27 in the average female daily population.

1.10 Though these suggested reductions would still fall a long way short of the prison reduction target set in *A Safer Way*, the continued silence in *A Better Way* on the ‘fewer prison places’ track of the twin track strategy proposed in *A Safer Way* meant that the likelihood of achieving even the estimated reductions was highly questionable given that *A Better Way* relied on the other track of ‘more options in the community’ and the courts making more use of them as *the* decarceration strategy.

1.11 But this strategy did not work. In 2003 the number of women in prison in Scotland went up to 282, an increase of 10% on 2002. The Justice 1 Committee reported on alternatives to custody in 2003 and concluded that “there are a substantial number of women in Scotland’ prisons who do not necessarily require to be there, as they do not represent a danger to the public. The evidence suggests that these women are sent to prison due to a lack of appropriate programmes and facilities in the community”. In June 2004 the then Minister for Justice said in Parliament that “The Scottish Executive is committed to reducing the number of women offenders needlessly sent to prison”.

1.12 Despite this the number of women in prison in Scotland went up again in 2004 to 314, an increase of 11% on 2003. In 2005 the Minister said in Parliament “I am particularly disappointed that Scotland’s female prison population continues to rise year on year... It surely cannot be beyond us, working together, radically to reform how we manage women offenders in Scotland”. In 2005 the number of women in prison went up again to 332, an increase of 6% on 2004. In 2006 and 2007 the Scottish Consortium on Crime and Criminal Justice held two events on women in prison and produced an action plan to reduce the unnecessary use of imprisonment for women in Scotland. By 2007 the number of women in prison was up to 353 and by 2008 the number of women was up again to 371. In 2009 the Equal Opportunities Committee of the Scottish Parliament produced its report on ‘Female offenders in the criminal justice system’. The report called for a new approach based on an understanding of inequality and discrimination. By 2009 the number of women in prison had reached 413, more than double the number since the time of *A Safer Way*.

#### Commission on Women Offenders (Angiolini Report) 2012

1.13 In 2011, subsequent to a follow-up inspection report from HM Inspector of Prisons for Scotland about conditions in Cornton Vale, the Scottish Government established an independent Commission on Women Offenders chaired by Dame Elish Angiolini, former Lord Advocate. Despite all the earlier reports on women offenders, a continued decrease in crime rates and no significant change in the crimes that women were convicted of, the female prison population continued to rise and had more than doubled in the previous ten years. In this context, the Commission’s remit was: “to consider the evidence on how to improve outcomes for women in the criminal justice system; to make recommendations for practical measures in this Parliament to reduce their reoffending and reverse the recent increase in the female prisoner population”.

1.14 The Commission first met in August 2011 and reported in April 2012 (Commission on Women Offenders 2012). The need for a community justice approach to improving outcomes for women offenders was central to the report. While the Commission noted that its 37 recommendations could be implemented within the existing systems, it concluded that there were significant structural and funding barriers to the effective delivery of offender services in the community and that radical reform was required. It highlighted problems with funding arrangements that favour activity over outcomes and a lack of strategic leadership and accountability as no single organisation was responsible for both the strategic and operational delivery of offender services in the community. Given this the Commission recommended structural reform to include the creation of a new national Community Justice Service to commission, provide and manage adult offender services in the community.

1.15 The community justice service would be designed in such a way as to ensure local liaison and delivery. However, though the Commission accepted that there were significant barriers to the creation of a joint criminal justice social work and prison service in Scotland, it was persuaded by the benefits of a model where criminal justice social work operated as a single national service. Social work would play a key role in the new national service and other agencies, such as the prosecution service, police, health, and third sector, would second staff to the service to improve cross agency working and the provision of an integrated service to offenders. The new service would cover male as well as female offenders. The Commission also proposed the establishment of a National Community Justice and Prison Delivery Board to promote integration between the two services and a shared vision for reducing reoffending across the community and within custodial settings.

1.16 In relation to women's imprisonment the Commission recommended that Cornton Vale be replaced with a smaller specialist prison for those women offenders serving a statutory defined long-term sentence and those who present a significant risk to the public. This new national prison should include: meaningful and consistent work with sufficient premises to allow that work to take place and enable all women prisoners to build skills for release and improve self-esteem and mental health; a medical centre with adequate space for group work and individual appointments to address physical and mental health problems; a separate unit for young women; a purpose built mother and baby unit; a family-friendly visitor centre with an outside play area for children. The Commission further recommended that most women prisoners on remand or serving short-term sentences be held in local prisons to improve liaison with local communities and reintegration upon release.

