

Additional lines (following Friday's meeting)

COP26 AND LEGAL AID

- Proposals for managing any increase in requirements for legally aided advice for the duration of COP26 are well advanced and discussions between the Scottish Government, Scottish Legal Aid Board and Law Society of Scotland continue.

GENDER RECOGNITION ACT REFORM

- We will introduce a Bill in the first year of this Parliament to reform the Gender Recognition Act 2004.
- We have consulted twice – firstly on the principles of reform, and then again on the draft Gender Recognition Reform Bill to alleviate concerns and address any misunderstandings about our proposals.
- The first consultation received more than 15,500 responses. The majority of respondents (60%) agreed with the proposals to reform the legal gender recognition system in Scotland.
- The second consultation, published at the end of 2019 alongside the draft bill, received more than 17,000 responses.
- Work on the draft bill, including the consultation analysis, was paused in April 2020 as a result of the pandemic. That work has now resumed.
- A transparent, robust and systematic analysis of all responses has been carried out by an independent research body.
- The analysis report was published on 2 September alongside responses from organisations and groups, where permission to publish was given.
- Analysts commissioned by the Scottish Government to review consultation responses carried out a transparent, robust and systematic analysis of all responses.
- As independent analysts, they are required to produce a balanced and impartial report for publication, ensuring the full range and nature of views are presented.

TRANSGENDER POLICY IN PRISONS

- The Scottish Prison Service Gender Recognition policy is scheduled to be reviewed this year, as the SPS has been required to prioritise the operational response to the COVID-19 pandemic,
- The timescales for this work are being considered alongside other priorities.
- As part of the work associated with the review, SPS will consult with interested groups to hear their views around how transgender prisoners are managed.
- Decisions as to the most appropriate location to accommodate transgender people are made on an individualised basis after careful consideration of all relevant factors, including risk.

- Such decisions seek to protect both the wellbeing and rights of the individual as well as the welfare and rights of others around them, including staff, in order to achieve an outcome that balances risks and promotes the safety of all.
- Under existing arrangements, some trans women have been refused transfer to a women's prison on the basis they would present a risk to the physical or psychological wellbeing of individuals there.

REMAND NUMBERS

- The single biggest factor in the increase in remand is the backlog of cases created by the pandemic. Prior to the pandemic the remand population was approx. 20% of the total prison population and this has risen to approx. 27%.
- We are committed to helping justice services recover from the impact of the pandemic. An additional £50m has been provided in this financial year so that the cases involving all accused, including those on remand, can be progressed.
- This is in addition to the £117m invested in community justice services each year, with a further £550k provided to incentivise bail supervision services.
- We know that remand can disrupt families and communities, and adversely affects peoples' health, employment opportunities and housing – the very things that evidence shows supports desistance from offending.
- As part of our commitment to explore legislative options to reduce the use of imprisonment, we are considering looking at how the legislative framework for bail decisions could be changed to increase the focus on public safety.
- This will be an open and inclusive process where views offered can help inform whether reform should be progressed and if so, how best that can be done.

SERIOUS ORGANISED CRIME

HMP ADDIEWELL INCIDENT

[22 Aug: Daily Record article quoting an alleged whistle-blower saying “gangs control HMP Addiewell, staff are in fear and management downplay incidents”. Also recent letter from anonymous prison officer at Addiewell to Cab Sec, copied to Jamie Green MSP and Pauline McNeill MSP, about these issues.]

- The Scottish Prison Service monitors the contract under which HMP Addiewell operates.
- The Scottish Prison Service has deployed a team to the establishment and will ascertain what if any action is required regarding the issues raised in recent media.
- We consider that all prisons should be owned and managed by the public sector.

Complexity of managing serious and organised crime groups in prisons

- Our prison estate holds increasingly complex and challenging populations. We recognise the importance of providing a safe and secure environment for those in custody and those who work in our prisons.
- The SPS has a zero tolerance approach towards violence. SPS staff are trained to recognise and respond to the precursors of violence and manage any incidents when they do occur.
- Through its national Strategic Risk and Threat Group, the SPS continues to seek to understand the changing nature of the prison population profile and the subsequent impact on violence, particularly in relation to serious organised crime.
- Violence Reduction meetings take place on a monthly basis across Scottish Prisons to discuss all notable incidents, trends and identify preventative actions.
- CCTV cameras operate within all Scottish prisons to deter violent incidents and assist in any post-incident investigations. Violent incidents are always reported to Police Scotland.

SEXUAL OFFENCES/AGEING PRISON POPULATION

- The average age of individuals experiencing imprisonment is increasing. The average age of prisoners has increased from 31.8 years in 2010-11 to 35.9 years in 2019-20, and the proportion aged 55 or older has more than doubled in ten years, from 3.3% to 7% (*Scottish Prison Population Statistics 2019-20*).
- Sexual crimes make up 5% of all recorded crime (*Recorded Crime Scotland 2019-20*)
- Programme access is just one way of evidencing reduction of risk while in custody. The existing national programme (Moving Forward Making Changes: MFMC) is being re-designed and that work will also look at increasing capacity of the programme.
- SPS have approached the Scottish Advisory Panel for Offender Rehabilitation (widely referred to as SAPOR) to act as a critical friend for the development of a new pilot programme for high risk offenders in custody which is also likely to increase the capacity of programme provision available.
- We are committed to public protection and ensuring there are robust processes in place to keep our communities safe and multi-Agency Public Protection Arrangements (MAPPA) provide a robust statutory framework to manage the risk posed by individuals convicted of sexual offences and other categories of serious offenders.

CONCERNS AROUND THROUGH-CARE AND PROGRESSION

- We are committed to ensuring that people leaving prison are supported to reintegrate into their communities and not reoffend.
- That is why we provide £3.4 million funding annually to third sector partnerships to support through-care services for men and women leaving short-term sentences.
- And we also provide funding to local authorities as part of the total £117m p.a. settlement to support the voluntary and statutory through-care services they provide people leaving custody.
- When a prisoner's release is scheduled, SPS will offer to work with the prisoner to plan for their release – including assistance to contact housing offices, benefits offices, medical services, or third sector services – depending on their needs.
- We will commit to review the conditions around release from custody, including the issue of Friday liberations, as well as wider issues of through-care support, release from remand and access to services.

DRUGS IN PRISON

- SPS have been investing in security. A comprehensive range of robust security measures are in place to prevent the introduction of contraband entering our prisons. Rapiscan machines, which specifically assist in detecting substances which may have been concealed in items of mail and personal property, are now in use in every prison. These machines have already proved successful in reducing the volume of contaminated paper entering prisons
- SPS staff have been made aware of the key methods used in attempts to introduce illicit substances and staff are encouraged to focus on these whilst undertaking their duties. SPS staff also carry out regular searches of prisoners, staff and visitors
- Intelligence and drug finds suggest that the current drug use in prisons also involve prescription drugs.
- Like psychoactive substances, prescription drugs cannot be tested for using the current drug screen urine tests or Mandatory Drug Tests (MDT).
- Testing by Dundee University has found that Rapiscan equipment is particularly effective in detecting the presence of psychoactive substances and other substances.
- Work is ongoing with Rapiscan to ensure that when new strains of psychoactive substances are detected, then the machines can be updated to ensure they continue to be effective in drug identification.

PRISON ESTATE

- Due to industry-wide supply chain issues brought about by EU Exit and the COVID-19 pandemic, we are now seeing some delay to construction, in particular the new female estate.
- SPS are working closely with their contractors to establish the extent of delay and the broader impact of this.

LINES ON OPPOSITION PROPOSALS FOR GREATER LOCAL ACCOUNTABILITY FOR POLICING

- The 2012 Police and Fire Reform (Scotland) Act already requires Police Scotland to adhere to a number of measures with regard to scrutiny of policing governance at a local level. These include:
 - involvement of the local authority in the setting of priorities and objectives for the policing of its area, and take into account any feedback received
 - consultation of each local authority in the setting of priorities and objectives for the policing of its area
 - submission of a local policing plan which sets out the main priorities and objectives for the area to the local authority for approval, and as soon as is reasonably practicable after the strategic police plan is approved
 - provide reports to the local authority as it requires on the carrying out of police functions in the area
 - consult each local authority prior to the designation of a local commander.
- Police Scotland and local authorities are also statutory participants in community planning and must work together with community planning partners and consult with local communities, to identify priority local outcomes.
- Each community planning partnership must also prepare local plans, to support improvement for particular areas which experience significantly poorer outcomes. These can often be areas of multiple deprivation, with higher than usual levels of crime, victims and vulnerable people.
- Local and national policing priorities are reflected in the local plan for each local authority area, prepared by the Divisional Commander in consultation with the local authority, and submitted to the local authority for approval.
- Each local authority has chosen and established individual scrutiny arrangements to align with their own local requirements, and governance and accountability structures. Examples of these arrangements include dedicated police and fire oversight committees, local scrutiny streamed principally through local community planning arrangements and scrutiny through a committee with a wider scrutiny role.

MINISTER FOR COMMUNITY SAFETY
Briefing for Criminal Justice Committee

What	Criminal Justice Committee – Introductory meeting
When	Wednesday, 01st September 2021 at 10-11:30am
Key messages	To be agreed with Comms/Special Adviser as appropriate.
Official support	Neil Rennick Justice Donald McGillivray Safer Communities
Comms Activity	Is there any planned communications activity around the debate? Is there a suggested tweet for the Minister?
Briefing contents	<p><i>[Please ensure each new Annex begins on an odd numbered page – inserting page breaks as required]</i></p> <p>FOR COMMITTEE:</p> <p>Annex A Speaking note (also submitted separately)</p> <p>Annex B Key messages/Top Lines</p> <p>Annex C Q&A covering possible questions from Committee/SPICe papers (a copy of the full Committee/SPICe paper should be attached as the last annex of briefing pack)</p> <p>Annex D FMQ style briefs on key issues (including relevant Q&A)</p>

Annex A – Speaking Note

[CABINET SECRETARY TO DELIVER]

I am grateful to the Committee for the opportunity to meet today.

As public health restrictions are further eased and Scotland continues to open up, the criminal justice system is responding to the significant challenges that are a result of covid and the necessary public health measures taken by the Scottish Government.

I would like to thank our justice partners for the important role they have played during this pandemic – prison officers, criminal justice social workers, police officers, fire and rescue staff, prosecutors, the court service and judiciary, our legal profession, the third sector and others.

I have been impressed by the hard work and willingness of everyone to come together to mitigate the consequences of the pandemic, finding creative solutions to the problems that the system has faced.

Innovations such as the use of remote jury centres in cinemas, the remote balloting of jurors, the use of online hearings in some court hearings – these are good examples of the collaborative and innovative approach taken by justice partners. The Scottish Government has committed to investing £50 million this year to help drive forward the Recover, Renew and Transform programme.

For 2021-22, we have also increased the policing budget by £75.5m to over £1.3bn, including £15m one-off funding specifically to mitigate the impact of COVID-19 on police finances. This is in line with our commitment to protect the police resource budget in real terms throughout the lifetime of this new Parliament, just as we did for the last.

We are beginning to see some optimistic signs as the necessary covid restrictions are eased. For example, the Scottish Courts and Tribunals Service announced that the number of sheriff solemn cases concluded in June exceeded pre-covid levels.

I recognise that the task ahead of us remains significant and I do not underestimate the distress caused to the victims of crime by unavoidable delays in cases being resolved. It will require continued co-operation across the justice system as a whole for some time to come to resolve fully the impact of the pandemic. However, that task is not only about

CABINET SECRETARY FOR JUSTICE AND VETERANS
Briefing for Criminal Justice Committee

returning to the way things were. It is also about thinking how we can do things better, which means doing things differently.

Before recess, in the Chamber, I outlined how we might do this. The SNP's manifesto sets out our vision of where we see Scotland's criminal justice system in 2026.

The Scottish Government has already begun the work to deliver these transformational changes across the whole 5 years of this parliament. More detail on this will be laid out in the Programme for Government when it is published next week.

A number of commitments which we have set out for the reform of our justice system are shared broadly by other parties within the parliament. To give one example, a legal right to anonymity for complainers in sexual offence cases was included in a number of our manifestos. There is, I believe, a lot that we can agree on.

I have met already with a number of opposition spokespersons – some of whom are here today – and if we work together we can bring about changes necessary to transform Scotland's criminal justice system.

I have said before, and I will repeat it here - I will try to find a consensus wherever possible. While I am sure there are areas of the Government's programme that members of the Committee will want to probe and scrutinise, I would ask you to work constructively with me where you can over the coming weeks, months and years.

CONTENTS

1. Violence against women and children;
2. Judicial register of interests;
3. Judicial diversity;
4. Scottish Fire and Rescue Service;
5. Human trafficking and exploitation;
6. Fireworks;
7. Legal Aid and Reform;
8. Control of dogs policy;
9. Children (Scotland) Act 2021 – Implementation;
10. Licensing;
11. Water safety;
12. Scottish Law Commission review of homicide law;
13. Prostitution.

VIOLENCE AGAINST WOMEN AND CHILDREN

Responding to the Covid-19 Pandemic

- Throughout the coronavirus pandemic, it has been our priority to ensure that all victims of gender based violence are aware that services remain open so they can access the help they need to keep them safe from harm.
- Police Scotland have continued to prioritise cases of domestic abuse and remain committed to ensuring that victims are visible and supported throughout the pandemic.
- We remain absolutely committed to working with partners across the justice system to ensure that all victims of gender based violence are kept safe and receive the most appropriate level of support.
- Absolutely no one should have to suffer abuse. We have continued to fund a range of services to support both male and female victims of domestic abuse and rape and sexual assault.
- Last year we allocated an additional £5.75 million to frontline services so they could respond to an increase in demand from victims of abuse. Organisations that benefitted from this funding include Rape Crisis Scotland, ASSIST and Scottish Women's Aid. This funding allows more people to quickly and easily access help.
- We also recognise the massive implications that the pandemic has made on the courts and cases progressing through the justice system and are absolutely committed to working with partners to address this.
- To tackle backlogs built up while necessary public health restrictions have been in place, we have committed to investing £50 million this year to the Justice Recover, Renew, and Transform (RRT) programme. This will drive further reform, including greater use of digital tools and improved support for victims and witnesses.
- Welcome that SCTS have set out plans that will see an increase in court capacity from September 2021, which includes the expansion of remote jury centres and a daily increase of 4 additional High Courts, 2 additional Sheriff Solemn Courts and up to 10 Sheriff Summary Courts.
- We continue to work with justice organisations, the legal profession and the third sector, to consider all options to respond to the inevitable increase in cases awaiting trial, as well as the wider impact of the on-going public health challenges across the justice system.

VIOLENCE AGAINST WOMEN AND CHILDREN

We remain committed to improving the experience of victims of sexual crimes

- We believe that the justice system should always take a victim-centred perspective in addressing sexual crime, and we are working with all partners – to ensure this happens across the board.
- We welcome publication of the review, led by Lady Dorrian, on the management of sexual offence cases in Scotland's courts which adds to the evidence base in this area.
- We are giving the report and its recommendations careful consideration as we look to build on actions already taken to improve the support provided to survivors and other participants in the criminal justice system.
- We are already supporting a pilot project to test the process of visually recording rape complainers' statement to Police and this has continued throughout the pandemic.
- We have also committed over £0.5m to support this pilot which includes funding for additional advocacy resource within Rape Crisis Scotland to support complainers during the VRI process.
- An evaluation will be undertaken when the pilot ends in November 2021 to inform decisions on a national roll out of the pilot and we will support the continuation of the recording of statements within the existing pilot areas.

Sexual crimes account for 5% of all crimes recorded in Scotland in 2019-20. The number of Sexual crimes recorded by the police in Scotland decreased by 1% from 13,547 in 2018-19 to 13,364 in 2019-20.

We are continuing to commit significant levels of funding to tackle violence against women and girls

- Through the combined funding of Justice and the Equality and Human Rights Budget, we invested around than £30 million over 2020/21 to support a range of projects and initiatives for victims and witnesses.
- In addition, within the first 100 days of forming a new government we allocated £5M to violence against women services. The funding will go to rape crisis centres and domestic abuse services to cut waiting lists, helping to ensure those affected can access the support they need more quickly.
- It will comprise approximately £4.5 million to be split between Scottish Women's Aid and Rape Crisis Scotland, and a total of £500,000 for 12 other specialist support services and organisations.
- In line with our manifesto commitment, we are working to launch a new, open and competitive funding scheme for victim support and violence against women and girls organisations (approx. £13m per annum from 2022/23).

VIOLENCE AGAINST WOMEN AND CHILDREN

- We created a new Delivering Equally Safe Fund (£19m per annum) and have recently confirmed allocations to 121 projects from 112 organisations working to provide services and prevent gender-based violence.

We will continue to hold perpetrators of domestic abuse to account and invest in measures to achieve this

- We are committed to holding perpetrators to account and supporting them to change their behaviour.
- We have invested over £22m in the innovative and accredited Caledonian System domestic abuse court mandated programme so that more male perpetrators of domestic abuse can receive specific rehabilitation services to address and challenge their harmful behaviours.
- We supported the roll out of the Caledonian Programme to a further six local authorities in 2019 and it is now delivered in 19 Local Authority areas which means approximately 75% of the population of Scotland live in a local authority area which deliver the Caledonian.
- The SNP manifesto further commits to ensuring that the Caledonian System is available nationwide and we will work with partners to achieve this.
- The PfG in 2019/20 further set out our commitment to explore policy options to increase access to positive behaviour change programmes for domestically abusive men. We are therefore supportive of demonstration projects to explore non-court mandated versions which will draw on the fundamentals of the Caledonian programme.
- We are working with Community Justice Scotland to test the delivery of versions of the 1:1 Caledonian Programme as part of three demonstration projects which will begin during 2021.
- Community Justice Scotland are also working with Castle Huntly to test a non-court mandated version of the 1:1 Caledonian programme as a community based intervention for prisoners whose index offence involved domestic abuse.

We have established the Misogyny and Criminal Justice Working Group

- The Hate Crime and Public Order (Scotland) Act 2021 received Royal Assent in April this year. It sends a message that hatred and prejudice will not be tolerated in Scotland.
- We have set up an Independent Working Group, chaired by Baroness Helena Kennedy QC, to specifically look at Misogyny in Scotland and explore the following questions:
 - Is there a gap in the criminal law that should be filled by a specific offence tackling misogynistic behaviour?

VIOLENCE AGAINST WOMEN AND CHILDREN

- Should the characteristic of 'sex' should be added to the hate crime framework?
- The work being undertaken will inform policy to address the many forms of violence, transgression and abuse experienced by women which emanate from misogyny.
- The Working Group is on target to produce its findings and recommendations in a report by February 2022.
- We have committed to acting swiftly on this report, and to bring forward secondary legislation if there is a recommendation to add 'sex', as a protected characteristic, to the hate crime framework, within a month of receiving the final report.
- Oral and written evidence from a number of experts and a wide scale survey of qualitative data about women's experiences of misogyny will support the Working Group's findings.
- The evidence heard to date includes online misogyny and sexualised violence and is helping the working group to establish a definition of misogyny within the evidence base.
- In Scotland between 2018 and 2020, 23.5% of females aged 16-24 had experienced being sent unwanted messages by text, email, messenger or posts on social media sites - almost double that experienced by men of similar ages.
- In a survey (2017) for Amnesty International, across five countries including the UK, just under half (46%) of women who had experienced online abuse or harassment said it was misogynistic or sexist in nature.
- The Working Group is looking at all this information to evaluate how the Scottish criminal justice system currently deals with misogyny, including looking at whether there are gaps in the law

JUDICIAL REGISTER OF INTERESTS

ISSUE:

- SNP manifesto commitment to create a register of interests for members of the judiciary.
- Scottish Government publicly confirmed this policy will be taken forward in answer to a PQ in June.
- Daily Record article on Monday 14 June highlighted that the judiciary are strongly opposed to a register.
- Since 2012 there has been a petition at the Scottish Parliament for a register.
- The Justice Committee kept the petition open for their successor committee to 'hear views, and perhaps explore a little why the Lord President is opposed to the creation of such a register'.
- The Citizen Participation and Public Petitions Committee has referred it to the Criminal Justice Committee for this session.
- The current and previous Lord Presidents have expressed strong views to the Committees against a register of interests, citing other safeguards in place, potential detrimental effect on recruitment to the judiciary and risk to members of the judiciary.
- A register of interests for the judiciary has been resisted by Scottish Ministers previously. Most recently in a letter from the Cabinet Secretary for Justice to the Justice Committee in February 2020.
- There are different types of JRIs that have been proposed by proponents and could be introduced:
 - A register of financial interests; and/or
 - A register of extra-judicial interests (which could include relationships, membership of organisations, gifts and hospitality and commercial interests).
- Introduction of a register will require careful consideration. New Zealand abandoned the introduction of such a register following parliamentary evidence sessions.

Top Lines

- It was a SNP manifesto commitment to introduce a register of interests for members of the judiciary to improve transparency and trust in the justice system.
- The Scottish Government will now begin work to engage with stakeholders to consider how best to bring forward this justice reform.

We recognise the need to engage with the senior judiciary and other relevant interests on this matter

- The Scottish Government is aware that the Lord President has said he does not consider a register to be necessary, as did Lord Gill when he was Lord President.
- We will engage with the Lord President and the judiciary as part of a thorough process to introduce the register and will listen to any concerns raised and take these into consideration.

JUDICIAL REGISTER OF INTERESTS

- The Scottish Government also recognises that there is support for a register from other areas. A judicial register of interests has been under consideration in the Scottish Parliament for a number of years due a petition calling for one.
- After 5 years of consideration the Public Petitions Committee reached the conclusion that a register should be introduced and referred it to the Justice Committee in 2018.
- The Justice Committee kept the petition open in March 2021 as, having considered the evidence before it already, members considered further evidence was needed.

It is essential that necessary preparation is undertaken

- The Scottish Government will carry out a thorough policy development process before introduction of a register of judicial interests and will engage with stakeholders.
- This will involve determining whether a register will include financial interests such as share-holdings and/or extra-judicial interests such as membership of organisations and relationships.
- Work is at an early stage and until further developed I am unable to say what interests a judicial register would cover and whether this would be a statutory register.

JUDICIAL DIVERSITY

TOP LINES

- The Judicial Appointments Board for Scotland (JABS) is responsible for making recommendations for appointment to judicial office based on merit and has a legal duty to encourage diversity in applications.
- The Scottish Government fully support JABS in its commitment to contribute to the creation of a more diverse judiciary in Scotland and we're also working collaboratively with the legal profession to reduce barriers and promote diversity in the profession, which will ultimately broaden the diversity of the pool of applicants to the judiciary.
- The Scottish Government is considering whether legislative changes would assist in improving the diversity of the judiciary.

Background

JABS is a advisory non departmental public body, established under the Judiciary and Courts (Scotland) Act 2008. It is responsible for making recommendations to Scottish Ministers for appointment to judicial office based on merit. JABS is an independent body.

Scottish Government's role

The Scottish Government has a sponsorship role for JABS and fully supports JABS in its commitment, as set out in its Strategic Plan, to contribute to the creation of a more diverse judiciary in Scotland - which 'reflects the growing diversity in our communities and which helps to build public trust and confidence.'

We are considering whether there are statutory changes that could assist increasing diversity in the judiciary, such as changing eligibility criteria. This work is at an early stage of policy consideration and will require further engagement with the Lord President to seek his views.

Diversity and appointments to the judiciary

JABS have a statutory duty to encourage diversity in applications, whilst recommendations for judicial appointment must be solely on merit.

A further constraint on applications for judicial appointment is the statutory requirement that individuals must have been legally qualified as a solicitor or advocate consistently throughout the 10 year period preceding their appointment. There is currently no court judiciary under the age of 40, with the vast majority over the age of 50. In considering the ethnic diversity of the judiciary, consideration of the legal profession is relevant as this is the sole route into the judiciary in Scotland.

JUDICIAL DIVERSITY

Diversity statistical information

Gender diversity statistics are available for the court and tribunal judiciary. For the court judiciary these show that in January 2021 25.2% of the judiciary were female (this includes salaried and fee paid judiciary). This is the same gender split as at September 2016 despite a considerable number of judicial appointments in the intervening period. Until the 2020 Judicial Attitudes Survey was published in February this year, there was no statistical information on the ethnicity for the Scottish court judiciary. 79% of salaried judiciary responded to the survey, 2% identified as non-white compared to 4% of the Scottish population.

Diversity Steering Group (DSG)

Lady Wise currently chairs the DSG which is a collaborative group set up under the auspices of JABS in June 2010. The Group has in mind JABS's obligations under section 14 of the 2008 Act. Representation on the group includes the Judiciary, Judicial Office, the Faculty of Advocates, the Law Society for Scotland and JABS. The Scottish Government currently has observer status. The DSG's aims include:

- identification of ways in which increased diversity of applicants applying for judicial office can be achieved;
- advice on removal of perceived obstacles to diversity;
- consideration of best practice in other jurisdictions; and
- discussion of areas in which there could be a common programme of action.

JABS Diversity Strategy

JABS published its latest 5 Year Strategic Plan in October 2018 which sets out how they intend to contribute to the creation of a more diverse judiciary in Scotland. It identifies the following priorities for JABS:

- To understand precisely how diverse Scotland's judiciary currently is.
- To develop and implement a communications plan that ensures JABS get the right messages to the right people at the right time so that they provide the appropriate level of information and attract a broad range of applicants.
- To collaborate with others in order to encourage judicial diversity within the wider social environment.
- To ensure that its appointment processes help and not hinder the pursuit of diversity.
- To learn lessons from the approach to promoting diversity in other legal systems.
- To provide strong, active and strategic leadership on diversity.

JUDICIAL DIVERSITY

JABS updated its diversity strategy in March 2019 to reflect new activity that is planned. This activity will:

- Develop and implement an Engagement Strategy that includes diversity.
- Make sure Board Members and staff understand what diversity means for JABS.
- Work with external partners to attract diverse applicants.
- Ensure JABS online application process is accessible for all candidates with all reasonable adjustments provided on request.
- Evaluate how best to support underrepresented groups who want to apply to join the judiciary to remove any perceived barriers to entry.

SCOTTISH FIRE AND RESCUE SERVICE

ISSUE 16 June: Daily record reporting: 'Shock as fire deaths double in twelve months during coronavirus lockdown' (53 compared to 27 the year before).

ISSUE 16 June: Matt Wrack, General Secretary of FBU has sent an open letter to the Prime Minister about concerns regarding the planned Home Office White Paper on reform of fire and rescue in England.

Top Lines

- **Any death from fire is one too many and it is crucial that we avoid any complacency when it comes to fire safety.**
- **Fire reform has enabled resources to be located strategically across the country without the geographical borders which were in place during the existence of the eight legacy fire services.**
- **A priority for the Scottish Government and Scottish Fire and Rescue Service safety is to prevent fires and reduce their social and economic impact.**
- **The Scottish Government and SFRS are determined to ensure that those who are most at risk of harm from fire get the help and support they need.**
- **It was a commitment in the SNP manifesto to continue to modernise and invest in SFRS.**
- **The availability of firefighting appliances is an operational matter for the Scottish Fire and Rescue Service.**

We committed in our manifesto to continue to modernise and invest in SFRS.

- UK Government are proposing changing some aspects of how Fire and Rescue Services operate in England.
- The Home Secretary announced in March that the Home Office would be consulting on a White Paper on Fire and Rescue Service Reform in England.
- Aspects of the Home Office reforms could have an impact on Scotland, for example if changes are made to the current UK wide Collective Bargaining arrangement on firefighter terms and conditions. The Scottish Government is closely monitoring developments and is in discussion with Home Office officials on this aspect of potential change.
- The SNP manifesto committed to "supporting the modernisation of our fire and rescue service so that SFRS can do more to protect communities and deliver positive outcomes for the people of Scotland".

SCOTTISH FIRE AND RESCUE SERVICE

- Further, it stated: “We have continued to invest in the modernisation of SFRS with an additional £8.7 million allocated for 2021-22. Central to this modernisation - which must be achieved in partnership with the trade unions - is broadening the role of firefighters in Scotland”.

The availability of firefighting appliances is an operational matter for the Scottish Fire and Rescue Service.

- One of the advantages of a national service is that SFRS has the flexibility to use its resources to ensure fire and rescue cover is maintained in all communities across Scotland.
- In common with other parts of the UK and beyond, recruitment and retention of volunteer and retained firefighters it is an on-going challenge for SFRS.
- We understand SFRS is actively pursuing a number of initiatives to address this issue.

The Scottish Government is continuing to invest in our Scottish Fire and Rescue Service with an increase in resource funding of £8.7m in 2021-22. This is on top of an increase in spending capacity of £15.5 million in 2018-19 and further increases in budget of £5.5 million in 2019-20 and £6.1 million in 2020-21.

Some fire stations are operating on temporarily reduced staffing levels as a result of Covid related absences.

- SFRS has well developed business continuity arrangements to ensure fire and rescue cover (including availability of fire appliances) is maintained across Scotland.
- Any temporary staffing changes remain under constant review by the SFRS Strategic Leadership Team.
- There were no staffing issues over the weekend of the tragic water incidents and all 20 SFRS water rescue resources were fully crewed and available.
- Whilst over the period of the pandemic, some multi-pump Water Rescue Stations have had reduced staffing levels (from 9 to 8 firefighters), this still allows for SFRS water resources to be available and deployed safely from those locations.
- All Water Rescue incidents receive additional specialist resources from other stations in order to support safe operations in line with agreed guidance.
- During the COVID pandemic SFRS have never failed to respond to any incident, including water incidents.

SCOTTISH FIRE AND RESCUE SERVICE

We are continuing to invest heavily in the service delivery and modernisation of the Scottish Fire and Rescue Service

- We committed in our manifesto to continue to modernise and invest in SFRS.
- We continue our commitment to support SFRS service delivery and modernisation with a further uplift of £8.7m resource for 2021-22.
- The spending capacity of SFRS was increased by £15.5 million in 2018-19 and further increases in budget continued of £5.5 million in 2019-20 and £6.1 million in 2020-21.
- The equivalent annual budget for SFRS (with VAT being reclaimed) is now over £35.8m higher than it was in 2017-18.
- The overall SFRS budget is now £343m and the SFRS Chief Fire Officer Martin Blunden has publically welcomed the increase.
- We continue to press the UK Government for return of the £50 million paid in VAT.
- The SFRS capital draft budget for 2021-22 has been maintained at £32.5m.
- However, SFRS received an additional £4.35 million capital allocation in 2020-21 specifically for minor capital works across its network of fire stations as part of the Covid fiscal stimulus package.
- While operations are matter for SFRS, they have confirmed there is no risk in terms of its operational response in relation to maintaining the capital draft budget.
- The Audit Scotland report, published on 31 May 2018, made it clear that modernisation of the Service is needed to reflect the risks facing the public.
- The draft budget for 2021-22 provides the Service the funding required to progress with its plans in order to meet the changing risks facing our communities.
- This continued resource investment means that SFRS can do more to keep our communities safe and deliver positive outcomes for the people of Scotland.
- The level of funding should allow SFRS to recover from Covid, in due course, resuming training and recruitment along with more Home Fire Safety Visits.
- The number of firefighters per head of population is higher in Scotland than in other parts of the UK. At March 2020, in Scotland there were 12.0 firefighters per 10,000 population. In England, that figure is just 6.2 and in Wales 8.8.

SCOTTISH FIRE AND RESCUE SERVICE

Fire reform has enabled resources to be located strategically across the country without the geographical borders which were in place during the existence of the eight legacy fire services.

- While various major incidents attended by SFRS, have benefitted from better access to specialist resources this was perhaps best demonstrated during Storm Frank in the winter 2015/16.
- During Storm Frank in the winter 2015/16 SFRS received over 350 calls in relation to flooding across all parts of Scotland. As the former Chief Officer alluded to in SFRS's evidence to Committee SFRS was able to strategically position and mobilise its resources according to rapidly changing risk and demand, often under the most challenging and dramatic conditions.
- Responses to major incidents like these have improved, including the capacity to maintain 'business of usual' at a local level during times of high demand.
- SFRS can now make evidence-based decisions on the allocation of its national specialist resources based on risk and location activity levels. This is one of a wide-range of measures designed to ensure equitable access to resources across Scotland and deliver the SFRS commitment to prioritise, maintain and enhance the safety of every community and its firefighters.
- Following a review of specialist resources SFRS improved the national coverage provided by its specialist water rescue units, increasing them to 20 units (and improving coverage in the north-east, west coast and Borders).

The Scottish Government has a very clear, zero tolerance approach to deliberate fire raising because it puts our communities at great risk.

- It presents a danger to life, property and the environment – not to mention the potential impact on businesses which are important to the economy.
- Deliberate fires are not only reckless and dangerous, but can divert SFRS resources away from genuine emergencies where people require its help.
- I urge the public to continue to support their firefighters by reporting any fire related anti-social behaviour because there may be people out there in need of the fire service's assistance at genuine emergencies – and every second counts.
- SFRS will continue to work very closely with its police and local authority partners to ensure that those responsible are identified and dealt with accordingly.
- The Scottish Government works in partnership with Police Scotland, SFRS, local authorities and the courts to tackle crimes of antisocial behaviour including fire-raising and vandalism.

SCOTTISH FIRE AND RESCUE SERVICE

- The Antisocial Behaviour etc. (Scotland) Act 2004 provides a wide range of measures for dealing with all forms of antisocial behaviour and our national strategy is based on prevention, early intervention and diversionary activities.
- SFRS run a host of engagement programmes which are utilised to engage with young people, with the aim of educating and supporting them and reduce and/or prevent the instances of deliberate fire setting and fire related anti-social behaviour.

Any death from fire is one too many and it is crucial that we avoid any complacency when it comes to fire safety.

- Effective fire safety, to prevent fires and reduce their impact, remains a priority for the Scottish Government and SFRS.
- SFRS's latest annual published statistics for 2019/20 confirmed a reduction in the total number of fires, fire fatalities, non-fatal fire casualties and accidental dwelling fires – the lowest on record across all four categories.
- We fully support SFRS's work to reduce fires and fire fatalities, including providing support to local communities and promoting safety.
- SFRS will continue to support local communities and promote safety, ensure that it has the technology and resources available to enable appropriate mobilisation to incidents across Scotland, and that Scotland's communities will continue to be fully protected.
- We will continue to work with emergency services and are happy to consider any further steps we can take to reduce the risk of fire fatalities.

A priority for the Scottish Government and Scottish Fire and Rescue Service safety is to prevent fires and reduce their social and economic impact.

- Fires and fire deaths in all domestic premises have reduced in the last 20 years, indicating the successful impact of the range of fire prevention and protection measures delivered.
- Scottish Fire and Rescue Service (SFRS) work in partnership with communities and organisations in the public, private and third sectors, on fire prevention, protection, response and wider community safety.
- Scottish Fire and Rescue Service deliver the programme of Home Fire Safety Visits (HFSVs). These give fire safety advice to people for their homes.
- In 2019-20 SFRS carried out **69,227 HFSVs** in people's homes, prioritising vulnerable people assessed at being at higher fire risk. SFRS also provide online bespoke advice.

SCOTTISH FIRE AND RESCUE SERVICE

- Following an increase in fire injuries and fatalities in early 2020, SFRS rapidly established the Make the Call campaign. This encouraged referral for Home Fire Safety Visits from friends, family and people at higher risk of fire: over 50 and smoke, and also either live alone, have mobility issues or are using medical oxygen.

A priority for Scottish Government continues to be learning from and responding to the Grenfell Tower Fire Inquiry to strengthen fire safety.

- The Ministerial Working Group on Building and Fire Safety was established following the Grenfell Tower fire. It continues to oversee reviews of building and fire safety frameworks, regulations and guidance, to improve the safety of homes in Scotland.
- Scottish Government produced a single source of Fire Safety Guidance for High Rise Domestic Building in 2019. This was a key recommendation by the Review of Fire Safety in Scotland and accepted by the Ministerial Working Group.
- No legislative change was recommended, but this remains under active consideration.

Scottish Government published its response to the Grenfell Inquiry Phase 1 report in October 2020.

- Scottish Fire and Rescue Service (SFRS) have led on the 31 recommendations for the fire service and emergency services. SFRS have completed the majority and the remainder are progressing, although some have been impacted by Covid-19 restrictions.
- There were actions from the remaining 15 recommendations, directed towards those responsible for fire safety in high rise domestic buildings and the Government. These have been, or are being, addressed by the Scottish Government Grenfell Inquiry Fire Safety Working Group.
- The approach for Scotland was to focus on outcomes that maintain and strengthen people's safety. The specific responses and actions reflect and build on the different fire safety legislation, regime and practice in Scotland, in a proportionate way, in line with the intent of the Grenfell Tower Inquiry Phase 1 recommendations.
- The actions have are being taken forward largely via amendments to the current the Fire Safety Guidance for High Rise Domestic Buildings.
- An Inspection of Firefighting in High Rise Domestic Buildings by Her Majesty's Fire Service Inspectorate has commenced and will report in 2022.

SCOTTISH FIRE AND RESCUE SERVICE

The Fire (Scotland) Act 2005 and associated regulations, provide the legislative basis for SFRS's fire safety work.

- The 2005 Act establishes the duty to promote fire safety and appoints SFRS as an enforcing authority for relevant premises.
- It includes enforcement of fire safety legislation, that generally applies to non-domestic premises, termed "relevant premises", to protect employees, residents and the public.
- Responsibility for compliance in these premises is with employers and others with control of the premises, known as dutyholders. They are required to undertake a fire safety risk assessment to determine what fire safety measures are required.
- SFRS carry out Fire Safety Audits, that are the examination of premises to ensure that they are managed and in line with the legislation. If a Duty Holder is not meeting their legal duties, or there are deficiencies, SFRS can take action, ranging from giving advice to legal enforcement.
- SFRS provide advice and support to those legally responsible for fire safety in premises. This has included advice from changes due to COVID restrictions.
- Under Covid-19 restrictions SFRS suspended its programme of routine Fire Safety audits to reduce staff accessing premises and person to person contact. Advice was given to dutyholders by phone and in writing to them to remind them of their fire safety duties. SFRS have plans to return to the fire safety audits programme.

The Scottish Government and SFRS are determined to ensure that those who are most at risk of harm from fire get the help and support they need.

- SFRS awareness raising work, such as the Make the Call campaign, is often aimed at those who are older, poorer, have health issues and live alone as well as fire safety advice to the general population.
- During their home fire safety visits SFRS officers are trained to recognise the fire safety risks in vulnerable people's homes and can make referrals to appropriate third party organisations for support.

SCOTTISH FIRE AND RESCUE SERVICE

The Scottish Government produced a single source of fire safety advice to protect people that live in supported accommodation or a domestic home.

- Fire Safety Guidance for Existing Specialised Housing's purpose is to strengthen fire safety for people who receive care or support. It is also be useful for those receiving "care at home" services or support in "general needs" housing. It provides practical fire safety advice on how to prevent fires and reduce their risk.
- The guidance uses a person-centred approach, that recognises the increased risk associated with people who are particularly vulnerable to fire, due to physical, cognitive or mental impairments. Personal characteristics can increase the likelihood of fire, the severity of the fire and the ability to respond effectively.

Targeted testing was introduced on 1 March 2021 to support essential public service functions, including all emergency service control rooms and NHS24.

- For SFRS, this means twice weekly testing for all operations control firefighters and other essential staff who need to come in close contact with others.
- Symptomatic testing at rural fire stations has been expanded to cover 24 sites across North and West Scotland to ensure more people are within 30 minutes of a testing centre.
- This is a good example of collaborative working between the Scottish Government, NHS and SFRS.

SFRS has robust plans in place to minimise Covid 19 infection between staff.

- This includes ensuring proper ventilation and maintaining physical distancing along with crews operating in bubbles to minimise the extent should an outbreak occur.
- Key staff groups such as Operations Control and those who come in close contact with others are routinely tested.
- In cases of Covid outbreaks, SFRS procedures quickly identify the need for action and ensure self-isolation of appropriate staff.
- SFRS works closely with Health Protection Scotland if any operational firefighter tests positive for Covid.
- Deep cleans are undertaken if any fire stations are affected and robust staff management arrangements mean that fire cover should be maintained at all times.
- As a national organisation SFRS can flex its resources to ensure cover is maintained to keep communities safe.

SCOTTISH FIRE AND RESCUE SERVICE

SFRS supports partners and local communities in a variety of emergencies and other challenging circumstances via local partnership arrangements delivering additional duties.

- For example, during Covid SFRS has delivered prescriptions and food parcels to the shielded and hand sanitisers to care homes.
- SFRS has supported the Scottish Ambulance Service through driving ambulances in times of pressure for SAS.
- SFRS stands ready to support other organisations and communities in any way it can.
- A strength of the national fire and rescue service is SFRS can bend and flex resources ensuring essential community safety cover is maintained at all times.

The Scottish Government takes the issue of water safety very seriously.

- The Scottish Government supports the work of Water Safety Scotland, and welcomed its publication in 2018 of Scotland's first Drowning Prevention Strategy, with a target to reduce accidental drowning deaths by 50% by 2026.
- The Scottish Government works closely with many partners on water safety; this includes providing grant funding to RoSPA and the Scottish Community Safety Network to help promote a co-ordinated and preventative approach.
- The Minister for Community Safety convened a meeting of senior stakeholders on 11 August, to secure agreement to work collaboratively to identify practical steps to accelerate progress in reducing water-related fatalities.
- The Minister for Community Safety is convening a follow-up meeting in September in order to assess progress and address any barriers to the effective delivery of water safety.

HUMAN TRAFFICKING AND EXPLOITATION

5 August

The Home Office Single Competent Authority released Q2 National Referral Mechanism (NRM) statistics for 2021 (1 April – 30 June) which showed 115 referrals related to Scotland.

The NRM is the UK-wide framework for identifying victims of human trafficking and ensuring they receive appropriate support and assistance.

KEY POINTS

- A total of **115** referrals relating to Scotland were made to the NRM in Q2 2021, which is an **increase of 31%** on Q1 2021 (88 referrals)
- **86 males** and **29 females** were referred in Q2 2021.
- 76 referrals were for adults with 28 referrals for children. In 11 cases, age was unknown/not specified.
- **Vietnamese** (31 referrals) was the largest nationality grouping, followed by Romanian nationals (12), Albanian (10), Iranian (10), Chinese (6), Iraqi (6) and UK nationals (6)
- 57 Scottish referrals for adults included indicators of **labour exploitation**, followed by **criminal exploitation** (24) and **sexual exploitation** (14)
- 16 Scottish referrals for children included indicators of **labour exploitation**, followed by **sexual exploitation** (6) and **criminal exploitation** (6). **[NB: a referral can include multiple exploitation types]**.
- There were 3,140 UK referrals in Q2 2021, compared to 2,942 in Q1 2021
- Of the 500 Conclusive Grounds Decisions made in Q2 2021, the **median timeframe** for a decision was **435 days**.
- Adults **must provide informed consent** to enter the NRM but consent **is not required** for children.

UK Nationality and Borders Bill

The UK Nationality and Borders Bill was published on 6 July. 



TOP LINES

- Any form of human trafficking or exploitation is completely unacceptable.
- The content of the New Plan for Immigration and subsequent Nationality and Borders Bill is likely to have a significant impact on victims of human trafficking and exploitation.
- Human trafficking and exploitation policy is devolved to Scottish Ministers.

HUMAN TRAFFICKING AND EXPLOITATION

- The Human Trafficking and Exploitation (Scotland) Act 2015, which was passed unanimously by the Scottish Parliament, gives police and prosecutors greater powers to detect and bring to justice those responsible for trafficking as well as strengthening protections for survivors.
- We are working closely with partners to ensure support for victims of trafficking continues during the COVID-19 pandemic.
- Police Scotland carried out Operation Perceptive last year, visiting premises in the fishing, forestry and agricultural sectors. This proved a useful source of intelligence, improved the resistance of those businesses vulnerable to hiring exploited labour and raised awareness of trafficking and exploitation.
- Police Scotland continue to work closely with partners across the UK and beyond to share intelligence and coordinate work to tackle human trafficking.
- Equally Safe, Scotland's strategy for preventing and eradicating violence against women and girls, adopts the position that commercial sexual exploitation, of which prostitution is one aspect, is a form of gendered violence.
- Scotland's serious organised crime strategy recognises the links between human trafficking and serious organised crime and underpins a joined-up approach to tackling this alongside our Trafficking and Exploitation Strategy.
- The National Referral Mechanism statistics published on 5 August show in no uncertain terms that human trafficking and exploitation is happening in Scotland, despite the significant restrictions that have been in place during reporting period.
- It is more important than ever that the public report any concerns to the Modern Slavery Helpline or Police Scotland - if something doesn't look right, report it.
- Information on spotting the signs of human trafficking and exploitation can be found on the Scottish Government or Modern Slavery Helpline websites.