1.17 The Government's response to the Commission's report in June 2012 accepted almost all its recommendations. The then Justice Secretary stated that the status quo was 'untenable'; without action being taken to implement the Commission's work the female prison population was projected to increase to 640 by 2019-2020. The Government would therefore publish a consultation on the options for redesigning community justice later that year and would plan to implement the recommendations in relation to replacing Cornton Vale. (Scottish Government 2012a)

1.18 The recommendations concerning the replacement of Cornton Vale were to be taken forward by the SPS over the summer months. During that period the SPS was required to consult with key stakeholders on the size, nature and location of the new national prison to ensure that it would meet the needs of the prisoner population to be located there, that is, those women offenders serving a statutory defined long-term sentence and those who present

a significant risk to the public. The SPS was to bring forward proposals in the autumn for the development of a new national prison in Scotland's central belt.

1.19 The Commission's recommendation that women prisoners on remand or serving short-term sentences be held in local prisons to improve liaison with local communities and reintegration was also accepted. The Government's response noted that this recommendation reflected the SPS's current policy to develop a community-facing regime that gave communities opportunities to engage with offenders before their release. It noted that in 2009 the SPS set up a facility in HMP Greenock to accommodate around 50 women, mainly from the west of Scotland; in 2010 small Community Integration Units were opened in HMP Aberdeen and HMP Inverness to accommodate women from the north east of Scotland; and that since summer 2011, over 100 women, mainly from the east of Scotland, had been accommodated in HMP Edinburgh. It also noted places would open at HMP Grampian in late 2013 or early 2014 and that HMP Inverclyde would open in 2015/16 with 52 places for female offenders and a further 5 places in the Community Integration Unit.

1.20 Further to the SPS consultation over the summer of 2012 the then Justice Secretary announced in October 2012 that a new national women's prison with 300 to 350 places would be built at Inverclyde and that two new specialist units would be set up at Edinburgh and Grampian prisons. These plans were, however, robustly opposed from the outset by penal reform campaigners and opposition MSPs and were hotly debated amidst calls for the project to be abandoned.

#### Scottish Government announces new plans for replacement of Cornton Vale 2015

1.21 In January 2015 the new Justice Secretary announced that the Government was abandoning the plan to replace Cornton Vale with a large national women's prison in Inverclyde costing £75m. He argued that the Inverclyde proposal did not fit with his 'vision of how a modern and progressive country should be addressing female offending' and that a 'bolder, more radical and ambitious approach' was required in Scotland. Following a consultation period with national and international experts, in June 2015 the Justice Secretary announced 'a new approach' which would provide a small national prison with 80 places on the Cornton Vale site together with five smaller community-based custodial units each accommodating up to 20 women across the country (custody in the community).

1.22 The smaller community-based custodial units would provide accommodation as women served their sentence, with access to intensive support to help overcome issues such as alcohol, drugs, mental health and domestic abuse trauma which could often be drivers of offending behaviour. The units would be located in areas close to the communities of female offenders in order to maintain family contact. The new approach also planned to make more use of community based alternatives to short-term prison sentences. More funding would be made available for these alternatives and the Government would consult on proposals to further strengthen the presumption against short-term prison sentences. The new national facility and community units would be in place by 2020, with other changes taking place gradually thereafter.

1.23 To date SPS has progressed plans for the new women's national facility on the site at Cornton Vale and has acquired a site in Maryhill, Glasgow for one of the first Community Custody Units (CCU). The second CCU will be in Dundee at a site yet to be identified.

1.24 Given that the arrangements planned for women offenders in both the national facility and the community units emphasise the primacy of community justice, we would expect Community Justice Scotland to have an important input into both the national facility and the community units emphasise the primacy of community how these plans develop and are put into action.