New Plan for Immigration & Nationality and Borders Bill

- The UK Government chose to announce significant proposals for change to the UK immigration system the day before the pre-election period.
- These are significant proposals, which will impact people living in communities across the UK, including victims of human trafficking and exploitation.
- Scottish Ministers have statutory responsibilities to support victims of human trafficking and exploitation.

HUMAN TRAFFICKING AND EXPLOITATION

- Human trafficking and exploitation is an abhorrent and complex crime. Victims can be highly traumatised and take time to fully describe what has happened to them and who was involved. Any changes to the identification of victims must have appropriate safeguards in place to avoid penalising genuine victims who require time to reveal the extent of their abuse.
- We are unclear on the evidential basis for any change to the threshold for Reasonable Grounds (RG) decisions. Extensive training on the National Referral Mechanism for First Responders should be prioritised to improve the quality of referrals, before any change to the Reasonable Grounds threshold is implemented.
- The Scottish Government recognises the need to deter and prevent abuse of our immigration and asylum systems, but careful consideration should be given to the scope of offences under ‘public order’ which may preclude access to support and assistance.
- Further detail is required about the parameters of ‘temporary leave to remain’ to fully assess the potential impacts for victims of human trafficking

The latest figures on National Referral Mechanism show Scotland continues to play its part in helping victims out of human trafficking and exploitation.

- The National Referral Mechanism is the UK framework for identifying potential victims of human trafficking and exploitation and ensuring they receive the appropriate support.
- Sections 9 & 10 of the Human Trafficking and Exploitation (Scotland) Act 2015 requires Scottish Ministers to secure support and assistance for adult victims of human trafficking where there are reasonable grounds (as determined through the NRM) to believe an adult is a victim of human trafficking and/or slavery, servitude and forced or compulsory labour.
- This support is set at 90 days in Scotland, or until a Conclusive Grounds Decision is reached, whichever comes first.
- The data published on 5 August makes clear that anyone can be a victim, including UK nationals.
- The level of referrals reflect, in part, continuing work with partners to raise awareness and improve training and practice.
- In collaboration with partners, we published a Toolkit on 19 March to assist professionals and survivors navigate the National Referral Mechanism
- The Toolkit is available to all First Responder organisations in Scotland and will help to ensure survivors get the support and assistance they require.
- We recognise the serious impact delays in decision making within the NRM can have on the recovery process for victims of trafficking and we have

HUMAN TRAFFICKING AND EXPLOITATION

raised the need for significantly faster decision making with the Home Office.

- We understand that the SCA are recruiting a substantial number of new decision making staff in order to deal with the volume of NRM cases. However, we are aware that this will not have an immediate impact on waiting times.
- A Conclusive Grounds Decision should be taken as soon as the necessary information is available. Faster decision making would support victim recovery and avoid significant periods of uncertainty which can be detrimental to wellbeing.
- We will look to work with the Home Office to reflect on learning from the current pilot being undertaken in Glasgow around NRM decision making for children.
- In Q2 2021, 98% of child and 80% of adult CG decisions taken by the Single Competent Authority within the Home Office were positive.

We have increased funding for victims of trafficking

- TARA and Migrant Help will share over £1.4 million in 2021/22 to support adult victims of trafficking and exploitation.
- Funding in 2021/22 amounts to £580,800 for TARA and £903,806 for Migrant Help
- This funding is enabling both organisations to deliver support and assistance to victims of trafficking, with a particular focus on digital inclusion.
- The Scottish Government has provided £2.5 million in funding to the Scottish Guardianship Service since 2010. (£50k – 2010-12; £200k: 2013-15; £300k: 2016-present).
- We are also providing over £186k this year to NHS Greater Glasgow and Clyde to provide a psychological trauma support service to adult trafficking victims.
- This represents a 28% increase compared to 2020/21 funding to support the rise in victims of trafficking requiring psychological trauma support.
- We increased weekly subsistence rates with effect from 13 January 2021 for victims of trafficking in Scotland. Following changes to asylum support payments by the UK Government, this ensures all trafficking victims are entitled to the same weekly amount.

We are identifying more victims and getting them the help they need

- Since 1 April 2018, support for victims of offences under the Human Trafficking and Exploitation Act has been placed on a statutory footing.
- This support can be provided for up to 90 days, or longer in some circumstances, and can include accommodation, assistance with day to

HUMAN TRAFFICKING AND EXPLOITATION

day living, medical advice and treatment including psychological help, language translation and interpretation, counselling, legal advice, help accessing other services and, if the victim wishes, repatriation.

- Throughout the pandemic we have worked closely with TARA and Migrant Help to overcome digital connectivity issues for victims, including funding significantly greater access to electronic devices to assist with remote support.

The Human Trafficking and Exploitation (Scotland) Act 2015 strengthens legal protections and police powers but why are there so few convictions?

- Decisions in relation to prosecution are for the Crown Office and Procurator Fiscal Service and are taken in line with the published Prosecution Code.
- The Act gives police and prosecutors greater powers to detect and prosecute those responsible.
- Trafficking and Exploitation Prevention Orders (TEPOs) came into force in June 2017 and Trafficking and Exploitation Risk Orders (TEROs) came into force in October 2017.
- The first convictions under the 2015 Act resulted in two men being sentenced to ten years and seven years imprisonment respectively on 15 March 2018.
- Trafficking is a complex crime, with control and coercion often exerted by traffickers over victims in subtle and hidden ways. Victims can be highly traumatised and elect not to assist with investigations or take time to fully describe what has happened to them and who was involved. These factors can combine to make building a case a time consuming process.
- Crimes relating to human trafficking may also be prosecuted under separate more general criminal offences.

We are working in partnership to raise awareness and strengthen protections for victims

- In May 2017 we published Scotland's first Trafficking and Exploitation Strategy.
- The Strategy sets out our vision to eliminate human trafficking and exploitation.
- We have worked with partners, including victims and support organisations, to review the Trafficking and Exploitation Strategy.
- The Strategy review and third annual progress report was published on Friday 29 May 2020, in line with statutory requirements.

HUMAN TRAFFICKING AND EXPLOITATION

- The review identified a need to further consider gendered aspects of human trafficking and exploitation, child criminal exploitation and longer term outcomes for survivors.

Duty to Notify

- Section 38 of the Act allows for the collation and processing of wider information about trafficking activity in Scotland not currently collected through the NRM or the criminal justice system.
- It is considered this should provide a more accurate picture of the scale and extent of trafficking in Scotland, and enable more effective targeting of enforcement activity and provision of support services.
- A consultation on implementing Duty to Notify in Scotland closed on 6 September 2019. We have published all consultation responses online.
- The consultation analysis report was published on 30 April 2020. Overall there was strong support for the Scottish Government proposals.
- Legislative implementation of the duty has been delayed due to the priority response to COVID-19 and its impact on public services.

We took forward Scotland's first national consultation on prostitution to discuss our future approach to this important issue within the context of how women and girls should be treated in an equal society.

- The consultation attracted over 4,000 responses and the analysis of the findings from the consultation and the Scottish Government response was published 16 June.
- As a Government we have a strong track record in bringing forward bold policies to tackling violence against women and girls and the harmful societal norms which perpetuate gender inequality.
- In line with these ambitions, our progressive policies on women's rights, and our Manifesto commitment, we have committed to developing a model for Scotland to tackle prostitution and challenge men's demand.
- The development of this will model will consider international approaches to challenge men's demand for prostitution and best practice to reduce harms.
- In addition, we will engage with those with direct or lived experience to shape services and design measures which will protect them from harm and provide the support they need, including helping them exit prostitution.
- We know that these challenging and unprecedented times are impacting those involved in prostitution and we continue to work with third sector partners to fully understand the impact of Covid-19 and encourage people to access mainstream and specialist support services available to them.

HUMAN TRAFFICKING AND EXPLOITATION

- The Scottish Government funds a range of services aimed to address commercial sexual exploitation and to support women who may be exploited through it.

Combating child exploitation and supporting victims to recover is a priority for the Scottish Government.

- In all cases where it is suspected that a child may be a victim of exploitation or trafficking, the child's safety is paramount and child protection procedures must be activated immediately.
- Where it is suspected that a child may be a victim of human trafficking or exploitation a referral to the National Referral Mechanism should be made.
- We are committed to tackling any form of child exploitation, as set out in our National Action Plan to Prevent and Tackle Child Sexual Exploitation; our Trafficking and Exploitation Strategy; Serious Organised Crime Strategy; Youth Justice Strategy and our National Action Plan on Internet Safety for Children and Young People.
- The Scottish Government's revised National Guidance for Child Protection is also currently being finalised and will include an updated section on identifying and supporting victims of exploitation including trafficking, criminal and sexual exploitation.
- Work is underway to develop the new Independent Child Trafficking Guardian service and in the meantime the Scottish Government continues to fund the Scottish Guardianship Service to provide additional legal and practical support to unaccompanied children and victims of trafficking.

FIREWORKS

ISSUE 15 AUGUST: Consultation on proposed Fireworks and Pyrotechnics Bill closed, with over 1,700 responses.

ISSUE 30 JUNE: The Fireworks (Scotland) Miscellaneous Amendments Regulations 2021 come into force. The regulations implement a number of the Firework Review Group recommendations and restrict the time of day the general public can use fireworks, restrict the time of day fireworks can be supplied to the general public, and restrict the volume of fireworks that can be supplied the general public at any one time.

ISSUE 20 JUNE: Launch of 8 week consultation on Fireworks and Pyrotechnics Bill seeking views on 1. changes to how fireworks can be sold and used in Scotland; 2. the use of pyrotechnic devices. The launch received positive coverage in the press and over 200 responses were received within the first few days.

ISSUE NOV 2020: Independent Fireworks Review Group recommends changes are needed to how fireworks are accessed and sold in Scotland requiring a combination of secondary and primary legislation to implement.

ISSUE NOV 2020: Police Scotland and Scottish Fire and Rescue Service report a higher number of incidents through Operation Moonbeam involving fireworks and bonfires.

ISSUE NOV 2020: Various media reports of incidents on Bonfire Night including 12 reported attacks on fire crews (no injuries), specialist police support resources deployed in Greenock as 200 youths gathered for an illegal firework display and two houses in Motherwell catching fire after being hit by a firework.

ISSUE JAN 2020: [REDACTED]

Top Lines

- There is a strong desire for greater control on the sale of use of fireworks in communities across Scotland for reasons ranging from the misuse of fireworks, attacks on our emergency services, firework related injury as well as the noise and disturbance of fireworks both on those with noise sensitivity as well as to animals.
- The misuse of fireworks in our communities – including setting off fireworks in public places or out with designated times - is not acceptable; and causes fear, alarm and distress.
- I am committed to introducing any legislation that is needed to ensure fireworks are used safely and appropriately.
- Following the final report from the independent Fireworks Review Group that recommended a fundamental shift is needed to how fireworks are accessed and used, I announced my intention to implement the recommendations from the Group as a matter of urgency to ensure positive change is in place for communities going forward.

FIREWORKS

- The Scottish Government has progressed three recommendations from the independent Review Group through secondary legislation via the Fireworks (Scotland) Miscellaneous Amendments Regulations 2021 to: restrict the times of day that fireworks can be sold; restrict the volume of fireworks that can be sold; and restrict the time of day that fireworks can be set off. These changes came into force on 30 June 2021.
- I launched a consultation on 20 June to seek views on implementing the remaining recommendations from the Review Group - specifically the introduction of four specific requirements in law in relation to the supply and use of fireworks in Scotland.
- I also sought views on a new offence in relation to carrying a pyrotechnic device in a public place (including in a vehicle) without reasonable excuse or lawful authority, and for police powers to be extended to allow a stop and search provision for anyone reasonably suspected of committing the offence.

The Scottish Government is committed to introducing legislation that is needed to ensure fireworks are used safely and appropriately going forward

- The Firework Review Group, chaired by Alasdair Hay, provided its recommendations on tightening legislation on fireworks in Scotland on 3rd November last year.
- I strongly welcomed the recommendations from the Review Group.
- I laid regulations in the Scottish Parliament in February to restrict the times of day that fireworks can be sold; restrict the volume of fireworks that can be sold; and restrict the time of day that fireworks can be set off. These came into force in June 2021 and will lead to positive and tangible change for individuals and communities in time for the November 2021 fireworks period.
- The recommendations were welcomed by Labour, Greens, and Liberal Democrats with the Conservatives recognising the Group's serious endeavour and the expertise of Alasdair Hay as Chair.

FIREWORKS

The Scottish Government recently sought views on changes to how fireworks can be sold and used in Scotland; and also the use of pyrotechnic devices in a consultation which closed on 15 August 2021

- The Scottish Government sought views on four changes to how fireworks can be sold and used in Scotland to ensure fireworks are used safely, handled with care and do not cause harm, distress or injury, including: introducing a fireworks licencing system before the general public can purchase, possess and use fireworks; restricting the days fireworks can be sold to and set off by the general public; introducing no firework areas where it is not possible for the general public to set fireworks off; and the introduction of a proxy purchasing offence to criminalise the supply of fireworks to people under the age of 18.
- The consultation also sought views on the use of pyrotechnic devices and specifically whether it should be an offence to carry a pyrotechnic device in a public place without reasonable excuse or lawful authority, and whether police powers should be extended to allow a stop and search provision for anyone reasonably suspected of committing the offence.
- The consultation closed on 15 August and received over 1,700 responses.
- These responses are being analysed by an independent consultant and the results will inform next steps and development of legislation relating to fireworks and pyrotechnics.
- A programme of communication and engagement took place to support the consultation, including virtual engagement events where individuals, communities and stakeholders were invited to attend and share their views on the measures proposed in the consultation.
- The 2021 consultation builds on views that were expressed through the 2019 consultation, which began a conversation about fireworks with the people of Scotland.

The Scottish Government recognises that legislation in and of itself is not enough to tackle the issue of fireworks misuse

- In October 2019, I published the **Fireworks Action Plan** setting out how the Scottish Government will address concerns expressed through the 2019 consultation.
- The Action Plan sets out activities that were taken forward immediately, as well as longer term actions that will collectively support a change in how fireworks are used in Scotland, including the establishment of the Fireworks Review Group.
- The Action Plan also sets out the range of non-legislative actions that have been progressing, including greater awareness raising, education and

FIREWORKS

preventative activity in communities across Scotland, including launching three public awareness and safety campaigns ahead of bonfire night.

There are specific laws in place to protect emergency workers through the Emergency Worker(s) Act (Scotland) 2005

- This Act, which was opposed by the Scottish Conservatives, is an important piece of legislation offering specific criminal law protections for our emergency services.
- In 2008 this administration extended the Emergency Workers Act to cover GPs, other doctors, nurses and midwives when working in the community.
- Under common law offences of assault and breach of the peace, penalties are available to the courts up to life imprisonment and unlimited fines to deal with the most serious assaults.
- For more serious assaults, the common law of assault can be used which carries maximum penalties up to life imprisonment.
- We keep the law under review and are happy to consider if any new reforms in the area of emergency workers law is needed.

The overwhelming results of the 2019 national consultation on fireworks demonstrates strong support for a change in how fireworks are sold and used in Scotland

- Almost all of those who responded to the 2019 consultation (94%) said they would welcome increased controls on the sale of fireworks.
- Most of those who responded to the 2019 consultation (92%) felt there should be more control on how fireworks can be used.
- This message is backed up by findings from a nationally representative opinion poll that provides findings representative of people across Scotland that confirmed:
 - A majority of adults in Scotland (71%) feel there should be more controls over the sale of fireworks.
 - A majority of adults in Scotland (68%) feel there should be more control on how fireworks can be used in Scotland.
- The subsequent Action Plan on Fireworks sets out clear actions that the Scottish Government will take to reduce the negative impact of fireworks. The Action Plan was welcomed by Labour and the Liberal Democrats, with the Conservatives welcoming the appointment of Alasdair Hay in 2019.

LEGAL AID AND REFORM

Background: The Scottish Government has consulted on plans for reform of the legal aid system and will seek to take forward primary legislation.

The Legal Aid Payment Advisory Panel reported its findings to Ministers during the summer recess. The recommendations were welcomed by the Scottish Government and are being addressed. Further information on next steps will be provided to the Committee.

The Scottish Government has engaged with legal aid providers to ensure the continued provision of publicly funded legal assistance throughout the Covid-19 pandemic and to secure provision as we enter the recovery and renewal stage.

Top Lines

- The role of legal aid solicitors in the justice sector is crucial and they have played a key role in supporting the continuation of court business during the worst of the pandemic. Their continued contribution will be crucial to the recovery of the justice system and the resolution of legal issues arising from the pandemic and resulting economic shock.
- That is why in 2020 we committed to bringing forward a package of measures worth £20 million to help support the legal aid sector.
- As part of this package, we have delivered the first stage (+5%) of a 10% uplift in legal aid fees in March 2021 and expect the next uplift to be taken forward later this year. We also provided a total of £2.3m in resilience fund grants to 94 firms in February this year.
- Funding up to £1 million was provided to the Law Society of Scotland to support the provision of up to 40 legal traineeships by legal aid providers and attract graduates to roles within the legal aid system post qualification.
- In addition to the resilience fund, a further fund of £6.7 million was launched at the beginning of August 2021 to support the legal aid sector and the recovery and renewal programme as we emerge from the pandemic. This fund was developed in partnership with the Scottish Solicitors Bar Association and the Law Society of Scotland and will lead to a distribution of a further £6.7m in grant funding.

LEGAL AID REFORM

- Following a period of public consultation there is support for developing a new statutory framework for a modern, forward-looking and user-centred legal aid service for Scotland.
- Analysis shows the majority of respondents supported that the user should be at the centre of the legal aid system.

LEGAL AID AND REFORM

- The majority of respondents agreed that the current model of provision could be strengthened.
- Overwhelmingly respondents supported not only retaining the current scope of legal aid but also widening it, specifically by including legal aid provision for group actions, tribunals and issues related to Human Rights.
- There is real value for both users and providers in achieving a user-focused and diverse delivery model; users can access appropriate interventions at the right time, and providers can better target their expertise to those who require it.
- More targeted provision could improve access to legally aided services in certain geographical areas or for groups that tend to have specific legal needs, such as survivors of domestic violence, those with a disability or people from a BME background.

LEGAL AID PAYMENT ADVISORY PANEL

- The legal aid payment advisory panel was established in response to recommendations made in the Independent Strategic Review of Legal Aid.
- The panel reported its findings and recommendations to Ministers during summer recess.
- The panel identified the potential to significantly improve transparency in relation to the setting of fee levels, to ensure an evidence guided process that is subject to regular review. The panel recommended that independent research be commissioned to consider, amongst other things, the cost to firms of providing legally aided advice.
- We agree that this research is necessary and timely and the Scottish Government will begin the process of identifying an appropriate contractor to carry this out in the coming weeks.
- The panel also recommended that the Scottish Government consult on criminal legal aid reforms. Engagement with the Scottish Bar Associations and the Law Society of Scotland has begun on these proposals.

RESILIENCE FUND - BACKGROUND

- The Covid Resilience and Recovery Fund for Legal Aid opened on 10 February and closed on 31 March.
- The Fund focussed support on legal aid firms, who had experienced a drop in projected income from new legal aid business once other forms of COVID-related support were taken into account.
- The fund brought firms back up to the income they could reasonably have expected had the pandemic not impacted on their levels of new legal aid business.

LEGAL AID AND REFORM

- We received 288 applications – representing fewer than half of the potentially eligible active firms - and have offered awards totalling circa £2.3 million to 94 firms who were able to demonstrate net loss of legal aid income.
- The fund was made available to applicants who could demonstrate that they had experienced adverse financial consequences in the year 2020-21 and who would commit to continue to deliver legal aid services until March 2022.
- The sum of funding provided was lower than anticipated; we received less than half of anticipated applications, and applicants whose shortfall in income was compensated through other forms of government Covid support received proportionate grant offers as a result.

LEGAL AID FEE INCREASE (WORTH £10M)

- On 1st February 2021 regulations were laid in the Scottish Parliament to provide a 5% increase across all legal aid fees from 22nd March 2021, with forthcoming regulations due to implement a further 5% increase in 2022. Therefore a compound increase of 10.25% over two years will be provided. This is a significant rise.

SUPPORT FOR TRAINEESHIPS (WORTH £1M)

- We have also committed to providing £1 million of funding to the Law Society of Scotland to support 40 additional traineeships.
- We have worked closely with the Law Society of Scotland on the development of this scheme and the Society is managing the recruitment process.
- The fund launched on 3 June and the recruitment process for trainees is well underway.

RECOVERY, RENEWAL AND TRANSFORMATION

- We have also provided extra funding to the Scottish Courts and Tribunal Service to restore and enhance the capacity of the courts to progress business when the current restrictions are lifted.
- Increased courts business leads to increased income for providers and therefore this investment in our courts will also be beneficial to legal aid providers in the future.
- At the end of 2020 we saw a recovery in a number of areas of legal aid to the levels previously seen and in some areas surpassing them, indicating that the slowdown was time-limited and that recovery was underway.

LEGAL AID AND REFORM

EARLIER SUPPORT FOR THE PROFESSION

- At the beginning of the pandemic, we acted immediately to bring in an enhanced scheme of interim payments, recognising the difficulty firms could be placed in financially.
- During the first months of the crisis, Coronavirus legislation also allowed named solicitors to be paid the full court fee when the duty solicitor covered the court, rather than the half fee available under existing regulations, ensuring that solicitors were able to comply with travel restrictions and assist with social distancing without adverse financial impact.

CONTROL OF DOGS POLICY

ISSUE: Control of dogs policy where there is a specific focus on public safety was the focus of Parliamentary scrutiny during the last session of Parliament, when the PAPLS Committee undertook post-legislative scrutiny on the Control of Dogs (Scotland) Act 2010 (“the 2010 Act”). Issues in relation to dog control and dangerous dogs continues to attract political, media and Ministerial interest. The Minister for Community Safety has policy responsibility for this issue.

Relevant legislation covers both criminal law and civil law. The Dangerous Dogs Act 1991 (“the 1991 Act”), provides for criminal law measures for dog owners and persons in charge of dogs which can be applied when a dog is ‘dangerously out of control’. While the 2010 Act provides for a civil regime which gives local authorities powers to impose dog control notices on dog owners who allow their dogs to be out of control.

The SNP Manifesto contained the commitment: “We will review the Dangerous Dog Act to ensure our communities are kept safe from dangerous dogs and irresponsible dog owners.”

TOP LINES

- Any dog attack is one too many. Working with justice agencies and local authorities, we want to keep communities safe from irresponsible dog owners and their ‘out of control and ‘dangerously out of control’ dogs.
- The vast majority of the owners of Scotland’s estimated 600,000 dogs are responsible people who take good care of their animals and enjoy the widespread benefits of dog ownership and companionship. However, a small minority of owners fail to keep their dog under proper control, which can put people at risk and cause public safety concerns across our communities.
- The SG is committed to reviewing the Dangerous Dogs Act 1991.
- A range of actions are underway to support enforcement by the police and local authorities, including work to establish a Scottish National Dog Control Notice (DCN) Database. The database is to hold information from all local authorities relating to DCNs served in Scotland.
- The SG undertook an awareness raising digital campaign, in partnership with the Scottish Society for the Prevention of Cruelty to Animals (SSPCA) in March 2021 to promote responsible dog ownership. The SG re-ran elements of the campaign on SG Facebook Safer Scotland page during w/c 9 August.
- The SG has consulted on practical measures to improve the operational effectiveness of the 2010 Act, and earlier this year we also consulted on possible options for reform of dog control legislation, primarily looking at the offence of a dog being dangerously out of control under the 1991 Act.
- The views offered in response to both consultations are helping to shape and inform policy development decisions going forward.

What action has the SG taken following the PAPLS Report last session

CONTROL OF DOGS POLICY

- The SG welcomed the PAPLS Committee report and committed to take a range of actions. The Minister for Community Safety appeared before the PAPLS Committee in March 2019, August 2020 and February 2021.
- Out of the 21 recommendations that require some form of action, 6 have been delivered, 14 are in progress and 1 is a longer-term recommendation which will be considered once reforms to the dog control system are in place.
- Many of the recommendations related to operational practice and the SG established a working group involving local authorities, Police Scotland, COSLA and other key stakeholders including a victim's voice, to progress this work.
- The SG launched a review of the 2010 Act in September 2019. This looked at technical aspects of the control of dogs legislative regime. The review confirmed strong support for new enforcement powers for local authorities. No legislative vehicle existed in the previous session and these changes consulted upon, along with possible change to the 1991 Act, require primary legislation.
- SG published updated statutory guidance on the 2010 Act in December 2020.
- SG led discussions between Police Scotland and local authorities to update the Joint Protocol (non-statutory status) between these enforcement agencies
- SG commissioned the Improvement Service to undertake a scoping study on a national DCN database. The scoping study ran from late November 2020 to February 2021. The SG is committed to having a Scottish National DCN Database operational by the end of 2021. The Improvement Service has recently carried out a 'proof of concept' exercise with 6 local authorities to make further progress towards the establishment of a national database.
- Earlier this year the SG consulted on possible options for reform of dog control legislation, primarily looking at the offence of a dog being dangerously out of control under the 1991 Act. The consultation closed on 30 April. [This has relevance to the SNP Manifesto commitment to 'Review the Dangerous Dogs Act'.]
- The SG carried out a marketing campaign on dog control with the SSPCA on in March 2021, with further activity to re-run elements of the campaign on the SG Safer Scotland page on Facebook during w/c 9 August.
- This digital led campaign was a continuation of activity undertaken last summer where we used social media channels to promote key messages / video scripts on Facebook and Twitter to promote responsible dog ownership.
- The SG is funding the development of a dog warden training fund (up to £100,000) and pilot scheme (up to £184,000) to look at enhancing training

CONTROL OF DOGS POLICY

for dog wardens and additional resource – progress will be kept under review by the SG led working group, which includes COSLA as one of its members.

Will the Scottish Government bring forward new legislation to tackle out of control dogs and consider any policy change on ‘banned breeds’

- Between September 2019 and January 2020 the SG carried out a public consultation looking at practical measures to improve the operational effectiveness of the 2010 Act.
- There was strong support for new enforcement powers. For example the ‘obstruction offence’, and more powers for local authorities that would enable dog wardens to consider and issue fixed penalty notices for a breach of a DCN. There was also strong support for a national DCN database.
- The SG is committed to reviewing the 1991 Act.
- A consultation on wider dog control law, primarily looking at the offence of a dog being dangerously out of control under the 1991 Act was published earlier this year, and ran until 30 April 2021.
- The views offered in response to both consultations are helping to shape and inform policy development decisions going forward.
- To further inform policy development, SG Justice Analytical Service will be undertaking a literature review to help understand approaches taken in other jurisdictions to help tackle and address irresponsible dog ownership and review the effectiveness of measures designed to improve dog control to keep communities safe.
- On banned breeds – SG is aware of the recent petition launched by the SSPCA. The SSPCA’s ‘No Bad Breed’ campaign urges members of the public to sign a petition asking for a review of the Dangerous Dogs Act. We agree with the SSPCA that responsible ownership is key to dogs being well looked after while keeping communities safe. In line with a 1997 amendment, a dog on the prohibited breed list can be kept legally subject to certain conditions, but we are happy to consider if changes are needed as part of work to consider the 1991 Act.”
- Without wishing to pre-empt the outcome of the ‘Review of the Dangerous Dogs Act’, the views offered will help inform whether legislation is brought forward during this parliamentary term.

CONTROL OF DOGS POLICY

The PAPLS Committee called for a National database to be established. What has the SG done.

- Where a person subject to a Dog Control Notice (DCN) moves from one local authority to another, a national database will be a valuable tool in helping enforce that notice.
- The Minister for Community Safety has given a commitment to Parliament that a Scottish National DCN Database will be operational by the end of this year.
- The SG commissioned the Improvement Service to undertake a Scoping Study exercise in relation to DCN management to develop a fuller understanding of the current approach towards DCN management.
- The Improvement Service has recently completed a tightly designed proof of concept exercise with a number of local authorities, and Police Scotland, in order to inform the ongoing work to develop and deliver a national database by the end of 2021.

The SG has previously acknowledged that there is a need for improved recording of A&E and primary care data in relation to dog bite incidents. What is the SG doing about this.

- Public Health Scotland (PHS) collects information on attendances at A&E due to dog bite incidents. However we do recognise that there is a need for improved recording of A&E and primary care data.
- PHS continue to work with NHS Boards to identify ways to improve the recording of diagnostic information in A&E data systems.
- A joint PHS/ SG Working Group has been set up to help to address the issues around accuracy and reliability of recorded data.

Do local authorities and Police Scotland need to do more

- The SG recognises the importance of ensuring all possible measures and actions are considered by independent operational agencies to protect our communities from dogs who pose a risk.
- The SG brought together representatives from the police and local authorities in a working group established last year. The working group is helping to drive forward improvements in the area of operational enforcement.
- With the assistance of the working group, the SG published updated statutory guidance on the Control of Dogs (Scotland) Act 2010 (“the 2010 Act”) in December 2020.
- Through the working group the SG also led and facilitated discussions between Police Scotland and local authorities to update the Joint Protocol agreement (non-statutory status) between these enforcement agencies.

CONTROL OF DOGS POLICY

- The SG has committed up to £100,000 to support the creation of a 'training fund' for local authority staff to help drive forward national improvement in local authority operational enforcement.
- The primary aim of the fund is to make sure that local authority staff involved in dog control in all 32 local authority areas have received suitable training that helps to ensure effective and consistent enforcement across Scotland. We want to see a step change in the level of expertise and competence in how dog wardens go about their day to day business.
- With the assistance of members of the SG led working group, officials have just recently received formal approval through COSLA to initiate this work.
- The SG has committed up to £184,000 to take forward a dog warden pilot scheme to test whether additional resources given to one or two local authorities proves to be successful in strengthening local authority enforcement, and in turn reducing the number of dog incidents / attacks on people. All local authorities were invited to apply to take part.
- The bids received from interested local authorities for the pilot scheme are currently being considered by the SG.

CHILDREN (SCOTLAND) ACT - IMPLEMENTATION

ISSUE: The Children (Scotland) Act gained Royal Assent on 1 October 2020.

Implementation of the Act will take time as a number of the provisions require secondary legislation, court rules or significant further work.

The Act covers a range of areas. The key areas of the Act are:

- Establishing registers of Child Welfare Reporters and curators ad litem;
- Introducing the regulation of child contact centres;
- Encouraging the views of younger children to be heard by decision makers;
- Protecting victims of domestic abuse by prohibiting person conduct of a case in certain circumstances and authorising special measures to be used in family court cases; and
- Promoting contact between looked after children and their siblings.

Top lines

- Our priority is to ensure that the interests of children are at the heart of family justice modernisation and to ensure the views of the child are heard.
- In cases involving domestic abuse, the Scottish Government wants to ensure that victims and children are protected appropriately during the family court process.
- Issues around family law and parental responsibilities inevitably raise sensitive issues and can give rise to competing viewpoints.
- The key policy aims of the Act are to:
 - Ensure the child's best interests are at the centre of any contact and residence case;
 - Ensure that the views of the child are heard; further compliance with the United Nations Convention on the Rights of the Child (UNCRC); and
 - Further protect victims of domestic abuse and their children in family court proceedings.
- We will take forward implementation of the Act as quickly as possible. However, implementation will take time as in many areas it will require secondary legislation, changes to court rules or significant further work.
- Regulations commencing a few sections of the Act were laid in the Scottish Parliament on 3 December and came into force on 17 January 2021.
- We have undertaken consultations on the register of child welfare reporters, curators ad litem and solicitors appointed where a person has

CHILDREN (SCOTLAND) ACT - IMPLEMENTATION

been prohibited from personally conducting a case themselves and on the regulation of child contact centres shortly.

- During the consultation period we engaged with a range of stakeholders including children and young people and victims of domestic abuse.

The welfare of the child is paramount

- The current law lays down that the welfare of the child is paramount in these cases. This will remain the position.

Family Justice Modernisation Strategy

- We recognise that primary legislation is only part of the action necessary to improve the operation of family justice. We published a Family Justice Modernisation Strategy (FJMS) at the same time as the Children (Scotland) Bill was introduced into Parliament.
- The FJMS sets out ongoing work by the Scottish Government and others; work that can be done by secondary legislation or improved guidance; areas covered by the Act; and areas that are for longer term work.
- The key areas covered by the FJMS are:
 - Guidance for parties and children on attending court;
 - Further work to protect victims of domestic abuse;
 - Further work to ensure, where it is safe for the child and resident parent, that non-resident parents are involved in their child's learning;
 - Longer term work in relation to allowing a child with capacity to apply to record a change of name; and
 - Prioritisation of sibling relationships for children in care.
- The Scottish Government published information for children on speaking to a child welfare reporter in December 2020. We are now working on a version for younger children.

LICENSING – AUGUST 2021

ISSUE: The Coronavirus (Scotland) Act 2020 (“the 2020 Act”) amended both alcohol and non-alcohol (e.g. taxi & private hire car) areas of licensing legislation to provide additional flexibility and discretion to help minimise, as far as practicable, license holders (such as individuals & businesses) & other key licensing interests (such as Police Scotland) being adversely affected. These temporary modifications had been due to expire on 30 September 2021. However The Coronavirus (Extension and Expiry) (Scotland) Act 2021 has now extended the expiry date for most of the emergency measures to 31 March 2022 (and possibly 30 September 2022 if needed). **NB. These temporary modifications are completely separate from the “lockdown” regulations which required hospitality premises to close/ limited their ability to open.**

Top lines

- In response to the COVID outbreak, the SG took swift action last year and made a number of temporary but significant changes to the alcohol and civic government licensing regimes through The Coronavirus (Scotland) Act 2020 (“the 2020 Act”). The changes made by the 2020 Act were designed to assist users of the licensing system as well as licensing authorities with the significant challenges posed by the outbreak.
- The aim of these modifications was to provide additional flexibility and discretion to enable both the alcohol and civic government licensing regimes regime to continue to function. These temporary modifications had been due to end on 30 September 2021. However following the passing of further emergency legislation by the Scottish Parliament, the expiration date for most of these emergency measures has now been extended to 31 March 2022 (and possibly 30 September 2022 if needed).
- The SG did however support the amendment to the Coronavirus (Extension and Expiry) (Scotland) Bill brought forward by Graham Simpson in relation to public access to alcohol licensing board meetings.
- To ensure meetings of Licensing Boards take place in public in future, Parliament removed the flexibility previously provided to Licensing Boards by the 2020 Act to decide that meetings of the Board cannot be held in public for a reason relating to COVID. However it is important to note that there is a distinction between a **meeting** of a Licensing Board and a **hearing** of a Licensing Board. Boards continue to have discretion to determine that a hearing cannot be held in person for a reason relating to COVID.

Why has the SG extended most of the emergency measures?

- The SG recognises the continued need to allow for additional flexibility in timescales etc. which will benefit many given the strict demands of existing licensing laws as public authorities and businesses recover from the effects of the pandemic.

LICENSING – AUGUST 2021

- Extending the licensing provisions will assist businesses as they begin to recover from the adverse impact of the pandemic. The extension will also enable all users of the licensing systems to react quickly to any further COVID related restrictions, thus enabling the licensing systems to continue functioning.
- The SG is sure that in operating under these provisions Licensing Boards and Licensing authorities will continue to take a pragmatic and sensible approach in the circumstances we all face.

Why did the SG support Graham Simpson's amendment in relation to alcohol licensing board meetings?

- Having listened carefully to members during the debate on The Coronavirus (Extension and Expiry) (Scotland) Bill, and assessing further the complex licensing legislation, the SG was content to support the amendment put forward by Graham Simpson.
- While this change will ensure **meetings** of Licensing Boards will need to be held in public, Boards will continue to have discretion to determine that a **hearing** cannot be held in person for a reason relating to COVID.
- In such a case the Board must offer alternate means for the participants to be heard remotely. That would mean that Boards could continue to conduct hearings via remote means rather than in person.
- A Licensing Board would not do that lightly and nor should it. But if a hearing – which is the forum within which certain decisions under licensing legislation is made – needs to be conducted in this manner and done separately from a Licensing Board meeting due to coronavirus, then that can still happen.

New flexibility/discretion in licensing including alcohol licensing

- Key changes made by the emergency legislation last year included new powers for Licensing Boards to be able to extend the period of effect of personal licences if considered necessary in context of the COVID outbreak. This is to minimise the chances of a licence holder losing their rights during the pandemic through no fault of their own.
- New flexibility for Licensing Boards to be able to relieve any procedural failings that arise from the coronavirus outbreak, and taken together, a package of change designed to protect the rights of licence holders during this challenging period has been welcomed by licensing stakeholders.

Remote Hearings

- The 2020 Act gave Licensing Boards discretion to provide parties with an opportunity to be heard by remote means where an in person hearing is not possible because of reasons relating to Covid. This was a response

LICENSING – AUGUST 2021

to the pandemic and the inability of Licensing Boards to be able to hold face-to-face meetings.

- However, as we move through the pandemic it has become clear this particular discretion for Licensing Boards may have value outwith times of pandemic.
- The SG takes the view that ensuring the availability of remote hearings will allow Boards to consider how best to conduct their business and as such continue to provide welcome flexibility that will benefit and assist all users of the licensing systems as they begin to recover from the adverse impact of the Covid pandemic.
- SG is currently seeking responses on the COVID Recovery consultation on public services, justice system and other reforms. The licensing proposals would enable Licensing Boards / Licensing Authorities to make discretionary decisions as to whether it would be appropriate for a hearing to be held remotely as opposed to “in person”. The additional flexibility will be of benefit to users (e.g. licence holders) of the licensing system as well as Licensing Boards / Licensing Authorities. Where a Licensing Board / Authority decides to make use of this discretion to hold a remote hearing, it is proposed that no dilution of public access will be permitted with the Licensing Board / Authority requiring to put in place appropriate arrangements to allow for the public to observe the hearing and, where relevant, participate as an objector.

ALCOHOL LICENSING

- Independent licensing boards are responsible for the day to day administration of the alcohol licensing regime in Scotland, as set out in the Licensing (Scotland) Act 2005.
- Licensing Boards have considerable discretion to determine appropriate licensing arrangements according to local needs and circumstances and their own legal advice.

Social Responsibility Levy – Alcohol

- The Scottish Government has no plans to introduce a social responsibility levy at present.
- We do not believe that the economic circumstances are suitable for the introduction of such a levy, particularly at a time when the hospitality sector and the licensed trade is facing well publicised difficulties as a result of the COVID pandemic.

TAXI AND PRIVATE HIRE CAR LICENSING

- Taxis and private hire cars are licensed under the Civic Government (Scotland) Act 1982 (“the 1982 Act”). Independent licensing authorities - in

LICENSING – AUGUST 2021

effect the 32 local authorities - are responsible for the day to day administration of the licensing regime in Scotland, as set out in the 1982 Act.

- The Finance Secretary has met with Unite the union and the Scottish Association for Private Hire Operators last month to discuss a range of issues in relation to the taxi sector.
- SG Licensing officials are due to meet with representatives of the taxi sector in the coming weeks (likely to be September).

Taxi and private hire car licence fees

- Fees are decided at a local level by the 32 independent licensing authorities. Each authority is required to ensure the level of fee set is sufficient to cover its costs in carrying out their functions as set out in the legislation.
- There is no legislative provision for the Scottish Ministers to make provision for licence fees for taxis/private hire cars. It is therefore entirely a matter for each independent licensing authority to decide on the licensing fee levels for their authority area.
- While the Scottish Government is happy to listen to any concerns about the operation of the licensing system, the Scottish Government expects independent licensing authorities to take a pragmatic and sensitive approach to licence holders during the challenges of Covid-19.

Extending the length of a taxi licence

- The 1982 Act provides that the duration of a licence is set by the licensing authority, up to a maximum of three years.
- There is no legislative provision for the Scottish Ministers to extend the length of a taxi/private hire car licence.

Taxi vehicle age requirements

- The 1982 Act does not provide that vehicles have to be replaced after a certain period of time. However, some local licensing authorities do set a vehicle age limit as part of their policies for licensing.
- Any decision regarding the practical operation of the licensing regime for taxis and private hire cars and their drivers is the responsibility of the relevant local authority.

Should taxis and private hire operators install protective screens in their vehicles?

- The decision whether or not to install protective barriers or safety screens is for licensing authorities, operators and the firm or individual operating the vehicle to make based on their own assessment of risk. Before

LICENSING – AUGUST 2021

considering installing a safety screen, operators should contact the relevant licensing authority to check that they will permit the installation and ensure that the screen and installation will meet their requirements.

- Updated non-statutory guidance providing advice for drivers, operators and owners of taxis or private hire cars who choose to fit a screen or barrier to their vehicle(s) to reduce the spread of COVID-19 was published in July and shared with the SOLAR Group of local authority licensing lawyers, and other stakeholders.

FUNFAIR LICENSING

- The SG is carefully considering the Stage 1 report by the Local Government and Communities Committee that was published just before the pre-election period. Officials are engaging with the travelling funfair sector and other licensing stakeholders with SG officials scheduled to have a meeting with representatives of the Showmen's Guild on Tuesday 24 August.

WATER SAFETY

ISSUE: 14th August: BBC report family of 16-year old Connor Markward, who drowned in Loch Lomond on 23rd July, are calling for a safety campaign in schools and better access to swimming lessons.

(Other relatives of deceased, from recent and previous incidents, have called for diverse action to improve awareness (through signage and education), and access to swimming tuition, and the availability of rescue equipment.)

ISSUE: 11th August: meeting with senior leaders of stakeholder organisations convened by the Minister for Community Safety, Ash Denham, securing agreement to collaborate further to identify and deliver tangible improvements.

ISSUE: 26th July: on BBC Drivetime the Cabinet Secretary for Justice and Veterans, Keith Brown, committed Scottish Government to hold an early meeting with water safety stakeholders.

ISSUE: Friday 23rd - Sunday 25th July: 5 separate incidents resulting in 7 deaths by drowning, along with several subsequent near misses.

Top Lines

- Our thoughts are with all those who tragically drowned, and our hearts go out to their grieving families and friends.
- The Scottish Government takes the issue of water safety very seriously.
- The Scottish Government supports the work of Water Safety Scotland, and welcomed its publication in 2018 of Scotland's first Drowning Prevention Strategy, with a target to reduce accidental drowning deaths by 50% by 2026.
- The Scottish Government works closely with many partners on water safety; this includes providing grant funding to RoSPA and the Scottish Community Safety Network to help promote a co-ordinated and preventative approach.
- The Minister for Community Safety convened a meeting of senior stakeholders on 11 August, to secure agreement to work collaboratively to identify practical steps to accelerate progress in reducing water-related fatalities.
- The Minister for Community Safety is convening a follow-up meeting in September in order to assess progress and address any barriers to the effective delivery of water safety.

WATER SAFETY

The Scottish Government is working with key partners to deliver improvements in water safety

- It is important that all relevant organisations, including the Scottish Government, should stocktake and review the effectiveness of approaches to water safety.
- The Minister for Community Safety convened a meeting of emergency services and other key partners precisely because we appreciate the importance of reviewing activity in this area, for mutual reinforcement and maximum impact.
- The need for vigilance is underscored by the size of the challenge here: 90% of standing freshwater in the UK is in Scotland and we also have 52% of the UK coastline.
- The Water Incident Database (WAID) had shown a picture of gradual improvement, with accidental deaths in Scotland falling from 52 in 2016, to 37 in 2019.
- WAID sadly showed improvement stalling in 2020, with accidental deaths in water at 39.
- The task for the Scottish Government and our partners is, through collaboration and innovation, to ensure that the pattern of improvement shown from 2016 to 2019 is resumed and accelerated.

The Scottish Government supports important water safety initiatives, not least by providing funding to some of the key agencies

- The Scottish Government provides annual funding to RoSPA (£117,000 in 2021-22) to deliver its annual home and water safety programme, and to the Scottish Community Safety Network (£255,000 in 2021-22) to support its work in supporting local community safety partnership activity.
- The Scottish Government is assessing whether additional funding could further enhance the impact of water safety partners, such as Water Safety Scotland.
- As importantly as funding, key partners, such as the emergency services, are exploring how to better engage with and support Water Safety Scotland in its work to improve education and communication.