## **Annex 2**    Some international comparisons

### 2.1    Comparative data

<u>Country</u>	<u>Finland</u>	<u>Ireland</u>	<u>Norway</u>	<u>Scotland</u>
Population (millions)	5.5	4.8	5.3	5.4
Prisoners	3,170	3,870	3,900	7,400
Rate per 100,000	57	80	74	136
Remands %	20.7	16.3	23	18.4
Women %	7.7	4.1	6.1	5.0
Prisons	26	12	54	15
Largest prison capacity	320	870	400	1,300

### Finland

2.2    In a number of respects there are many similarities between Finland and Scotland. They are both small northern European countries with concentrated urban communities, large sparsely populated areas and a tradition of strong welfare institutions. At 5.5 and 5.4 million respectively, their populations are broadly similar in size. However, in one respect the countries are quite different, with Scotland having more than twice as many people in prison as Finland. This was not always the case. In the 1950s the Finnish rate of imprisonment was one of the highest in Western Europe, four times higher than its Nordic neighbours. Over succeeding decades its rate of imprisonment fell significantly and has remained one of the lowest in Europe for many years.

2.3    This did not happen by accident. Rather, the decrease was the result of deliberate, long-term and systematic policy choices. Most importantly, it came about because of a clear political will and consensus to bring down the prisoner rate. The criminal justice system was not regarded as a major source for social control but was rather seen as having an important but narrow role to play in contributing to public security. The role of the criminal justice system in reducing re-offending was restricted to “endeavouring to break the cycle of social exclusion that reproduces crime”. It set out to achieve this objective by linking offenders into the local community services which provided accommodation, employment and social support.

2.4    Courts may convert prison sentences of up to eight months into community service of between 20 and 200 hours. In addition, all prison sentences of up to two years can be imposed conditionally, which means that the offender will serve a period of probation instead of going to prison. More than 50% of all prison sentences are conditional.

## Ireland

2.5 In the first decade of this century the number of people in prison in Ireland rose by over one third (although the rate of imprisonment remained much lower than that in Scotland). Many of the country's prisons were in a poor state of repair and most were overcrowded. The government of the day decided to embark on a large prison building programme. Controversially, plans were drawn up to build a new prison with a design capacity for 1,400 and 'operational flexibility' to hold up to 2,200. After the financial collapse a new government set up a review of this proposal and in 2011 it was cancelled. The Minister of Justice at the time said, "... prison overcrowding cannot be solved solely by building more prisons". A new programme of renovating and replacing existing prisons was begun.

2.6 At the same time, there was a programme of close cooperation between the separate Prison and Probation Services, with two specific initiatives which have had considerable impact. A new Community Support Scheme was set up in collaboration with a third sector organisation to provide comprehensive support for prisoners serving between three and 12 months, during imprisonment and after release.

2.7 The most important initiative was the new Community Return Programme which was introduced in late 2011. This was described as 'an incentivised scheme for the supervised release of qualifying prisoners who complete unpaid community work as a condition of their early release'. The programme applies to prisoners who are serving more than one year and less than eight years, on completion of at least 50% of their sentence. Those who are accepted for the programme are intensively supported in the community and are required to perform supervised community service instead of remaining in prison. An evaluation of the programme published in 2015 has indicated that 89% of participants have completed the programme successfully.

## Norway

2.8 With a population comparable to Scotland, Norway has consistently had one of the lowest imprisonment rates in Europe. It has a number of striking features:

- The Correctional Service oversees prisons and probation.
- There are 54 prisons, compared to 15 in Scotland.
- The largest holds 400 prisoners, the smallest 13, with the average being about 70.
- Prisoners are to be held as close to their home area as possible
- The maximum prison sentence in Norway is 21 years, although there is legal provision for preventive detention beyond this period in very high risk cases.
- The average prison sentence is around 8 months. More than 60% of unconditional prison sentences are for 3 months or less. Almost 90% are for less than one year.
- The Correctional Service has the authority to implement a sentence of imprisonment in a variety of ways:
  - A sentence of up to four months unconditional imprisonment may be served under home detention with electronic monitoring and other stringent conditions.
  - Under certain conditions up to half of a longer unconditional prison sentence may be served under home detention.
  - It is possible to be released on probation after having served two-thirds of a prison sentence and a minimum of 74 days.

- Under the ‘import model’ reintegration services for prisoners, such as health care, education and social support, are delivered and financed by community providers.
- All new recruit prison staff must undertake a two-year education course at the Staff Academy.
- Independent research published in 2010 indicated that around 20% of those released from prison were reconvicted within two years. (In 2012 Audit Scotland reported that over 40% of released prisoners were reconvicted within two years.)

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