WATER SAFETY

The Scottish Government believes a multi-faceted approach can best promote water safety

- There is no single, simple answer to the challenge of drowning prevention. In addition to education, there's a role for signage and for life-saving equipment.
- All water can be dangerous, but there are some locations where the dangers are particularly significant and where, therefore, it is especially important that there is clear warning signage and appropriate life-saving equipment.
- The Scottish Government's expectation is that relevant stakeholders will routinely review provision in locations for which they have responsibility, to ensure that it is fit-for-purpose.
- It is important that, rather than proceeding on the basis of assumptions and good intentions, we learn lessons from recent fatal and near-fatal incidents – what worked and what didn't – and listen to those with real expertise.
- The group that has been convened by the Minister for Community Safety is focused on learning and listening, so the resources are focused on delivering the most effective action to promote water safety and save lives.

The Scottish Government wants every child to learn to swim, as it's such an important life skill

- Because swimming is an important life skill, ensuring that every child learns to swim is a priority for both Scottish Swimming and the Scottish Government.
- The National Learn to Swim Framework is supported by Scottish Water and delivered by aquatic partners every week.
- The Framework helps children to become safe, competent, and confident swimmers and these water safety themed lessons are an essential part of helping to educate on water safety.
- We are working with stakeholders to consider greater opportunities for children and young people to engage in community swimming lessons.
- But we need to be clear, as several of those who drowned in recent times have been able to swim, that it is not enough to teach people to swim: the importance of floating to live, the dangers of cold water shock, all need to be communicated.

WATER SAFETY

The Scottish Government acknowledges that schools can be one of the contributors with a part to play in promoting water safety

- Within schools, Curriculum for Excellence's flexible guidelines allow teachers to decide upon the content of lessons at the local level.
- When deciding upon the content of lessons, schools should consider how they can best meet the local needs and circumstances of all children and young people in attendance.

SCOTTISH LAW COMMISSION PROJECT TO EXAMINE THE LAW OF HOMICIDE

ISSUE: On 27 May the Scottish Law Commission (SLC) published a Discussion Paper to examine the law of homicide. The SLC's project (which was announced in their Tenth Programme of Law Reform in February 2018) is examining the law of Homicide which includes the principles underlying and the boundaries between the crimes of murder and culpable homicide; and the mental element required for the commission of each of these offences. The consultation period will last until 15 October 2021 (extended from 27 August). The project is ongoing and split into two phases. Currently, the SLC envisage that their ownership of the project will be a medium-term one expected to take 5 years to complete (i.e. a final report will be delivered to the Scottish Government in 2023).

The SLC consider that under the current law the mental element of these crimes is defined in terms of concepts and language from a bygone age. As such, this may give rise to difficulties in understanding and applying the law and in directing juries in modern and accessible terms. In addition, the Discussion Paper examines the nature, scope and definitions of the complete defences of self-defence, necessity and coercion and the partial defences of provocation and diminished responsibility that arise in the context of homicide. They have also included discussion on the effect of domestic abuse in the context of homicide and also included brief discussion as to the so-called 'rough sex' defence.

On 30 May media coverage of the discussion paper focused solely on the discussion of the so-called 'rough sex' defence. This is included at pages 188-190 of their 254 page Discussion Paper and briefly raises awareness of steps taken by the UK Government to place on statute previous common law in England and Wales as regards it not being a defence for a person accused of murder to claim their victim consented to being harmed. Coverage is often confused on this issue as it is often portrayed as the UK Government having 'banned' such a defence whereas pre-existing common law did not permit it in any event. Under existing Scots law, no-one can escape criminal liability by claiming their victim consented to being harmed, though in certain cases it could be relevant in terms of whether a murder has been committed or the lesser crime of culpable homicide. The SLC is considering this as part of their much wider consideration of homicide law.

The Scottish Government has not made any commitments to legislate in this area. However, any recommendations taken forward would need to be consulted on. In line with normal practice, the Scottish Government will consider any recommendations made by the SLC as a result of their Homicide law project when their final report is published.

Top Lines

- The SLC's project is a medium-term one and is expected to complete in 2023.
- The consultation process for the Discussion Paper will run until 15 October to allow consultees the time to absorb its detailed contents and provide comments and views.
- The Scottish Government notes that the SLC is progressing this important project.
- In line with normal practice, the Scottish Government will consider any recommendations made by the SLC as a result of their Homicide law project when their final report is published and any recommendations taken forward would need to be consulted on.
- This includes in the area of what is known as the 'rough sex' defence.

SCOTTISH LAW COMMISSION PROJECT TO EXAMINE THE LAW OF HOMICIDE

- Under existing Scots law, no-one can escape liability under the criminal law by claiming their victim consented to being assaulted or worse.
- However, I support the SLC in looking to see if the law should be made clearer including in respect of whether lesser charges become available through claiming of this type of defence.
- We are also pleased the review is covering the law on provocation which is an area ripe for reform.
- We are hopeful the eventual outcomes in this area will be an improved set of homicide laws which can be used to appropriately hold to account those who commit acts of homicide and which give confidence to those affected by homicide that justice is being done.
- The Scottish Government looks forward to seeing the outcome of the SLC's extensive and comprehensive work in this area of law.

VAWG - PROSTITUTION

ISSUE: The Times, 30 August, reports that an alliance of survivors and front line organisation has called on Ministers to overhaul Scotland's outdated and unjust prostitution laws.

The Times, 17 August, reports that **Marsha Scott, Chief Executive of Scottish Women's Aid**, has said that criminalising the buying of sex in Scotland would "disempower" women and put them in further danger. Comments were made in response to a letter received from Diane Martin CBE, a Scottish survivor of prostitution and sex trafficking and Vice Chair of the International Survivors of Trafficking Advisory Council, inviting support for the development of a Scottish model which recognises prostitution and sex trafficking as the same thing.

Greens and SNP manifestos do not align on the approach needed to tackle prostitution. Agreements are being worked out that as the Scottish Government work is progressed there may be some potential for dialogue on measures to improve support, e.g. healthcare, and protection from exploitation for individuals engaged in prostitution.

Top Lines

- Last year we published Scotland's first consultation on challenging men's demand for prostitution, working to reduce the harms associated with prostitution and helping women to exit. It received over 4000 responses.
- The consultation adopts Equally Safe's definition of violence against women which states that commercial sexual exploitation, including prostitution, is a form of this violence.
- The Scottish Government's definition of prostitution is internationally recognised within the 2014 European Parliament resolution which identifies that prostitution, forced prostitution and sexual exploitation are gendered issues, and violations of human dignity and human rights.
- In line with progressive policies on women's rights, and our Manifesto commitment, we have committed to developing a model which will challenge men's demand for prostitution whilst keeping women's safety at the centre of our efforts.
- The majority of people being trafficked in Scotland for the purposes of sexual exploitation are female. This supports that demand is mainly men purchasing sex from women.
- In the last ten years, almost 100% of convictions for kerb crawling or loitering in Scotland were against men seeking to buy sex.
- The majority of prostitution activity is 'underground' - this can hide the scale of harms caused.

VAWG - PROSTITUTION

- Research conducted by the Scottish Government has demonstrated that the harms associated with prostitution, exacerbated by COVID-19, can vary from threats, rape, sexual assault, poor mental health and addiction.
- The Covid-19 pandemic has exposed the increased risks faced by many women in prostitution, including exploiting vulnerabilities and making demands for women to expose themselves to a deadly virus to make money.

We are committed to working across this chamber and with stakeholders to build on the information collected from the consultation and develop the principles of a model which will keep women safe.

- There was a high level of engagement with the consultation, from both individuals and organisations and over 4000 responses were received.
- We will reflect on the wide ranging views provided through the consultation responses as we take forward work in shaping our approach to prostitution in Scotland.
- Scottish Womens Aid's response included that the safety, protection and human rights of women in prostitution must be the Scottish Government's priority in any legal or policy initiatives. We do not disagree.
- Scottish Womens Aid also hold the view that purchasing use of another's body for sex is unacceptable. We do not disagree.
- There was no clear consensus from the consultation responses received on what the Scottish Government's approach to prostitution should be.
- The two favoured approaches were the Nordic Model – which would decriminalise those who sell and criminalise those who purchase and a full decriminalisation model.
- Organisations, such as the survivor-led alliance of Scottish organisations calling for A Model for Scotland, are supportive of a model which decriminalises women and criminalising the purchase for sex.
- We will consult on the fundamental principles of a model for Scotland and will work with key stakeholders to identify where agreement can be reached.
- Keeping women safe whilst challenging men's demand for the purchase of sex is not mutually exclusive and I believe a model can be designed to effectively deliver on both.
- The approach to the criminal law is only one aspect under consideration, it is vital that improving women's safety underpins any changes which are brought forward.
- This model will include integrated support for women involved in prostitution, and we are looking at the human trafficking statutory support model as an example of good practice.
- A model for Scotland will aim to reduce stigma and criminalisation experienced by women and encourage better access to services thus reducing harms experienced by women.

VAWG - PROSTITUTION

Direct lived experience is fundamental to our work and we are developing a programme of lived experience engagement.

- We understand the importance of listening to the voices of those involved in prostitution, and are committed to continuing this engagement through 2021.
- A common theme from the consultation was the need to involve those with direct experience in the design of services.
- We are committed to ongoing engagement beyond the consultation and will work with specialist support organisations to ensure that women and men have the opportunity for their voices to be heard.
- A national commission of lived experience is underway to further support this programme.

We have invested more than £38 million to support survivors of gender-based violence and focus on prevention, this includes projects which support those engaged in prostitution

- We are also investing £90,000 of funding to support women involved in prostitution through the Victims' Fund, a bespoke pilot project offering crisis counselling and the Scottish Women's Rights Centre to support timely access to legal information.
- This new funding builds on the £90,000 made available during the height of the pandemic to the Encompass Network for Covid-focussed services for destitution support, trauma counselling, advocacy and to provide a bridge to national mainstream support.
- Support is not conditional on exiting prostitution.

We brought forward the Human Trafficking and Exploitation (Scotland) Act 2015, which gives police and prosecutors greater powers to detect and bring to justice those responsible for trafficking as well as strengthening protections for survivors.

- Since 1 April 2018, support for victims of offences under the Human Trafficking and Exploitation Act has been placed on a statutory footing.
- This support can be provided for up to 90 days, or longer in some circumstances, and includes accommodation, medical and mental health support, translation services, counselling, legal advice, and, if the victim wishes, repatriation.
- TARA and Migrant Help will share over £1.4 million in 2021/22 to support adult victims of trafficking and exploitation.
- We are also providing over £186k this year to NHS Greater Glasgow and Clyde to provide a psychological trauma support service to adult trafficking victims.
- This represents a 28% increase compared to 2020/21 funding to support the rise in victims of trafficking requiring psychological trauma support.
- We worked with partners, including victims and support organisations, to review the Trafficking and Exploitation Strategy.

VAWG - PROSTITUTION

- The Strategy review and third annual progress report was published in May 2020, in line with statutory requirements.
- The review identified a need to further consider gendered aspects of human trafficking and exploitation, child criminal exploitation and longer term outcomes for survivors.

"We must get rid of this false dichotomy that "trafficking is bad" and "prostitution is a job like any other." It's the same men buying women and girls in both instances; and the two systems fuel each other."

Diane Martin CBE, a Scottish survivor of prostitution and sex trafficking and Vice Chair of the International Survivors of Trafficking Advisory Council
5 December 2019, #TwentyYearsOn, Scottish Parliament in Edinburgh

"Now is the time for Scotland to develop a new approach to prostitution, ensuring victims no longer face criminal sanctions but are provided with tailored support to exit; and where pimps, sex buyers and pimping websites are no longer able to operate and exploit with impunity. It is this demand that fuels the sex trade and Scotland must create a hostile environment for those who exploit victims. We must stand together to ensure this exploitation ends. The cost of inaction is too high."

Diane Martin (as above), The Times, August 30, 2021

"We need to enable women to recover from the trauma they have experienced whilst addressing harmful attitudes towards women which have no place in a modern and progressive Scotland."

Bronagh Andrew, Operations Manager for TARA and Routes Out, The Times, August 30, 2021

"Scotland's laws on prostitution are stuck in the dark ages. While the Scottish government have recognised that prostitution is violence against women for decades, our laws have not reflected this policy. This needs to change and we need laws that penalise those who create demand and decriminalise those who fall victim to this abusive trade."

Rhoda Grant MSP, Cross-Party Group on Commercial Sexual Exploitation, The Times, August 30, 2021

"We support the Scottish Government's strategy to eradicate violence against women – Equally Safe – which recognises prostitution, pornography, lap dancing and trafficking as commercial sexual exploitation and forms of violence against women."

Statement by the **Cross-Party Group on Commercial Sexual Exploitation**, Scottish Parliament (Co-Chairs Ruth Maguire MSP and Rhoda Grant MSP)

CABINET SECRETARY FOR JUSTICE AND VETERANS
Briefing for Criminal Justice Committee

What	Criminal Justice Committee – Introductory meeting
When	Wednesday, 01st September 2021 at 10-11:30am
Key messages	To be agreed with Comms/Special Adviser as appropriate.
Official support	Neil Rennick Justice Donald McGillivray Safer Communities
Comms Activity	Is there any planned communications activity around the debate? Is there a suggested tweet for the Minister?
Briefing contents	<p><i>[Please ensure each new Annex begins on an odd numbered page – inserting page breaks as required]</i></p> <p>FOR COMMITTEE:</p> <p>Annex A Speaking note (also submitted separately)</p> <p>Annex B Key messages/Top Lines</p> <p>Annex C Q&A covering possible questions from Committee/SPICe papers (a copy of the full Committee/SPICe paper should be attached as the last annex of briefing pack)</p> <p>Annex D FMQ style briefs on key issues (including relevant Q&A)</p>

Annex A – Speaking Note

I am grateful to the Committee for the opportunity to meet today.

As public health restrictions are further eased and Scotland continues to open up, the criminal justice system is responding to the significant challenges that are a result of covid and the necessary public health measures taken by the Scottish Government.

I would like to thank our justice partners for the important role they have played during this pandemic – prison officers, criminal justice social workers, police officers, fire and rescue staff, prosecutors, the court service and judiciary, our legal profession, the third sector and others.

I have been impressed by the hard work and willingness of everyone to come together to mitigate the consequences of the pandemic, finding creative solutions to the problems that the system has faced.

Innovations such as the use of remote jury centres in cinemas, the remote balloting of jurors, the use of online hearings in some court hearings – these are good examples of the collaborative and innovative approach taken by justice partners. The Scottish Government has committed to investing £50 million this year to help drive forward the Recover, Renew and Transform programme.

For 2021-22, we have also increased the policing budget by £75.5m to over £1.3bn, including £15m one-off funding specifically to mitigate the impact of COVID-19 on police finances. This is in line with our commitment to protect the police resource budget in real terms throughout the lifetime of this new Parliament, just as we did for the last.

We are beginning to see some optimistic signs as the necessary covid restrictions are eased. For example, the Scottish Courts and Tribunals Service announced that the number of sheriff solemn cases concluded in June exceeded pre-covid levels.

I recognise that the task ahead of us remains significant and I do not underestimate the distress caused to the victims of crime by unavoidable delays in cases being resolved. It will require continued co-operation across the justice system as a whole for some time to come to resolve fully the impact of the pandemic. However, that task is not only about

CABINET SECRETARY FOR JUSTICE AND VETERANS
Briefing for Criminal Justice Committee

returning to the way things were. It is also about thinking how we can do things better, which means doing things differently.

Before recess, in the Chamber, I outlined how we might do this. The SNP's manifesto sets out our vision of where we see Scotland's criminal justice system in 2026.

The Scottish Government has already begun the work to deliver these transformational changes across the whole 5 years of this parliament. More detail on this will be laid out in the Programme for Government when it is published next week.

A number of commitments which we have set out for the reform of our justice system are shared broadly by other parties within the parliament. To give one example, a legal right to anonymity for complainers in sexual offence cases was included in a number of our manifestos. There is, I believe, a lot that we can agree on.

I have met already with a number of opposition spokespersons – some of whom are here today – and if we work together we can bring about changes necessary to transform Scotland's criminal justice system.

I have said before, and I will repeat it here - I will try to find a consensus wherever possible. While I am sure there are areas of the Government's programme that members of the Committee will want to probe and scrutinise, I would ask you to work constructively with me where you can over the coming weeks, months and years.

CONTENTS

1. Victims of crime;
2. Conservative's 10-point Victims Law;
3. Not Proven & Corroboration;
4. Improving management of sexual offence cases;
5. Anonymity of complainers in sexual offence cases;
6. Violence against women and children;
7. Violent crime;
8. Restitution fund;
9. Sentencing;
10. Remand;
11. Throughcare and reintegration;
12. Community justice interventions;
13. Electronic monitoring;
14. Covid Recovery consultation;
15. Rangers inquiry;
16. Judicial register of interests;
17. Police Scotland – COP26 safety and security;
18. Police Scotland – funding;
19. Dame Elish Angiolini review implementation;
20. Serious Organised Crime Taskforce;
21. Serious Organised Crime – Fraud and scams;
22. Serious Organised Crime – Cybercrime;
23. Prisons;
24. Prison population;
25. Covid 19 response in Prisons;
26. Deaths in prison custody and mental health;
27. Prison budget and prison estate;
28. Human trafficking and exploitation;
29. Hate Crime and Public Order (Act) 2021 – Implementation;
30. Domestic Abuse (Protection) (Scotland) Act 2021 –
Implementation;
31. Offensive Weapons Act 2019 – Implementation;
32. Youth Justice;
33. Barnahus
34. Consultation on law officers dual roles.

VICTIMS OF CRIME

ISSUE – Criminal Justice Committee evidence session on 22 September to hear from stakeholders such as Victim Support Scotland about victims’ rights and support. Specific issues the Committee have highlighted include:

- Possible legislation to establish a Victims’ Commissioner
- The impact of the Victim Surcharge, which was introduced in 2019.
- The effectiveness of the Victim Notification Scheme

ISSUE 17 Aug: Tory news release with Jamie Greene claiming SNP is “betraying” victims of crime by failing to fix (*sic*) Victim Notification Scheme. Quotes falling numbers of victims signing up to Scheme. Covered in various media.

ISSUE 9 Aug: Most respondents to Law Society ‘Not Proven’ survey say retain verdict.

ISSUE Jul/Aug: Jamie Greene asked several written PQs about crime victims and the justice system related to matters covered by Tories’ planned Victims Bill.

ISSUE Apr/May Tory manifesto included plans for ‘Victims Law’ (trailed in Oct 2020) to include ending NP verdict and introducing statutory timescale for FAIs. In 10 June justice debate Mr Greene indicated a Bill would be lodged in Parly’s first 100 days, [REDACTED]

[REDACTED]

SNP manifesto pledges included: creating Victims Commissioner; review provision of victim services; develop a new funding regime for victim support organisations; introduce a justice-specific knowledge and skills framework for trauma informed practice; and ensuring restorative justice is widely available by 2023.

TOP LINES

While offending has fallen under this Government, we continue to strengthen how justice and wider public services support those who do fall victim to crime.

- Our manifesto contained a range of commitments to further improve victims’ experience of the justice system, including creating a Victims Commissioner to provide an independent voice for victims. We will engage victims and support organisations on the development of the role.
- We will review the provision of victim services as part of our work to develop a more victim-centred approach, including reviewing the Victim Notification Scheme and enabling more victims to tell the court how crime has impacted on them personally.
- We will develop a new funding regime for victim support organisations and introduce a justice-specific knowledge and skills framework for trauma-informed practice.
- Scotland’s reconviction rate for offenders has fallen to its lowest level in 21 years.

VICTIMS OF CRIME

- We are passionate about victims and survivors being properly supported but we should not ignore that we also serve victims by tackling offending behaviour.

We are ensuring victims' rights are at the heart of our justice system and have invested over £88m via the justice budget to support victims over the past five years.

- We have also invested over £23m in successful violence prevention programmes since 2008 – helping drive down crime, and inspiring similar approaches elsewhere.
- We are investing £18.2m through our justice budget this year to support victims. This includes a £1.5m increase in resource funding compared to last year and £13m in grant funding for organisations such as Victim Support Scotland.
- We also have a £15.6m budget to support victims of violent crime through the Criminal Injuries Compensation Scheme, operated by the UK Government.
- This justice investment is in addition to significant wider Scottish Government funding, from other portfolios, to support victims. For example:
 - £18m annually over 2 years, through the Delivering Equally Safe Fund, to tackle violence against women and girls
 - £10m over 4 years (2020-2024) to support all Survivors of Childhood Abuse
 - £5m per year through Future Pathways for survivors abused in care.

VICTIMS COMMISSIONER

Our manifesto contains a suite of commitments designed to improve victims experience of the justice system. This includes introducing a Victims Commissioner to provide an independent voice for victims.

- The Victims Taskforce considered this as part of their work programme. There was general support amongst members for the introduction of a Victims Commissioner. However some concerns were raised about resource implications and additional bureaucracy.
- We will therefore consult with victims and support organisations to ensure that the role of the Victims Commissioner is tailored to meet the needs of those affected by crime in Scotland.

VICTIMS OF CRIME

VICTIM SURCHARGE

As part of our broader package of support for victims of crime, we established the Victim Surcharge Fund to provide practical help.

- Since November 2019, all offenders who receive a court fine are required to pay a 'victim surcharge'.
- In April we awarded more than £157,000 to five victim support organisations through the Victim Surcharge Fund.
- Organisations can use the Fund to provide financial assistance to cover the costs of short-term and practical support, such as new windows and locks for victims of break-ins or to cover travel costs, for example to places of safety or to attend court.
- Ultimately, we anticipate that the surcharge may generate a fund of around £0.8 million - £1 million a year, but this is obviously directly dependent on income from offenders. We cannot award what we do not have.
- Kate Wallace, Chief Executive of Victim Support Scotland said in March she hoped the fund would go some way to empowering people to move on after a crime.
- She said [QUOTE]: *"This additional money available through the Victims Surcharge Fund will allow us to meet the continual needs of vulnerable victims in the aftermath of crime. For many of the people we support, this financial assistance can be life changing and sometimes lifesaving."*

VICTIMS OF CRIME

VICTIM NOTIFICATION SCHEME

This Government has strengthened the Victim Notification Scheme, giving victims of crime – and in certain circumstances their close relatives – greater rights to information about the status of an offender.

- Victims and their families who are eligible to join the Victim Notification Scheme are given guidance on what is involved, the type of information they will receive and when they will be able to make representations about an offender's release.
- Victims are able to make an informed decision as to whether they wish to sign up to the Scheme, and can do so at any time. Some victims may choose not to do so.

We legislated to make more victims eligible from 2014 – extending the criteria from prison sentences of four years or more to those involving more than 18 months imprisonment.

- And in 2015 we extended the right to receive certain information to victims of offenders sentenced to less than 18 months.
- We have committed to bringing all relevant partners together to review the Victim Notification Scheme and determine where further improvements could be made.

NOT PROVEN VERDICT

We have committed to consult on the removal of the Not Proven verdict – in recognition of the strong case that can be made for abolition.

- The views of the legal profession, as well as others with direct experience of the system including survivors, will continue to inform these considerations.
- The independent jury research we commissioned and that reported in late 2019 was the largest, most realistic of its kind ever undertaken in the UK – and it found inconsistent views on the meaning and effect of the not proven verdict.
- Stakeholder events last year, with a substantial number of legal professionals as well as survivors and victims, emphasised concerns with the not proven verdict, such as lack of understanding, juror confusion and perceived stigma.
- These are complex issues and many participants felt that the third verdict should be retained, or highlighted the interconnectedness of the system, so we must consider these issues carefully.

VICTIMS OF CRIME

CRIME & VICTIMISATION TRENDS

By all main measures crime, including violent crime, has fallen under this Government and most people do not experience it.

- Over the long term, we have seen a significant reduction of police recorded non-sexual violent crime of 34% between 2006-07 and 2019-20.
- Separately, the Scottish Crime & Justice Survey (2019-20) – which captures incidents not reported to police as well as those that are – shows crime in Scotland has fallen by 46% since 2008-09, with violent crime down by almost two-fifths (39%).
- Around one-in-eight (11.9%) adults in Scotland experienced crime in 2019-20, compared to one-in-five (20.4%) in 2008-09 – a rate that remains lower than England & Wales with an equivalent figure of 13.3%.
- NHS data shows the number of emergency hospital admissions due to assault have more than halved since 2006-07 – down 57% by 2019-20.

DOMESTIC ABUSE

We continue to take strong and decisive action to tackle domestic abuse

- We have strengthened the criminal law through the Domestic Abuse (Scotland) Act 2018, which creates a specific statutory offence of domestic abuse and makes a number of associated reforms to criminal procedure in domestic abuse cases.
- The new Domestic Abuse (Protection) Act will also provide police and courts with powers to further protect people at risk of domestic abuse and will make a real difference to the lives of many and ensure a person's home is a place of safety.

We fund a range of support services that provide support for women and children affected by domestic abuse, including Scottish Women's Aid.

- [REDACTED]
- We have committed to review the funding and commissioning of frontline support services to move towards a longer term and more sustainable funding model.
- Within the first 100 days of this new Government we will invest a further £5m to support frontline organisations that tackle domestic abuse and sexual violence, to deal with outstanding demand that has built up over the past year of the pandemic.

VICTIMS OF CRIME

- We have also invested over £22m in the innovative and accredited Caledonian System court-mandated programme so that more male perpetrators of domestic abuse can receive specific rehabilitation services to address and challenge their harmful behaviours. Our manifesto pledged to ensure this is available nationwide.

RAPE & SEXUAL CRIMES

We are determined to improve the justice system to respond better to the needs of survivors of rape and sexual assault in Scotland.

- We are giving serious consideration to the recommendations of Lady Dorrian's independent review of the management of sexual offence cases.
- The number of prosecutions for rape and attempted rape rose over the past decade from 80 in 2010-11 to 300 in 2019-20; And convictions increased from 36 to 130.
- Recent criminal proceedings statistics show prosecutions and convictions for rape and attempted rape over the last two years are the highest in the past decade.
- A pilot project of visually recording (VRI) rape complainer's statement launched on 1 November 2019. The VRI Pilot has continued through the pandemic and we will undertake an evaluation at the end of the two year pilot in November 2021 to inform decisions on a national roll out of the VRI Pilot.
- We have allocated over £1.3m from the Justice budget in 2021/22 to support Rape Crisis Scotland's National Advocacy Project – which provides a key support worker in every centre in Scotland to help victims to engage with the criminal justice system.

PRESUMPTION AGAINST SHORT PRISON SENTENCES

The presumption is precisely that – not a ban – and Judges retain the discretion to pass the most appropriate sentence based on the facts of the case, including a custodial sentence if they decide the alternatives are not appropriate.

- Short sentences disrupt many of the things most likely to help prevent reoffending, such as housing, employment, family relationships and ready access to health care.
- Our evidence-based approach to rehabilitation, in communities and custody, is working with reconviction levels at a 21-year low.

VICTIMS OF CRIME

COVID COURT BACKLOGS

The justice system in Scotland faces significant challenges, as in rest of UK.

- To tackle backlogs built up while necessary public health restrictions have been in place, we have committed £50m this year to the Justice Recover, Renew, and Transform programme – supporting greater use of digital tools and improved support for victims and witnesses.
- We have been working hard to mitigate the impact of the Covid pandemic – with most civil work being dealt with online or virtually and the establishment of innovations such as remote jury centres in cinemas for the most serious criminal trials.
- We will deliver increased court capacity from September 2021, including expansion of remote jury centres and a daily increase of 4 extra High Courts, 2 additional Sheriff Solemn Courts and up to 10 Sheriff Summary Courts.

CONSERVATIVES 10-POINT VICTIMS LAW

ISSUE: Detail on the 10 Proposals in the Conservatives' Victims' Law Bill

- end the Not Proven verdict so victims get a clear outcome
- enable all victims to provide victim statements so their voices are heard
- implement Michelle's Law to protect victims and their families from offenders
- enshrine in legislation the right for all victims to be notified of decisions not to prosecute or discontinue criminal proceedings so they can challenge the decision
- implement Suzanne's Law so killers cannot be released if they have not revealed the location of their victim's body
- introduce a statutory timescale for Fatal Accident Inquiries to commence so families can get answers as soon as possible
- restrict the right of the accused to request post-mortems to protect murder victims families from further trauma
- improve access to the Victim Notification Scheme so more victims receive information about the release of offenders
- ensure families of murder victims can access the Victim Notification Scheme without arbitrary restrictions
- expand restorative justice to allow more victims to receive an apology from offenders.

- 
- Victim statements enable victims to explain to the court how a crime has impacted on them and to help inform sentencing decisions.
 - We are committed to expanding the scope of the scheme and looking at different ways statements could be delivered to the court.
 - We consulted at the end of 2019 and passed the Criminal Justice (Scotland) Act 2003 (Supplemental Provisions) (Scotland) Order 2021, which provides greater flexibility in how powers relating to victim statements can be used.
 - This flexibility will, for example, enable the introduction of pilot projects for victim statements which would not have previously been possible.
 - We will bring forward further legislation as required in the light of outcomes of pilot projects, and taking account of responses to the consultation.

CONSERVATIVES 10-POINT VICTIMS LAW

- Amendments to the Parole Board (Scotland) Rules 2001 were laid in Parliament on 11 January and include provision to increase transparency as to how the Board may consider the safety and welfare of victims when it considers the case of a prisoner.
- The amendments also enhance the ability of victims to observe parole proceedings and provide increased transparency in relation to the reasons for the Board's decision in cases where it recommends release.
- These amendments came into force on 1 March 2021.
- Further work to modernise and simplify the Parole Board Rules is already underway with the expectation of going out to consultation on revised Rules later this year.
- We have legislated to put in place a number of new electronic monitoring policy uses.
- A new national contract for electronic monitoring was procured and put in place from April last year which allows us to work with Justice partners and others to test and introduce GPS technology into the electronic monitoring service. This technology gives the potential to change how exclusion zones are monitored.

Suzanne's Law – Our sympathies go to Suzanne Pilley's family. I can only imagine that the refusal to disclose where a victim's body is buried and deny them a dignified burial is extremely painful.

- Work is already underway to rewrite of the Parole Board (Scotland) Rules 2001 in order to simplify and modernise them.
- As part of that work we intend to add a specific provision to the rules which will provide for failure to disclose a victim's body as a matter, amongst others, that the Parole Board may take into account when making a decision on a prisoner's case.
- We expect to consult on the new rules towards the end of this year.
- The previous Justice Secretary met with Suzanne Pilley's family in December 2019 and let them know about the proposal to change the rules. He also wrote to the family in January 2021 to confirm the timing of the rules rewrite.
- Failure to disclose the location of a body can already be prosecuted as a criminal offence of attempting to defeat the ends of justice and also may be taken into account when sentencing.
- Any proposal around denying parole has to be carefully considered in the context of ECHR requirements.

CONSERVATIVES 10-POINT VICTIMS LAW

The Lord Advocate has acknowledged that more needs to be done to ensure that FAls take place as quickly as possible.

- Significant reforms directed by the outgoing Lord Advocate, along with a significant injection of resources to COPFS during the last Parliamentary session, are providing benefit to the people of Scotland and will continue to do so.
- The length of time to complete a death investigation has significantly improved as a result. Less than 2% of active death investigations are over 2 years old and every death investigation over 2 years old is being carefully managed through a now well-established Case Management Panel process.
- A statutory time limit is not the answer as it takes no account of the specific circumstances or the complexity of a particular investigation. The decision to hold an inquiry cannot be taken until other proceedings, such as any criminal charges, have been completed or ruled out.
- Parliament considered statutory time limits during the passage of the Inquiries into Fatal Accidents and Sudden Deaths (Scotland) Act in 2016 and decided not to impose specific time limits.

Action has already been taken to reduce the need for defence post mortems

- There is concern that setting a time limit for defence agents to request a post mortem could have unintended consequence resulting in more requests.
- In October 2018 the Crown Office published a protocol which it developed together with forensic pathologists and representatives of defence agents.
- It was designed to give defence agents greater confidence in the initial post mortem carried out on the instructions of the Crown Office.
- This has been successful: the Crown Office advises that, from the introduction of the Protocol in October 2018 to January 2021, 92 homicides had been reported and only 3 defence post-mortems had taken place.
- And there have been no defence post-mortems since July 2019 with these 3 defence post-mortems arising in the initial months of the protocol
- The right of the defence to its own post mortem is one secured by the requirement for “equality of arms” developed under application of the European Convention of Human Rights.
- No Conservative MSPs supported the introduction of Gil Paterson MSP’s Post-Mortem Examinations (Defence Time Limit) (Scotland) Bill that was before Parliament in the last months of the previous session of Parliament.

CONSERVATIVES 10-POINT VICTIMS LAW

- Parliament voted by 90 – 26 not to proceed with this Bill [Labour and Greens voting in favour].

Victims and their families who are eligible for the Victim Notification Scheme are able to make an informed decision as to whether they wish to sign up to make representations, and can do so at any time.

- We have committed to bringing all relevant partners together to discuss the Victim Notification Scheme and determine where improvements could be made.
- We amended the Parole Board Rules with effect from 1 March to make clear that the Board can take a victim's safety and security into account when considering release.
- The Board is now required to publish a summary of its decisions to recommend release. The amended Rules also provide for a defined process for victims and their families to request to observe parole hearings.

We are committed to having restorative justice services widely available across Scotland by 2023.

- Restorative Justice (RJ) is a process of independent, facilitated contact, which supports constructive dialogue between a victim and a person who has harmed arising from an offence or alleged offence.
- RJ in Scotland will always be voluntary for those who wish to take part in it, whether they are the individual or community harmed or someone who has caused harm.
- Our RJ Action Plan, published in 2019, sets out the vision, and actions required to achieve our 2023 commitment.
- Actions in the plan aim to address: accessibility to RJ across Scotland; quality and consistency of service (including training of facilitators); increasing public awareness.

NOT PROVEN AND CORROBORATION

ISSUE 9 August: Law Society of Scotland survey on not proven – majority of respondents (all legal professionals) said that the verdict should be retained.

ISSUE: The SNP manifesto committed to “undertake a review of Scotland’s prosecution system to deliver fairer, faster and more effective justice. The review will consider reform of corroboration, and the three verdict system, including - in recognition of the strong case that can be made for abolition - a consultation on the removal of the not-proven verdict.”

Top Lines

- We have committed to consult on the removal of the Not Proven verdict – in recognition of the strong case that can be made for abolition.
- We are committed to engaging further with justice partners to develop a shared understanding of the implications and potential unintended consequences of reform, while continuing discussions with those with direct experience of the system.
- It is important that we consider potential reforms against the landscape of wider work including the recommendations of Lady Dorrian’s review on the management of sexual offence cases.

Stakeholder events last year, with legal professionals as well as survivors and victims, emphasised concerns with the not proven verdict, such as lack of understanding, juror confusion and perceived stigma.

- These are complex issues and many participants felt that the third verdict should be retained, or highlighted the interconnectedness of the system, so it is right that we consider these issues carefully.
- The views of those with direct experience of the system including survivors, will continue to inform these considerations.

As a government we understand the concerns with how the corroboration rule can affect access to justice for survivors of crimes committed in private.

- That was one of the main reasons why we previously tried to take forward corroboration reform and have now committed to giving it further consideration.
- The Scottish Government proposed removing the corroboration requirement in the Criminal Justice (Scotland) Bill, introduced in 2013.
- But there was no parliamentary or legal stakeholder consensus at that time.

CONSERVATIVES 10-POINT VICTIMS LAW

- The engagement events held last year to discuss the findings of our landmark Scottish jury research revealed there is still considerable opposition to reforming corroboration amongst a number of stakeholders.
- The previous Cabinet Secretary for Justice held constructive discussions with Opposition Spokespeople in December 2020 to hear their views on reforming corroboration and all agreed that the issue needs further exploration.
- We are committed to engaging further with justice partners to develop a shared understanding of the evolving legal position and the implications and potential unintended consequences of reform, while continuing discussions with those with direct experience of the system.
- It is important that we consider potential reforms to corroboration in the context of evolving case law, and against the landscape of wider work.



- The independent jury research we commissioned and that reported in late 2019 was the largest, most realistic of its kind ever undertaken in the UK – and it found inconsistent views on the meaning and effect of the not proven verdict.
- Stakeholder events last year, with a substantial number of legal professionals as well as survivors and victims, also emphasised concerns with the not proven verdict, such as lack of understanding, juror confusion and perceived stigma.
- However, these are complex issues and many participants felt that the third verdict should be retained, or highlighted the interconnectedness of the system, so it is right that we consider these issues carefully.
- It is also important that we consider potential reforms against the landscape of wider work including the recently published recommendations of Lady Dorrian’s review on the management of sexual offence cases.
- That is why we have committed to consult on the removal of the Not Proven verdict.

IMPROVING THE MANAGEMENT OF SEXUAL OFFENCE CASES

ISSUE: The SNP manifesto committed to careful consideration to Lady Dorrian's report to deliver a justice system in which survivors of sexual crime can have confidence. It also committed to legislating to provide anonymity for rape complainers – a recommendation in Lady Dorrian's report. The June debate on RRT highlighted there is potential for consensus across the chamber on much of the report, [REDACTED]

[REDACTED]

Top Lines

- We are committed to careful consideration of Lady Dorrian's report. It is clear there is a good deal around which we can build consensus amongst partners, stakeholders and politically.
- It is premature for me to give commitments beyond those already set out – this is a complex area. Taking the time to consider the report will not delay ongoing work to improve the experience of victims of sexual offending and tackle the backlog of cases that have built up during the pandemic.
- Some proposals require legislative change and we will consult fully on those. Further detail will be set out in Programme for Government.
- The report has potential to drive transformational change across the system, beyond sexual offence cases. It is important to consider it in the context of our ambitious programme for justice reform and via development of a new justice strategy.

ANONYMITY OF COMPLAINERS IN SEXUAL OFFENCE CASES

ISSUE: Anonymity of complainers in sexual offence cases

In March 2021 Lady Dorrian published the final report by the Lord Justice Clerk's cross judicial review group entitled *Improving the Management of Sexual Offences cases*. The review was commissioned by the Lord President in March 2019 to develop proposals for serious sexual offence cases which dominate solemn proceedings in the courts. One of the recommendations within the review group's final report is in the area of anonymity of complainers in sexual offence cases. The recommendation is to introduce legislation granting anonymity to those complaining of rape or other sexual offences along the lines of the Sexual Offences (Amendment) Act 1992 (where an automatic right to anonymity currently extends only to complainers in England and Wales and does not apply to the investigation or prosecution of sexual offences in Scotland).

A paper published in the *Edinburgh Law Review* in October 2020 by Dr Tickell called for Scotland to have more robust laws to protect the anonymity of complainers in sexual offence cases, saying it relies on journalistic restraint and ignorance among the public. Anonymity for sexual offences complainers is an issue which is raised frequently. In recent times this has been in the context of the allegations made against the former First Minister and his subsequent prosecution, but also arise in other cases too. Legislation would be required to provide an automatic statutory anonymity for sexual offence complainers.

Top Lines

- The Scottish Government recognises the importance of protecting the anonymity of all people who report sexual crimes and value the cross judicial review group's recommendation in this area.
- As well as being contained in Lady Dorrian's recent report, it is a manifesto commitment to change the law in this area.
- We are committed to giving the report and its recommendations careful consideration as we look to build on actions already taken by the Scottish Government to improve the support provided to participants in the criminal justice system.
- We recognise there is a growing body of consensus towards enshrining anonymity rights for complainers in sexual offence cases, particularly with the emergence of new media.

At present there is no automatic legislative right to anonymity in sexual offence cases in Scotland

- In Scotland, complainers in cases of rape and other sexual offences give evidence under "closed court" conditions, whereby the public is excluded from the court during the giving of their evidence.
- This exclusion does not apply to bona fide journalists whose presence is permitted as an important aspect of open justice.

VIOLENCE AGAINST WOMEN AND CHILDREN

- In sexual offence cases in Scotland, there can be a legal right of anonymity for sexual offence complainers, but this requires a decision by a court to be made to protect a person's identity in a given case.
- Separate from this, there is a long-standing non-statutory protocol operated by the media not to name complainers in sexual offence cases.
- The approach in Scotland differs to the rest of the UK where the law (the Sexual Offences (Amendment) Act 1992)) provides that protections on identity apply as soon as an allegation has been made that a sexual offence has been committed against a person.
- The 1992 Act applies to Scotland only to prevent publication in Scotland of information relating to complainers alleging contravention of the law of E&W or NI, and in relation to service offences under armed forces legislation.
- The position in Scotland for complainers is therefore less certain than in other jurisdictions where anonymity is an automatic legal right.
- Legislation would be required to provide an automatic statutory anonymity for sexual offence complainers.
- While the non-statutory approach of the media has worked well over many years, the emergence of new forms of communication do not fit neatly within the current legal and non-legal framework and present real challenges in ensuring anonymity is preserved.

The existing legal tools available to Scottish courts are found in the Contempt of Court Act 1981.

- Section 11 of the 1981 Act empowers the court to make an order prohibiting the publication of any “name or matter to be withheld from the public in proceedings before the court...as appear to the court to be necessary for the purpose for which it was so withheld,” allowing courts explicitly to prohibit the identification of complainers in criminal or civil cases.
- Breach of an order under section 11 would constitute a contempt of court punishable by two years’ imprisonment, a fine, or both.
- In practice it does not appear that making orders under section 11 is routine in sexual offence prosecutions in Scotland.
- The number of sexual offences pursued in Scotland’s criminal courts substantially outstrips the number of orders made (8 orders in 2019 compared to 1,762 people proceeded against for sexual offences in 2018/19, with 324 appearing on charges of rape or attempted rape).

VIOLENCE AGAINST WOMEN AND CHILDREN

Lady Dorrian's independent review on the management of sexual offence cases published in March 2021 recommends that complainer anonymity in rape or other sexual offence cases is put on a statutory footing.

- If implemented, the right for a complainer in proceedings not to be identified in the media would be expressly set out in legislation rather than relying upon current convention and agreement.
- The policy would bring the position in Scotland on anonymity for sexual offences complainers in line with other parts of the UK.
- The regulation of the media to provide anonymity for complainers in sexual offence cases is practiced in many countries, either through legislation (e.g. Australia, Ireland, Canada, India, New Zealand) or through policy (e.g. most of the US).
- Legislative action in this area also reflects the emergence of new forms of communication and technological change which have transformed anybody with a smartphone or laptop into a publisher with potential global reach.
- An individual can therefore use the internet to cause lasting damage by naming a victim of sexual violence, whilst at the same time safeguarding his or her own anonymity.
- While Scottish courts do have powers in this area, they are required to operate a system whereby the courts, once a matter is before them, can decide to provide anonymity to alleged victims of particular crimes.
- In the high profile case of HM Advocate v Alexander Salmond an order was not made under section 11 of the 1981 Act prohibiting identification of the complainers the second day of the trial.

Supportive quotes:

Rape Crisis Scotland included in their “Holyrood 2021 Ask” the need to enshrine legal rights for complainers to anonymity, citing the difference in Scotland compared to other parts of the UK and the need to ensure that those reporting sexual offences are protected particularly where the use of social media is widespread.

A campaign for complainers’ anonymity is also being led by GCU law lecturers Dr Andrew Tickell and Seonaid Stevenson-McCabe. In a new article for Edinburgh Law Review in September 2020, Dr Tickell argues that, in the wake of the Alex Salmond trial, Scotland’s highest-profile sexual offences prosecution to date, the reliance on “a gentleman’s agreement by the mainstream media” or occasional special court orders is unsustainable.

The Greens, Conservatives and Liberal Democrats all include similar commitments around anonymity in their manifestos.

VIOLENCE AGAINST WOMEN AND CHILDREN

Responding to the Covid-19 Pandemic

- Throughout the coronavirus pandemic, it has been our priority to ensure that all victims of gender based violence are aware that services remain open so they can access the help they need to keep them safe from harm.
- Police Scotland have continued to prioritise cases of domestic abuse and remain committed to ensuring that victims are visible and supported throughout the pandemic.
- We remain absolutely committed to working with partners across the justice system to ensure that all victims of gender based violence are kept safe and receive the most appropriate level of support.
- Absolutely no one should have to suffer abuse. We have continued to fund a range of services to support both male and female victims of domestic abuse and rape and sexual assault.
- Last year we allocated an additional £5.75 million to frontline services so they could respond to an increase in demand from victims of abuse. Organisations that benefitted from this funding include Rape Crisis Scotland, ASSIST and Scottish Women's Aid. This funding allows more people to quickly and easily access help.
- We also recognise the massive implications that the pandemic has made on the courts and cases progressing through the justice system and are absolutely committed to working with partners to address this.
- To tackle backlogs built up while necessary public health restrictions have been in place, we have committed to investing £50 million this year to the Justice Recover, Renew, and Transform (RRT) programme. This will drive further reform, including greater use of digital tools and improved support for victims and witnesses.
- Welcome that SCTS have set out plans that will see an increase in court capacity from September 2021, which includes the expansion of remote jury centres and a daily increase of 4 additional High Courts, 2 additional Sheriff Solemn Courts and up to 10 Sheriff Summary Courts.
- We continue to work with justice organisations, the legal profession and the third sector, to consider all options to respond to the inevitable increase in cases awaiting trial, as well as the wider impact of the on-going public health challenges across the justice system.

VIOLENCE AGAINST WOMEN AND CHILDREN

We remain committed to improving the experience of victims of sexual crimes

- We believe that the justice system should always take a victim-centred perspective in addressing sexual crime, and we are working with all partners – to ensure this happens across the board.
- We welcome publication of the review, led by Lady Dorrian, on the management of sexual offence cases in Scotland's courts which adds to the evidence base in this area.
- We are giving the report and its recommendations careful consideration as we look to build on actions already taken to improve the support provided to survivors and other participants in the criminal justice system.
- We are already supporting a pilot project to test the process of visually recording rape complainers' statement to Police and this has continued throughout the pandemic.
- We have also committed over £0.5m to support this pilot which includes funding for additional advocacy resource within Rape Crisis Scotland to support complainers during the VRI process.
- An evaluation will be undertaken when the pilot ends in November 2021 to inform decisions on a national roll out of the pilot and we will support the continuation of the recording of statements within the existing pilot areas.

Sexual crimes account for 5% of all crimes recorded in Scotland in 2019-20. The number of Sexual crimes recorded by the police in Scotland decreased by 1% from 13,547 in 2018-19 to 13,364 in 2019-20.

We are continuing to commit significant levels of funding to tackle violence against women and girls

- Through the combined funding of Justice and the Equality and Human Rights Budget, we invested around than £30 million over 2020/21 to support a range of projects and initiatives for victims and witnesses.
- In addition, within the first 100 days of forming a new government we allocated £5M to violence against women services. The funding will go to rape crisis centres and domestic abuse services to cut waiting lists, helping to ensure those affected can access the support they need more quickly.
- It will comprise approximately £4.5 million to be split between Scottish Women's Aid and Rape Crisis Scotland, and a total of £500,000 for 12 other specialist support services and organisations.
- In line with our manifesto commitment, we are working to launch a new, open and competitive funding scheme for victim support and violence against women and girls organisations (approx. £13m per annum from 2022/23).

VIOLENCE AGAINST WOMEN AND CHILDREN

- We created a new Delivering Equally Safe Fund (£19m per annum) and have recently confirmed allocations to 121 projects from 112 organisations working to provide services and prevent gender-based violence.

We will continue to hold perpetrators of domestic abuse to account and invest in measures to achieve this

- We are committed to holding perpetrators to account and supporting them to change their behaviour.
- We have invested over £22m in the innovative and accredited Caledonian System domestic abuse court mandated programme so that more male perpetrators of domestic abuse can receive specific rehabilitation services to address and challenge their harmful behaviours.
- We supported the roll out of the Caledonian Programme to a further six local authorities in 2019 and it is now delivered in 19 Local Authority areas which means approximately 75% of the population of Scotland live in a local authority area which deliver the Caledonian.
- The SNP manifesto further commits to ensuring that the Caledonian System is available nationwide and we will work with partners to achieve this.
- The PfG in 2019/20 further set out our commitment to explore policy options to increase access to positive behaviour change programmes for domestically abusive men. We are therefore supportive of demonstration projects to explore non-court mandated versions which will draw on the fundamentals of the Caledonian programme.
- We are working with Community Justice Scotland to test the delivery of versions of the 1:1 Caledonian Programme as part of three demonstration projects which will begin during 2021.
- Community Justice Scotland are also working with Castle Huntly to test a non-court mandated version of the 1:1 Caledonian programme as a community based intervention for prisoners whose index offence involved domestic abuse.

We have established the Misogyny and Criminal Justice Working Group

- The Hate Crime and Public Order (Scotland) Act 2021 received Royal Assent in April this year. It sends a message that hatred and prejudice will not be tolerated in Scotland.
- We have set up an Independent Working Group, chaired by Baroness Helena Kennedy QC, to specifically look at Misogyny in Scotland and explore the following questions:
 - Is there a gap in the criminal law that should be filled by a specific offence tackling misogynistic behaviour?

VIOLENCE AGAINST WOMEN AND CHILDREN

- Should the characteristic of 'sex' should be added to the hate crime framework?
- The work being undertaken will inform policy to address the many forms of violence, transgression and abuse experienced by women which emanate from misogyny.
- The Working Group is on target to produce its findings and recommendations in a report by February 2022.
- We have committed to acting swiftly on this report, and to bring forward secondary legislation if there is a recommendation to add 'sex', as a protected characteristic, to the hate crime framework, within a month of receiving the final report.
- Oral and written evidence from a number of experts and a wide scale survey of qualitative data about women's experiences of misogyny will support the Working Group's findings.
- The evidence heard to date includes online misogyny and sexualised violence and is helping the working group to establish a definition of misogyny within the evidence base.
- In Scotland between 2018 and 2020, 23.5% of females aged 16-24 had experienced being sent unwanted messages by text, email, messenger or posts on social media sites - almost double that experienced by men of similar ages.
- In a survey (2017) for Amnesty International, across five countries including the UK, just under half (46%) of women who had experienced online abuse or harassment said it was misogynistic or sexist in nature.
- The Working Group is looking at all this information to evaluate how the Scottish criminal justice system currently deals with misogyny, including looking at whether there are gaps in the law.

VIOLENT CRIME

ISSUE: 19 August: Publication of Recorded Crime in Scotland: July 2021

- In July 2021, recorded crime was 6% lower than July 2020 (when pandemic restrictions were in place) and 13% lower than July 2019 (pre-pandemic).
- There were variations in the year-on-year trends between crime types. However, with the exception of Non-sexual crimes of violence and Sexual crimes, all groups were lower than pre-pandemic levels (July 2019).
- The **Herald and Daily Mail** have both picked up on the increase in Non-sexual crimes of violence (up 6% compared to July 2020, and up 11% compared to July 2019).

ISSUE: 30 May: Police Scotland News Release: More than 1,000 assaults on officers and staff included coronavirus related context during 2020-21, analysis suggests.

- The 1,087 reports were identified by searching cases for keywords relating to coronavirus such as 'spit', 'cough' and 'Covid'.
- The figure contributed to a total of 6,942 recorded assaults on officers and staff, 413 more than the year before, an increase of 6.3% year on year.
- Reported assaults are also up 18% on the five year average, continuing a long-term trend of increasing assaults against the police.

Recorded crime remains at one of the lowest levels seen since 1974, and is down 41% since 2006-07.

- Over the long term we have seen huge reductions in non-sexual violent crime, though agree there is more we must and will do to tackle this unacceptable behaviour.
- Since 2008, we have invested more than £23 million in violence reduction programmes.
- This includes over £16 million to the Scottish Violence Reduction Unit, and more than £4 million to No Knives, Better Lives.
- The Scottish Crime and Justice Survey shows a 46% fall between 2008-09 and 2019-20 in crimes experienced by adults in Scotland.

All local areas have seen a reduction in recorded crime over the longer term.

- Recorded crime has fallen across all local authorities since 2006-07, including in Glasgow (down 43%), Edinburgh (down 37%), and Aberdeen (down 51%).
- Local commanders will use this information, and a range of other intelligence to plan activity in partnership with the communities they serve.
- Despite constraints on Scotland's public services through a decade of UK austerity, policing services have been maintained and improved.

VIOLENT CRIME

- The Scottish Crime and Justice Survey shows public confidence in policing is good - the majority of people (55%) believe local police do a good or excellent job.

Significant progress has been made in reducing non-sexual violent crime, but we all agree more needs to be done.

- Police recorded non-sexual violent crime has fallen by a third (34%) since 2006-07.
- The Scottish Crime and Justice Survey shows a 39% fall between 2008-09 and 2019-20 in violent incidents experienced by adults in Scotland.
- The number of emergency admissions to hospital due to assault have more than halved since 2006-07 - down 57% by 2019-20
- Emergency admissions to hospital due to assault with a sharp object have fallen by 60% between 2006-07 and 2019-20, including a 19% fall in the latest year.
- While there have been increases in handling offensive weapons crimes in recent years, these crimes have more than halved since 2006-07 (falling by 56%).
- We know the devastating consequences of these crimes on individuals, families and communities. One knife crime is one too many.
- Homicide cases are at one of the lowest levels since comparable records began in 1976 (64 cases of homicide in 2019-20 – Homicide National Statistics).

Tackling violent crime remains a key priority for this Government.

- We have invested over £23 million in violence prevention since 2008.
- This includes over £16 million to the Scottish Violence Reduction Unit, and more than £4 million to No Knives, Better Lives.
- This funding includes delivery of the Mentors in Violence Prevention Programme which is engaged with all 32 Local Authorities across Scotland.
- This is a peer mentoring programme giving young people the chance to explore and challenge the attitudes that underpin gender based violence
- The Scottish Violence Reduction Unit have expanded their reach to other areas across Scotland including Dundee, Edinburgh and Ayrshire.
- They are delivering a place-based approach in North West Glasgow to specifically target deprived communities where violence exists, helping build connections and offer support to individuals and families.
- Our Navigators service now operates in seven A&E departments across Scotland.

VIOLENT CRIME

- This service reaches out to people facing severe and multiple disadvantage, helping them receive a person centred approach to access the support they need.
- It addresses the multiple complex issues that often accompany chaotic violent lifestyles, including substance use, alcohol dependency and poor mental health
- We are piloting a Youth Navigator service in the children's hospital Emergency departments at Edinburgh Royal Infirmary, St Johns Livingston and Glasgow.
- Tackling knife crime is paramount, our No Knives Better Lives youth engagement programme has developed a 'Nae Danger' interactive video game designed to help young people speak out and get help if someone they know is carrying a knife.
- We currently have around 850 Police Scotland Youth Volunteers working with the Police, breaking down barriers and developing relationships through volunteering within their local communities.

Amongst other actions, we have commissioned a large scale qualitative study to better understand violence-related repeat victimisation in Scotland.

- We know that 1% of adults were victims of multiple violent crimes in 2019-20, but their experiences account for 65% of all violent crime in Scotland.
- Our new study, led by the University of Glasgow, will ensure we better understand the problem of repeat violent victimisation, by researching those who experience it.
- This will include the circumstances of these cases, the barriers to seeking support and what help would be of most value in future.
- We are also completing work to examine 'What Works?' in violence prevention.

YOUTH JUSTICE

Over the last 12 years, Scotland has seen dramatic changes in the youth justice sector since this government made a decisive shift towards prevention.

- Between 2008-9 and 2019-20, the number of 12-17s proceeded against in Scotland's courts has fallen by 85% and there has been a 75% reduction in children referred to the children's reporter on offence grounds.
- In this period, the number of under 18s sentenced to custody also decreased by 93%.
- The Whole System Approach (WSA) is the Government's approach to young people who are in conflict with the law. It was rolled out across Scotland in 2011. The partnership approach has a shared ambition of

VIOLENT CRIME

what we want to do to prevent, divert, manage and change offending behaviour by children and young people.

- In June 2015 we launched a youth justice strategy (Preventing Offending: Getting it right for children and young people) to drive further improvements, based on the Whole System Approach that has delivered such striking success.
- This strategy came to an end in June 2020. We have developed a new vision and action plan for Youth Justice due to be launched on 16 June at the National Youth Justice Conference.

Despite constraints on Scotland's public services through a decade of UK austerity, policing services have been maintained and improved.

- We have increased the policing budget by £75.5 million in 2021-22, bringing the total budget to over £1.3 billion.
- This includes £15 million to mitigate the impact of COVID-19 on the policing budget in 2021-22.
- This has eliminated Police Scotland's budget deficit, delivered a sustainable budget position and protected the police workforce.
- We have a higher number of officers than at any time during the previous administration.
- The total number of officers – 17,289 (as at 30 June 2021) – is an increase of 1,055 police officers (+6.5%) from the position inherited in 2007 (31 March 2007).
- Scotland's officer numbers compare favourably with England and Wales.
- The latest figures show that there were around 32 officers per 10,000 population in Scotland, compared to around 23 officers per 10,000 population in England and Wales, as at 31 March 2021.

I fully support the actions that Police Scotland and the Chief Constable are taking to protect police officers and staff from assaults and their impact.

- It is unacceptable that Scotland's police officers and staff should be attacked or abused.
- The leadership of Police Scotland outlined its commitment to tackling this issue, including through the Chief Constable's Assault Pledge.
- The pledge promises: to help reduce the impact of violence; to improve the safety of officers and staff; and to provide appropriate support where it does occur.
- While overall levels of violent crime have fallen significantly in Scotland over the last decade, no-one should be the victim of abuse or violence at work.

VIOLENT CRIME

- We do not tolerate any attacks on emergency services workers and we fully support our police, prosecutors and courts in dealing robustly with people who offend against any emergency worker.
- Scotland's justice system has extensive powers to deal with perpetrators through statutes such as the Emergency Workers (Scotland) Act 2005 and section 90 of the Police and Fire Reform (Scotland) Act 2012, or using common law.
- The average custodial sentence length for assaults against police officers prosecuted under section 90(1) of the Police and Fire Reform (Scotland) Act 2012 has increased by 6% since it was introduced (from 160 days in 2013-14 to 170 days in 2019-20).
- For more serious attacks, the Crown may prosecute cases under common law offences such as assault, with potential penalties of up to life imprisonment.
- Since February this year, our courts have had the ability to impose Restitution Orders – a new financial penalty – on those who assault the police.
- These orders require an offender to pay towards support services for police victims of such assaults, sending a further signal that such behaviour is unacceptable.

CLEAR UP RATES

Crime Clear up rates are amongst the highest ever seen.

- At 51.5%, the proportion of crime cleared up in 2019-20 is at one of the highest levels seen since comparable records began in 1976.
- 71.7% of non-sexual violence was cleared up in 2019-20 (60.0% in 2006-07).

You are less likely to experience crime in Scotland compared to England and Wales.

- Surveys of the population show adults in Scotland were less likely to experience crime in 2019-20 than those living in England & Wales.
- An estimated 11.9% of adults experienced at least one property or violent crime in 2019-20 (compared to 13.3% in England & Wales).

RESTITUTION FUND

ISSUE 10 August: The Cabinet Secretary for Justice and Veterans wrote to Committee to advise them that Scottish Police Benevolent Fund had withdrawn as an operator and advise them about the publication of high level guidance about the operation of the Fund.

Top lines

- The Scottish Police Benevolent Fund wrote to the Cabinet Secretary of Justice and Veterans on 30 June 2021, informing him of their decision to withdraw as Operators of the Restitution Fund.
- This follows a number of discussions with the SPBF, and the wider Restitution Fund Working Group, over recent months on ways we could facilitate the SPBF remaining as the operator of the Fund, within the parameters of the legislation.
- The SG is committed to finding an alternative way of delivering the Fund, which will allow all victims of police assault to access the money available.
- We will continue to consult with the Working Group – which includes representation from the SPBF, Police Scotland and the police officer association and staff unions - on a solution.
- The earliest date at which funds could be used to support victims is 10 August 2021, 6 months on from the introduction of the new penalty. However, the Working Group are supportive of allowing funds to build for more time before spending begins, to ensure sufficient funds are available and that suitable arrangements are in place.

General lines on Restitution Fund

- Restitution Orders are a new financial penalty which can be imposed by the courts on offenders to help provide support services to police officers and staff assaulted during the course of their job. They were introduced on 10 February 2021.
- Those who assault police officers or staff can now be ordered to help fund physical and mental support as part of sentence following conviction.
- Money raised will be banked in the Restitution Fund and will help pay for both physical and mental health and wellbeing services for police.

RESTITUTION FUND

Background

Restitution Orders provisions were included in the Victims and Witnesses (Scotland) Act 2014, and commenced on 10 February 2021. Restitution Orders are a new financial penalty available to courts for those convicted of assault on police (under section 90 of the Police and Fire Reform Act 2012.)

The Restitution Fund (Scotland) Order 2021 delegates the establishment, maintenance and administration of the Fund to the SPBF.

The Restitution Fund Working Group considered options for the operator of the fund during 2019, and reached a view that the Scottish Police Benevolent Fund should operate the Restitution Fund, which was subsequently agreed with the (previous) Cabinet Secretary for Justice.



SENTENCING

ISSUE: 15 JULY – New independent Sentencing Council guideline outlining the process steps for sentencing decisions approved by the High Court and will come into effect on 22 September. The guideline aims to ‘demystify sentencing’ for the public.

ISSUE: 17 JUNE – Daily Mail (Scotland) – Concerns over the new vision for youth justice published on 16 June aimed at those up to age 18 but also recognising the needs of young people up to age 26. The article suggests a soft touch approach and reflects on the Scottish Sentencing Council proposals around young people.

TOP LINES

- As Members will know, the decision on the most appropriate sentence in any given case is for the independent court with all the facts and circumstances before it.
- I am clear that the most serious and dangerous offenders deserve to go to jail.
- It was this Government that ended automatic early release for long-term prisoners sentenced after 1 February 2016. The previous system of automatic early release was introduced by the then-UK Government in 1993.
- The average length of prison sentences has increased by 29% over the last decade, driven by more convictions and prison sentences for serious crimes.
- The problem is not that we don't send enough people to prison – it's that for many, particularly those given short custodial sentences, prison is not effective.
- Statistics show that over one third (35%) of those who received short custodial sentences were back in prison within a year.
- Our new vision for youth justice - launched on 16 June - builds on the successes we have seen over the last 12 years following this Government's move to a preventative approach through the whole system approach to preventing offending by young people.
- The vision suggests that, where possible and appropriate, consideration will be given to extending such an approach up to age 26.
- Our approach is evidence led and focussed on what works to keep communities safe and prevent offending.
- Support the independent Sentencing Council in their important work to help people understand and have confidence in how sentencing operates.

SENTENCING

CRIMINAL PROCEEDINGS 2019-20

Criminal Proceedings statistics showed the number of violent offenders receiving custody at highest level since 2012-13, with 1,107 being imprisoned.

- The increase in convictions for non-sexual crimes of violence between 2018-19 and 2019-20 was due, in part, to the introduction of the new crime of domestic abuse that came into effect for a course of conduct committed on or after 1st April 2019.
- The importance of our 2018 Domestic Abuse Act – described by Scottish Women’s Aid as a “gold standard” – has been shown to be effective in its first year of operation, with 206 perpetrators held to account for their actions.
- While the Criminal Proceedings figures show a slight reduction in 2019-20 in the average length of prison term for rape convictions, this figure fluctuates from year to year
- The average of 2,445 days imprisonment – or more than 6-a-half-years – for rape convictions in 2019-20 is 17% longer than in 2010-11 (when it was 2,090 days).

While no sentence – either in custody or in the community – can eliminate the possibility of some individuals offending in the future, both reconvictions and overall crime in Scotland are at historically low levels. Ultimately these are measures of a safer country.

- Recorded crime in Scotland remained almost unchanged from 2018-19, rising by less than 1%, and is down 41% since 2006-07 to one of the lowest levels since 1974.
- Our firm focus on prevention, effective community interventions and rehabilitation, both in communities and custody, is working with reconviction levels at the lowest level since comparable records began.
- Over the past decade, the average number of reconviction per offender has decreased by 23%, from 0.60 in 2008-09, to 0.46 in 2017-18. The reconviction rate has decreased by 5.2 percentage points in the same period from 31.5% to 26.3%.

REMAND

ISSUE: July 2021 - Jamie Greene MSP, Scottish Conservative spokesperson on Justice and member of the Criminal Justice Committee tabled 3 PQs in July 2021 on Remand, which have been answered:

- S6W - 01760: To ask the Scottish Government what plans are in place to address the reported increase in the untried remand population in prisons.
- S6W-01761: To ask the Scottish Government what measures are in place to support people who are held on remand for an extended period and are then not convicted at trial.
- S6W-01762: To ask the Scottish Government what measures are in place to support the families of people who are held on remand for an extended period and are then not convicted at trial.

ISSUE: June 2021 – In response to a Sunday Post article on 20 June 2021 which carried comments from stakeholders such as Howard League Scotland and the Prison Reform Trust expressing concern about the numbers of women remanded and their access to support. Following the publication of this article, Pauline McNeill MSP lodged a Topical PQ asking the Scottish Government what action it was taking to reduce the number of female prisoners on remand.

ISSUE: May 2021 - Howard League Scotland published a report on the use of remand in Scotland (The Scandal of Remand in Scotland). The publication coincided with a week of social media action calling for a reduction in the use of remand. The report highlighted the increase in the remand population due to the Covid pandemic and called for urgent action. The accompanying news release highlighted the length of time people are held on remand and raised specific concerns on the impact on young people and people with learning disabilities.

ISSUE: May 2021 - A survey of local authorities indicated that 26 local authorities have a bail supervision scheme in place (a direct alternative to remand), 3 local authorities have plans to establish a scheme in the near future and 3 local authorities have no plans to establish a scheme. Currently, there are no mechanisms to require local authorities to run a bail supervision scheme and justice social work partners report increased operational pressures and challenges in recruiting staff.

ISSUE: Ongoing (since pandemic) - Concerns about the remand population pre-date Covid-19; however the lack of throughput of through the courts during the pandemic has led to an increase in the remand population (from approx. 1500 in 2019-20 to approx. 2000) even though the overall prison population has reduced (from over 8000 to approx. 7500) in this same period. This represents an increase in the remand population of approx. 20% of the total prison population to approx. 27%.

Current Remand Population

- The prison population on the morning of Monday 16th August 2021 was 7566 in custody (5473 sentenced, 1763 untried and 331 awaiting sentencing). 28% of the prison population were on remand.
- The population for women at this time was 302 (202 sentenced, 76 untried and 24 awaiting sentencing). The proportion of women held on remand was 33%.
- The overall remand population of 2094 represents an increase of 5% in the past month.

TOP LINES

- The single biggest factor in the increase in remand is the backlog of cases created by the pandemic. Prior to the pandemic the remand population was approx. 20% of the total prison population and this has risen to approx. 27%.
- We are committed to helping justice services recover from the impact of the pandemic. An additional £50m has been provided in this financial year

REMAND

so that the cases involving all accused, including those on remand, can be progressed.

- Decisions on whether to remand in custody or grant bail ahead of trial or sentencing are for the independent courts in each case.
- Public protection is paramount and remand will always be necessary in some cases.
- However, we are considering looking at how the legislative framework for bail decisions could be changed to increase this focus on public safety. This will be an open and inclusive process where views offered can help inform whether reform should be progressed and if so, how best that can be done.
- As the Justice Committee's inquiry into the use of remand in 2018 made clear, we know that remand can disrupt families and communities, and adversely affects peoples' health, employment opportunities and housing – the very things that evidence shows supports desistance from offending.
- We have increased funding for alternatives to remand. In addition to the £117m invested in community justice services each year, we have provided a further £550k to incentivise bail supervision services and £1.5m for bail support for women each year.
- We are working with partners to implement electronically monitored bail across Scotland – providing a further monitoring capability for courts.
- We recognise the impact the pandemic has had on the justice system – including the remand population – and
- We acknowledge the importance support being available to people leaving custody and a range of measures are in place to support people during their time on remand and on release.
- We recognise that remand can be a particularly vulnerable time for women and can take them away from children and other family members. Tailored support is available and we have ensured in-person visits can resume in all prisons holding women.
- We understand that an ambition to reduce the use of remand is widely held and we welcome input and opportunities to work collaboratively to support further improvements.

We recognise the impact the pandemic has had on the justice system – including the remand population – we are committed to helping the justice services recover.

- The single biggest factor in the increase in remand is the backlog of cases created by the pandemic. Prior to the pandemic the remand population was approx. 20% of the total prison population and this has risen to approx. 27%.

REMAND

- That is one reason why we are committed to enabling the criminal courts to address this backlog - and have provided an additional £50m in this financial year so that the cases involving all accused, including those on remand, can be progressed.
- This includes £11.8m specifically allocated for use by justice social work services in directly addressing the impact of the pandemic – including increasing the availability of alternatives to remand.

We are continuing to invest to ensure robust alternatives to remand are available across Scotland

- Including additional investment of £550,000 per annum to bolster existing provision for supervised bail as an alternative to the use of remand.
- This funding is intended to double capacity for bail supervision services – and we saw a 40% increase in uptake of bail supervision in 2019/20.
- This is in addition to the £117m invested in community justice services annually, which includes a ring fenced allocation of £1.5m for bail support for women.
- We are updating national guidance on bail supervision to support the consistent establishment and delivery of effective bail supervision schemes across Scotland. This will be published later this year.

We are working with justice partners to ensure operational readiness for the implementation of electronically monitored as part of bail across Scotland.

- This is due to commence later in the year – as a way of continuing to reduce the use of remand by providing a community based alternative.
- Individual decisions on remand or bail will still be for the independent judiciary but electronically monitored as part of bail will be a new capability to consider for cases on the cusp of remand or bail.
- It will provide an ability to monitor special conditions of bail if Sheriffs deem it appropriate.

We are committed to ensuring a range of measures are in place to support people during their time in remand and on release.

- Everyone on remand has access to healthcare from the NHS- including both physical and mental health support as well as access to treatment and support for substance misuse and addiction issues.
- This is supplemented by SPS support, which includes an individual assessment of need so that the appropriate support can be put in place for people during their time in custody.

REMAND

- Although not required under the Prison Rules, the SPS encourage people on remand to undertake purposeful activity like work or education where possible/appropriate.
- The SPS are working with GEOAmev to provide liberation packs to those released at courts, including those who have been held on remand. These information packs are specific to the local area and include information about local support services.

We recognise that remand can be a particularly vulnerable time for women and are committed to ensuring tailored support is available.

- All establishments with a female population encourage women on remand to participate in the same rehabilitative regime offered to those who are convicted.
- Women on remand also have access to other purposeful activities such as life skills, positive choices courses and a range of counselling advice on ending abuse and domestic violence.
- In-person visits resumed in all prisons holding women and we are committed to maintaining our prison visitor centres which provide a range of vital support to children of those in custody, including those on remand.
- The Scottish Government funds SHINE a third sector mentoring partnership supporting women leaving custody after serving short sentences, SHINE also provides support for women leaving remand.

This Government has worked hard to keep children out of the criminal justice system by instigating measures that encourage alternatives to remand and custody where possible.

- We have seen dramatic changes in the youth justice sector since this government made a decisive shift towards prevention in 2007.
- This includes a reduction in the number of under 18s in custody down by 91% since 2006.
- A new vision for youth justice priorities with a primary focus on keeping children out of the criminal justice system was published in June.
- The vision continues to promote the whole system approach in Scotland – a multi-agency partnership approach focussed on preventing and changing offending behaviour by children and young people.

THROUGH-CARE AND REINTEGRATION

ISSUE: Access to through-care services differs depending on the length of sentence an individual is serving. Those serving less than 4 years can request through-care support from their local authority justice social work department (on a voluntary basis). The Scottish Government also provides £3.4m p.a. to third sector partnerships to provide through-care services to men and women leaving short sentences.

Those leaving custody after serving 4 years or more receive statutory through-care support from their local authority justice social work department.

ISSUE – July 2019 – the SPS announced that they were temporarily suspending the operation of their Through-care Support Officer (TSO) service and reallocating the 41 officers to mainstream duties. The TSOs had offered a voluntary service to individuals released from short sentences, working before and after their release to help them with practical problems that might hinder their reintegration.

The service was suspended by SPS as part of their efforts to manage the high prison population and address prison staffing problems. It was an operational decision taken by SPS. At the time of suspending this service, there was criticism of this decision from opposition parties as being against the principle of assisting individuals to desist from offending.

The Third Sector PSPs extended their services to pick up the TSO workload.

In addition to the through-care services provided by local authorities and the third sector, there are statutory duties on public bodies (local government, health) to support people leaving prison to enable them to reintegrate. For example, to access housing, benefits, healthcare. These needs are assessed by SPS at the point of an individual's admission to custody and this information is shared with relevant partners.

ISSUE: Friday Liberations – The Prisoner (Control of Release) Scotland Act 2015 (as amended by the Management of Offenders (Scotland) Act 2019) provides SPS, on behalf of Scottish Ministers, with the discretion to bring forward the release date by no more than 2 days for the purposes of benefiting a prisoner's reintegration into the community. Requests are not limited to people being released on a Friday, or a Thursday prior to a public holiday weekend. The final report of the Drugs Death Taskforce [DN: check closer to Committee appearance as report isn't published yet – scheduled for September] includes a recommendation that introduce a blanket ban on Friday liberations (or in advance of a public holiday), rather than it being on an individually assessed basis.

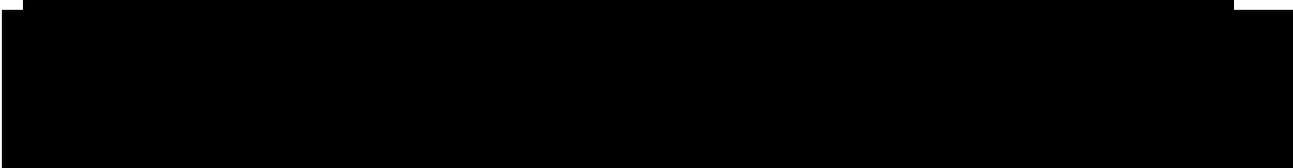
TOP LINES

- We are committed to ensuring that people leaving prison are supported to reintegrate into their communities and not reoffend.
- And we recognise the importance of through-care and reintegration support.
- That is why we provide £3.4 million funding annually to third sector partnerships to support through-care services for men and women leaving short-term sentences.
- And we also provide funding to local authorities as part of the total £117m p.a. settlement to support the voluntary and statutory through-care services they provide people leaving custody.

THROUGH-CARE AND REINTEGRATION

When a prisoner's release is scheduled, SPS will offer to work with the prisoner to plan for their release – including assistance to contact housing offices, benefits offices, medical services, or third sector services – depending on their needs and intentions.

- Once an individual reaches their release date the SPS do not have legal authority to detain them any further. They are required to release the individual immediately.
- Support to help prisoners contact housing services, and other support services, is on a voluntary basis. It is up to the individual whether they accept that support, and up to them how they act once they are released. We cannot compel prisoners to engage with public services.
- When the prisoner's release has not been pre-planned, officers will offer support as well as is possible at that time.
- Only individuals serving long sentences, and those whom the court issue specific post-release orders, are compelled to be supervised by Justice Social Work after they are released. There are also court based social workers who can deal with social work issues that arise at court.

- 
- We will work with stakeholders to consider the options available to us, including new models of care, as well as procedural or legislative change.
 - We know that release from custody, and the subsequent transition to community based care, can be a vulnerable time for many individuals, and can lead to increased risk of drug related harms and deaths.
 - This Government will continue as a priority to consider ways to improve the circumstances and support available for individuals leaving custody, and to mitigate any risks.

SG continue to invest in third sector throughcare services

- We have invested in third sector mentoring services since 2012-13, now at a level of £3.4m annually.
- This provides support to 3 third sector partnerships – supporting men, women, and young people leaving prison from short sentences.
- These services provide flexible, practical support which helps people leaving prison to reintegrate successfully into their communities.
- These services can advise and (where necessary) support individuals to engage with public services (housing, healthcare, benefits etc). But they

THROUGH-CARE AND REINTEGRATION

cannot replace such services, and do not have control over how other services operate.

- Throughcare services are not intended to be ongoing support services, but rather to support prisoners on their release and reintegration. These services are not resourced to provide an ongoing service, or to support other groups of people.
- The national third sector throughcare partnerships have demonstrated that they are providing effective support to their service users – typically helping to improve the individual's basic circumstances, achieving generally improved attitudes to offending, and helping them engage with public services.
- Covid has been a serious challenge to the throughcare services, with the PSPs having to suspend almost all in-person contact, as a result of public health guidance. The services increased efforts to maintain contact using phone, text and email-a-prisoner. And are beginning to undertake face to face contact again, in line with public health guidance.

Local Authorities also play a vital role in supporting individuals on release from custody.

- Each local authority area is required to provide some form of voluntary throughcare to short-sentence prisoner after release – if the individual requests it, up to 12 months after release.
- It is up to the local authority to decide what support is provided– as part of their duty to deliver such services as are required by local need.
- In addition, Individuals leaving long-term sentences will continue to be supervised by Criminal Justice Social Work, to ensure that they abide by the conditions of their release.
- This is supported by ongoing Scottish Government investment in community justice services of £117m a year.

COMMUNITY JUSTICE INTERVENTIONS

ISSUE: 9 August – National Care Service consultation published which includes questions on scope of the service including in relation to Justice Social Work services and related implications for community justice governance linked to reform of Integration Joint Boards. Open consultation on risks, benefits, and other options for reform, and no SG position at this time. Consultation ends 18 October.

ISSUE: July - Jamie Greene MSP, Scottish Conservative spokesperson on Justice and member of the Criminal Justice Committee, tabled 40 PQs in July 2021, including a number on Community Justice, which have been answered:

- S6W-01758 Impact of Unpaid Work on reoffending rates
- S6W-01779 Action to increase the CPO completion rate
- S6W-01780 Analysis of the decline in the percentage of CPOS which include unpaid work requirements
- S6W-01781 Response to Audit Scotland’s ‘Sustainable Alternatives to Custody’
- S6W-01786 The appropriateness of knitting as Unpaid Work

ISSUE: 15 July – Audit Scotland published a short report, ‘Community Justice: Sustainable Alternatives to Custody’, which attracted media coverage. It stated that the SG is yet to meet its aim of ensuring that people convicted of criminal offences increasingly receive community sentences instead of going to prison.

ISSUE: May – SNP manifesto included commitments on community justice, including to invest in a “substantial expansion” in diversion from prosecution and other community justice services, and to develop a new National Community Justice Strategy.

ISSUE: Ongoing (since pandemic) - Capacity to deliver community orders, in particular unpaid work or other activity requirements in Community Payback Orders, has been impacted by coronavirus. Regulations varying unpaid work requirements by 35% (with exceptions for domestic abuse, sexual offending, and stalking) approved by Parliament in March. Additional covid funding of £11.8m allocated to justice social work in 2021/22.

TOP LINES

- We remain committed to encouraging more widespread use of community-based interventions where appropriate, which are often more effective than custody in reducing reoffending and keeping our communities safe.
- Through continued investment in community justice services, the development of a new National Community Justice Strategy, and related work across the justice system, we will build on progress to date and ensure a renewed emphasis on early intervention and addressing the underlying causes of offending behaviour.

COMMUNITY JUSTICE INTERVENTIONS

- The pandemic has had a significant impact on community justice services, and we are grateful to all those who have worked hard over the past 18 months to ensure that vital support continued to be provided in extremely challenging circumstances.

Our firm focus on prevention and effective community interventions has helped see Scotland's reconviction rate fall to its lowest level since comparable records began.

- Over the past decade, the average number of reconviction per offender has decreased by 23%, from 0.60 in 2008-09, to 0.46 in 2017-18. The reconviction rate has decreased by 5.2 percentage points in the same period from 31.5% to 26.3%.
- In 2019-20, 22% (16,296) of all convictions resulted in a main penalty of a community sentence - the highest proportion of convictions where community sentences were imposed in the past ten years and up from 14% in 2010-11. This is a 7% increase in the number from 15,211 in 2018-19.
- Decisions on sentencing are rightly for the judiciary, having considered all facts and circumstances of the case.
- Evidence shows that individuals released from a custodial sentence of 12 months or less are reconvicted nearly twice as often as those given a Community Payback Order.
- CPOs are a robust and credible community alternative which make individuals pay back to the community or fulfil other requirements decided on by court while addressing the underlying causes of their offending behaviour.
- While no sentence – either in custody or in the community – can eliminate the possibility of some individuals offending in the future, both reconvictions and overall crime in Scotland are at historically low levels.
- [QUOTE] “If you think about the justice system like an infection, once you get infected once, it can become a chronic and life-limiting condition. Get infected again, and again, and again. So, getting people out at the earliest point in time, if that’s appropriate, is the right thing to do.” Karyn McCluskey, Community Justice Scotland – 1 June.

COMMUNITY JUSTICE INTERVENTIONS

We will review and revise the National Strategy for Community Justice

- Over this year we will review and revise the National Strategy for Community Justice, considering how to build on progress over recent years, set clear aims for all involved in delivering services, and further encourage the use of community interventions where appropriate.
- We recognise that taking a holistic approach – including recognising public health aspects of offending – can inform actions necessary to keep our communities safe.
- We will involve stakeholders throughout the sector in reviewing how well the current strategy has performed, before engaging more widely in exploring what approach a revised strategy might take.
- In addition, we will explore legislative options for a sustainable reduction in the prison population, with a focus on managing offending behaviour, protecting public safety and reducing re-offending .

We welcome Audit Scotland's report on community justice and its intention to carry out further work in this vital area in 2022.

- The report 'Community Justice: Sustainable Alternatives to Custody' was published on 15 July and looks at some of the key developments since Audit Scotland's 2012 report 'Reducing Reoffending in Scotland'.
- While sentencing decisions in individual cases are a matter for the independent courts, we are committed to encouraging more widespread use of community-based interventions where appropriate. These are often more effective at reducing re-offending, as Audit Scotland sets out, and for keeping our communities safe.
- We will consider the issues identified by Audit Scotland in its report, including as part of the review and expected refresh of the Community Justice strategy, which we anticipate will be published in 2022 alongside an updated Outcomes, Performance and Improvement Framework.
- It is important to note that, despite ongoing challenges, progress has been made – for example, in addition to continued investment in community justice services, which will total more than £117m this year, Parliament agreed in 2019 to extend the presumption against short custodial sentences from 3 to 12 months. Although it is too early to determine the impact of the extension, the use of such sentences has fallen significantly in recent years, with those receiving a sentence of 12 months or less reducing by 13% in the most recent data between 2018-19 and 2019-20.

COMMUNITY JUSTICE INTERVENTIONS

Consultation is underway on the creation of the National Care Service (NCS) which has the possibility to radically change how we deliver services.

- The primary focus of the proposals is on adult social care, but the consultation also rightly seeks views on the remit of the NCS and whether it should go beyond this to potentially include all social work services.
- This clearly has implications for justice social work – as well as other areas such as children and young people services – and the consultation seeks views on the potential risks and benefits of including such services in the NCS, as well as on whether any alternative reforms might be explored.
- No decisions have been taken as yet in relation to the justice aspects of the proposals, and views will be carefully considered to inform a decision on the scope of the National Care Service, including for potential future phases of development.
- Engagement is taking place during the consultation period with justice stakeholders including Community Justice Scotland, Social Work Scotland, and COSLA.

Regulations to reduce unpaid work requirements by 35% (with exceptions for domestic abuse, sexual offending and stalking) in response to the COVID-19 pandemic were scrutinised and approved by Parliament.

- This was a necessary and proportionate response to help ensure the justice system can operate effectively and ease pressure on local authorities as the pandemic continued.
- This proportionate measure helped address the unavoidable build-up of unpaid work resulting from essential public health restrictions, while ensuring that those on community orders still serve the majority of their sentences.
- All existing orders imposed up to and including 15 March 2021 were reduced.
- Approximately 270,000 hours of unpaid work were removed as a result of the regulations.
- Although the regulations and additional funding has mitigated risks to the system, the potential for community justice services to be overwhelmed has remained as unpaid work simply could not be delivered in reasonable timescales due to necessary public health restrictions and increasing demand.

COMMUNITY JUSTICE INTERVENTIONS

- This is why Parliament approved the extension of provisions on timescales for completion of unpaid work and a power to vary community payback orders, in the Coronavirus (Expiry and Extension) (Scotland) Bill. I can assure the Committee that these powers would be used only if absolutely necessary and that there are no current plans to use the powers to vary orders again.

The presumption against short prison sentences is not a ban

- We have not abolished jail sentences of less than 12 months.
- Judges retain the discretion to pass the most appropriate sentence based on the facts of the case, including a custodial sentence if they decide the alternatives are not appropriate.
- Between 2018-19 and 2019-20, there was a four percentage point reduction in custodial sentences of 12 months or less. The number of custodial sentence of “up to 3 months” decreased by 19% in the past year, from 3,139 in 2018-19 to 2,551 in 2019-20, and is less than half the number ten years ago.
- Short sentences disrupt many of the things we know are most likely to help reduce reoffending such as housing, employment, family relationships and access to health care and support.

Our long-standing, strategic investment in community justice is one that has helped drive down the country’s reconviction rate to its lowest level since comparable records began

- Scottish Budget for 2021/22 ensures at least £117 million is invested in community justice services and specialist third sector services.
- To support pandemic recovery work, an additional £50 million over 2021-22 has been allocated both to establish additional court capacity and to contribute to the wider associated costs across the justice system, including community justice, prisons, and legal aid.
- From that funding, approximately £11.8 million has been allocated for use by justice social work services in directly addressing the impact of the pandemic.
- In addition to funding arising specifically as a result of the pandemic, the Scottish Government will also invest around an additional £2.5 million that was agreed in the draft budget to community justice services.
- The SNP Manifesto contains a commitment that “building on our progress over the last 5 years, we will invest in a substantial expansion in diversion from prosecution and of community justice services including alternatives to remand and custodial sentences.”

COMMUNITY JUSTICE INTERVENTIONS

National statistics on community orders and non-court disposals are gathered and monitored on an ongoing basis

- 16,700 CPOs were commenced in 2019-20. 70% had an unpaid work or other activity requirement. 62% of orders had a supervision requirement, the highest level in the last seven years.
- Number of diversion from prosecution cases commenced rose by 8 per cent between 2018-19 and 2019-20 to around 2,000.
- A total of 470 bail supervision cases were commenced in 2019-20, a 40 per cent increase on 2018-19 and the highest level in any of the last seven years.

Jamie Greene tabled a large number of written PQs last month including a number on Community Payback Orders and unpaid work. I hope he found those answers helpful.

- CPOs are a valuable component of our focus on effective interventions and we know that CPOs do work to reduce reoffending - individuals released from a custodial sentence of 12 months or less are reconvicted nearly twice as often as those who are given a Community Payback Order.

ADDITIONAL POINTS FROM PQ ANSWERS IF NEEDED:

Reconviction rates

- The most recent reconviction rates show that 29% of people with a Community Payback Order (CPO) imposed in 2017-18 were reconvicted within a year, which is the lowest rate since they were introduced.

Completion rates

- The completion rate for Community Payback Orders (CPOs) has generally been around 70% over the last seven years. This is consistently higher than for the orders they replaced.
- There are a range of factors which can influence the likelihood that an order will be successfully completed. In particular, outcomes are likely to be influenced by the nature of the offending behaviour and individuals' underlying risks and needs.
- Local authorities are responsible for delivering CPOs and, we are continuing to work with national and local partners to help ensure orders are implemented as effectively as possible, and that completion rates are as high as they can be.

COMMUNITY JUSTICE INTERVENTIONS

CPOs with unpaid work requirement

- It is up to the independent sentencing judge to decide the most appropriate sentence, including which requirements are most appropriate, based on all of the circumstances of the case – for example, the nature of the crime, information contained in the criminal justice social work report and what is most likely to prevent the individual from reoffending.
- In certain circumstances the court may consider that an order without an unpaid work requirement is the most appropriate sentence to address the offending behaviour and its causes. This is particularly the case where an individual has more complex risks and needs that need to be addressed and unpaid work may not be suitable.

Type of unpaid work

- Unpaid work has a strong focus on reparation and providing opportunities to make amends and prevent reoffending through strengthening relationships with the community, and through developing useful skills.
- Justice social work staff and unpaid work managers in local areas are best placed to determine what unpaid work is suitable, taking into account each individual's particular circumstances, to help ensure that individuals complete their unpaid work hours in a way which benefits the community.

DEVELOPMENT OF ELECTRONIC MONITORING

ISSUE – Development of electronic monitoring covers both new policy and technological uses and those will be taken forward with different timescales.

Background:

The Management of Offenders (Scotland) Act 2019 (the 2019 Act) consolidates a number of existing pieces of legislation covering electronic monitoring. Once commenced, all the current policy uses of electronic monitoring will continue and some new additional policy uses will be brought in. As well as new policy uses, the longer-term plans for electronic monitoring development also include exploring use of new types of technology, for example to monitor by virtue of satellite tracking (GPS).

The current radio frequency (RF) technology is well established and familiar to the sector so we are introducing the new policy uses first with that proven technology, before we explore changing the technology used.

- The current electronic monitoring capability in Scotland is through radio frequency technology has a proven ability to monitor curfew.
- The vast majority of the current orders relate to curfew conditions (generally 1900-0700) and RF can also be used to restrict individuals away from a specified place, for 24 hours a day.
- RF is currently used to monitor a wide range of community disposals and licences.
- In terms of impact, it is likely opening up new policy uses will more clearly allow for greater use of EM with the technology as a constant to plan around, whereas introducing GPS may just mean a different way of monitoring with the impact across each policy use less certain.

We are still supportive of satellite tracking (GPS) but need to develop it at a pace that is manageable for the sector.

- The 2019 Act enables the use of new technologies such as satellite tracking and remote substance monitoring (when such equipment is prescribed, which it is not as yet).
- We have legislated to allow for this new technology and last year began a new national contract that will allow for GPS.
- We have said that we will explore the use of GPS in the lifetime of the five year monitoring contract.

DEVELOPMENT OF ELECTRONIC MONITORING

- The decision to explore new technologies *after* introducing new policy uses is predicated on keeping the scope and scale of change manageable for people, there will be longer lead-in and development time for GPS (e.g. would need ability to pilot and train people on new equipment during time of distancing, and many more consequential changes needed for partners – not all of which they will have yet considered).
- The ability to have prescribed exclusion zones already exists in many orders and licences and can be undertaken by radio frequency so RF offers much by way of functionality.
- Ultimately, electronic monitoring does not physically prevent a monitored person from failing to comply with an order or licence. It is the monitored person's own responsibility to ensure that they abide by the underlying terms of the order or licence.

We need all partners in the justice sector to be ready before the final stages of commencement of the new policy uses.

- The new policy uses of electronic monitoring introduced by the 2019 Act are: electronic monitoring with a Community Payback Order (CPO) (at first disposal, can currently be used for breach), electronic monitoring of supervised release orders (SROs), electronic monitoring of sexual offences prevention orders (SOPOs), electronic monitoring of sexual harm prevention orders (SHPOs), electronic monitoring of release on licence (extending EM to cover temporary release from prison) and electronic monitoring of bail
- The Scottish Government took forward legislative changes to include bail in the list of disposals that can be electronically monitored and those were brought before Parliament at the end of last year and agreed.
- We need to make sure, before this change is given effect, that all Justice partners are operationally ready.
- Discussions on operational readiness have been taking place in parallel and once all partners are content we will be able to move to commence the final parts of the legislation to give these powers effect.
- Examples of the practical steps needing taken to support this include: making changes to Court Rules, ensuring partners have resource in place to get swift access to those eligible for bail, ensuring timely and secure information exchange between partners such as the Police and COPFS and configuring IT systems.
- Coronavirus has to an extent delayed commencement due to other pressures on justice partners and the system.

DEVELOPMENT OF ELECTRONIC MONITORING

- We are appraised of the need to move swiftly but also safely here, to ensure assessment and enforcement are appropriately calibrated to keep those in the community safe and ensure no unintended consequences for the prison population.
- The impact of changes such as use of electronic monitoring with bail, will be dependent on use by the judiciary as they take the decisions about bail and remand.
- We still anticipate partners will be ready for this change later this year and the Criminal Justice Board (with Police, COPFS and SCTS representation) are being kept updated on progress so they can press this for their operational interests.

COVID RECOVERY CONSULTATION: JUSTICE SYSTEM REFORMS

ISSUE 17 August : Launch of the Scottish Government's consultation paper "Covid Recovery: A consultation on public services, justice system and other reforms" which focuses on reviewing the legislative powers that have supported the Government's response to Covid and invites views on specific legislative proposals that have the potential to support COVID recovery. This includes proposals to respond to the impact of COVID in the justice system specifically where backlogs have unavoidably built up.

Top Lines

- The Scottish Government's highest priority is to continue to lead Scotland safely through and out of the Covid pandemic and to re-open the country as quickly and safely as possible.
- We therefore now have a real opportunity to achieve a fairer and more equal post-Covid Scotland, where no one is left behind.
- As one of the steps to harness lessons from the Covid pandemic, the Scottish Government is committed to reviewing the impact of Covid on the Scottish statute book.
- The consultation proposes making permanent, or to retain for an extended period, a range of justice related measures from the emergency Coronavirus Acts that have evidentially been found beneficial as measures during the COVID pandemic.
- The Government wants to remove measures no longer needed in order to respond to the pandemic whilst keeping those where there is demonstrable benefit to the people of Scotland.
- The consultation includes proposals to respond to the impact of Covid in the justice system specifically, where backlogs have unavoidably built up.
- Our current view is that to not retain on a longer term basis key elements of the temporary primary legislation, as it impacts on the criminal justice system, would seriously undermine the progress and ultimate achievement of this ambition.
- I would encourage anyone with an interest in ensuring that our justice system can continue to operate and progress its innovative and positive response to the impact of the pandemic, and address the backlog in caseload, to respond constructively to the consultation.

COVID RECOVERY CONSULTATION: JUSTICE SYSTEM REFORMS

Why do we need to extend the justice provisions for a further period of time if we are emerging from the constraints of the pandemic?

- On 10 June 2021, the Scottish Parliament debated the Scottish Government's ambition to achieve a faster, fairer, and more effective Justice system for the people of Scotland, building on the progressive Recover, Renew and Transform (RRT) programme in response to the Covid pandemic.
- The programme aims to recover essential services and transform how the justice sector operates to ensure a resilient and effective system for now and for the future.
- The ability to continue the recovery of our Justice system from Covid will be potentially dependent on retaining some or all of the justice provisions for a further period of time. That could encompass for example the retention of fully virtual summary trials and virtual custody courts.
- Recovery is a long term goal. It requires to be managed and underpinned by a strong legislative basis
- This work has progressed under the common goal of recovering a viable justice system which is able to respond flexibly to meet the public health challenges of Covid, and deliver a more effective and efficient justice system.

How is this interlinked to current plans to address the backlog?

- Based on current modelling, it is currently envisaged that the backlog of solemn trials will be cleared in 2025, with the summary trial backlog expected to be cleared by 2024; the consequences of this backlog for sentences involving community justice services will not begin to reduce until 2027.
- That assessment is based on a number of assumptions, not least that the existing court system has returned to pre-pandemic capacity by March 2022 and service delivery organisations being able to recruit staff for the additional courts to allow them to start in September 2021.
- This is of course by no means certain and should be looked at in cautionary terms.
- Statistics published by SCTS on 17 August for example already highlight that Petitions, which provide a useful indicator of future solemn business, are 21% higher than the average monthly pre-COVID level.
- That being said, the use of digital technology to allow procedural steps to be taken electronically and virtual courts to be convened will potentially facilitate and enhance the ability of the courts to deal with the backlog.
- Continuing for a longer period, the provisions which impact on community sentencing will also be critical in allowing the backlog of community sentences to be progressed quickly and effectively.

COVID RECOVERY CONSULTATION: JUSTICE SYSTEM REFORMS

- Not retaining on a longer term basis key elements of the temporary primary legislation, as it impacts on the criminal justice system, would seriously undermine the progress and ultimate achievement of this ambition.

How will you ensure that the concerns of victims, witnesses and the accused are considered equally alongside operational priorities?

- That is an important aspect of the consultation process and why we provided a detailed rationale for considering extended justice system provisions.
- Continuation of many of these provisions would lend themselves well to a sustained progressive response to the pandemic which embraces the opportunity that technology provides whilst safeguarding the key principles of our justice system for users.
- Operational decisions will always be considered alongside the impact on users, with appropriate analysis and evaluation.

COVID RECOVERY CONSULTATION: JUSTICE SYSTEM REFORMS

At a glance – Responding to the impact of Covid in the justice system chapter (Longer Extension)

- **Courts and tribunals: conduct of business by electronic means**

Provisions allow documents to be signed and transmitted electronically in courts and tribunals

The use of written submissions, the digital transmission of documents and the use of electronic signatures have enabled swift process changes that have enabled court services to operate more efficiently.

- **Courts and tribunals: virtual attendance**

Provisions allowing people to attend a court or a tribunal by electronic means (for example, by live video link)

These provisions have been utilised to good example, most particularly through the remote jury model, and have enabled the justice sector to respond to wider challenges out with their control in order for business to continue and adapt. These provisions have also enabled a systemic response to the impact of public health restrictions. The systemic response often represented improvements previously identified as features of a modern criminal justice system and something that should be retained in the immediate term.

- **Criminal justice: early release of prisoners**

Provisions allowing by regulations, that a person who falls within a class of persons specified in the regulations is to be released from prison earlier than their scheduled release date.

In order to reduce pressure on the prison system, and help prison management to maintain safe and effective operations under these capacity and staffing challenges, the First Scottish Act gave Scottish Ministers powers to release a limited number of prisoners earlier than their scheduled release date. The specific criteria identifying which prisoners were to be released early had to be set out in regulations, which were to be approved by the Scottish Parliament. This power was only to be used when it was necessary and proportionate to do so, to deal with problems arising from Covid.

COVID RECOVERY CONSULTATION: JUSTICE SYSTEM REFORMS

- **Criminal justice: expiry of undertaking**

During the Covid pandemic people have been unable to attend court in accordance with their undertaking due to public health guidance or infection. Without action, in this situation there is a risk that protective conditions attached to undertakings will expire in an increasing number of cases, raising safety concerns and an increased risk for the public, with particular risks associated with domestic abuse cases.

These provisions addressed this risk by providing the court with the power to prevent the expiry of an undertaking given under section 25(2)(a) of the Criminal Justice (Scotland) Act 2016 and any conditions attached to it by changing the time the person is due to appear at court where certain conditions are met. The need to self-isolate because of possible infection with Covid (or the continued existence of other Covid related reasons which prevent people from attending court) may continue for some time to come. These provisions ensure that in any case where a person is unable to attend court for a Covid-related reason, the court has a power to ensure that any conditions associated with the undertakings on which they were released can continue to have effect until they are able to appear in court.

- **Criminal justice: fiscal fines**

These provisions increased the maximum level of a fiscal fine from £300 to £500 and introduced a new scale of fixed penalties to give practical effect to this measure, enabling a wider range of cases to be dealt with by fiscal fine, without the need for court procedure and associated appearance at court.

- **Criminal justice: national court for cases beginning with an appearance from custody**

Provision for Scotland-wide jurisdiction for sheriffs dealing with first appearances from police custody and any continuation of the case up until a not guilty plea is tendered (or full committal in petition proceedings).

- **Criminal justice: time limits**

Provisions suspend certain time limits contained in the Criminal Procedure (Scotland) Act 1995 with the effect of increasing the max time period that an accused person can be held on remand prior to trial in both solemn and summary cases as well as the max period prior to trial where the accused is not in custody and the maximum period between the alleged commission of an offence and the trial for certain summary-only offences.

COVID RECOVERY CONSULTATION: JUSTICE SYSTEM REFORMS

Provisions dis-apply certain time limits on the length of an adjournment, such as on the power of the court to adjourn a summary case at first calling, the power to remand an accused for inquiry into their physical or mental condition where the accused has committed an offence punishable with imprisonment, and the power to adjourn a hearing and remand an offender for inquiry in respect of their apparent failure to comply with a requirement of a Community Payback Order, Drug Testing Treatment Order or restriction of liberty order.

The consultation explores a range of issues relating to the time limit extensions and seeks views on the extent to which extension of time limits should or should not continue beyond March 2022 – including whether a different approach should be taken to different time limits.

- **Proceeds of crime.**

Provisions provide that, for the purposes of section 99(4) of the Proceeds of Crime Act 2002 “exceptional circumstances” includes the effect (whether direct or indirect) of coronavirus on the proceedings .

Provisions enable an accused to make application to the court for a further extension of the time to pay a confiscation order where the court accepts that an accused’s inability to pay has been affected (whether directly or indirectly) as a result of coronavirus, and further provides that the payment of interest on the outstanding amount as set out at section 117 of the 2002 Act is dis-applied where an extension under section 116A has been granted.

Supportive Quotes:

Ken Dalling, President of the Law Society of Scotland, said: “We welcome this consultation, which will give the Law Society as well as other interested organisations and individuals the opportunity to consider the impact of the policy changes brought in to respond to the pandemic. As public health restrictions are lifting it is important to examine exactly what is in place and to consider where there are longer term benefits in continuing as we are, where changes are no longer needed, and where there should be additional measures to help support this next phase of recovery. The Law Society looks forward to considering and responding to the consultation in detail in the coming weeks.’

RANGERS INQUIRY

ISSUE: The action raised by Mr Charles Green has settled for £6.39 million.

On 11 August 2021, the Times reported that Duff & Phelps were seeking £120 million for reputational damage. This case remains live.

Compensation for Mr David Whitehouse and Mr Paul Clark has been paid. Three other cases remain live before the courts. COPFS advise that no comments should be made on the specifics of any case given on-going live proceedings.

In a Parliamentary debate in February, SG committed to a “process of inquiry” into events once all live proceedings are complete. Exchanges have been on the form of inquiry and if it should be judge-led, and by a judge from outwith Scotland.

The Lord Advocate has recused herself and Solicitor General for Scotland is issuing instructions on these matters.

The Solicitor General for Scotland is issuing instructions in relation to these cases

- On 16 August 2021 the Sun reported comments attributed to MSP Russell Findlay in which it said that the Solicitor General is conflicted in relation to these matters. The Solicitor General is not conflicted, her knowledge of these cases is an asset.

The previous Lord Advocate has apologised, acknowledging certain individuals should not have been prosecuted

- Proceedings are ongoing in some of the cases however and it would be inappropriate to comment further on any specifics in respect of these cases.

The Scottish Government is committed to a process of inquiry once all legal proceedings are at an end

- In February Parliament debated these issues and voted in favour of a judge-led inquiry.
- During that debate the previous Lord Advocate and the then Minister for Parliamentary Business gave a public commitment that a process of inquiry would be held into the events surrounding these prosecutions.
- The exact form of inquiry will be determined at the point once all legal proceedings are concluded.

The exact form of inquiry is best determined once all legal proceedings are concluded

- There are a number of considerations as to whether to establish an inquiry under the Inquiries Act 2005.

RANGERS INQUIRY

- Ministers must consider whether the circumstances of the matter in question justify the use of 2005 Act powers, the considerable expense associated with such an inquiry, and its likely duration.
- Non-statutory inquiries, or other forms of review or investigation, may be more proportionate and report more quickly.
- Such decisions will be taken in light of all the available information once legal proceedings are complete.
- It is also important to be clear that it is never the purpose of a public inquiry to determine civil or criminal liability.

Funding to cover the necessary settlements will not affect delivery of justice

- The settlement of these cases will not have to be met from the COPFS resource allocation.
- The overall budget and emerging underspend are managed across the Scottish Government and, as happens every year, any overall funding changes required to support expenditure are confirmed as part of budget revisions.

Police Scotland have made allowance for settlements affecting them

- In relation to these matters, Police Scotland agreed settlements with Mr Clark and Mr Whitehouse in November 2020.
- In evidence to the Public Audit and Post-Legislative Committee on 11 February 2021, the Chief Constable confirmed that settlements were agreed with Mr Clark's and Mr Whitehouse's representatives.
- These were within the limit of the Chief Constable's delegated financial authority in terms of litigation.
- Given this position, I can confirm that the Scottish Government has not received any requests for approval of legal settlements.
- These payments have been made from the SPA resource budget.
- No additional funding has been provided to the SPA for the purpose of these payments.
- On 4 December 2020 a sum of £150,000 was paid to lawyers representing Mr Whitehouse in agreed full resolution of his civil action.
- This sum comprised £75,000 in damages and £75,000 as a contribution to Mr Whitehouse's most recent legal expenses.
- The Chief Constable also confirmed separate payment of Mr Whitehouse's previous legal expenses totalling approximately £160,000.
- The Chief Constable gave his commitment that the Police Service of Scotland will contribute to and co-operate fully with any inquiry that arises.

JUDICIAL REGISTER OF INTERESTS

ISSUE:

- SNP manifesto commitment to create a register of interests for members of the judiciary.
- Scottish Government publicly confirmed this policy will be taken forward in answer to a PQ in June.
- Daily Record article on Monday 14 June highlighted that the judiciary are strongly opposed to a register.
- Since 2012 there has been a petition at the Scottish Parliament for a register.
- The Justice Committee kept the petition open for their successor committee to 'hear views, and perhaps explore a little why the Lord President is opposed to the creation of such a register'.
- The Citizen Participation and Public Petitions Committee has referred it to the Criminal Justice Committee for this session.
- The current and previous Lord Presidents have expressed strong views to the Committees against a register of interests, citing other safeguards in place, potential detrimental effect on recruitment to the judiciary and risk to members of the judiciary.
- A register of interests for the judiciary has been resisted by Scottish Ministers previously. Most recently in a letter from the Cabinet Secretary for Justice to the Justice Committee in February 2020.
- There are different types of JRIs that have been proposed by proponents and could be introduced:
 - A register of financial interests; and/or
 - A register of extra-judicial interests (which could include relationships, membership of organisations, gifts and hospitality and commercial interests).
- Introduction of a register will require careful consideration. New Zealand abandoned the introduction of such a register following parliamentary evidence sessions.

Top Lines

- It was a SNP manifesto commitment to introduce a register of interests for members of the judiciary to improve transparency and trust in the justice system.
- The Scottish Government will now begin work to engage with stakeholders to consider how best to bring forward this justice reform.

We recognise the need to engage with the senior judiciary and other relevant interests on this matter

- The Scottish Government is aware that the Lord President has said he does not consider a register to be necessary, as did Lord Gill when he was Lord President.
- We will engage with the Lord President and the judiciary as part of a thorough process to introduce the register and will listen to any concerns raised and take these into consideration.

JUDICIAL REGISTER OF INTERESTS

- The Scottish Government also recognises that there is support for a register from other areas. A judicial register of interests has been under consideration in the Scottish Parliament for a number of years due a petition calling for one.
- After 5 years of consideration the Public Petitions Committee reached the conclusion that a register should be introduced and referred it to the Justice Committee in 2018.
- The Justice Committee kept the petition open in March 2021 as, having considered the evidence before it already, members considered further evidence was needed.

It is essential that necessary preparation is undertaken

- The Scottish Government will carry out a thorough policy development process before introduction of a register of judicial interests and will engage with stakeholders.
- This will involve determining whether a register will include financial interests such as share-holdings and/or extra-judicial interests such as membership of organisations and relationships.
- Work is at an early stage and until further developed I am unable to say what interests a judicial register would cover and whether this would be a statutory register.

POLICE SCOTLAND – COP26 SAFETY AND SECURITY

Top Lines

- COP26 will be one of the most significant policing and security operations to take place in the UK.
- One of the four key objectives for the Scottish Government with regards to COP26 is to deliver a safe, secure and successful event.
- This will be underpinned by a coordinated security plan that brings together the key elements of **policing**, UN security and private security.
- COP26 will take place in a period when COVID-19 remains a global public health issue.
- The pandemic continues to be closely monitored by all relevant agencies and, while it is too early to predict the course of the pandemic in October/November, the Scottish Government will be closely involved in decisions around the planning.
- The detail of Covid mitigations at the event are evolving but will be based around the principles of vaccination and compliance with existing Government guidance.
- It is essential that Police Scotland and others are fully engaged in Covid planning to allow preparations and exercising to proceed with confidence.
- The recent HMICS review on Police Scotland's preparations for the event offers a high degree of assurance with a single recommendation made. HMICS inspectors continue to evaluate progress.

Policing

- The policing operation is significant and will require large deployments of mutual aid officers from England and Wales, given the scale of protest expected.
- The handling of planning for COP26 is an operational matter for the Chief Constable, however Police Scotland continue to work closely with the Scottish Government as plans for the conference COP26 develop.
- This includes regular meetings between SG and senior officers, which provide an opportunity to receive updates on developments.
- I joined the First Minister and other members of the cabinet at a briefing from the Chief Constable and his executive team last month which was an opportunity to discuss COP26 planning and governance measures.

Activism

- Thousands of activists are expected to attend COP26, meaning that there is a risk of large-scale public gatherings and marches before and during the event which may disrupt preparations for, or delivery of COP26.
- Police Scotland are engaging with a wide range of activist groups in advance of the Conference in order to facilitate and support their right to

POLICE SCOTLAND - COP26 SAFETY AND SECURITY

peaceful protest. SG Safety and Security officials are also working with the COP26 team and Police Scotland to develop a collaborative approach to the risk tolerance and management of protest-related issues.

- A workshop on risk tolerance was attended by Police Scotland, Home Office, Cabinet Office and SG and it was indicated there that Police Scotland/Cabinet Office planning on risk mitigation and protestor segmentation was broadly agreeable.

Business as Usual (BAU)

- The impact of COP26 on the day-to-day business of delivery partners will be a particular focus of planning as the event approaches, including additional service delivery capability demands and any required contingency planning to ensure essential services continue during the event.
- The recent HMICS review into Police Scotland's planning for the event offers a high degree of assurance around the service's ability to balance business as usual policing with delivering a safe and secure COP26.
- The Scottish Government's Safety and Resilience Board, attended by key partners involved in the planning for COP26 (including Glasgow City Council) will meet regularly in the lead up to the event.
- The main role for the Board during this time will be to act as a platform for situational awareness and will focus in particular on the protection of BAU leading up to and during the event.
- Lessons learned from recent high profile events including G7 and Euro 2020 will help to assist partners in the final stages of planning for the event ensure that BAU is maintained.

POLICE SCOTLAND - FUNDING

Manifesto commitment on police funding: We will protect the police resource budget in real terms for the entirety of the next parliament.

Despite constraints on Scotland's public services through a decade of UK austerity, policing services have been maintained and improved.

- We have increased police funding year-on-year since 2016-17, investing more than £10bn in policing since the creation of Police Scotland in 2013.
- We will protect the police resource budget in real terms throughout the lifetime of this new Parliament, as we did during the last Parliament.
- For 2021-22, we have increased the policing budget by £75.5m to over £1.3bn, including £15m one-off funding specifically to mitigate the impact of COVID-19 on the police budget.

Our total budget for policing in 2021-22 is over £1.3 billion.

- We increased the SPA's resource budget by 5.2% (or £60m) for 2021-22.
- This has eliminated Police Scotland's structural deficit, enabling the SPA to set a balanced budget for 2021-22.
- The funding has also enabled officer numbers – currently higher than at any time during the previous administration – to be maintained.
- We continue to invest in both Scotland's police staff and officers, supporting the delivery of the Joint Policing Strategy to meet changing demands and strengthen support to our communities.
- The Chief Constable welcomed the 2021-22 budget (28 Jan), saying, **QUOTE** *"I welcome the announcement to eliminate the structural deficit in policing's funding."*
- Calum Steele of the Scottish Police Federation also welcomed the funding (28 Jan), saying: **QUOTE** *"An additional £60m for policing, wiping out the structural deficit is good news indeed. A mature political decision"*

POLICE SCOTLAND - FUNDING

Despite Westminster cuts to the SG capital budget in their Spending Review, we have maintained the police capital budget.

- We have more than doubled the SPA capital budget since 2017-18, supporting continued investment in police assets – estate, fleet, specialist equipment and ICT.
- It is for the SPA and the Chief Constable to prioritise the allocation of this funding to meet their priorities and to deliver their ICT, estate and fleet strategies.
- We have maintained the police core capital budget at £45 million in 2021-22.
- We have also provided an additional one-off £0.5m to invest in body worn video for specialist officers.
- We awarded the SPA a further £10m capital in March 2021 to invest in modernising the police fleet, including 235 new ultra-low emission vehicles allowing Police Scotland to move faster on plans to decarbonise its fleet.
- This further supports Police Scotland's vision of having the UK's first ultra-low emission blue light fleet by 2030.
- This additional capital support builds on the £12 million made available to Police Scotland in 2019-20 to introduce mobile working to 10,000 frontline officers.

We have continued reform funding for a further year to support police transformation.

- This year we are providing £29.6m reform funding to the SPA, supporting a range of transformation projects including work to modernise ICT infrastructure, enhance mobile technology for officers and to support staff pay, reward and harmonisation.
- This investment supports the delivery of the Joint Policing Strategy, to meet changing demands, and to strengthen support to communities.

We have a higher number of officers than at any time during the previous administration.

- The total number of officers – 17,289 (as at 30 June 2021) – is an increase of 1,055 police officers (+6.5%) from the position inherited in 2007 (31 March 2007).
- Scotland's officer numbers compare favourably with England and Wales.
- The latest figures show that there were around 32 officers per 10,000 population in Scotland, compared to around 23 officers per 10,000 population in England and Wales as at 31 March 2021.

DAME ELISH ANGIOLINI REVIEW - IMPLEMENTATION

MANIFESTO COMMITMENT: “We will implement the remainder of Dame Elish Angiolini’s review into complaints against the police and introduce a Police Complaints Bill into Parliament.”

BACKGROUND

- The Final Report of the Independent Review of Complaints Handling, Investigations and Misconduct Issues in relation to Policing was published by Dame Elish Angiolini on 11 November 2020.
- The final report includes 81 new recommendations for Police Scotland, SPA, PIRC, COPFS and the Scottish Government.
- This is in addition to 30 recommendations in the preliminary report published in June 2019.
- In June 2018, the then Cabinet Secretary for Justice and Lord Advocate invited Dame Elish Angiolini to conduct an independent review which commenced in September 2018.
- The purpose of the Review was to:
 - consider the current law and practice in relation to complaints handling, investigations and misconduct issues, as set out in relevant primary and secondary legislation
 - assess and report on the effectiveness of the current law and practice; and
 - make recommendations to the Cabinet Secretary for Justice and the Lord Advocate for improvements to ensure the system is fair, transparent, accountable and proportionate, in order to strengthen public confidence in policing in Scotland.

OVERVIEW – MAIN LINES

Dame Elish’s recommendations provide a platform for bold reform of the framework and systems governing this complex landscape.

- We are very grateful to Dame Elish Angiolini for leading the independent review of complaints handling, investigations and misconduct issues in relation to policing in Scotland and delivering two comprehensive and incisive reports
- We acknowledge the findings of the Justice Committee consideration of police complaints as part of its Post Legislative Review of the Police and Fire Reform (Scotland) Act 2012, which shared themes with Dame Elish’s review.

DAME ELISH ANGIOLINI REVIEW - IMPLEMENTATION

- We remain confident that the systems for handling police complaints, investigations of serious incidents and misconduct are fundamentally sound, but recognise there is a clear case to make improvements.
- Together, working with partners, it remains our intention to accept the majority of Dame Elish's recommendations, many as specifically set out, but with options being explored where other routes or mechanisms may achieve the desired outcome.

OVERVIEW – PROGRESS

The Thematic Report published in June set out the position at that point regarding the overall 111 recommendations:

- **19 recommendations fully completed**, with a further **4 awaiting sign off**;
- **35 recommendations requiring legislation** (we will bring forward a public consultation on those proposals in due course);
- of the remainder, **48 recommendations in progress** and a number of these expected to be submitted for sign off and included as complete in the next Thematic Progress Report; and
- **5 recommendations** from the Preliminary Report overtaken by the Final Report recommendations.

Since June, other recommendations may well have been completed. We look forward to receiving further updates from partners and publishing the next Thematic Progress Report later this year.

COMPLAINTS PROCESS – MAIN LINES

We are confident the structures and procedures brought in under the 2012 Act have strengthened the governance, accountability and scrutiny arrangements for policing.

- Five years after the creation of Police Scotland in 2013, the timing was right to explore how the structures and processes of PIRC, the SPA and Police Scotland were working and any improvements needed.
- The Review provided an opportunity to look across the system and identify areas for improvement that will further build the trust and confidence of those involved and of the wider public.

DAME ELISH ANGIOLINI REVIEW - IMPLEMENTATION

PUBLIC CONFIDENCE – MAIN LINES

We greatly value the work of Scotland’s police officers and staff in keeping communities safe, particularly as a vital part of our public health response to the challenges of the pandemic.

- Public confidence is a key part of the Standards of Professional Behaviour and Code of Ethics for Policing in Scotland
- The Scottish Crime and Justice survey published in 2020 found the majority of people who have come into contact with the police in recent years reflect positively on their experience
- A survey by the Scottish Police Authority in February 2021 confirmed that 58% of respondents rated their local police as excellent or good.
- To sustain that confidence, it is essential that when things go wrong, the police are held to account, lessons are learned and improvements made.
- The principle of policing by consent, so central to our justice system, is built on this accountability.
- While public confidence in policing is high, we intend to seize the opportunity to make it even stronger in the field of complaints, investigations and misconduct.

PROGRESS SINCE PRELIMINARY REPORT – MAIN LINES

It’s important to recognise the significant progress each organisation has made since the preliminary report was published in 2019.

- We commend the significant steps taken by Police Scotland, the Scottish Police Authority (SPA), the Police Investigations and Review Commissioner (PIRC) and the Crown Office and Procurator Fiscal Service (COPFS).
- Each of the partner organisations is putting in place important measures which will provide the foundations on which to build progress towards implementation.
- In her Final Report, Dame Elish acknowledges these developments and a “sea change in the relationships”, resulting in an ability to address and resolve issues more effectively than before.
- That can be evidenced by the fact that of the interim report in 2019’s 30 recommendations, approximately 21 have already been implemented, either fully or partly. The remainder have not been implemented because they require legislative change.

DAME ELISH ANGIOLINI REVIEW - IMPLEMENTATION

EQUALITY, DIVERSITY AND INCLUSION – MAIN LINES

We take extremely seriously the concerns raised by both police officers and the public of discriminatory conduct and attitudes within Police Scotland

- Eliminating discrimination is critical to ensuring we have a fair and equal justice system.
- The findings of the Dame Elish Angiolini Review are a stark reminder that we cannot be complacent and those of us in public service, including policing are, quite rightly, held to a high standard.
- Police Scotland is committed to addressing discriminatory attitudes and behaviours and developing service to better reflect the society which they serve.
- As the progress report sets out, Police Scotland has established a Strategic Oversight Board and Independent Review Group to scrutinise delivery of diversity, equality and inclusion workstreams to address Dame Elish's recommendations
- We commend the commitment of partners across the policing landscape to tackling discriminatory conduct, attitudes and cultures; to improving the diversity of our workforces; and enhancing the quality of our data, to better understand and serve the needs of our communities.

GOVERNANCE AND ASSURANCE – MAIN LINES

Given the complexity and breadth of the Review, we have put in place clear governance structures to oversee, direct and report on progress

- The governance framework is designed to provide assurance and accountability to Ministers, who in turn are accountable to the Scottish Parliament and the communities we serve.
- The governance framework consists of 3 groups: Ministerial Group chaired jointly by the Cabinet Secretary for Justice and Veterans and Lord Advocate, Strategic Oversight Group and Practitioner Working Group, with all partners represented on each group.
- In taking forward the work, we are also committed to adopting a collaborative and inclusive approach to engagement with the whole policing community and recognise the key role that staff associations will play.
- We are working with the Scottish Police Consultative Forum (SPCF) to consult staff associations on the issues impacting their members, across the themes and on future proposals for legislative amendments.

DAME ELISH ANGIOLINI REVIEW - IMPLEMENTATION

REPORTING FRAMEWORK – MAIN LINES

We are committed to publishing thematic progress reports outlining progress on a triannual basis, with the first report published on 24 June 2021.

- We recognise the importance of transparency, the need to be open about our plans and provide clear updates on their delivery.
- The aim of the overarching reporting framework is to provide a coherent picture of progress across the areas Dame Elish identified for improvement.
- We are committed to sharing information in a way that is meaningful and accessible to a range of audiences.
- The Scottish Government is committed to publishing reports on implementation, which include updates on specific recommendations to track progress.
- The first progress report was published on 24 June 2021 on the Scottish Government website.
- The second progress report is planned for the end of this calendar year.

RIGHTS & ETHICS – MAIN LINES

We are working with partners to ensure that human rights remains central to the framework and systems for police complaints handling, investigations and misconduct.

- We want to create an inclusive Scotland that protects, respects, promotes and implements internationally recognised human rights.
- The commitment to upholding fundamental human rights is embedded in police training and the oath that is taken by officers - and it is at the core of Police Scotland's professional ethics and values.
- All partners remain committed to ensuring that policing operations respect the human rights of all people and officers, who, in turn, should have their rights respected.
- We will give positive consideration to the recommendation that the Code of Ethics be underpinned in statute, as part of the consultation on proposals for future legislative amendments.

DAME ELISH ANGIOLINI REVIEW - IMPLEMENTATION

JURISDICTION & POWERS – MAIN LINES

We welcome recommendations on the legislative framework and the jurisdiction and powers of its principal agencies, particularly in relation to officers who have resigned or retired

- In a letter to the Justice Committee in January 2020, the then Cabinet Secretary for Justice acknowledged the fundamental importance of clarifying the definition of “person serving with the police” in legislation
- We accept the pressing requirement to address the unforeseen consequences that have arisen and commit to fully exploring the options for clarifying the definition in consultation.
- We are aware the current legislative framework does not provide powers to the PIRC to investigate incidents involving officers from other territorial forces operating in Scotland and are committed to engaging with appropriate colleagues and stakeholders from across the other nations to discuss this. As a short term solution, we have worked well with UK Government to agree a Memorandum of Understanding of how this will be addressed in advance of COP26
- We will work with our counterparts and partner bodies across the four nations to address cross-border jurisdictional issues and assess whether some of their arrangements could be adapted to work well here, accepting the different legislative and policing context in Scotland.

DAME ELISH ANGIOLINI REVIEW - IMPLEMENTATION

ROLE OF PIRC – GOVERNANCE AND ACCOUNTABILITY – MAIN LINES

We have committed to consider the recommendations set out in the report that address PIRC’s current governance and accountability arrangements.

- It is essential that both the public and policing bodies have confidence in a police oversight body such as the PIRC.
- This includes being able to demonstrate its independence from the influence of Scottish Ministers or others, ensuring that appropriate governance and accountability arrangements are in place, and that it is adequately resourced to ensure it can fulfil all statutory duties placed upon it.
- Recommendations suggest a new suite of powers for the PIRC, so it is an opportune time to consider any enhancement to the current arrangements.
- The PIRC have already made progress in taking forward changes that do not require legislation. These include putting their Audit and Accountability Committee on a more formal footing, issuing revised guidance to clarify timescales for the submission of complaints, confirming their performance targets are already published in their recent Annual Report as well as updating their website.

Both the Justice Committee and Dame Elish addressed the accountability of the PIRC.

- Any changes to the current governance and accountability structure would need to be necessary and proportionate.

TRANSPARENCY & ACCESSIBILITY – MAIN LINES

We are committed to working with Police Scotland, the SPA and PIRC to ensure we have a complaints system in place which is fair, accountable, transparent and accessible to everyone.

- As Dame Elish states it should be easy to complain, easy to get a response and easy to learn the lessons.
- We welcome Dame Elish’s recommendations to reduce barriers and improve access to policing and the complaints process for everyone.
- We are pleased to note there is agreement by partners to make improvements to deliver on the intent of all recommendations in this area and plans are in progress to take these forward.

DAME ELISH ANGIOLINI REVIEW - IMPLEMENTATION

CONDUCT & STANDARDS – MAIN LINES

Any allegation of misconduct against a police officer must be taken seriously, investigated thoroughly and dealt with impartially

- Dame Elish's detailed recommendations to improve the handling of misconduct cases are in the interests of greater independence, fairness and transparency.
- These are significant changes, many of which will require legislation. We will engage further with stakeholders before responding more fully.
- We welcome recommendations in relation to improving gross misconduct procedures and recognise that further discussions, consultation and engagement will be required to develop legislative proposals.
- As part of this, there will be extensive engagement with police staff associations, who will provide insight and expertise from the workforce perspective.

MENTAL HEALTH – MAIN LINES

We will continue to work with Health Boards to retain, develop and support Mental Health Assessment Services, as part of a broader approach to helping people with mental health needs or in distress.

- We note Dame Elish's observations regarding NHS accident and emergency facilities and remain committed to improving mental health services in Scotland, as set out in the Mental Health Strategy 2017-2027, assuring delivery through our Mental Health Delivery Board.
- Scotland's Transition and Recovery Plan prioritises modernising pathways into mental health services from primary and unscheduled care services.
- We are working with the Redesign of Urgent Care Programme to improve the integration of physical and mental health within the urgent care setting.
- We are working alongside partners from other sectors, to ensure that support that is easy to access, quick and responsive is available at the earliest possible point.
- This will ensure that people who present with unscheduled care needs find our various systems easy to access and are supported by a clearer referral pathway to the right intervention.
- The intention is to build on the significant progress already made toward providing an unscheduled care response, this will include embedding mental health unscheduled care pathways for adults, children and young people.

DAME ELISH ANGIOLINI REVIEW - IMPLEMENTATION

FINANCIAL IMPLICATIONS – MAIN LINES

We will continue to work with partners on budgets and resourcing required, recognising that timescales will in part be influenced by the investment required to underpin delivery.

- There will be longer term resource and finance implications associated with changes to current roles and responsibilities, jurisdiction and powers that may flow from implementation.
- The Scottish Government's total budget for policing in 2021-22 is over £1.3 billion.
- This includes a £60 million increase in the SPA resource budget which has eliminated the structural deficit thereby delivering a sustainable budget position.
- In addition, the SPA has been allocated a further £15 million, one-off COVID-19 consequentials, to mitigate the impact of COVID-19 on the policing budget in 2021-22.
- This budget supports officers and staff and will ensure that officer numbers can be maintained.
- The Grant in Aid awarded to PIRC for this current financial year is £5.474m, an increase of £778,000 on the amount initially awarded last year. Part of this allocation is to support the implementation of recommendations that do not require legislation to take forward.

COSTS

The estimated final cost of the review is £932,000 which is 3% over budget

- The original estimated cost was £902,000. With the duration of the review being 27 months instead of 24 months this is in line with our expectations.
- This was a complex and wide-ranging review which needed time and resources allocated to scrutinise and appraise the complaints handling framework.

SERIOUS ORGANISED CRIME TASKFORCE

ISSUE: The Convener of the Criminal Justice Committee is a former serving police officer in Police Scotland, and another committee member, Russell Findlay, is a former investigative journalist with a particular interest in organised crime.

Top Lines

- The Scottish Government and its partners on the Serious Organised Crime (SOC) Taskforce oversee work being carried out to reduce harm caused by serious organised crime in Scotland.
- Serious organised crime is no respecter of borders or any of society's norms and Scotland is not immune from its impact.

BACKGROUND

The Committee has been sent an overview of the work of the Taskforce and SOC ahead of the committee session planned for 01 September.

SOC TASKFORCE

- 13 organisations, including the Lord Advocate, COPFS, Police Scotland, National Crime Agency, HMRC, Local Authorities and others are represented on the SOC Taskforce, which in turn is bolstered by a wide range of organisations working across the Strategy's four strands: Divert, Deter, Detect and Disrupt. The Taskforce is chaired by the Cabinet Secretary for Justice and Veterans.
- This collaborative approach, bringing together a range of bodies, is essential given the global nature of organised crime.

STRATEGY REFRESH

- The Serious Organised Crime Taskforce commissioned a refresh of the 2015 strategy and has agreed a new draft strategy in principle.
- While the aims and objectives are likely to remain broadly the same, changes include strengthening the links between intelligence and tasking, improving the use of analysis and encouraging increased collaboration.
- We hope to publish it by the end of the year, once the changes to structures have been agreed and finalised.

SERIOUS ORGANISED CRIME TASKFORCE

DISRUPTING DRUGS SUPPLY

Quote: *“Record 1,264 drugs deaths in Scotland. Focus rightly on reducing this obscene toll. But what about drugs gangs operating with apparent impunity, profiting from death & with zero fear of toothless proceeds of crime law? In every community of Scotland, we all know who they are.”* [Source: Russell Findlay (Con.) 15 Dec 2020 – Twitter]

- We are committed to continuing to bring to justice those who supply drugs to our communities.
- Police Scotland work with agencies around the UK and internationally to take illegal substances off Scotland’s streets and to dismantle the groups responsible.
- And after a prosecution is secured, the Crown will use the Proceeds of Crime legislation to ensure funds obtained through crime are confiscated from those who do not deserve them.

COUNTY LINES / CUCKOOING

- The Scottish Government is working with partners on the Serious Organised Crime Taskforce to reduce the harm caused by organised crime groups, including county lines gangs.
- The importation of drugs, particularly to the north-east from England, predates the emergence of county lines and cuckooing.
- Police Scotland has implemented an anti-cuckooing initiative in partnership with councils in the north east which aims to identify, engage with and safeguard those at risk of cuckooing.
- Those forced to become involved in county lines should be seen as victims and it is important that the appropriate support and safeguards are put in place to prevent them from being further exploited.
- Successful enforcement action has been taken against county lines gangs, resulting in the recovery of large amounts of Class A drugs, weapons and money, disrupting the practices of county lines groups impacting on Scotland.

SERIOUS ORGANISED CRIME TASKFORCE

ILLEGAL PUPPY TRADE

- A 'Tackling the Puppy Trade Working Group', chaired by Kirsteen Campbell, Chief Exec of the SSPCA has been established involving a wide range of organisations (including the Scottish Government).
- Operation Delphin is the specific ongoing operation tackling the illegal trade of puppies through Cairn Ryan.
- A number of mapped OCGs have been identified as involved in the breeding and sale of designer dogs. Puppy farms/illegal trade in puppies is seen as high reward for little risk.
- At the Working Group meeting in April it was noted that 103 puppies had been seized in the previous 12 months.
- A number of prosecutions are in the pipeline, some high profile.
- There have been a number of campaigns to raise awareness among the public on the illegal puppy trade.

SERIOUS ORGANISED CRIME – FRAUD AND SCAMS

ISSUE: Fraud accounted for 11% of crimes of dishonesty in 2019/20.[†]

Crimes of fraud have increased by 3 per cent since 2010-11, including a 23% increase between 2018-19 and 2019-20.[†]

After a relatively stable period between 2010-11 and 2013-14, and a decrease in 2014-15, crimes of fraud have experienced an upward trend since 2014-15.[†]

Police recorded crimes of Fraud cover a wide range of actions by the perpetrator. The most common types include fraudulent use of a bank card; failure to pay for products or services; fraudulent selling; and phishing-type frauds.[‡]

An estimated 28% of cases in 2018-19 were cyber enabled (i.e. the internet was used as a means to commit the crime).[‡]

The average amount defrauded for each crime of Fraud in 2018-19 was £150. This was higher for cyber enabled Frauds (£490) than for those that weren't (£80).[‡] In 2018-19, victims were more likely to be male (56%), and had an average of age of 48 years old. Victims of Phishing-type frauds tended to be older, with an average age of 60 years old.[‡]

Criminals are exploiting the current COVID-19 pandemic, particularly as people adapted to new working patterns and personal circumstances as a result of restrictions introduced.

We have been working closely with a number of partners throughout the pandemic period to help strengthen effective communication of the latest threats posed by scammers. Through this partnership working we have contributed to a number of resources available to the public which provide up-to-date information and advice on the latest scams.

[†]Scottish Government, *Recorded Crime in Scotland, 2019-20*, p.34

[‡]Scottish Government, *Recorded Crime in Scotland, 2018-19; 'Crimes of Dishonesty: An Additional Analysis of Fraud'*, pp.46-52)

Top Lines – Fraud

- Fraud is committed by a broad range of criminals, from domestic lone actors to complex international organised crime groups
- The Scottish Government is working with partners on the Serious Organised Crime Taskforce to raise awareness of the potential risks that exist and on how criminals are looking to defraud individuals and organizations, particularly during the COVID crisis.
- It will be important for Government and partners to continue to share knowledge and learning around fraud activity at this time.
- This effort to raise awareness among the public is being delivered through various means such as Police Scotland's 'Shut out Scammers' campaign, the opportunity for the public to subscribe to Trading Standards Scotland's Scam Share e-Bulletin and the CyberScotland Bulletin.
- The Scottish Government, Police Scotland and the National Cyber Security Centre are working together to help protect organisations from cyber criminals, by identifying fraudulent websites, preventing phishing emails, blocking phone numbers and ultimately bringing those responsible to justice. **We encourage everyone to report suspicious sites to NCSC using their reporting tool on their website.**

SERIOUS ORGANISED CRIME – FRAUD AND SCAMS

- There is a range of advice to help people improve their online safety, including from the National Cyber Security Centre, the CyberScotland online portal, the Cyber Essentials Scheme, Cyber Aware, Take Five and Get Safe Online.
- These types of fraud and scams are constant and not new. They have ‘increased’ because of the fear and uncertainty that COVID-19 has engendered. People will remain vulnerable if they do not protect themselves.

Top Lines – Scams Strategy

- Scams have an enormous cost, both to the individuals who suffer as a result of them, and to our wider economy. Tackling this criminal behaviour cannot be achieved through enforcement practices alone.
- That is why the Scottish Government published **Scotland’s Scams Prevention, Awareness & Enforcement Strategy** on 19 March 2021, in order to facilitate a more coordinated approach to tackling scams in Scotland.
- My colleague, the Minister for Public Finance, Planning and Community Wealth (Mr Arthur), and his officials are taking forward work on the Strategy.
- As a first step in implementing the strategic framework set out in the strategy, a new **Scottish Scams Prevention Strategic Partnership** has been established in order to support and embed greater stakeholder coordination and collaboration longer term.
- The first meeting of this new partnership took place on 12 August 2021.

SERIOUS ORGANISED CRIME – CYBERCRIME

ISSUE: Cybercrime is a serious and evolving issue. It ranges from cyber-dependent crimes, such as hacking, to cyber-enabled crimes, such as online child exploitation. Cybercrime is difficult to detect and prosecute. It is frequently anonymous, committed remotely, and can be cross-border. International co-operation is vital to tackling cybercrime. As technology changes, there are increasingly new opportunities for criminals to exploit. The scope, frequency and impact of cybercrime is also expected to increase in future. Cybercrime is likely underreported. Underreporting may be linked to incidents being viewed as having no emotional or physical impact or as an inconvenience. This is in addition to the relatively high rates of financial reimbursement. It is estimated that 20% of all sexual crimes in 2016/17 in Scotland had a cyber-element. More than half of fraud incidents were coded as cyber in the Crime Survey for England and Wales 2017. The figures are likely to be similar in Scotland. Police Scotland are currently developing accessible language and set definitions around cybercrime.

Top Lines

- The Scottish Government and partners are working together to build a cyber-resilient, safe and strong Scotland. Individuals and businesses can help to protect themselves from cybercrime by using strong passwords, patching devices regularly, and taking other simple steps to improve their safety online.
- The Scottish Government works closely with the National Cyber Security Centre (NCSC) and Police Scotland to ensure Scotland is prepared for cyber threats and would urge all organisations to follow NCSC's advice and guidance.
- Sharing intelligence and experience is key to responding to cyber threats. The National Cyber Security Centre has established the Cyber Security Information Sharing Partnership to help organisations share information and increase resilience. The Scottish Government is an active member, and encourages all organisations in Scotland to join.
- Police Scotland and the Scottish Police Authority work together to ensure the necessary resources and expertise are in place to tackle emerging areas of threat, such as cyber-crime and fraud. It is for the Scottish Police Authority and the Chief Constable to allocate Scottish Government funding across their priorities.
- There is a range of advice to help people improve their online safety and protect themselves from cybercrime, including from the National Cyber Security Centre, CyberScotland, the Cyber Essentials Scheme, Cyber Aware, Take 5, and Get Safe Online.

SERIOUS ORGANISED CRIME – CYBERCRIME

- The Strategic Framework for a Cyber Resilient Scotland was launched in February 2021 and sets out a vision of a Scotland that thrives by being a digitally secure and resilient nation. The Framework is being delivered collaboratively and using a whole-of-government approach, strengthening the place of cyber resilience across multiple policy areas and across the *CyberScotland Partnership* – a leadership collaboration of national delivery partners.
- Cybercrime is a priority in Scotland’s Serious Organised Crime Strategy. Outcomes include ensuring that ‘individuals are aware of cyber threats and able to safely use the internet and social media.’ The Serious Organised Crime Taskforce is taking forward a range of activities to achieve the outcomes in the Strategy, including in relation to cybercrime.

PRISONS

ISSUE:

8 Members of the Criminal Justice Committee visited HMP Edinburgh on Thurs 26 August.

The areas in the prison visited were:

- Glenesk, remand hall speaking to one of the prisoners who has been remanded during the entire pandemic
- Hermiston, sex offenders particularly those with social care needs
- Health Centre, various health care professionals and one of the Chaplains were in attendance
- Recovery area with discussion on their recovery journey with two male and two female prisoners

Topics covered during the visit:

- Population pressures and churn
- Drugs ,preventative measures and recovery
- Elderly population
- Remands
- Sex Offender programmes and waiting lists
- Throughcare

22 Aug: Daily Record article quoting an alleged whistle-blower saying “gangs control HMP Addiewell, staff are in fear and management downplay incidents”. Also recent letter from anonymous prison officer at Addiewell to Cab Sec, copied to Jamie Green MSP and Pauline McNeill MSP, about these issues.

HMP ADDIEWELL INCIDENT

The Scottish Prison Service monitors the contract under which HMP Addiewell operates.

- The Scottish Prison Service has deployed a team to the establishment and will ascertain what if any action is required regarding the issues raised in recent media.
- We consider that all prisons should be owned and managed by the public sector.

TRANSGENDER PRISONERS/GENDER RECOGNITION

The Scottish Prison Service Gender Recognition policy is scheduled to be reviewed this year, as the SPS has been required to prioritise the operational response to the COVID-19 pandemic.

- The timescales for this work are being considered alongside other priorities.
- As part of the work associated with the review, SPS will consult with interested groups to hear their views around how transgender prisoners are managed.

PRISONS

- Decisions as to the most appropriate location to accommodate transgender people are made on an individualised basis after careful consideration of all relevant factors, including risk.
- Such decisions seek to protect both the wellbeing and rights of the individual as well as the welfare and rights of others around them, including staff, in order to achieve an outcome that balances risks and promotes the safety of all.
- Under existing arrangements, trans women have been refused transfer to a women's prison on the basis they would present a risk to the physical or psychological wellbeing of individuals there.

SERIOUS ORGANISED CRIME- TACKLING VIOLENCE AND DRUGS IN PRISONS

Our prison estate holds increasingly complex and challenging populations. We recognise the importance of providing a safe and secure environment for those in custody and those who work in our prisons.

- The SPS has a zero tolerance approach towards violence. SPS staff are trained to recognise and respond to the precursors of violence and manage any incidents when they do occur.
- Through its national Strategic Risk and Threat Group, the SPS continues to seek to understand the changing nature of the prison population profile and the subsequent impact on violence, particularly in relation to serious organised crime.
- Violence Reduction meetings take place on a monthly basis across Scottish Prisons to discuss all notable incidents, trends and identify preventative actions.
- CCTV cameras operate within all Scottish prisons to deter violent incidents and assist in any post-incident investigations. Violent incidents are always reported to Police Scotland.

PRISONS

PREVENTION OF DRUGS-SECURITY

- **SPS have been investing in security. A comprehensive range of robust security measures are in place to prevent the introduction of contraband entering our prisons. Rapiscan machines, which specifically assist in detecting substances which may have been concealed in items of mail and personal property, are now in use in every prison. These machines have already proved successful in reducing the volume of contaminated paper entering prisons**
- SPS staff have been made aware of the key methods used in attempts to introduce illicit substances and staff are encouraged to focus on these whilst undertaking their duties. SPS staff also carry out regular searches of prisoners, staff and visitors
- Intelligence and drug finds suggest that the current drug use in prisons also involve prescription drugs.
- Like psychoactive substances, prescription drugs cannot be tested for using the current drug screen urine tests or Mandatory Drug Tests (MDT).
- Testing by Dundee University has found that Rapiscan equipment is particularly effective in detecting the presence of psychoactive substances and other substances.
- Work is ongoing with Rapiscan to ensure that when new strains of psychoactive substances are detected, then the machines can be updated to ensure they continue to be effective in drug identification.

CARE OF OLDER PRISONERS

- The Scottish Government is delivering a comprehensive health and social care needs assessment of Scotland's prison population looking at different domains of need: social care, substance use, mental health and physical health. This will include the needs of sub-populations such as older people in custody.

THROUGH CARE

- We are committed to ensuring that people leaving prison are supported to reintegrate into their communities and not reoffend.
- That is why we provide £3.4 million funding annually to third sector partnerships to support throughcare services for men and women leaving short-term sentences.
- And we also provide funding to local authorities as part of the total £117m p.a. settlement to support the voluntary and statutory throughcare services they provide people leaving custody.

PRISONS

- When a prisoner's release is scheduled, SPS will offer to work with the prisoner to plan for their release – including assistance to contact housing offices, benefits offices, medical services, or third sector services – depending on their needs.
- We will commit to review the conditions around release from custody, including the issue of Friday liberations, as well as wider issues of throughcare support, release from remand and access to services.

PRISON POPULATION

ISSUE: After an initial decrease in the prison population during the start of the pandemic (largely due to court shut down) the population has stabilised slightly to around 7,500 since October 2020. It is likely that the resumption of court activity (particularly solemn and high court business) will drive an increase in the prison population. [REDACTED]

PRISON POPULATION

- The Scottish Government has already taken action to reduce the use of imprisonment - and will continue to do so.
- This includes extending the presumption against short sentences, introducing legislation to support the expansion of electronic monitoring, and ongoing investment in community justice services at a level of £117m a year.
- This investment has been further supported by an additional £4m in April 2020,
- specifically to support diversion from prosecution, bail supervision, and structured deferred sentences.

Remand

- The single biggest factor in the increase in remand is the backlog of cases created by the pandemic. Prior to the pandemic the remand population was approx. 20% of the total prison population and this has risen to approx. 27%.
- We are committed to helping justice services recover from the impact of the pandemic. An additional £50m has been provided in this financial year so that the cases involving all accused, including those on remand, can be progressed.
- This is in addition to the £117m invested in community justice services each year, with a further £550k provided to incentivise bail supervision services.
- We know that remand can disrupt families and communities, and adversely affects peoples' health, employment opportunities and housing – the very things that evidence shows supports desistance from offending.
- As part of our commitment to explore legislative options to reduce the use of imprisonment, we are considering looking at how the legislative framework for bail decisions could be changed to increase the focus on public safety.

PRISON POPULATION

- This will be an open and inclusive process where views offered can help inform whether reform should be progressed and if so, how best that can be done.

COVID 19 RESPONSE IN PRISONS

BACKGROUND

- There are a total of **251** individuals in SPS custody in isolation across **8** sites as follows:
- There are **30** confirmed cases across 4 sites. (21 at HMP Barlinnie, 3 at Dumfries, 5 at Low Moss and 1 at HMP Perth)

Following peaks of approximately 375 COVID-19 cases recorded in February this year across the prison estate, the number of positive cases in the prison estate has since decreased significantly and continues to remain stable.

- To the credit of prison and health staff, our prisons for the vast majority of this pandemic have been settings of low infection rates and the operation of our prisons remains safe and stable.
- The prison service's response to the pandemic has been recognised as responsive and rapid.

SUPPORTIVE QUOTE:

- Her Majesty's Chief Inspector for Prisons Wendy Sinclair-Gieben said QUOTE: **"The decisive action to minimise risks has meant that there has been no explosion of COVID-19 infections in prisons, as feared, and far fewer deaths than in comparator populations. That is no mean feat, given the vulnerability and close confinement of those in prison"** (Annual Report 2019-20, published 12 November 2020, page 3)
- With the rise in community cases, the prison service will remain vigilant due to the transmissibility of the virus in vulnerable prison settings. It is a pivotal moment.
- A range of robust protective measures such as strict hygiene control, physical distancing, wearing of PPE by staff and prisoners in certain circumstances will remain in place in every prison.
- Consistent with the wider community, the prison service is now gradually and cautiously lifting regime restrictions that were necessary to protect the health and wellbeing of those who live and work in our prisons.
- SPS' National Coronavirus Response Group will continue to work in partnership with Public Health Scotland, Health Protection Scotland and local Health Protection Teams to ensure monitoring and appropriate response to national rates of COVID spread or additional risks caused by new variants.
- The SPS pandemic plan will continue to be monitored and updated.
- A clinical advisory group for prisons is in place to ensure the prison service is provided with strategic national clinical and public health advice in response to COVID-19.

COVID 19 RESPONSE IN PRISONS

CURRENT REGIME/LIFTING OF RESTRICTIONS

- **While neither this government or the SPS underestimate the impact restrictions have had on those in SPS's care and on their families, reducing the spread of the virus and mitigating the real threat it still poses must remain the priority in order to protect those who live work and visit prisons.**
- Decisions to restrict prison regime are never taken lightly but have been necessary and proportionate in order to ensure the safety and wellbeing of those that live, work and visit our prisons.
- SPS has its own COVID-19 Routemap, which aligns with Scottish Government and Public Health advice. This Routemap details the series of connected, and carefully controlled steps which will be taken to ensure that SPS can move forward with recovery.
- From 26 April, SPS has enabled greater access to in-person visits in establishments with robust local risk assessments in place and implementation of protective measures for staff, prisoners and visitors.
- Physical contact is allowed at the start and end of a visit with appropriate face coverings.
- Fife College are now delivering education services across all SPS sites in line with local risk assessments and regime requirements and all indoor gymnasiums and exercise areas are open and operating to appropriate restrictions.
- Community work placements have recommenced for individuals in SPS's care who are eligible to access them in HMPs Castle Huntly, Greenock and Barlinnie.
- Measures taken by SPS to restrict the regime over the past year have been necessary, proportionate and aligned to public health advice to support the safe operation of prisons and to protect the health and wellbeing of those who live and work in them.

COVID 19 RESPONSE IN PRISONS

DATA ON COVID RESPONSE

Note: You wrote to Pauline McNeill MSP on 11 August in response to points she raised during the stage 3 debate on the Coronavirus (Extension and Expiry) Bill regarding covid data in prisons. Ms McNeill lodged an amendment to this Bill (which was not passed) seeking additional requirements on SPS to report on conditions with the custodial estate (for example, amount of time prisoners spend outdoors, on activities and in their cells).

- Throughout the pandemic, the prison service has strove to provide regular and up to date information on covid-19 in prisons. Members will recognise that the quickly evolving nature of outbreaks mean things can change at pace.
- SPS maintain a dedicated and regularly updated web page which contains a range of information in relation to the SPS's response to Covid for the duration of the pandemic.
- This includes a daily update of details of confirmed cases of Covid and the number of individuals who are self-isolating, and a weekly update with details of cases in each establishment.
- The SPS website also provides updated guidance for the families of prisoners and other individuals on the operation of visits and other contact throughout the pandemic.
- In addition, the SPS report on an annual basis on a range of Key Performance Indicators (KPIs) – these include reporting on the overall number of hours of purposeful activity carried out and the average purposeful activity hours per week per convicted prisoner.

PRISONER HUMAN RIGHTS

The wellbeing, safety and human rights of all those who live in our prisons has been and will remain a priority for the Scottish Government and the prison service for the duration of this pandemic and beyond.

- We remain vigilant and take very seriously the current pressures facing the prison service. We are actively considering what further action is required to both reduce the use of imprisonment and maintain a lower prison population.
- Independent and robust scrutiny and monitoring of conditions and treatment in our prisons has been maintained during the pandemic through a remote monitoring framework and on-site liaison visits.

COVID 19 RESPONSE IN PRISONS

- The HMCIPS Remote monitoring and liaison visit inspection frameworks are grounded in human rights principles. These ensure that HMCIPS fulfils its obligations under OPCAT and that independent scrutiny continues into the treatment and conditions for prisoners throughout the pandemic.
- The frameworks are also consistent with the Council of Europe's Committee for the Statement of Principles for COVID-19 in places of detention and WHO guidance on scrutiny.
- Inspection activity has been increased during the pandemic with liaison visit inspections being undertaken three-weekly as opposed to 4 per annum. All liaison visits reports are published on the Inspectorate's website.
- On-site inspection liaison visits were temporarily paused on 5 January due to national restrictions but independent remote monitoring remained in place and a blended model that includes some on-site inspection liaison visits was adopted in February.
- The Inspectorate's full inspection regime is expected to resume in October.

EMERGENCY EARLY RELEASE UNDER CORONAVIRUS LEGISLATION

The early release of 348 prisoners under this legislation in May 2020 was undertaken in line with the legislation – as approved by Parliament – and was carefully planned with local partners with public protection a key consideration.

- The Parliament passed the Coronavirus (Scotland) Act on 1 April, which set out the powers for early release - and the Parliament Covid 19 Committee approved the specific regulations for the release process on 21 May.
- The only prisoners considered for early release were within 90 days of their scheduled release date, on sentences of 18 months or less.
- A 'triple lock' set of restrictions prevented those convicted of more serious offences from being released under the scheme:
 - Those sentenced to more than 18 months were not eligible,
 - Those convicted of sex offences, terrorism offences, recent domestic abuse offences or aggravations, harassment offences, or Covid-related offences, were automatically excluded.
 - And prison governors had the power to exclude any prisoner where there was evidence that their early release presented an immediate threat to an identified person.
- It's important to see this process in context, as around 120 prisoners can be released from prison in a normal week.

COVID 19 RESPONSE IN PRISONS

- All those eligible were short sentenced prisoners who were due to return to their communities within 12 weeks – who would typically do so without additional risk assessment or monitoring when their time in custody ends.

Public safety was a central consideration for the provisions.

- The process specifically excluded long sentence prisoners, sex offenders, or categories of high-risk prisoner who are supervised after release.
- The regulations also excluded prisoners whose offences related to domestic abuse, harassment, or Covid-19 related offences.
- Prison Governors could veto the release of any prisoner under the early release process – if there is a clear risk of harm to a specific individual.

Plans for the covid early release process were worked out in advance with local government, housing services and the third sector.

- COSLA leadership, Chief Housing Officers, and Scotland's Housing Options Hubs were closely involved at the time, to help them plan.
- Local authorities were notified in advance of the process, and provided with lists of individuals who were eligible for early release.
- The early release process is just one part of the continuing effort that public and third sector services make to support all prisoners being released.

The early release plans were broadly welcomed by the justice sector, and most other parties

- Wendy Sinclair-Gieben, HM Chief Inspector of Prisons for Scotland, said **QUOTE:** *“These powers are necessary to protect the health of prison staff, NHS and local authority staff working in prisons, and prisoners”* (21 April).
- Alex Cole-Hamilton MSP **QUOTE:** *“Liberal Democrats think that emergency release, with the right protections in place, is the right thing to do”* (20 April, Scottish Parliament).
- Labour's James Kelly MSP described these plans as a **QUOTE:** *“correct and proportionate response”* (20 April, Scottish Parliament).

COVID 19 RESPONSE IN PRISONS

AMENDMENTS TO PRISON RULES- REGIME RESTRICTIONS

On 31 August, an SSI has been laid before Parliament which will retain the flexibility for Governors to adapt regimes to ensure they are prepared for all eventualities including any resurgence of the virus, either nationally or locally or new variants.

- The threat of the virus remain in prison settings and these Rule changes may be necessary and proportionate to keep those who live, work and visit our prisons safe throughout this pandemic.
- This includes for example Rule 40A which provides SPS and NHS staff with the means to isolate large groups of individuals who are symptomatic or who are close contacts in line with Public Health Scotland / Scottish Government advice.
- The Rule changes were consulted upon with key stakeholders including Scottish Human Rights Commission, Howard League and others.
- The majority of the comments received were outwith the scope of the proposed SSI. Those comments that were relevant are concerned with: (1) ensuring that the powers are only used when absolutely necessary; and (2) that there be enhanced SPS HQ and external oversight of the use of the powers.
- Subject to Parliamentary scrutiny these Rule will be in place until 31 March 2021.
- Consistent with the use of regime restriction measures throughout the pandemic, the Rules will only be used if necessary and appropriate.
- The prison service has laid 4 SSIs over the last 18 months which made amendments to the Prison Rules during the pandemic in order to ensure it is prepared for all eventualities.

COVID-19 VACCINATION IN PRISONS

All those aged 16 and over in custody are being offered covid-19 vaccination by Heath Boards in line with when they would be offered it in the community.

- Consistent with the wider community, vaccination deployment by Health Boards in the prison setting has followed JCVI age categories.
- Tailored communications to maximise uptake of the vaccine for the prison population was developed in collaboration with NHS partners and has been distributed to those in SPS' care. Work is ongoing to maximise uptake of the vaccine in prisons.

COVID 19 RESPONSE IN PRISONS

- We recognise the important role key workers play, including prison officers in our prisons, particularly during the pandemic. All prison staff have been offered the vaccination in their communities consistent with age and other priority categories.
- We recognise that the rate of vaccination in prisons is challenging to establish, with some people leaving after they have received their vaccination and other people, who may not have taken up the offer of vaccination in the community, arriving in prison and still requiring vaccination.

STAFF COVID-19 TESTING

Regular asymptomatic testing for prison staff is in place across the prison estate.

- A once-weekly asymptomatic PCR testing pathway for prison-based staff is now running in 13 of 15 prisons across Scotland. HMPs Addiewell and Kilmarnock are expected to commence a testing pathway shortly.
- Testing for staff is voluntary and Unions are supportive.

PRISONER COVID-19 TESTING

An asymptomatic PCR testing pathway for prisoner admissions is now being implemented in a phased approach across the prison estate with all sites expected to go live by early September

- Testing of prisoner admissions has commenced in 8 establishments with the remainder expected to go live by early September.
- As in the wider community, admissions who display symptoms of COVID-19 can be tested and all health boards with a prison in their area provide symptomatic testing for those in custody.

VIRTUAL VISITS AND MOBILE PHONES

The provision of virtual visits and mobile phones have been vital in maintaining family contacting and reducing the detrimental impact of restrictions on visiting on families.

- Virtual visits commenced across the prison estate in June last year and these are now in place in every prison with over 54,367 virtual visits having taken place.
- Authorised mobile phones are now in use in all establishments, with the exception of HMP Kilmarnock who have instead implemented an in-cell telephony option, which provides similar functionality in enabling contact with family and friends.

COVID 19 RESPONSE IN PRISONS

- The restrictions on the phones are similar to those on the existing landline system and their use will be continually monitored.
- The use of these new methods of contact will continue to provide support to prisoners throughout the pandemic and are vital to ensure contact during local resurgence of the virus.
- The prison service is considering the future use of mobile phones.
The roll out of authorised mobile phones and virtual visits was welcomed by HM Chief Inspector of Prisons in her most recent annual report. QUOTE: “I am delighted to see the introduction of in-cell telephony and virtual visits coming to fruition, which provides much needed alternative family contact capability. This is a step forward in Scotland’s enlightened approach to penology.” (page 35)

DEATHS IN CUSTODY AND MENTAL HEALTH

Background

SPS publish deaths in custody data on their website and this is updated on a quarterly basis with the medical cause of death reported as stated on the death certificate.

The last update was in July 2021, which reported **26** deaths in custody in Q1 and Q2, **9** of which are suspected suicide.

Two apparent suicides in HMP&YOI Polmont in 2018 have received Parliamentary and media attention. More recently this has centred around the reconsideration of alleged breaches of health and safety law and corporate manslaughter charges in respect of failure to apply suicide prevention strategies in custody. We understand this is currently being investigated by COPFS.

The Solicitor General met with the family of William Lindsay and their representative Aamer Anwar on 16 August, and with Katie Allan's parents on 4 August. Media have reported that the Solicitor General admitted FAI processes have taken too long and promised progress will be made.

William Lindsay, (also known as Brown) aged 16, died by apparent suicide in HMP&YOI Polmont on 7 October 2018 shortly after being placed there on remand.

Katie Allan, aged 21, died by apparent suicide in HMP&YOI Polmont on 4 June 2018. She was a first offender, having received a sentence of 16 months imprisonment for dangerous driving and drink driving. Since her death her family have campaigned substantially on wider justice system concerns and are highly critical of her care while in custody.

No FAI dates have yet been set for both these deaths.

KEY LINES

If pressed on death in custody

- Members will be aware it would not be appropriate for Scottish Ministers to comment on any ongoing investigation, legal action or circumstances of specific deaths in custody, and until any related processes, have concluded.

Death in custody – general

- My thoughts are with every family tragically bereaved by a death in prison custody and I fully understand the desire for answers following the death of a loved one.
- **The safe treatment and mental health of all those in custody is a key priority for Scotland's prisons, which care for people with higher levels of risk and vulnerability than the general population as a whole.**
- A Fatal Accident Inquiry (FAI) is an independent, judicial process and is mandatory for all deaths in custody (unless the circumstances of the death

DEATHS IN CUSTODY AND MENTAL HEALTH

have been explained through a criminal trial) and we have provided additional funding to help expedite fatal accident inquiries.

- SPS formally respond to all recommendations arising from FAI determinations within 8 weeks of an FAI determination being published as required by Section 28 of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016.
- The SPS takes all instances of self-harm and threats to suicide very seriously and have been continuing to robustly monitor throughout the pandemic.
- Suicide prevention and self-harm policy will be key area of focus of SPS in their developing Health and Wellbeing Strategy.
- The Scottish Government takes these issues very seriously and my predecessor commissioned two independent reviews to make improvements to the provision of mental health support for young people in custody and to improve transparency in the handling of deaths across the prison estate.
- On 24 March 2021, the former Cabinet Secretary for Justice gave a comprehensive update of progress in response to the recommendations of the Expert Review of Mental Health to Parliamentary Committees, HM Chief Inspector of Prisons for Scotland and also informed bereaved families.
- HM Chief Inspector of prisons has recently written to me indicating a pleasing number of areas of progress following the Review.
- HM Chief Inspector of Prisons for Scotland provided an update on 9 October 2020 to the Justice Committee of progress to date of the independent review into the handling of deaths in prison custody. The review will report to me later this year.
- The prison service, with the NHS and other relevant organisations, carry out a Death in Prison Learning Audit and Review meeting normally within 12 weeks of all deaths in custody. This provides a system for recording any learning and identified actions from individual incidents.
- The prison service is committed to the publication of transparent death in prison custody data and posts a notification of all deaths which occur in prison custody on their website as soon as possible, following confirmation that the next of kin have been informed. In response to concerns raised by the Allan family, confirmation of the medical cause of death as listed on the death certificate have been published since 2019, and are updated quarterly.
- The Scottish Prison Service published a revised vision for young people in March 2021, and is piloting a new self-harm policy, enhanced training in trauma informed practices in working with young people and is developing

DEATHS IN CUSTODY AND MENTAL HEALTH

a new health and wellbeing strategy for people in custody for issue later this year.

- NHS Forth Valley appointed additional healthcare staff, including mental health nurses and occupational therapy staff. Clinical support and leadership have also been strengthened to support the healthcare team.

INDEPENDENT REVIEW OF DEATHS IN PRISON CUSTODY

The independent review into the handling of deaths in prison custody announced on 7 November 2019 by the former Cabinet Secretary for Justice will inform improvements to ensure that all processes and communication with families are as open and transparent as possible, including a focus on prevention.

- The independent review is being led by the HM Chief Inspector of Prisons for Scotland who has the statutory function and powers to carry out independent inspections into the treatment and conditions of prisoners as provided for by the Prisons (Scotland) Act 1989.
- In addition, Judith Robertson Chair of the Scottish Human Rights Commission is co-Chair to the review along with Professor Nancy Loucks from Families Outside to ensure external expertise in human rights and the views of families impacted by a death in prison custody including preventative approaches.
- It is being informed by a wide range of views including academics, other experts and families impacted by death in prison custody, who will be invited to contribute their views.
- I met with HM Chief Inspector for Prisons last month and she advised that the review is in the final stages of development and will report in autumn.

ADDRESSING MENTAL HEALTH IN CUSTODY

The safe treatment of any mental health issues of all those in custody is a key priority for Scotland's prisons and our Prison Service takes the mental health of all those in its care very seriously

- I recognise that addressing the mental health needs of those in custody is a key area of concern and it will be a priority for the portfolio and the Minister for Mental Health and Wellbeing. Mr Stewart and I will be meeting on 21 September to discuss these matters.
- Many people in custody have complex needs and our frontline prison officers and NHS staff work hard every day to support people in custody, including those who use challenging behaviours as a means to communicate their distress.

DEATHS IN CUSTODY AND MENTAL HEALTH

- We know that people in custody present higher levels of risk and vulnerability than the general population as a whole and often have complex mental health needs.
- The Scottish Government takes seriously the responsibility to ensure prisoners with mental health issues are appropriately supported, treated and cared for, while ensuring their rights are being maintained.
- Our Mental Health Transition & Recovery Plan published in October 2020 made clear our commitment to continue to work with partners to seek better support for those with mental ill health within the criminal justice system, including prisons.
- Mental health policy are in the early stages of planning a new strategy to look at the mental health support for those at risk of offending, accused of offending and those who have offended.
- Furthermore, the Scottish Prison Service are currently working in partnership with mental health experts to co-produce a revised mental health strategy for those in custody. A first draft is expected later this year.
- The Scottish Prison Service has developed self-harm guidance and bespoke training is being developed in partnership with NHS and rolled out across the estate.
- Action 15 of our Mental Health Strategy outlines the Government's commitment to funding 800 additional mental health workers in key settings, including police station custody suites and to our prisons, ensuring that local provision and support is at the heart of our plans.
- We have made over £51 million available to date since 2018-19 to deliver Action 15, and we will continue to invest in 2021-22 as necessary to ensure we meet the commitment.
- As at 1 January 2021, 559.64 whole time equivalent (WTE) mental health roles have been filled through Action 15 of the Mental Health Strategy. This includes 41.26 WTE staff located within prisons.
- SPS re-issued revised Talk To Me Guidance to all staff to make clearer the circumstances in which a risk assessment and / or health care assessment should be carried out and these remain in place throughout the pandemic.
- Everyone entering prison is assessed for their risk of suicide by a prison officer and, if there are concerns, a healthcare professional.
- If a person is deemed to be at risk, an immediate care plan is put in place that sets out issues such as appropriate accommodation and a checking schedule.

DEATHS IN CUSTODY AND MENTAL HEALTH

ACTION TO PREVENT SELF HARM

The SPS takes all instances of self-harm and threats to suicide very seriously and robust processes are in place to ensure those at risk are identified and supported effectively.

- SPS review the number of self-harm incidents on a monthly basis and liaise with local Suicide Prevention Co-ordinators in each prison to monitor these incidents.
- SPS works closely with NHS and other partners to provide the highest level of care and support; and encourages those with thoughts of self-harm to speak to staff so appropriate support can be provided.
- Throughout the pandemic, incidents of self-harm have been monitored to ensure any possible issues were identified early and action taken.
- There has not been a significant rise in self-harm during the pandemic. Enhanced family contact through the In-Cell Prisoner Telephony system, virtual visits and recommencement of social visits has been a factor in this.
- The prison service has worked to mitigate against the impact of social isolation during the pandemic and continues to do so through a number of measures.

FATAL ACCIDENT INQUIRIES

The Lord Advocate is constitutionally responsible for the investigation of all sudden, unexpected and unexplained deaths in Scotland. These functions are exercised independently.

- Fatal accident inquiries are mandatory for all deaths in custody.
- We fully understand the desire of families to get to the truth following a loved one's death and the stress caused by long delays. That is why we have provided additional funding to help expedite fatal accident inquiries and other Crown investigations.
- The investigation of deaths, the decision to hold a fatal accident inquiry, and the timing for initiating it, are matters entirely for the Crown Office and Procurator Fiscal Service, independent of government. They are committed to providing more information for bereaved families.
- The decision to hold a FAI will not be taken until other proceedings, such as any criminal charges have been completed or ruled out.
- Where family members seek their own legal representation in order to participate at an FAI, applications for legal aid are subject to statutory tests of probable cause, reasonableness and financial eligibility.
- Financial means testing will continue to be a feature of legal aid for Fatal Accident Inquiries in the future.

PRISON BUDGET AND PRISON ESTATE

ISSUE:

ISSUE: 24 August: the UK's National Preventive Mechanism (NPM) report published – concerns around the state of HMP Barlinnie, in particular the reception area and the 1m² holding cells ('dog-boxes').

ISSUE: 5 August: P&J reports '*New Inverness prison delayed until 2026 – and the cost is expected to soar*' and follow up article on **17 August** about the date mix-up. The correct estimated operational date for the new HMP Highland is 2024.

ISSUE: 29 July: Publication of Prisons Inspectorate (HMCIPS)'s visit report on HMP Greenock, media coverage focuses on physical infrastructure concerns.

Top Lines

- We are committed to modernisation of the prison estate. Current priorities for investment are the new female custodial estate and progressing with replacements for HMP Barlinnie and HMP Inverness
- Despite constraints on public services through a decade of UK austerity, we have invested significantly in Scotland's prison service. Our ongoing investment in our prison estate will ensure it is fit for the future.
- Since 2007, the Scottish Government has invested almost £600 million in the prison estate, including both for 3 new prisons (Low Moss, Addiewell & Grampian) and refurbishment of existing prisons including Polmont, Edinburgh and Glenochil.
- We consider that all prisons should be owned and managed in the public sector.

The New Women's Estate

- Construction of the Women's National Facility (WNF) and the two Community Custodial Units in Glasgow and Dundee is underway.
- Due to industry-wide supply chain issues brought about by EU Exit and the COVID-19 pandemic, we are now seeing some delay to construction.
- SPS are working closely with their contractors to establish the extent of delay and the broader impact of this.
- **if pressed** – currently a 3 months delay to the WNF and 4 – 6 weeks delay to the CCUs look likely, making operational dates autumn/summer 2022 (rather than spring as previously reported)
- Our plans for the new female estate are transformative and world-leading.
- The facilities will be managed by SPS. SPS are creating and will work in partnership with multi-disciplinary teams to create a recovery-based ethos that will respond to the specific needs of women in custody.
- The new female estate has a total capital budget of £98m, £74m WNF and £13m and £12m for the CCUs in Glasgow and Dundee respectively.

PRISON BUDGET AND PRISON ESTATE

HMP Barlinnie / HMP Glasgow

- Improvement works within HMP Barlinnie are progressing, including upgrades to the prisoner healthcare facilities and reception area. A contractor was appointed in November 2020 and work commenced in March 2021.
- The work includes nine phases whilst the prison continues to operate and is scheduled to run until November 2022.
- The acquisition of the site for the replacement for HMP Barlinnie near Provanmill in Glasgow is now complete.
- Construction work is currently scheduled to commence in September 2023 and the operational date is estimated for 2026.
- Estimated cost for the new HMP Glasgow is £400m.

HMP Inverness / HMP Highland

- Procurement activity is underway for HMP Highland at the chosen site at Inverness Retail and Business Park.
- We expect pre-construction work to start this autumn and the operational date is estimated for 2024.
- Estimated cost for HMP Highland is £110m

HMP Greenock Report – Infrastructure Concerns

- The Inspectorate found HMP Greenock was positive in its response to the pandemic with strong communication between prisoners and staff and that the health and safety of those who live and work there is apparent.
- The prison service responded swiftly to the infrastructure issues identified during the liaison visit in March. This included significant roof repair work and internal refurbishment to address water damage. Further maintenance is being taken forward.
- Given the current significant financial and operational pressures, alongside other prison investment priorities, it is unlikely that the prison service will be able to commence work on any HMP Greenock replacement before 2025/26.
- SPS remain committed to a replacement for HMP Greenock and have already made significant investment in the new prison site.

SPS Budget

- We have committed a total of £460.2 million to the Scottish Prison Service for 2021-2022, an increase of £18 million compared to 2020-2021 to help manage multiple pressures including a rising and increasingly complex prison population.
- This includes a 4% increase in their resource budget (total £354.6m) and a capital investment of £72.8m in the prison estate.

HATE CRIME AND PUBLIC ORDER (SCOTLAND) ACT 2021

The Hate Crime and Public Order (Scotland) Act 2021: Received Royal Assent in April 2021. The new Act was developed in response to recommendations made by Lord Bracadale's independent review of hate crime legislation in Scotland. It consolidates and modernises Scotland's hate crime legislation. It also:

- adds age as an additional hate crime characteristic;
- extends standalone stirring up hatred offences to cover all listed characteristics;
- updates the definition of transgender identity applicable for the purposes of hate crime legislation and creates a separate category of hate crime offences relating to variations in sex characteristics;
- includes a power to allow the characteristic of 'sex' to be added to the lists of hate crime characteristics by secondary legislation at a later date; and
- abolishes the common law offence of blasphemy.

Commencement:

[REDACTED]

- Media reports on an FOI release over summer stated that the Act would cost Police Scotland more than £1m to implement – however, the figures quoted related to estimated costs for a range of justice partners and not just Police Scotland.

[REDACTED]

Top Lines

- Hate crime threatens community cohesion and can be an extremely distressing and pernicious form of criminality.
- The Act consolidates, modernises and extends hate crime legislation - ensuring it is fit for 21st Century Scotland. It is the product of years of research, consultation and engagement.
- The Act includes rigorous safeguards on free speech. It does not prevent people expressing controversial, challenging or offensive views nor does it seek to stifle criticism or rigorous debate in any way.
- The Working Group on Misogyny and Criminal Justice (chaired by Baroness Helena Kennedy) is, among other things, looking at whether the characteristic of "sex" should be added to the hate crime framework. The previous Parliament afforded the Working Group the space so that it can

HATE CRIME AND PUBLIC ORDER (SCOTLAND) ACT 2021

deliver, uninhibited, on its role and remit and provide its recommendations early next year for us to consider.

- Implementation of the Hate Crime Act provides a good opportunity for the Scottish Government, justice partners and stakeholders to take stock of and refresh their approach to tackling hate crime.
- We will work with stakeholders to develop a new hate crime strategy later this year, which will support implementation of the Hate Crime Act.

STIRRING UP HATRED + FREEDOM OF EXPRESSION

Part 3 of the Act introduces new standalone offences criminalising the stirring up of hatred against people based on the listed characteristics. During parliamentary scrutiny this area attracted significant controversy, with those opposed to offences of stirring up hatred arguing they would stifle free speech. The Act contains explicit provision on freedom of expression to provide clarity and reassurance as to the boundaries of the new stirring up hatred offences.

The Act extends the protections provided against hate crimes through introducing new offences criminalising the stirring up of hatred for characteristics other than race, and modernises and consolidates existing offences in relation to stirring up racial hatred.

- The concept of stirring up hatred offences is not new to Scots law.
- Long-standing stirring up racial hatred offences have operated effectively in Scotland and across the UK since the mid-1980s.
- The Act creates new offences of stirring up hatred in respect of the characteristics of age, disability, religion, sexual orientation, transgender identity, and variations in sex characteristics.
- For the new stirring up hatred offences, people can express controversial, challenging or offensive views as long as this is not done in a **threatening or abusive** way that is **intended** to stir up hatred.
- For the long standing stirring up racial hatred offences, the threshold remains threatening, abusive or insulting behaviour, accompanied by an intention or likelihood to stir up hatred.

Behaviour that stirs up hatred is corrosive, and it can leave entire communities feeling isolated, scared and vulnerable to attack.

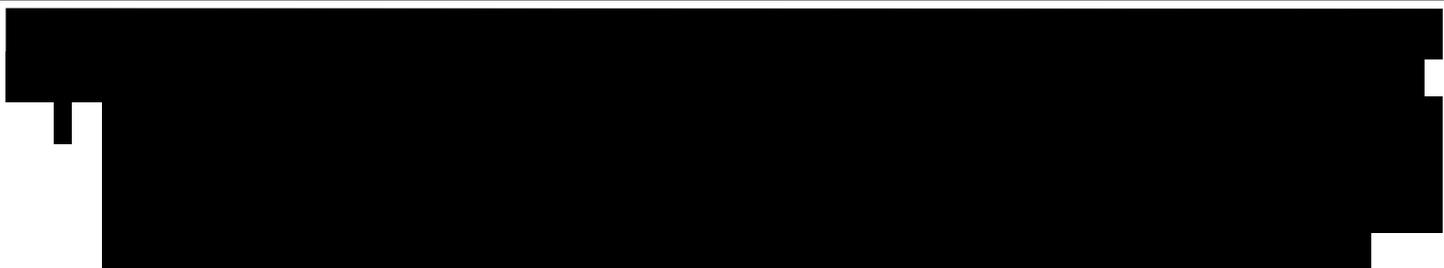
- If someone cannot offer strongly held views without doing so in a threatening or abusive way which is intended to stir up hatred of others, then the criminal law should be able to be used if necessary to protect people.
- Whether conduct is “threatening” or “abusive” and intended/likely to stir up hatred in any given case is for the police, prosecutors and ultimately the

HATE CRIME AND PUBLIC ORDER (SCOTLAND) ACT 2021

courts to determine to the standard of beyond reasonable doubt on the basis of an independent, objective assessment of the available evidence. **The freedom of expression protections in the Act provide reassurance that offences of stirring up hatred will not inadvertently cause anyone who wishes to debate, discuss or criticise any matters in a non-threatening or abusive manner to self-censor because they fear they may be committing an offence.**

- The approach taken in the Act answers the calls for more comprehensive freedom of expression protection without singling out specific communities.
- More detailed freedom of expression provision is provided for the characteristic of religion, including expressions of antipathy, dislike, ridicule or insult.
- There is no freedom of expression provision for the longstanding offence of stirring up racial hatred.
- The ECHR protects everyone's right to express views even if they shock, offend or disturb others, but it does not give the right to threaten or abuse others where it is intended to encourage a hatred of them.

HATE CRIME DATA



Hate Crime statistics: Publication of Scottish Government research report - *'A Study of the Characteristics of Police Recorded Hate Crime in Scotland'* which presents (i) statistics on the number of hate crimes recorded by police in Scotland over 2014-15 to 2019-20 and (ii) findings from a study into the characteristics of these crimes, based on the review of a large sample of records from 2018-19.

- The police recorded 6,448 hate crimes in 2019-20. Around three-fifths (62%) had a race aggravator, one in five (20%) included a sexual orientation aggravator, 8% religion, 4% disability and 1% transgender identity.
- The most frequently recorded hate crimes were public order offences, such as threatening or abusive behaviour (51%). Since 2014-15, the number of hate crimes recorded by the police has fluctuated between 6,300 and 7,000. Rates are highest in Edinburgh and Glasgow.

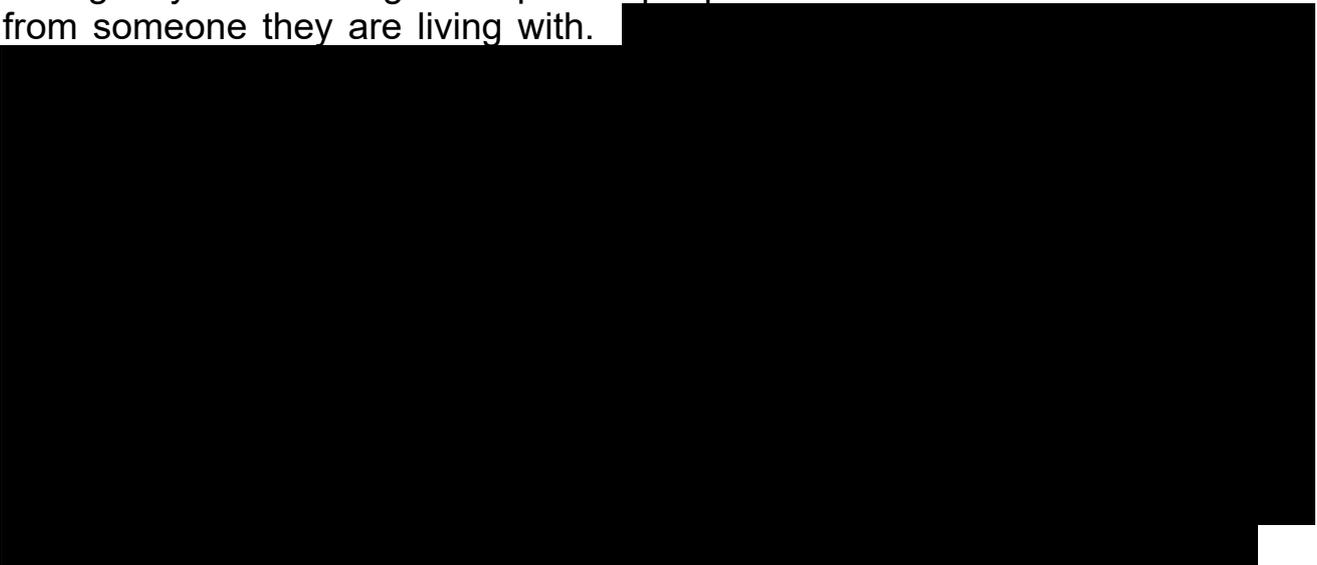
The Hate Crime Act's provisions on the recording of hate crime data will provide vital information on what groups are being targeted.

HATE CRIME AND PUBLIC ORDER (SCOTLAND) ACT 2021

- Under-reporting of hate crime is a significant issue that must be tackled, and having the data and evidence to inform our response will be key to ensuring it is effective and provides the necessary support for victims.
- We are working with Police Scotland to ensure their new Crime Management System will have the capability of capturing the data, where it is available, on a sustainable basis.
- We will also work with COPFS and SCTS to determine the most effective way for Scottish Ministers to receive further information on hate crime convictions.
- Until Police Scotland's systems are in place, we have committed to produce a further study into the characteristics of police recorded hate crime for 2020/21, which will cover the exceptional circumstances of the COVID pandemic.

DOMESTIC ABUSE (PROTECTION) (SCOTLAND) ACT 2021 - IMPLEMENTATION

ISSUE: The Domestic Abuse (Protection) (Scotland) Act 2021 will, when it comes into effect, provide new powers for the police and courts to make emergency orders designed to protect people who are at risk of domestic abuse from someone they are living with.



TOP LINES

- This legislation helps progress further fundamental reform to improve how people at risk of domestic abuse are protected.
- In 2018, a new criminal offence of domestic abuse was legislated for and this new legislation complements that with powers to protect people at risk especially where no criminal case can be progressed.
- The Act provides the police and courts with powers to make emergency notices and orders to protect people at risk of domestic abuse
- When commenced, these will provide powers to remove a suspected perpetrator from a home they share with a person at risk and prohibit them from contacting or approaching them.
- Unlike existing civil measures, the person at risk does not have to make the application to the court themselves.
- The Act also creates a new ground for social landlords to apply to the court to end the tenancy of a perpetrator of domestic abuse with a view to transferring it to the victim of abuse.
- These powers are intended to provide protection for people at risk of domestic abuse and make it easier to stay in their own home.
- We will work with Police Scotland, the Scottish Courts and Tribunals Service, Scottish Women's Aid and others to take the necessary steps to enable the new protective notices and orders scheme to be implemented.

DOMESTIC ABUSE (PROTECTION) (SCOTLAND) ACT 2021 - IMPLEMENTATION

The Act provides the police and courts with new powers to remove a suspected perpetrator from the home of a person at risk of domestic abuse

- The Act gives the police a power to make a very short-term notice – a Domestic Abuse Protection Notice – which can bar a suspected perpetrator from the home of a person at risk.
- The police are then required to apply to the court for a protective order – a Domestic Abuse Protection order - that can remain in force for up to two months (extendable on application to three months).
- Breach of a police notice or a court order will be a criminal offence.

In contrast with existing civil protective orders, the person at risk does not have to apply to court themselves

- We know that people experiencing domestic abuse can face significant barriers to taking court action themselves to exclude an abusive partner from their home.
- Providing the police with powers to take action on behalf of the person at risk will provide space for a person to take longer-term steps to secure their safety.
- This might involve seeking an exclusion order, non-harassment order or interdict or steps to remove a person from a shared tenancy.
- This is intended to reduce the risk that a person experiencing domestic abuse may have to make themselves homeless to ensure their safety.

An Implementation Group, including Police Scotland, Scottish Courts and Tribunals Service and Scottish Women's Aid has been established

- It will have a role in the development of training and operating procedures, court rules and associated processes for courts' consideration of applications for protective orders, legal aid issues, support for people for whose protection an order is made, and steps needed to monitor and evaluate the use of the legislation once in effect.
- The group is considering the timetable for when the Act can be commenced.

The Act makes it easier for a local authority or registered social landlord to transfer a tenancy to a victim of domestic abuse

- The Act creates a new ground on which the landlord can apply to the court to end the tenancy of the perpetrator with a view to transferring it to the victim of abuse.
- It applies where the perpetrator is a tenant in a Scottish secure tenancy and the victim is either the partner or ex-partner of the tenant.

DOMESTIC ABUSE (PROTECTION) (SCOTLAND) ACT 2021 - IMPLEMENTATION

- This aspect of the Act is not directly linked to the protective notices and orders scheme and implementation will be a matter for Ministers responsible for housing policy.

OFFENSIVE WEAPONS ACT 2019 - IMPLEMENTATION

ISSUE: The UK Government's Offensive Weapons Act 2019 covers both reserved and devolved areas relating to offensive weapons. The 2019 Act provides for new restrictions relating to the sale and supply of, corrosives such as acids, bladed articles such as knives, other offensive weapons and firearms. Much of the 2019 Act is for the UK Government to implement (e.g. certain restrictions on corrosives and all the firearms provisions) but there are some areas for the Scottish Government to implement as they fall within devolved areas. There was a delay across the UK in terms of implementation due to Covid-19.

The Scottish devolved areas include:

- Banning possession of a corrosive substance in a public place,
- Tightening the operation of the existing offence banning sale of bladed articles to under 18s when sales take place remotely (e.g. online),
- Banning sellers from arranging the delivery of a bladed article to residential addresses or a locker where purchase is made remotely (e.g. online),
- Banning delivery companies from delivering bladed articles to under 18s where seller is outwith the UK,
- Banning possession in all places of certain dangerous knives and certain offensive weapons (where current restrictions only apply to public places) which will include a surrender and compensation scheme,
- Publishing statutory guidance for the provisions that extend to Scotland.



Top Lines

- Following re-prioritisation of work as part of post-Covid-19 planning, work is now well underway to develop an implementation plan for the devolved aspects of the 2019 Act.
- Scottish Government officials are in the final stages of drafting (in consultation with Police Scotland and the COPFS) Scottish statutory guidance for publication in relation to devolved aspects of the 2019 Act. It is anticipated that the draft guidance will be consulted on and amended where necessary before final publication, subject to Ministerial approval.
- Most large retailers that sell weapons have already implemented new policies that, for example, mean knives are no longer delivered to lockers.
- Implementation of the relevant provisions will back this up on a statutory basis.

OFFENSIVE WEAPONS ACT 2019 - IMPLEMENTATION

- A constraint on implementation of the corrosives provisions under Part 1 of the 2019 Act across the whole of the UK including Scotland is that new corrosives testing procedures which are necessary for Part 1 to be implemented are not yet developed.
- The new testing procedures are in the process of being developed through a UK Government scientific group which Scottish stakeholders and the Scottish Government are involved in.
- The police need to be able to identify types of corrosives to help enforce the new corrosives offences. Scottish Government officials are working with the Scottish Police Authority, Police Scotland and the COPFS regarding evidential testing procedures for corrosive substances.
- 
- Scottish Government officials are working with Police Scotland to develop a surrender and compensation scheme for specific knives that will be banned entirely.
- Secondary legislation (affirmative procedure) for approval by the Scottish Parliament will be needed in order for the surrender and compensation scheme to take place and this work is underway.
- It will also be necessary to set the amount of compensation that will be available per relevant knife and draft a claim form for compensation to be paid. Subject to approval by the Cabinet Secretary, the compensation to be paid per different type of weapon will be the same as the UK Government scheme. Therefore, the likely cost to the Scottish Government will be around £25K. It is considered the operation of this scheme will be a complex aspect of the project.

YOUTH JUSTICE

- Scotland has seen dramatic changes in the youth justice sector since this government made a decisive shift towards prevention. We take a strong focus on early and effective intervention, diversion and appropriate support to address offending behaviour by young people. This is done in a timely and effective way through a whole system approach to offending behaviour, based on multi-agency partnerships.
- Our Whole System Approach was rolled out in 2011 as the Scottish Government's programme for addressing the needs of under 18s involved in, or at risk of becoming involved in, offending.
- Based on the principles of GIRFEC, it aims to prevent the use of custody and secure accommodation wherever possible, seeking opportunities to engage young people in a preventative way, and putting in place a more streamlined and consistent response that works across all systems and agencies to achieve better outcomes for young people and their communities.
- This ensures that young people get the right support at the right time, offering better outcomes for young people, victims and safer communities.
- Local authorities are engaged with the Whole System Approach. In order to support our continued commitment to early intervention and reducing re-offending, and keeping young people out of formal systems as far as possible, we provided £800,000 in 2018-19 and a further £800,000 in 2019-20 to all local authorities in Scotland to support, renew and extend the Whole System Approach.
- This was to allow for deepened partnership working, strengthened links between youth justice, community justice, education, third sector and children's services and where possible to extend the Whole System Approach to young people aged 21, and 26 for care experienced young people.

YOUTH JUSTICE

Youth Justice Vision and Action Plan

- We launched a youth justice strategy (Preventing Offending: Getting it Right for Children and Young People) in June 2015. This strategy built on the shift to prevention in 2008 which has seen numbers of children and young people in justice system reduce substantially.
- A new **vision** for youth justice in Scotland, and accompanying **action plan**, were announced by Ms Haughey in her keynote speech at the Youth Justice Conference on 16 June 2021.
- This vision is based on the Promise, incorporation of the UNCRC and other influential documents, along with views from key stakeholders, partners and, most importantly, children and young people. It will continue to drive a whole system approach with a focus on reducing the number of young people in the Criminal Justice System and in custody.
- The vision will be supported by the action plan. The action plan is a dynamic, two-year plan which is designed to be flexible to new and emerging priorities, and will be regularly reviewed by the Youth Justice Improvement Board.

YOUTH JUSTICE

Secure Accommodation and 16 – 17 Year Olds in Polmont Young Offender's Institute

Scottish Government are committed to delivering the following asks from The Promise:

- 16- and 17-year-olds will no longer be placed in Young Offenders Institutes (YOI) for sentence or on remand.
- There will be sufficient community-based alternatives so that detention is a last resort.
- Children who do need to have their liberty restricted will be cared for in small, secure, safe, trauma-informed environments that uphold their rights
- Scotland must stop selling care placements to Local Authorities outside of Scotland.
- Scotland must avoid the monetisation of the care of children and prevent the marketization of care.
- We are in discussions with Secure Care providers and other key partners to consider future changes to secure care to enable all 16 – 17 year olds a pathway in to secure accommodation rather than YOI. All four of the independent secure care providers are keen to deliver on the Promise.
- Currently young people can only access secure care if they are under 16, or 16/17 years old on a supervision order. When a young person reaches the age of 18 they must leave secure care. This can result in a young person having to go to Polmont for a matter of weeks to complete their sentence.
- This is a complex issue and will require legislative change to the Criminal Procedure (Scotland) Act 1995 to allow all 16/17 year olds access to secure accommodation.
- Discussions are under way for a Care and Justice Bill in this Parliamentary session.

Young People in Polmont YOI

The latest most up to date total of young people aged 16 – 17 years old in Polmont Young Offender's Institute is 16. This includes:

- 11 remanded males
- 1 remanded female
- 3 sentenced males
- 1 male awaiting sentence

YOUTH JUSTICE

16 and 17 Year Olds in the Justice System

- There is long-standing debate around the definition of children and the position of 16 and 17 year olds within Scotland's criminal justice system, and how cases are progressed either through the Children's Hearings System or adult courts.
- There are different current legal protections offered to 16/17 year olds navigating the justice system. This is dependent on a number of factors, including the severity of the crime and whether they are under a Compulsory Supervision Order. 16/17 year olds going through the courts and being treated as adults aren't able to access the same support as children and young people who are referred to the children's hearings system.
- The 2019 Programme for Government committed to consult on enabling joint reporting to the Crown Office and the Scottish Children's Reporter Administration of all 16 and 17 year olds' offence cases.
- The consultation ran from June to October 2020 and an independent analysis was published on 7 December 2020. There was overwhelming support to raise the maximum age of referral to 18 for care, protection and offence cases, allowing equal opportunities for young people to get the right support at the right time.

We are working with partners to explore the operational and practical implications of any future legislative change re 16/17s

- In November 2019, the Youth Justice Improvement Board (YJIB) established a working group to undertake cross system planning ahead of a wide range of potential policy and practice changes.
- Membership of the group includes COPFS, SCRA, CHS, Police Scotland, Community Justice Scotland, Social Work Scotland, SPS and COSLA.
- The group has focussed on 4 main themes:
 - Data and throughput of 16/17 year olds subject to prosecution;
 - Assessment of the current range of supports, services and interventions available;
 - Current provision of support and advice to victims; and
 - Understanding the profile, needs and background of young people currently on remand/sentences at HMYOI Polmont and across the Secure estate.
- The group will present its closure report and recommendations to YJIB on 15 September 2021.

YOUTH JUSTICE

Age of Criminal Responsibility (Scotland) Act 2019

- The age of criminal responsibility is part of the portfolio of the Minister for Children and Young People.
- The Equalities and Human Rights Committee was the lead Committee for the Age of Criminal Responsibility (Scotland) Bill.
- The Age of Criminal Responsibility (Scotland) [Act 2019](#) increases the age at which a child is considered to have the capacity to commit a crime from 8 to 12.
- Raising the age of criminal responsibility to 12 will protect children from the harmful effects of early criminalisation.
- Primary school-aged children will no longer be stigmatised from being labelled as an offender at such a young age, which will improve their life chances and well-being.
- The Act sets out a number of measures to ensure that action can still be taken by the police and other statutory agencies when children under 12 are involved in serious incidents. These measures will ensure that the harmful behaviour of children under 12 can continue to be investigated, and that authorities respect, and respond to, the needs of victims
- Part 6 of the Act places a duty on the Scottish Ministers to review the age.
- We must take the time of the review period – 3 years, once the Act is fully commenced - to fully assess the implications of going to a higher age, including identifying how to ensure that the rights of victims are upheld and community confidence is maintained.
- Implementation of the Act will be undertaken as quickly and safely as possible.

YOUTH JUSTICE

Implementation of the Act

- Commencement of the Act is being phased. The Scottish Government wanted to make a positive difference to children's lives as early as possible, by removing the offence ground of referral. This came into effect in November 2019, as part of the first set of commencement regulations. These regulations removed the offence ground of referral to a children's hearing and commenced provisions in relation to information for victims.
- Since November 2019, children have only been referred to a children's hearing on care and protection grounds.
- The removal of the offence ground means that children younger than 12 cannot accrue convictions or criminal records.
- The second set of commencement regulations came into force in March 2020 and commenced the guidance-making and regulation-making powers of the Act and enable children's legal aid to also be available for proceedings before the sheriff which relate to applications for orders under Part 4 of the Act.
- The third set of commencement regulations came into force in November 2020 and brought into force those provisions in Part 2 of the Act (which relates to disclosure of information) which had not already been commenced.
- The fourth (and final) set of commencement regulations will bring into force the remainder of the Act. This is planned to take place in autumn 2021.

YOUTH JUSTICE

Detail of the Act

Part 2 - Disclosure of Information

- Any conduct by a child below the age of 12 that would previously have been recorded as a conviction will no longer be recorded as such.
- This means that it will no longer be possible for a person to acquire a criminal conviction on the basis of behaviour that occurred when they were aged under 12. In the future there will be no conviction information relating to this period in a person's life to disclose later in life.
- The Act makes changes to the disclosure system to ensure that non-conviction information relating to harmful behaviour that occurred when a child was under 12 cannot automatically be disclosed by the State. Whilst such information may be disclosed as "Other Relevant Information" on two specific types of (enhanced) disclosure, this can only take place following determination by an independent review.

Part 3 - Information for victims

- Children under 12 are no longer referred to the children's reporter on an offence ground. Previously such referrals allowed the alleged victim to access information about the referral.
- The Act ensures that people affected by the behaviour of a child under 12 will still be able to ask for information and can request the Principal Reporter provides them with information about action taken to address the behaviour.
- The provisions in the Act for both of these (the removal of the offence ground, and information for victims) came into force at the same time in November 2019.

Part 4 – Police investigatory and other powers

- The Act creates a package of powers designed to ensure that serious behaviour by any child under the age of 12 can still be investigated by the police, and for this to be carried out in a child-centred way that is in keeping with the ethos of removing young children from criminal justice processes.
- The Act restricts the application of most of these powers so that they are only available in the most serious of cases. This is where it is thought

YOUTH JUSTICE

that a child has caused (or risked causing) death or serious injury by acting in a violent or dangerous way, or that the child has harmed (or risked harming) someone with sexually violent or sexually coercive behaviour.

- The Act sets out procedures for the questioning of children by way of an investigative interview. The purpose of these interviews is both to help the police to establish what has happened, and to help identify any additional support or protection needs that the child may have.

Child Interview Rights Practitioner (ChIRP)

- The Act introduces the role of the ChIRP who must be a suitably qualified solicitor registered with the Children's Legal Assistance Scheme.
- The ChIRP will provide the child with advice, support and assistance in connection with, and during an investigative interview with the police. ChIRPs are required to undertake detailed training on their role and responsibilities.

Part 5 - Children's hearing: duty to consider additional reports

- Requesting reports has always been optional under the Children's Hearings Procedural Rules. The Act places a duty on a children's hearing to consider whether to require the Principal Reporter to obtain any report that the hearing considers relevant to any matter.
- This provides clarity that a hearing *must* consider whether they need more information, and has a statutory right to require it.

Part 6 – Review of the age of criminal responsibility

- The Act places a duty on the Scottish Ministers to review the operation of the Act both generally, and with a view to considering the future age of criminal responsibility.
- The Scottish Ministers are required to prepare and publish a report on that review.
- A copy of the report of the review must be laid before the Scottish Parliament no later than 12 months after the end of the review period.
- The review period is the period 3 years beginning with the day on which section 1 comes into force.

BARNAHUS

ISSUE 1: April 2021. SNP set out a manifesto commitment to ensure that every child victim/witness will have access to a Bairns' Hoose by 2025.

Top Lines

- Our manifesto commitment and vision for the Bairns' Hoose in Scotland is bold. It represents the Scottish Government's significant commitment to the implementation of the model in Scotland by 2025.
- We believe that every child victim or witness has the right to consistent and holistic support that enables them to tell their stories, access specialist services and recover from their experiences, and that these services should be delivered under one roof.
- This level of ambition demonstrates our commitment to improving the experience of Scotland's healthcare, child protection and criminal justice systems for children who have experienced trauma.
- We are working with all relevant partners, and closely with Healthcare Improvement Scotland (HIS), to finalise Standards for a Bairns' Hoose in Scotland by the end of 2022.
- We will bring forward further details about our vision, values, and approach later this month, and establish a national strategic governance group to provide guidance, support, and oversight.
- We will embed the Bairns' Hoose in Scotland within our child protection landscape which includes GIRFEC, Joint Investigative Interviews (JIIs) and our commitment to the United Nations Convention on the Rights of the Child (UNCRC) and delivery of The Promise.

Health Improvement Scotland and the Care Inspectorate have been commissioned by the Scottish Government to develop Scotland-specific standards for Barnahus based on the European PROMISE Quality Standards

- Work restarted in December 2020 under a revised timetable after a pause due to COVID-19.
- A priority was to re-examine Barnahus in the context of redesigning children's systems, The Scottish Promise, the UNCRC Incorporation Bill and legislation on the Age of Criminal Responsibility and to produce a report to Scottish Government.
- This Foundations Report is expected to publish this month (September)
- A Barnahus Symposium, coinciding with the publication of the Foundations report, will bring together stakeholders to discuss the findings and how to incorporate these into the development of Bairns' Hoose Standards.

BARNAHUS

- The Minister for Children and Young People and Cabinet Secretary for Justice will open and close this event.
- Building on the Symposium, the Scottish Government will publicise a paper outlining our vision, values, and approach for Bairn's Hoose .
- We intend to bring forward Draft Standards for consultation by summer 2022 and publication of final Bairns' Hoose Standards by the end of 2022.
- These Standards will support a framework for health, justice and local authorities to understand what is required to improve our collective response to child victims, and provide a roadmap for developing our approach to Bairns' Hoose.

The key objective is to balance a child's right to recovery from the point at which they disclose abuse/harm, with their right to access a child-centred justice system in line with the UN Convention on the Rights of the Child (UNCRC), The Promise and GIRFEC.

- The Scottish Government is committed to the implementation of The Promise in redesigning the whole system around children.
- Work on Joint Investigative Interviews and other related activity within justice and child protection policy areas is key to deliver the transformative change and innovative approach the Independent Care Review calls for.
- There is particular alignment with the Promise commitment that "Scotland must recognise the pain associated with the telling and retelling of stories. Listening must be therapeutic and provide opportunity for healing. Children must not have to describe the most painful parts of their lives at every turn if they do not want to. Appropriate support must be consistently available."

The National Child Protection Leadership Group (NCPLG) provides overall governance of policy relating to children's wellbeing and oversees Barnahus policy.

- Justice partners, including Crown and Police, are central to developing a working model and will be fully consulted as we progress.
- The Barnahus concept requires adaptation from the Nordic approach given our very different policy and legal landscape.
- Consideration will be given to how the model will interact with our unique Scottish justice system and respect the rights enshrined in the European Convention on Human Rights
- A Bairns' Hoose will continue to respect the Lord Advocate's independent role as Head of Prosecutions and Investigations in Scotland. This will not change.

BARNAHUS

- We will establish a National Strategic Governance Group for Bairns' Hoose to provide the necessary governance, legal, policy and practice expertise for the development, piloting, establishment and implementation of a model for Scotland.
- This will include representatives from across child protection, health, justice and third sector.
- We are committed to ensuring that the views and experiences of children and young people and their families are represented on the national governance group

Children 1st was successful in their bid for £1.5 million of Dream Funding from the People's Postcode Lottery to deliver a "Child's House for Healing" in partnership with Victim Support Scotland, the University of Edinburgh and Children in England.

- Children 1st have established an expert "Delivering The Vision" group of advisors to help oversee the project and assist in overcoming any technical, legal, practice, and procedural challenges.
- The Child's House, whilst this is not Scottish Government led, intends to pilot the Barnahus model in Scotland.
- The Scottish Government are represented on this governance group to ensure the model is used to support learning for the Barnahus standards development and wider policy development.
- A site for the Child's House in Paisley has now been secured and interviews will be conducted using the Scottish Child Interview Model which is being piloted in North Strathclyde.
- The Child's House will have facilities to record evidence and provide children with access to support to recover as well as to participate in protection and safety planning. It's expected to be operational by early 2022
- Children 1st will also receive a further £44,443 in 2021/22 from the Scottish Government to support funding for Participation and Children's Rights Workers who will ensure the voices of children and their families inform our approach to justice including work to explore Barnahus.
- We are working closely with Children's 1st, and learning is being shared.
- We are grateful for Children's 1st input into our visions, values, and approach paper.
- Mary Glasgow, Chief Executive of Children 1st is in regular touch with officials and meeting with the Justice Secretary next week to discuss our vision for Bairns' Hoose in Scotland

BARNAHUS

Lady Dorrian's Evidence and Procedure Project Report sets out a longer term vision for children under 16 who are complainers in cases involving the most serious crimes.

- The vision of a 'comprehensive forensic interview' for child witnesses is an inspiring and interesting proposal for how our justice system could evolve.
- The Vulnerable Witnesses (Criminal Evidence) (Scotland) Act, and our work to explore the Barnahus concept in Scotland, are important initial steps in the direction of this vision.
- The Barnahus concept is about much more than evidence and the justice process. It supports a child's recovery from the point at which they disclose abuse, as well as supporting their right to justice.
- As part of work to develop Scotland-specific standards, we will consider how the European Standards in relation to the forensic interview could be adapted to a Scottish context without compromising the core principles of Barnahus.

SUPPORTIVE QUOTE: Children 1st *In response to the Cabinet Secretary for Justice's tweet on 5th April announcing the SNP manifesto pledge*

"Fantastic to see commitment to ensuring access to a #barnahus for all child victims & witnesses by @theSNP" In their manifesto, Children in Scotland called for all political parties to include learning from the findings of approaches such as the Scottish Barnahus pilot led by Children 1st, to support children and young people who have been victims or have witnessed violence, and committing to implementing and funding a national approach to this. However, there is also some wider concern and tensions likely to arise around the challenges to implement and fully resource this model."

CONSULTATION ON THE LAW OFFICERS' DUAL ROLES

ISSUE: Dorothy Bain QC and Ruth Charteris QC have been appointed as the new Lord Advocate and Solicitor General with the agreement of the SP. Questions were asked about a conflict of interest as Ms Bain's husband is a senior judge (Lord Turnbull). It has been confirmed by the Judicial Office he will stand aside from criminal cases. Calls were also made for confirmation hearings before a vote on the appointments

- The SNP Manifesto made a commitment to: *“consult on whether the dual functions of the Law Officers, as head of the independent prosecution service and principal legal advisers to the Scottish Government should be separated. SNP Governments will continue to ensure that the Law Officers are not party political appointees. They will attend meetings of the Scottish Government cabinet only when required.”*
- Similar comments have been made by Labour, the Lib Dems and Conservatives:
 - *“As well as splitting the dual role of the Lord Advocate, Scottish Labour believes the time has come for wider reform of the Crown Office and the Procurator Fiscal service.”* (Scottish Labour Manifesto, p.104)
 - *“We will support this work [other changes to the justice system] with an independent director of prosecutions to run the Crown Office and Procurator Fiscal Service, separate from the Lord Advocate’s position as the Scottish Government’s legal advisor.”* (Scottish Liberal Democrats Manifesto, p.32)
 - *“...[W]e will again make the case for the roles to be separated, to remove concerns of political interference in prosecution decisions.”* (Douglas Ross, speech 9/03/2021)
- Changes to the Law Officers' roles as head of the systems of prosecution and investigation of deaths are reserved. The allocation of responsibilities between the Lord Advocate and the Solicitor General are, as a matter of law, for the Lord Advocate. Reforms to COPFS would be a matter for the Lord Advocate (some recent reforms by the previous Lord Advocate are described below).
- Dorothy Bain QC has agreed to provide “all appropriate assistance” to the review into the Law Officers' dual roles
- Roddy Dunlop, dean of the Faculty of Advocates, has urged caution on splitting the traditional roles of the Lord Advocate and against “knee-jerk reactions” on scrapping

Top Lines

- The Government intends to publish a consultation on the functions of the law officers, and will do that in due course.
- It is vital that the systems of criminal prosecution and investigation of deaths, as well as the role of the law officers in Government, continue to enjoy the full confidence of the public. The Government is confident that they do.
- The dual role of the law officers is not new. It has been that way since the start of devolution under successive governments.
- The Government believes there is a case for reform, but it is really important that we take the time to get it right. It is also necessary that there is widespread consensus about the path that we eventually take.

CONSULTATION ON THE LAW OFFICERS' DUAL ROLES

ON CONFIRMATION HEARINGS FOR LAW OFFICERS

- We do not support confirmation hearings for Law Officer appointments. The Lord Advocate and Solicitor General are apolitical posts, and that well-established impartiality and separation from political debate is something that should be robustly defended.
- Parliamentary hearings “to grill the nominees” for Law Officer would, almost inevitably, lead to the increasing politicisation of the posts of Lord Advocate and Solicitor General.

DEVOLUTION AND OTHER LEGAL ASPECTS

- Aspects of the Law Officers' functions (notably the responsibilities of the Lord Advocate for the systems of criminal prosecution and investigation of deaths, and under the Scotland Act 1998) are reserved in the Scotland Act 1998.
- The allocation of the Lord Advocate's functions as between the Lord Advocate and the Solicitor General is, under the Law Officers Act 1944, a matter for the Lord Advocate of the day.
- Reforms to the working of COPFS, as part of the systems of criminal prosecution and investigation of deaths for which the Lord Advocate is responsible, are matters for the Lord Advocate alone, acting independently of any other person.

ATTENDANCE AT CABINET

- The appointment letter of the Lord Advocate states that: “you will, as Lord Advocate, attend Cabinet when required in order to provide legal advice and to represent your own Ministerial interests, but you will not be a full voting member of Cabinet.”
- In practice, as the Government's senior Law Officer, the Lord Advocate (or, in their absence, the Solicitor General) has in recent years been a regular attender at Cabinet (although not a member), in line with the terms of the appointment letter.
- The Law Officers receive copies of all Cabinet papers.

CONSULTATION ON THE LAW OFFICERS' DUAL ROLES

FIRST MINISTERS QUESTIONS – 27 MAY 2021

- **Lord Advocate and Crown Office and Procurator Fiscal Service (Reform)**

- **7. Liam McArthur (Orkney Islands) (LD):**

To ask the First Minister what plans the Scottish Government has to reform the roles of the Lord Advocate and Crown Office and Procurator Fiscal Service, in light of the resignations of the Lord Advocate and Solicitor General. (S6F-00031)

- **The First Minister (Nicola Sturgeon):**

I take the opportunity to briefly put on the record my deep gratitude to the Lord Advocate and the Solicitor General for their extremely distinguished service during the past five years. I am sure that I will have more to say about that in the days and weeks to come, but I record my appreciation, gratitude and respect for them both.

The Government will put nominations for new law officers to Parliament for approval shortly. Until then, of course, the current law officers will remain in office.

As we said in our manifesto, the Government intends to publish a consultation on the dual functions of the law officers, and we will do that in due course. It is vital that the systems of criminal prosecution and investigation of deaths, as well as the role of the law officers in Government, continue to enjoy the full confidence of the public, and I believe that they do.

- **Liam McArthur:**

I, too, pay tribute to James Wolffe and Alison Di Rollo for their service and for their willingness to engage, particularly with those of us who sat on the Justice Committee.

Reform is, however, needed and the First Minister has the power to deliver change. The role of the Lord Advocate needs to be split in order to end the conflicts of interest, including by appointing a director of prosecutions. Fatal accident inquiries must be removed from the Crown Office, as families are still waiting too long. It is a scandal that we still do not know the circumstances surrounding the deaths of Lamara Bell and John Yuill on the M9 six years ago. After the landmark vote in the Parliament in March, we also need change to ensure that those who are in the grip of drugs are diverted to treatment rather than to prosecution and imprisonment.

In hiring the new law officers, will the First Minister commit to those much-needed reforms?

The First Minister:

I will make a number of points, which I hope are helpful. Given potential reform of this nature, it is necessary that there is widespread consensus about the path that we eventually take. First, it is really important to recognise—as, I am sure, everybody in Parliament does—that the dual role of the law officers is not new. It was not created under a Scottish National Party Administration; it has been that way since the dawn of devolution, and the dual roles were held under previous Governments.

Secondly, I think that there is a case for reform, which is why my manifesto committed to carrying out a consultation on that, but it is really important that we take the time to get it right. As I was listening to Liam McArthur, one thing came to mind that Parliament will want to consider during the course of such a consultation. Because of the dual role of law officers, they can be called to Parliament to answer questions, and, on all the issues that fall within the prosecutorial function of the law officers, they can be questioned in the chamber. If we separate those roles, it may not be possible to do that in the same way in the future. Parliament might be comfortable with that, but it is just one example of why there is a need to take care over the matter. We must make sure that we get the consultation right and try to move forward on the basis of as much consensus and proper consideration as possible.

These issues are really serious, and I hope that all members, including Liam McArthur, will engage with them seriously over the course of any consultation that comes.

CABINET SECRETARY FOR JUSTICE AND VETERANS
Briefing for Criminal Justice Committee

What	Criminal Justice Committee – Introductory meeting
When	Wednesday, 01st September 2021 at 10-11:30am
Key messages	To be agreed with Comms/Special Adviser as appropriate.
Official support	Neil Rennick Justice Donald McGillivray Safer Communities
Comms Activity	Is there any planned communications activity around the debate? Is there a suggested tweet for the Minister?
Briefing contents	<p><i>[Please ensure each new Annex begins on an odd numbered page – inserting page breaks as required]</i></p> <p>FOR COMMITTEE:</p> <p>Annex A Speaking note (also submitted separately)</p> <p>Annex B Key messages/Top Lines</p> <p>Annex C Q&A covering possible questions from Committee/SPICe papers (a copy of the full Committee/SPICe paper should be attached as the last annex of briefing pack)</p> <p>Annex D FMQ style briefs on key issues (including relevant Q&A)</p>

Annex A – Speaking Note

I am grateful to the Committee for the opportunity to meet today.

As public health restrictions are further eased and Scotland continues to open up, the criminal justice system is responding to the significant challenges that are a result of covid and the necessary public health measures taken by the Scottish Government.

I would like to thank our justice partners for the important role they have played during this pandemic – prison officers, criminal justice social workers, police officers, fire and rescue staff, prosecutors, the court service and judiciary, our legal profession, the third sector and others.

I have been impressed by the hard work and willingness of everyone to come together to mitigate the consequences of the pandemic, finding creative solutions to the problems that the system has faced.

Innovations such as the use of remote jury centres in cinemas, the remote balloting of jurors, the use of online hearings in some court hearings – these are good examples of the collaborative and innovative approach taken by justice partners. The Scottish Government has committed to investing £50 million this year to help drive forward the Recover, Renew and Transform programme.

For 2021-22, we have also increased the policing budget by £75.5m to over £1.3bn, including £15m one-off funding specifically to mitigate the impact of COVID-19 on police finances. This is in line with our commitment to protect the police resource budget in real terms throughout the lifetime of this new Parliament, just as we did for the last.

We are beginning to see some optimistic signs as the necessary covid restrictions are eased. For example, the Scottish Courts and Tribunals Service announced that the number of sheriff solemn cases concluded in June exceeded pre-covid levels.

I recognise that the task ahead of us remains significant and I do not underestimate the distress caused to the victims of crime by unavoidable delays in cases being resolved. It will require continued co-operation across the justice system as a whole for some time to come to resolve fully the impact of the pandemic. However, that task is not only about

CABINET SECRETARY FOR JUSTICE AND VETERANS
Briefing for Criminal Justice Committee

returning to the way things were. It is also about thinking how we can do things better, which means doing things differently.

Before recess, in the Chamber, I outlined how we might do this. The SNP's manifesto sets out our vision of where we see Scotland's criminal justice system in 2026.

The Scottish Government has already begun the work to deliver these transformational changes across the whole 5 years of this parliament. More detail on this will be laid out in the Programme for Government when it is published next week.

A number of commitments which we have set out for the reform of our justice system are shared broadly by other parties within the parliament. To give one example, a legal right to anonymity for complainers in sexual offence cases was included in a number of our manifestos. There is, I believe, a lot that we can agree on.

I have met already with a number of opposition spokespersons – some of whom are here today – and if we work together we can bring about changes necessary to transform Scotland's criminal justice system.

I have said before, and I will repeat it here - I will try to find a consensus wherever possible. While I am sure there are areas of the Government's programme that members of the Committee will want to probe and scrutinise, I would ask you to work constructively with me where you can over the coming weeks, months and years.

CONTENTS

1. [Victims of crime;](#)
2. [Conservative's 10-point Victims Law;](#)
3. [Not Proven & Corroboration;](#)
4. [Improving management of sexual offence cases;](#)
5. [Anonymity of complainers in sexual offence cases;](#)
6. [Violence against women and children;](#)
7. [Violent crime;](#)
8. [Sentencing;](#)
9. [Remand;](#)
10. [Throughcare and reintegration;](#)
11. [Community justice interventions;](#)
12. [Electronic monitoring;](#)
13. [Public protection;](#)
14. [MAPPA;](#)
15. [Covid Recovery consultation;](#)
16. [Rangers inquiry;](#)
17. [Judicial register of interests;](#)
18. [Judicial diversity;](#)
19. [Police Scotland – Cross justice working groups on race and workforce, data and evidence;](#)
20. [Police Scotland – Race employment;](#)
21. [Sheku Bayoh public inquiry;](#)
22. [Police Scotland – COP26 safety and security;](#)
23. [Police Scotland – 101 call handling delays;](#)
24. [Police Scotland – funding;](#)
25. [Dame Elish Angiolini review implementation;](#)
26. [Independent advisory group on emerging technologies \(ETIAG\):](#)
27. [Digital evidence sharing capability \(DESC\);](#)
28. [Serious Organised Crime Taskforce;](#)
29. [Proceeds of Crime Act 2002;](#)
30. [Unexplained Wealth Order;](#)
31. [Unexplained Wealth Order – Avaaz litigation;](#)
32. [Serious Organised Crime – Fraud and scams;](#)
33. [Serious Organised Crime – Cybercrime;](#)
34. [Proceeds of Crime Act 2002 - CashBack for communities programme](#)
35. [Police Scotland – Increase in use of tasers;](#)
36. [Prison population;](#)
37. [Covid 19 response in Prisons;](#)
38. [Deaths in prison custody and mental health;](#)
39. [Prison budget and prison estate;](#)
40. [Scottish Fire and Rescue Service;](#)
41. [Human trafficking and exploitation;](#)

CABINET SECRETARY FOR JUSTICE AND VETERANS
Briefing for **Criminal Justice Committee**

42. [Hate Crime and Public Order \(Act\) 2021 – Implementation;](#)
43. [Fireworks;](#)
44. [Legal Aid and Reform;](#)
45. [Control of dogs policy;](#)
46. [Domestic Abuse \(Protection\) \(Scotland\) Act 2021 – Implementation;](#)
47. [Offensive Weapons Act 2019 – Implementation;](#)
48. [Children \(Scotland\) Act 2021 – Implementation;](#)
49. [Licensing;](#)
50. [Water safety;](#)
51. [Scottish Law Commission review of homicide law;](#)
52. [Youth Justice.](#)

VICTIMS OF CRIME

ISSUE – Criminal Justice Committee evidence session on 22 September to hear from stakeholders such as Victim Support Scotland about victims’ rights and support. Specific issues the Committee have highlighted include:

- Possible legislation to establish a Victims’ Commissioner
- The impact of the Victim Surcharge, which was introduced in 2019.
- The effectiveness of the Victim Notification Scheme

ISSUE 17 Aug: Tory news release with Jamie Greene claiming SNP is “betraying” victims of crime by failing to fix (*sic*) Victim Notification Scheme. Quotes falling numbers of victims signing up to Scheme. Covered in various media.

ISSUE 9 Aug: Most respondents to Law Society ‘Not Proven’ survey say retain verdict.

ISSUE Jul/Aug: Jamie Greene asked several written PQs about crime victims and the justice system related to matters covered by Tories’ planned Victims Bill.

ISSUE Apr/May Tory manifesto included plans for ‘Victims Law’ (trailed in Oct 2020) to include ending NP verdict and introducing statutory timescale for FAs. In 10 June justice debate Mr Greene indicated a Bill would be lodged in Parly’s first 100 [REDACTED]

[REDACTED]

SNP manifesto pledges included: creating Victims Commissioner; review provision of victim services; develop a new funding regime for victim support organisations; introduce a justice-specific knowledge and skills framework for trauma informed practice; and ensuring restorative justice is widely available by 2023.

[REDACTED]

[REDACTED]

Our manifesto contained a range of commitments to further improve victims’ experience of the justice system, including creating a Victims Commissioner to provide an independent voice for victims. We will engage victims and support organisations on the development of the role.

- We will review the provision of victim services as part of our work to develop a more victim-centred approach, including reviewing the Victim Notification Scheme and enabling more victims to tell the court how crime has impacted on them personally.
- We will develop a new funding regime for victim support organisations and introduce a justice-specific knowledge and skills framework for trauma-informed practice.
- Scotland’s reconviction rate for offenders has fallen to its lowest level in 21 years.

VICTIMS OF CRIME

- We are passionate about victims and survivors being properly supported but we should not ignore that we also serve victims by tackling offending behaviour.

We are ensuring victims' rights are at the heart of our justice system and have invested over £88m via the justice budget to support victims over the past five years.

- We have also invested over £23m in successful violence prevention programmes since 2008 – helping drive down crime, and inspiring similar approaches elsewhere.
- We are investing £18.2m through our justice budget this year to support victims. This includes a £1.5m increase in resource funding compared to last year and £13m in grant funding for organisations such as Victim Support Scotland.
- We also have a £15.6m budget to support victims of violent crime through the Criminal Injuries Compensation Scheme, operated by the UK Government.
- This justice investment is in addition to significant wider Scottish Government funding, from other portfolios, to support victims. For example:
 - £18m annually over 2 years, through the Delivering Equally Safe Fund, to tackle violence against women and girls
 - £10m over 4 years (2020-2024) to support all Survivors of Childhood Abuse
 - £5m per year through Future Pathways for survivors abused in care.

VICTIMS COMMISSIONER

Our manifesto contains a suite of commitments designed to improve victims experience of the justice system. This includes introducing a Victims Commissioner to provide an independent voice for victims.

- The Victims Taskforce considered this as part of their work programme. There was general support amongst members for the introduction of a Victims Commissioner. However some concerns were raised about resource implications and additional bureaucracy.
 - We will therefore consult with victims and support organisations to ensure that the role of the Victims Commissioner is tailored to meet the needs of those affected by crime in Scotland.
- 

VICTIMS OF CRIME

VICTIM SURCHARGE

As part of our broader package of support for victims of crime, we established the Victim Surcharge Fund to provide practical help.

- Since November 2019, all offenders who receive a court fine are required to pay a 'victim surcharge'.
- In April we awarded more than £157,000 to five victim support organisations through the Victim Surcharge Fund.
- Organisations can use the Fund to provide financial assistance to cover the costs of short-term and practical support, such as new windows and locks for victims of break-ins or to cover travel costs, for example to places of safety or to attend court.
- Ultimately, we anticipate that the surcharge may generate a fund of around £0.8 million - £1 million a year, but this is obviously directly dependent on income from offenders. We cannot award what we do not have.
- Kate Wallace, Chief Executive of Victim Support Scotland said in March she hoped the fund would go some way to empowering people to move on after a crime.
- She said [QUOTE]: *"This additional money available through the Victims Surcharge Fund will allow us to meet the continual needs of vulnerable victims in the aftermath of crime. For many of the people we support, this financial assistance can be life changing and sometimes lifesaving."*

VICTIMS OF CRIME

VICTIM NOTIFICATION SCHEME

This Government has strengthened the Victim Notification Scheme, giving victims of crime – and in certain circumstances their close relatives – greater rights to information about the status of an offender.

- Victims and their families who are eligible to join the Victim Notification Scheme are given guidance on what is involved, the type of information they will receive and when they will be able to make representations about an offender's release.
- Victims are able to make an informed decision as to whether they wish to sign up to the Scheme, and can do so at any time. Some victims may choose not to do so.

We legislated to make more victims eligible from 2014 – extending the criteria from prison sentences of four years or more to those involving more than 18 months imprisonment.

- And in 2015 we extended the right to receive certain information to victims of offenders sentenced to less than 18 months.
- We have committed to bringing all relevant partners together to review the Victim Notification Scheme and determine where further improvements could be made.

NOT PROVEN VERDICT

We have committed to consult on the removal of the Not Proven verdict – in recognition of the strong case that can be made for abolition.

- The views of the legal profession, as well as others with direct experience of the system including survivors, will continue to inform these considerations.
- The independent jury research we commissioned and that reported in late 2019 was the largest, most realistic of its kind ever undertaken in the UK – and it found inconsistent views on the meaning and effect of the not proven verdict.
- Stakeholder events last year, with a substantial number of legal professionals as well as survivors and victims, emphasised concerns with the not proven verdict, such as lack of understanding, juror confusion and perceived stigma.
- These are complex issues and many participants felt that the third verdict should be retained, or highlighted the interconnectedness of the system, so we must consider these issues carefully.

VICTIMS OF CRIME

CRIME & VICTIMISATION TRENDS

By all main measures crime, including violent crime, has fallen under this Government and most people do not experience it.

- Over the long term, we have seen a significant reduction of police recorded non-sexual violent crime of 34% between 2006-07 and 2019-20.
- Separately, the Scottish Crime & Justice Survey (2019-20) – which captures incidents not reported to police as well as those that are – shows crime in Scotland has fallen by 46% since 2008-09, with violent crime down by almost two-fifths (39%).
- Around one-in-eight (11.9%) adults in Scotland experienced crime in 2019-20, compared to one-in-five (20.4%) in 2008-09 – a rate that remains lower than England & Wales with an equivalent figure of 13.3%.
- NHS data shows the number of emergency hospital admissions due to assault have more than halved since 2006-07 – down 57% by 2019-20.

DOMESTIC ABUSE

We continue to take strong and decisive action to tackle domestic abuse

- We have strengthened the criminal law through the Domestic Abuse (Scotland) Act 2018, which creates a specific statutory offence of domestic abuse and makes a number of associated reforms to criminal procedure in domestic abuse cases.
- The new Domestic Abuse (Protection) Act will also provide police and courts with powers to further protect people at risk of domestic abuse and will make a real difference to the lives of many and ensure a person's home is a place of safety.

We fund a range of support services that provide support for women and children affected by domestic abuse, including Scottish Women's Aid.

- [REDACTED]
- We have committed to review the funding and commissioning of frontline support services to move towards a longer term and more sustainable funding model.
- Within the first 100 days of this new Government we will invest a further £5m to support frontline organisations that tackle domestic abuse and sexual violence, to deal with outstanding demand that has built up over the past year of the pandemic.

VICTIMS OF CRIME

- We have also invested over £22m in the innovative and accredited Caledonian System court-mandated programme so that more male perpetrators of domestic abuse can receive specific rehabilitation services to address and challenge their harmful behaviours. Our manifesto pledged to ensure this is available nationwide.

RAPE & SEXUAL CRIMES We are determined to improve the justice system to respond better to the needs of survivors of rape and sexual assault in Scotland.

We are giving serious consideration to the recommendations of Lady Dorrian's independent review of the management of sexual offence cases.

- The number of prosecutions for rape and attempted rape rose over the past decade from 80 in 2010-11 to 300 in 2019-20; And convictions increased from 36 to 130.
- Recent criminal proceedings statistics show prosecutions and convictions for rape and attempted rape over the last two years are the highest in the past decade.
- A pilot project of visually recording (VRI) rape complainer's statement launched on 1 November 2019. The VRI Pilot has continued through the pandemic and we will undertake an evaluation at the end of the two year pilot in November 2021 to inform decisions on a national roll out of the VRI Pilot.
- We have allocated over £1.3m from the Justice budget in 2021/22 to support Rape Crisis Scotland's National Advocacy Project – which provides a key support worker in every centre in Scotland to help victims to engage with the criminal justice system.

PRESUMPTION AGAINST SHORT PRISON SENTENCES

The presumption is precisely that – not a ban – and Judges retain the discretion to pass the most appropriate sentence based on the facts of the case, including a custodial sentence if they decide the alternatives are not appropriate.

- Short sentences disrupt many of the things most likely to help prevent reoffending, such as housing, employment, family relationships and ready access to health care.
- Our evidence-based approach to rehabilitation, in communities and custody, is working with reconviction levels at a 21-year low.

VICTIMS OF CRIME

COVID COURT BACKLOGS

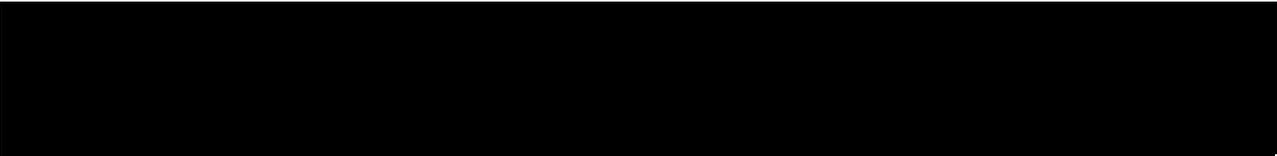
The justice system in Scotland faces significant challenges, as in rest of UK.

- To tackle backlogs built up while necessary public health restrictions have been in place, we have committed £50m this year to the Justice Recover, Renew, and Transform programme – supporting greater use of digital tools and improved support for victims and witnesses.
- We have been working hard to mitigate the impact of the Covid pandemic – with most civil work being dealt with online or virtually and the establishment of innovations such as remote jury centres in cinemas for the most serious criminal trials.
- We will deliver increased court capacity from September 2021, including expansion of remote jury centres and a daily increase of 4 extra High Courts, 2 additional Sheriff Solemn Courts and up to 10 Sheriff Summary Courts.

CONSERVATIVES 10-POINT VICTIMS LAW

ISSUE: Detail on the 10 Proposals in the Conservatives' Victims' Law Bill

- end the Not Proven verdict so victims get a clear outcome
- enable all victims to provide victim statements so their voices are heard
- implement Michelle's Law to protect victims and their families from offenders
- enshrine in legislation the right for all victims to be notified of decisions not to prosecute or discontinue criminal proceedings so they can challenge the decision
- implement Suzanne's Law so killers cannot be released if they have not revealed the location of their victim's body
- introduce a statutory timescale for Fatal Accident Inquiries to commence so families can get answers as soon as possible
- restrict the right of the accused to request post-mortems to protect murder victims families from further trauma
- improve access to the Victim Notification Scheme so more victims receive information about the release of offenders
- ensure families of murder victims can access the Victim Notification Scheme without arbitrary restrictions
- expand restorative justice to allow more victims to receive an apology from offenders.

- 
- Victim statements enable victims to explain to the court how a crime has impacted on them and to help inform sentencing decisions.
 - We are committed to expanding the scope of the scheme and looking at different ways statements could be delivered to the court.
 - We consulted at the end of 2019 and passed the Criminal Justice (Scotland) Act 2003 (Supplemental Provisions) (Scotland) Order 2021, which provides greater flexibility in how powers relating to victim statements can be used.
 - This flexibility will, for example, enable the introduction of pilot projects for victim statements which would not have previously been possible.
 - We will bring forward further legislation as required in the light of outcomes of pilot projects, and taking account of responses to the consultation.

CONSERVATIVES 10-POINT VICTIMS LAW

- Amendments to the Parole Board (Scotland) Rules 2001 were laid in Parliament on 11 January and include provision to increase transparency as to how the Board may consider the safety and welfare of victims when it considers the case of a prisoner.
- The amendments also enhance the ability of victims to observe parole proceedings and provide increased transparency in relation to the reasons for the Board's decision in cases where it recommends release.
- These amendments came into force on 1 March 2021.
- Further work to modernise and simplify the Parole Board Rules is already underway with the expectation of going out to consultation on revised Rules later this year.
- We have legislated to put in place a number of new electronic monitoring policy uses.
- A new national contract for electronic monitoring was procured and put in place from April last year which allows us to work with Justice partners and others to test and introduce GPS technology into the electronic monitoring service. This technology gives the potential to change how exclusion zones are monitored.

Suzanne's Law – Our sympathies go to Suzanne Pilley's family. I can only imagine that the refusal to disclose where a victim's body is buried and deny them a dignified burial is extremely painful.

- Work is already underway to rewrite of the Parole Board (Scotland) Rules 2001 in order to simplify and modernise them.
- As part of that work we intend to add a specific provision to the rules which will provide for failure to disclose a victim's body as a matter, amongst others, that the Parole Board may take into account when making a decision on a prisoner's case.
- We expect to consult on the new rules towards the end of this year.
- The previous Justice Secretary met with Suzanne Pilley's family in December 2019 and let them know about the proposal to change the rules. He also wrote to the family in January 2021 to confirm the timing of the rules rewrite.
- Failure to disclose the location of a body can already be prosecuted as a criminal offence of attempting to defeat the ends of justice and also may be taken into account when sentencing.
- Any proposal around denying parole has to be carefully considered in the context of ECHR requirements.

CONSERVATIVES 10-POINT VICTIMS LAW

The Lord Advocate has acknowledged that more needs to be done to ensure that FAls take place as quickly as possible.

- Significant reforms directed by the outgoing Lord Advocate, along with a significant injection of resources to COPFS during the last Parliamentary session, are providing benefit to the people of Scotland and will continue to do so.
- The length of time to complete a death investigation has significantly improved as a result. Less than 2% of active death investigations are over 2 years old and every death investigation over 2 years old is being carefully managed through a now well-established Case Management Panel process.
- A statutory time limit is not the answer as it takes no account of the specific circumstances or the complexity of a particular investigation. The decision to hold an inquiry cannot be taken until other proceedings, such as any criminal charges, have been completed or ruled out.
- Parliament considered statutory time limits during the passage of the Inquiries into Fatal Accidents and Sudden Deaths (Scotland) Act in 2016 and decided not to impose specific time limits.

Action has already been taken to reduce the need for defence post mortems

- There is concern that setting a time limit for defence agents to request a post mortem could have unintended consequence resulting in more requests.
- In October 2018 the Crown Office published a protocol which it developed together with forensic pathologists and representatives of defence agents.
- It was designed to give defence agents greater confidence in the initial post mortem carried out on the instructions of the Crown Office.
- This has been successful: the Crown Office advises that, from the introduction of the Protocol in October 2018 to January 2021, 92 homicides had been reported and only 3 defence post-mortems had taken place.
- And there have been no defence post-mortems since July 2019 with these 3 defence post-mortems arising in the initial months of the protocol
- The right of the defence to its own post mortem is one secured by the requirement for “equality of arms” developed under application of the European Convention of Human Rights.
- No Conservative MSPs supported the introduction of Gil Paterson MSP’s Post-Mortem Examinations (Defence Time Limit) (Scotland) Bill that was before Parliament in the last months of the previous session of Parliament.

CONSERVATIVES 10-POINT VICTIMS LAW

- Parliament voted by 90 – 26 not to proceed with this Bill [Labour and Greens voting in favour].

Victims and their families who are eligible for the Victim Notification Scheme are able to make an informed decision as to whether they wish to sign up to make representations, and can do so at any time.

- We have committed to bringing all relevant partners together to discuss the Victim Notification Scheme and determine where improvements could be made.
- We amended the Parole Board Rules with effect from 1 March to make clear that the Board can take a victim's safety and security into account when considering release.
- The Board is now required to publish a summary of its decisions to recommend release. The amended Rules also provide for a defined process for victims and their families to request to observe parole hearings.

We are committed to having restorative justice services widely available across Scotland by 2023.

- Restorative Justice (RJ) is a process of independent, facilitated contact, which supports constructive dialogue between a victim and a person who has harmed arising from an offence or alleged offence.
- RJ in Scotland will always be voluntary for those who wish to take part in it, whether they are the individual or community harmed or someone who has caused harm.
- Our RJ Action Plan, published in 2019, sets out the vision, and actions required to achieve our 2023 commitment.
- Actions in the plan aim to address: accessibility to RJ across Scotland; quality and consistency of service (including training of facilitators); increasing public awareness.

NOT PROVEN AND CORROBORATION

ISSUE 9 August: Law Society of Scotland survey on not proven – majority of respondents (all legal professionals) said that the verdict should be retained.

ISSUE: The SNP manifesto committed to “undertake a review of Scotland’s prosecution system to deliver fairer, faster and more effective justice. The review will consider reform of corroboration, and the three verdict system, including - in recognition of the strong case that can be made for abolition - a consultation on the removal of the not-proven verdict.”

Top Lines

- We have committed to consult on the removal of the Not Proven verdict – in recognition of the strong case that can be made for abolition.
- We are committed to engaging further with justice partners to develop a shared understanding of the implications and potential unintended consequences of reform, while continuing discussions with those with direct experience of the system.
- It is important that we consider potential reforms against the landscape of wider work including the recommendations of Lady Dorrian’s review on the management of sexual offence cases.

Stakeholder events last year, with legal professionals as well as survivors and victims, emphasised concerns with the not proven verdict, such as lack of understanding, juror confusion and perceived stigma.

- These are complex issues and many participants felt that the third verdict should be retained, or highlighted the interconnectedness of the system, so it is right that we consider these issues carefully.
- The views of those with direct experience of the system including survivors, will continue to inform these considerations.

As a government we understand the concerns with how the corroboration rule can affect access to justice for survivors of crimes committed in private.

- That was one of the main reasons why we previously tried to take forward corroboration reform and have now committed to giving it further consideration.
- The Scottish Government proposed removing the corroboration requirement in the Criminal Justice (Scotland) Bill, introduced in 2013.
- But there was no parliamentary or legal stakeholder consensus at that time.

CONSERVATIVES 10-POINT VICTIMS LAW

- The engagement events held last year to discuss the findings of our landmark Scottish jury research revealed there is still considerable opposition to reforming corroboration amongst a number of stakeholders.
- The previous Cabinet Secretary for Justice held constructive discussions with Opposition Spokespeople in December 2020 to hear their views on reforming corroboration and all agreed that the issue needs further exploration.
- We are committed to engaging further with justice partners to develop a shared understanding of the evolving legal position and the implications and potential unintended consequences of reform, while continuing discussions with those with direct experience of the system.
- It is important that we consider potential reforms to corroboration in the context of evolving case law, and against the landscape of wider work.



- The independent jury research we commissioned and that reported in late 2019 was the largest, most realistic of its kind ever undertaken in the UK – and it found inconsistent views on the meaning and effect of the not proven verdict.
- Stakeholder events last year, with a substantial number of legal professionals as well as survivors and victims, also emphasised concerns with the not proven verdict, such as lack of understanding, juror confusion and perceived stigma.
- However, these are complex issues and many participants felt that the third verdict should be retained, or highlighted the interconnectedness of the system, so it is right that we consider these issues carefully.
- It is also important that we consider potential reforms against the landscape of wider work including the recently published recommendations of Lady Dorrian’s review on the management of sexual offence cases.
- That is why we have committed to consult on the removal of the Not Proven verdict.

IMPROVING THE MANAGEMENT OF SEXUAL OFFENCE CASES

ISSUE: The SNP manifesto committed to careful consideration to Lady Dorrian's report to deliver a justice system in which survivors of sexual crime can have confidence. It also committed to legislating to provide anonymity for rape complainers – a recommendation in Lady Dorrian's report. The June debate on RRT highlighted there is 



Top Lines

- We are committed to careful consideration of Lady Dorrian's report. It is clear there is a good deal around which we can build consensus amongst partners, stakeholders and politically.
- It is premature for me to give commitments beyond those already set out – this is a complex area. Taking the time to consider the report will not delay ongoing work to improve the experience of victims of sexual offending and tackle the backlog of cases that have built up during the pandemic.
- Some proposals require legislative change and we will consult fully on those. Further detail will be set out in Programme for Government.
- The report has potential to drive transformational change across the system, beyond sexual offence cases. It is important to consider it in the context of our ambitious programme for justice reform and via development of a new justice strategy.

ANONYMITY OF COMPLAINERS IN SEXUAL OFFENCE CASES

ISSUE: Anonymity of complainers in sexual offence cases

In March 2021 Lady Dorrian published the final report by the Lord Justice Clerk's cross judicial review group entitled *Improving the Management of Sexual Offences cases*. The review was commissioned by the Lord President in March 2019 to develop proposals for serious sexual offence cases which dominate solemn proceedings in the courts. One of the recommendations within the review group's final report is in the area of anonymity of complainers in sexual offence cases. The recommendation is to introduce legislation granting anonymity to those complaining of rape or other sexual offences along the lines of the Sexual Offences (Amendment) Act 1992 (where an automatic right to anonymity currently extends only to complainers in England and Wales and does not apply to the investigation or prosecution of sexual offences in Scotland).

A paper published in the *Edinburgh Law Review* in October 2020 by Dr Tickell called for Scotland to have more robust laws to protect the anonymity of complainers in sexual offence cases, saying it relies on journalistic restraint and ignorance among the public. Anonymity for sexual offences complainers is an issue which is raised frequently. In recent times this has been in the context of the allegations made against the former First Minister and his subsequent prosecution, but also arise in other cases too. Legislation would be required to provide an automatic statutory anonymity for sexual offence complainers.

Top Lines

- The Scottish Government recognises the importance of protecting the anonymity of all people who report sexual crimes and value the cross judicial review group's recommendation in this area.
- As well as being contained in Lady Dorrian's recent report, it is a manifesto commitment to change the law in this area.
- We are committed to giving the report and its recommendations careful consideration as we look to build on actions already taken by the Scottish Government to improve the support provided to participants in the criminal justice system.
- We recognise there is a growing body of consensus towards enshrining anonymity rights for complainers in sexual offence cases, particularly with the emergence of new media.

At present there is no automatic legislative right to anonymity in sexual offence cases in Scotland

- In Scotland, complainers in cases of rape and other sexual offences give evidence under "closed court" conditions, whereby the public is excluded from the court during the giving of their evidence.
- This exclusion does not apply to bona fide journalists whose presence is permitted as an important aspect of open justice.

VIOLENCE AGAINST WOMEN AND CHILDREN

- In sexual offence cases in Scotland, there can be a legal right of anonymity for sexual offence complainers, but this requires a decision by a court to be made to protect a person's identity in a given case.
- Separate from this, there is a long-standing non-statutory protocol operated by the media not to name complainers in sexual offence cases.
- The approach in Scotland differs to the rest of the UK where the law (the Sexual Offences (Amendment) Act 1992)) provides that protections on identity apply as soon as an allegation has been made that a sexual offence has been committed against a person.
- The 1992 Act applies to Scotland only to prevent publication in Scotland of information relating to complainers alleging contravention of the law of E&W or NI, and in relation to service offences under armed forces legislation.
- The position in Scotland for complainers is therefore less certain than in other jurisdictions where anonymity is an automatic legal right.
- Legislation would be required to provide an automatic statutory anonymity for sexual offence complainers.
- While the non-statutory approach of the media has worked well over many years, the emergence of new forms of communication do not fit neatly within the current legal and non-legal framework and present real challenges in ensuring anonymity is preserved.

The existing legal tools available to Scottish courts are found in the Contempt of Court Act 1981.

- Section 11 of the 1981 Act empowers the court to make an order prohibiting the publication of any “name or matter to be withheld from the public in proceedings before the court...as appear to the court to be necessary for the purpose for which it was so withheld,” allowing courts explicitly to prohibit the identification of complainers in criminal or civil cases.
- Breach of an order under section 11 would constitute a contempt of court punishable by two years’ imprisonment, a fine, or both.
- In practice it does not appear that making orders under section 11 is routine in sexual offence prosecutions in Scotland.
- The number of sexual offences pursued in Scotland’s criminal courts substantially outstrips the number of orders made (8 orders in 2019 compared to 1,762 people proceeded against for sexual offences in 2018/19, with 324 appearing on charges of rape or attempted rape).

VIOLENCE AGAINST WOMEN AND CHILDREN

Lady Dorrian's independent review on the management of sexual offence cases published in March 2021 recommends that complainer anonymity in rape or other sexual offence cases is put on a statutory footing.

- If implemented, the right for a complainer in proceedings not to be identified in the media would be expressly set out in legislation rather than relying upon current convention and agreement.
- The policy would bring the position in Scotland on anonymity for sexual offences complainers in line with other parts of the UK.
- The regulation of the media to provide anonymity for complainers in sexual offence cases is practiced in many countries, either through legislation (e.g. Australia, Ireland, Canada, India, New Zealand) or through policy (e.g. most of the US).
- Legislative action in this area also reflects the emergence of new forms of communication and technological change which have transformed anybody with a smartphone or laptop into a publisher with potential global reach.
- An individual can therefore use the internet to cause lasting damage by naming a victim of sexual violence, whilst at the same time safeguarding his or her own anonymity.
- While Scottish courts do have powers in this area, they are required to operate a system whereby the courts, once a matter is before them, can decide to provide anonymity to alleged victims of particular crimes.
- In the high profile case of HM Advocate v Alexander Salmond an order was not made under section 11 of the 1981 Act prohibiting identification of the complainers the second day of the trial.

Supportive quotes:

Rape Crisis Scotland included in their “Holyrood 2021 Ask” the need to enshrine legal rights for complainers to anonymity, citing the difference in Scotland compared to other parts of the UK and the need to ensure that those reporting sexual offences are protected particularly where the use of social media is widespread.

A campaign for complainers’ anonymity is also being led by GCU law lecturers Dr Andrew Tickell and Seonaid Stevenson-McCabe. In a new article for Edinburgh Law Review in September 2020, Dr Tickell argues that, in the wake of the Alex Salmond trial, Scotland’s highest-profile sexual offences prosecution to date, the reliance on “a gentleman’s agreement by the mainstream media” or occasional special court orders is unsustainable.

The Greens, Conservatives and Liberal Democrats all include similar commitments around anonymity in their manifestos.

VIOLENCE AGAINST WOMEN AND CHILDREN

Responding to the Covid-19 Pandemic

- Throughout the coronavirus pandemic, it has been our priority to ensure that all victims of gender based violence are aware that services remain open so they can access the help they need to keep them safe from harm.
- Police Scotland have continued to prioritise cases of domestic abuse and remain committed to ensuring that victims are visible and supported throughout the pandemic.
- We remain absolutely committed to working with partners across the justice system to ensure that all victims of gender based violence are kept safe and receive the most appropriate level of support.
- Absolutely no one should have to suffer abuse. We have continued to fund a range of services to support both male and female victims of domestic abuse and rape and sexual assault.
- Last year we allocated an additional £5.75 million to frontline services so they could respond to an increase in demand from victims of abuse. Organisations that benefitted from this funding include Rape Crisis Scotland, ASSIST and Scottish Women's Aid. This funding allows more people to quickly and easily access help.
- We also recognise the massive implications that the pandemic has made on the courts and cases progressing through the justice system and are absolutely committed to working with partners to address this.
- To tackle backlogs built up while necessary public health restrictions have been in place, we have committed to investing £50 million this year to the Justice Recover, Renew, and Transform (RRT) programme. This will drive further reform, including greater use of digital tools and improved support for victims and witnesses.
- Welcome that SCTS have set out plans that will see an increase in court capacity from September 2021, which includes the expansion of remote jury centres and a daily increase of 4 additional High Courts, 2 additional Sheriff Solemn Courts and up to 10 Sheriff Summary Courts.
- We continue to work with justice organisations, the legal profession and the third sector, to consider all options to respond to the inevitable increase in cases awaiting trial, as well as the wider impact of the on-going public health challenges across the justice system.

VIOLENCE AGAINST WOMEN AND CHILDREN

We remain committed to improving the experience of victims of sexual crimes

- We believe that the justice system should always take a victim-centred perspective in addressing sexual crime, and we are working with all partners – to ensure this happens across the board.
- We welcome publication of the review, led by Lady Dorrian, on the management of sexual offence cases in Scotland's courts which adds to the evidence base in this area.
- We are giving the report and its recommendations careful consideration as we look to build on actions already taken to improve the support provided to survivors and other participants in the criminal justice system.
- We are already supporting a pilot project to test the process of visually recording rape complainers' statement to Police and this has continued throughout the pandemic.
- We have also committed over £0.5m to support this pilot which includes funding for additional advocacy resource within Rape Crisis Scotland to support complainers during the VRI process.
- An evaluation will be undertaken when the pilot ends in November 2021 to inform decisions on a national roll out of the pilot and we will support the continuation of the recording of statements within the existing pilot areas.

Sexual crimes account for 5% of all crimes recorded in Scotland in 2019-20. The number of Sexual crimes recorded by the police in Scotland decreased by 1% from 13,547 in 2018-19 to 13,364 in 2019-20.

We are continuing to commit significant levels of funding to tackle violence against women and girls

- Through the combined funding of Justice and the Equality and Human Rights Budget, we invested around than £30 million over 2020/21 to support a range of projects and initiatives for victims and witnesses.
- In addition, within the first 100 days of forming a new government we allocated £5M to violence against women services. The funding will go to rape crisis centres and domestic abuse services to cut waiting lists, helping to ensure those affected can access the support they need more quickly.
- It will comprise approximately £4.5 million to be split between Scottish Women's Aid and Rape Crisis Scotland, and a total of £500,000 for 12 other specialist support services and organisations.
- In line with our manifesto commitment, we are working to launch a new, open and competitive funding scheme for victim support and violence against women and girls organisations (approx. £13m per annum from 2022/23).

VIOLENCE AGAINST WOMEN AND CHILDREN

- We created a new Delivering Equally Safe Fund (£19m per annum) and have recently confirmed allocations to 121 projects from 112 organisations working to provide services and prevent gender-based violence.

We will continue to hold perpetrators of domestic abuse to account and invest in measures to achieve this

- We are committed to holding perpetrators to account and supporting them to change their behaviour.
- We have invested over £22m in the innovative and accredited Caledonian System domestic abuse court mandated programme so that more male perpetrators of domestic abuse can receive specific rehabilitation services to address and challenge their harmful behaviours.
- We supported the roll out of the Caledonian Programme to a further six local authorities in 2019 and it is now delivered in 19 Local Authority areas which means approximately 75% of the population of Scotland live in a local authority area which deliver the Caledonian.
- The SNP manifesto further commits to ensuring that the Caledonian System is available nationwide and we will work with partners to achieve this.
- The PfG in 2019/20 further set out our commitment to explore policy options to increase access to positive behaviour change programmes for domestically abusive men. We are therefore supportive of demonstration projects to explore non-court mandated versions which will draw on the fundamentals of the Caledonian programme.
- We are working with Community Justice Scotland to test the delivery of versions of the 1:1 Caledonian Programme as part of three demonstration projects which will begin during 2021.
- Community Justice Scotland are also working with Castle Huntly to test a non-court mandated version of the 1:1 Caledonian programme as a community based intervention for prisoners whose index offence involved domestic abuse.

We have established the Misogyny and Criminal Justice Working Group

- The Hate Crime and Public Order (Scotland) Act 2021 received Royal Assent in April this year. It sends a message that hatred and prejudice will not be tolerated in Scotland.
- We have set up an Independent Working Group, chaired by Baroness Helena Kennedy QC, to specifically look at Misogyny in Scotland and explore the following questions:
 - Is there a gap in the criminal law that should be filled by a specific offence tackling misogynistic behaviour?

VIOLENCE AGAINST WOMEN AND CHILDREN

- Should the characteristic of 'sex' should be added to the hate crime framework?
- The work being undertaken will inform policy to address the many forms of violence, transgression and abuse experienced by women which emanate from misogyny.
- The Working Group is on target to produce its findings and recommendations in a report by February 2022.
- We have committed to acting swiftly on this report, and to bring forward secondary legislation if there is a recommendation to add 'sex', as a protected characteristic, to the hate crime framework, within a month of receiving the final report.
- Oral and written evidence from a number of experts and a wide scale survey of qualitative data about women's experiences of misogyny will support the Working Group's findings.
- The evidence heard to date includes online misogyny and sexualised violence and is helping the working group to establish a definition of misogyny within the evidence base.
- In Scotland between 2018 and 2020, 23.5% of females aged 16-24 had experienced being sent unwanted messages by text, email, messenger or posts on social media sites - almost double that experienced by men of similar ages.
- In a survey (2017) for Amnesty International, across five countries including the UK, just under half (46%) of women who had experienced online abuse or harassment said it was misogynistic or sexist in nature.
- The Working Group is looking at all this information to evaluate how the Scottish criminal justice system currently deals with misogyny, including looking at whether there are gaps in the law.

VIOLENT CRIME

ISSUE: 19 August: Publication of Recorded Crime in Scotland: July 2021

- In July 2021, recorded crime was 6% lower than July 2020 (when pandemic restrictions were in place) and 13% lower than July 2019 (pre-pandemic).
- There were variations in the year-on-year trends between crime types. However, with the exception of Non-sexual crimes of violence and Sexual crimes, all groups were lower than pre-pandemic levels (July 2019).
- The **Herald and Daily Mail** have both picked up on the increase in Non-sexual crimes of violence (up 6% compared to July 2020, and up 11% compared to July 2019).

ISSUE: 30 May: Police Scotland News Release: More than 1,000 assaults on officers and staff included coronavirus related context during 2020-21, analysis suggests.

- The 1,087 reports were identified by searching cases for keywords relating to coronavirus such as 'spit', 'cough' and 'Covid'.
- The figure contributed to a total of 6,942 recorded assaults on officers and staff, 413 more than the year before, an increase of 6.3% year on year.
- Reported assaults are also up 18% on the five year average, continuing a long-term trend of increasing assaults against the police.

Recorded crime remains at one of the lowest levels seen since 1974, and is down 41% since 2006-07.

- Over the long term we have seen huge reductions in non-sexual violent crime, though agree there is more we must and will do to tackle this unacceptable behaviour.
- Since 2008, we have invested more than £23 million in violence reduction programmes.
- This includes over £16 million to the Scottish Violence Reduction Unit, and more than £4 million to No Knives, Better Lives.
- The Scottish Crime and Justice Survey shows a 46% fall between 2008-09 and 2019-20 in crimes experienced by adults in Scotland.

All local areas have seen a reduction in recorded crime over the longer term.

- Recorded crime has fallen across all local authorities since 2006-07, including in Glasgow (down 43%), Edinburgh (down 37%), and Aberdeen (down 51%).
- Local commanders will use this information, and a range of other intelligence to plan activity in partnership with the communities they serve.
- Despite constraints on Scotland's public services through a decade of UK austerity, policing services have been maintained and improved.

VIOLENT CRIME

- The Scottish Crime and Justice Survey shows public confidence in policing is good - the majority of people (55%) believe local police do a good or excellent job.

Significant progress has been made in reducing non-sexual violent crime, but we all agree more needs to be done.

- Police recorded non-sexual violent crime has fallen by a third (34%) since 2006-07.
- The Scottish Crime and Justice Survey shows a 39% fall between 2008-09 and 2019-20 in violent incidents experienced by adults in Scotland.
- The number of emergency admissions to hospital due to assault have more than halved since 2006-07 - down 57% by 2019-20
- Emergency admissions to hospital due to assault with a sharp object have fallen by 60% between 2006-07 and 2019-20, including a 19% fall in the latest year.
- While there have been increases in handling offensive weapons crimes in recent years, these crimes have more than halved since 2006-07 (falling by 56%).
- We know the devastating consequences of these crimes on individuals, families and communities. One knife crime is one too many.
- Homicide cases are at one of the lowest levels since comparable records began in 1976 (64 cases of homicide in 2019-20 – Homicide National Statistics).

Tackling violent crime remains a key priority for this Government.

- We have invested over £23 million in violence prevention since 2008.
- This includes over £16 million to the Scottish Violence Reduction Unit, and more than £4 million to No Knives, Better Lives.
- This funding includes delivery of the Mentors in Violence Prevention Programme which is engaged with all 32 Local Authorities across Scotland.
- This is a peer mentoring programme giving young people the chance to explore and challenge the attitudes that underpin gender based violence
- The Scottish Violence Reduction Unit have expanded their reach to other areas across Scotland including Dundee, Edinburgh and Ayrshire.
- They are delivering a place-based approach in North West Glasgow to specifically target deprived communities where violence exists, helping build connections and offer support to individuals and families.
- Our Navigators service now operates in seven A&E departments across Scotland.

VIOLENT CRIME

- This service reaches out to people facing severe and multiple disadvantage, helping them receive a person centred approach to access the support they need.
- It addresses the multiple complex issues that often accompany chaotic violent lifestyles, including substance use, alcohol dependency and poor mental health
- We are piloting a Youth Navigator service in the children's hospital Emergency departments at Edinburgh Royal Infirmary, St Johns Livingston and Glasgow.
- Tackling knife crime is paramount, our No Knives Better Lives youth engagement programme has developed a 'Nae Danger' interactive video game designed to help young people speak out and get help if someone they know is carrying a knife.
- We currently have around 850 Police Scotland Youth Volunteers working with the Police, breaking down barriers and developing relationships through volunteering within their local communities.

Amongst other actions, we have commissioned a large scale qualitative study to better understand violence-related repeat victimisation in Scotland.

- We know that 1% of adults were victims of multiple violent crimes in 2019-20, but their experiences account for 65% of all violent crime in Scotland.
- Our new study, led by the University of Glasgow, will ensure we better understand the problem of repeat violent victimisation, by researching those who experience it.
- This will include the circumstances of these cases, the barriers to seeking support and what help would be of most value in future.
- We are also completing work to examine 'What Works?' in violence prevention.

YOUTH JUSTICE

Over the last 12 years, Scotland has seen dramatic changes in the youth justice sector since this government made a decisive shift towards prevention.

- Between 2008-9 and 2019-20, the number of 12-17s proceeded against in Scotland's courts has fallen by 85% and there has been a 75% reduction in children referred to the children's reporter on offence grounds.
- In this period, the number of under 18s sentenced to custody also decreased by 93%.
- The Whole System Approach (WSA) is the Government's approach to young people who are in conflict with the law. It was rolled out across Scotland in 2011. The partnership approach has a shared ambition of

VIOLENT CRIME

what we want to do to prevent, divert, manage and change offending behaviour by children and young people.

- In June 2015 we launched a youth justice strategy (Preventing Offending: Getting it right for children and young people) to drive further improvements, based on the Whole System Approach that has delivered such striking success.
- This strategy came to an end in June 2020. We have developed a new vision and action plan for Youth Justice due to be launched on 16 June at the National Youth Justice Conference.

Despite constraints on Scotland's public services through a decade of UK austerity, policing services have been maintained and improved.

- We have increased the policing budget by £75.5 million in 2021-22, bringing the total budget to over £1.3 billion.
- This includes £15 million to mitigate the impact of COVID-19 on the policing budget in 2021-22.
- This has eliminated Police Scotland's budget deficit, delivered a sustainable budget position and protected the police workforce.
- We have a higher number of officers than at any time during the previous administration.
- The total number of officers – 17,289 (as at 30 June 2021) – is an increase of 1,055 police officers (+6.5%) from the position inherited in 2007 (31 March 2007).
- Scotland's officer numbers compare favourably with England and Wales.
- The latest figures show that there were around 32 officers per 10,000 population in Scotland, compared to around 23 officers per 10,000 population in England and Wales, as at 31 March 2021.

I fully support the actions that Police Scotland and the Chief Constable are taking to protect police officers and staff from assaults and their impact.

- It is unacceptable that Scotland's police officers and staff should be attacked or abused.
- The leadership of Police Scotland outlined its commitment to tackling this issue, including through the Chief Constable's Assault Pledge.
- The pledge promises: to help reduce the impact of violence; to improve the safety of officers and staff; and to provide appropriate support where it does occur.
- While overall levels of violent crime have fallen significantly in Scotland over the last decade, no-one should be the victim of abuse or violence at work.

VIOLENT CRIME

- We do not tolerate any attacks on emergency services workers and we fully support our police, prosecutors and courts in dealing robustly with people who offend against any emergency worker.
- Scotland's justice system has extensive powers to deal with perpetrators through statutes such as the Emergency Workers (Scotland) Act 2005 and section 90 of the Police and Fire Reform (Scotland) Act 2012, or using common law.
- The average custodial sentence length for assaults against police officers prosecuted under section 90(1) of the Police and Fire Reform (Scotland) has increased by 6% since it was introduced (from 160 days in 2013-14 to 170 days in 2019-20).
- For more serious attacks, the Crown may prosecute cases under common law offences such as assault, with potential penalties of up to life imprisonment.
- Since February this year, our courts have had the ability to impose Restitution Orders – a new financial penalty – on those who assault the police.
- These orders require an offender to pay towards support services for police victims of such assaults, sending a further signal that such behaviour is unacceptable.

CLEAR UP RATES

Crime Clear up rates are amongst the highest ever seen.

- At 51.5%, the proportion of crime cleared up in 2019-20 is at one of the highest levels seen since comparable records began in 1976.
- 71.7% of non-sexual violence was cleared up in 2019-20 (60.0% in 2006-07).

You are less likely to experience crime in Scotland compared to England and Wales.

- Surveys of the population show adults in Scotland were less likely to experience crime in 2019-20 than those living in England & Wales.
- An estimated 11.9% of adults experienced at least one property or violent crime in 2019-20 (compared to 13.3% in England & Wales).

SENTENCING

ISSUE: 15 JULY – New independent Sentencing Council guideline outlining the process steps for sentencing decisions approved by the High Court and will come into effect on 22 September. The guideline aims to ‘demystify sentencing’ for the public.

ISSUE: 17 JUNE – Daily Mail (Scotland) – Concerns over the new vision for youth justice published on 16 June aimed at those up to age 18 but also recognising the needs of young people up to age 26. The article suggests a soft touch approach and reflects on the Scottish Sentencing Council proposals around young people.

TOP LINES

- As Members will know, the decision on the most appropriate sentence in any given case is for the independent court with all the facts and circumstances before it.
- I am clear that the most serious and dangerous offenders deserve to go to jail.
- It was this Government that ended automatic early release for long-term prisoners sentenced after 1 February 2016. The previous system of automatic early release was introduced by the then-UK Government in 1993.
- The average length of prison sentences has increased by 29% over the last decade, driven by more convictions and prison sentences for serious crimes.
- The problem is not that we don't send enough people to prison – it's that for many, particularly those given short custodial sentences, prison is not effective.
- Statistics show that over one third (35%) of those who received short custodial sentences were back in prison within a year.
- Our new vision for youth justice - launched on 16 June - builds on the successes we have seen over the last 12 years following this Government's move to a preventative approach through the whole system approach to preventing offending by young people.
- The vision suggests that, where possible and appropriate, consideration will be given to extending such an approach up to age 26.
- Our approach is evidence led and focussed on what works to keep communities safe and prevent offending.
- Support the independent Sentencing Council in their important work to help people understand and have confidence in how sentencing operates.

SENTENCING

CRIMINAL PROCEEDINGS 2019-20

Criminal Proceedings statistics showed the number of violent offenders receiving custody at highest level since 2012-13, with 1,107 being imprisoned.

- The increase in convictions for non-sexual crimes of violence between 2018-19 and 2019-20 was due, in part, to the introduction of the new crime of domestic abuse that came into effect for a course of conduct committed on or after 1st April 2019.
- The importance of our 2018 Domestic Abuse Act – described by Scottish Women’s Aid as a “gold standard” – has been shown to be effective in its first year of operation, with 206 perpetrators held to account for their actions.
- While the Criminal Proceedings figures show a slight reduction in 2019-20 in the average length of prison term for rape convictions, this figure fluctuates from year to year
- The average of 2,445 days imprisonment – or more than 6-a-half-years – for rape convictions in 2019-20 is 17% longer than in 2010-11 (when it was 2,090 days).

While no sentence – either in custody or in the community – can eliminate the possibility of some individuals offending in the future, both reconvictions and overall crime in Scotland are at historically low levels. Ultimately these are measures of a safer country.

- Recorded crime in Scotland remained almost unchanged from 2018-19, rising by less than 1%, and is down 41% since 2006-07 to one of the lowest levels since 1974.
- Our firm focus on prevention, effective community interventions and rehabilitation, both in communities and custody, is working with reconviction levels at the lowest level since comparable records began.
- Over the past decade, the average number of reconviction per offender has decreased by 23%, from 0.60 in 2008-09, to 0.46 in 2017-18. The reconviction rate has decreased by 5.2 percentage points in the same period from 31.5% to 26.3%.

REMAND

ISSUE: July 2021 - Jamie Greene MSP, Scottish Conservative spokesperson on Justice and member of the Criminal Justice Committee tabled 3 PQs in July 2021 on Remand, which have been answered:

- S6W - 01760: To ask the Scottish Government what plans are in place to address the reported increase in the untried remand population in prisons.
- S6W-01761: To ask the Scottish Government what measures are in place to support people who are held on remand for an extended period and are then not convicted at trial.
- S6W-01762: To ask the Scottish Government what measures are in place to support the families of people who are held on remand for an extended period and are then not convicted at trial.

ISSUE: June 2021 – In response to a Sunday Post article on 20 June 2021 which carried comments from stakeholders such as Howard League Scotland and the Prison Reform Trust expressing concern about the numbers of women remanded and their access to support. Following the publication of this article, Pauline McNeill MSP lodged a Topical PQ asking the Scottish Government what action it was taking to reduce the number of female prisoners on remand.

ISSUE: May 2021 - Howard League Scotland published a report on the use of remand in Scotland (The Scandal of Remand in Scotland). The publication coincided with a week of social media action calling for a reduction in the use of remand. The report highlighted the increase in the remand population due to the Covid pandemic and called for urgent action. The accompanying news release highlighted the length of time people are held on remand and raised specific concerns on the impact on young people and people with learning disabilities.

ISSUE: May 2021 - A survey of local authorities indicated that 26 local authorities have a bail supervision scheme in place (a direct alternative to remand), 3 local authorities have plans to establish a scheme in the near future and 3 local authorities have no plans to establish a scheme. Currently, there are no mechanisms to require local authorities to run a bail supervision scheme and justice social work partners report increased operational pressures and challenges in recruiting staff.

ISSUE: Ongoing (since pandemic) - Concerns about the remand population pre-date Covid-19; however the lack of throughput of through the courts during the pandemic has led to an increase in the remand population (from approx. 1500 in 2019-20 to approx. 2000) even though the overall prison population has reduced (from over 8000 to approx. 7500) in this same period. This represents an increase in the remand population of approx. 20% of the total prison population to approx. 27%.

Current Remand Population

- The prison population on the morning of Monday 16th August 2021 was 7566 in custody (5473 sentenced, 1763 untried and 331 awaiting sentencing). 28% of the prison population were on remand.
- The population for women at this time was 302 (202 sentenced, 76 untried and 24 awaiting sentencing). The proportion of women held on remand was 33%.
- The overall remand population of 2094 represents an increase of 5% in the past month.

TOP LINES

- The single biggest factor in the increase in remand is the backlog of cases created by the pandemic. Prior to the pandemic the remand population was approx. 20% of the total prison population and this has risen to approx. 27%.
- We are committed to helping justice services recover from the impact of the pandemic. An additional £50m has been provided in this financial year

REMAND

so that the cases involving all accused, including those on remand, can be progressed.

- Decisions on whether to remand in custody or grant bail ahead of trial or sentencing are for the independent courts in each case.
- Public protection is paramount and remand will always be necessary in some cases.
- However, we are considering looking at how the legislative framework for bail decisions could be changed to increase this focus on public safety. This will be an open and inclusive process where views offered can help inform whether reform should be progressed and if so, how best that can be done.
- As the Justice Committee's inquiry into the use of remand in 2018 made clear, we know that remand can disrupt families and communities, and adversely affects peoples' health, employment opportunities and housing – the very things that evidence shows supports desistance from offending.
- We have increased funding for alternatives to remand. In addition to the £117m invested in community justice services each year, we have provided a further £550k to incentivise bail supervision services and £1.5m for bail support for women each year.
- We are working with partners to implement electronically monitored bail across Scotland – providing a further monitoring capability for courts.
- We recognise the impact the pandemic has had on the justice system – including the remand population – and
- We acknowledge the importance support being available to people leaving custody and a range of measures are in place to support people during their time on remand and on release.
- We recognise that remand can be a particularly vulnerable time for women and can take them away from children and other family members. Tailored support is available and we have ensured in-person visits can resume in all prisons holding women.
- We understand that an ambition to reduce the use of remand is widely held and we welcome input and opportunities to work collaboratively to support further improvements.

We recognise the impact the pandemic has had on the justice system – including the remand population – we are committed to helping the justice services recover.

- The single biggest factor in the increase in remand is the backlog of cases created by the pandemic. Prior to the pandemic the remand population was approx. 20% of the total prison population and this has risen to approx. 27%.

REMAND

- That is one reason why we are committed to enabling the criminal courts to address this backlog - and have provided an additional £50m in this financial year so that the cases involving all accused, including those on remand, can be progressed.
- This includes £11.8m specifically allocated for use by justice social work services in directly addressing the impact of the pandemic – including increasing the availability of alternatives to remand.

We are continuing to invest to ensure robust alternatives to remand are available across Scotland

- Including additional investment of £550,000 per annum to bolster existing provision for supervised bail as an alternative to the use of remand.
- This funding is intended to double capacity for bail supervision services – and we saw a 40% increase in uptake of bail supervision in 2019/20.
- This is in addition to the £117m invested in community justice services annually, which includes a ring fenced allocation of £1.5m for bail support for women.
- We are updating national guidance on bail supervision to support the consistent establishment and delivery of effective bail supervision schemes across Scotland. This will be published later this year.

We are working with justice partners to ensure operational readiness for the implementation of electronically monitored as part of bail across Scotland.

- This is due to commence later in the year – as a way of continuing to reduce the use of remand by providing a community based alternative.
- Individual decisions on remand or bail will still be for the independent judiciary but electronically monitored as part of bail will be a new capability to consider for cases on the cusp of remand or bail.
- It will provide an ability to monitor special conditions of bail if Sheriffs deem it appropriate.

We are committed to ensuring a range of measures are in place to support people during their time in remand and on release.

- Everyone on remand has access to healthcare from the NHS- including both physical and mental health support as well as access to treatment and support for substance misuse and addiction issues.
- This is supplemented by SPS support, which includes an individual assessment of need so that the appropriate support can be put in place for people during their time in custody.

REMAND

- Although not required under the Prison Rules, the SPS encourage people on remand to undertake purposeful activity like work or education where possible/appropriate.
- The SPS are working with GEOAmev to provide liberation packs to those released at courts, including those who have been held on remand. These information packs are specific to the local area and include information about local support services.

We recognise that remand can be a particularly vulnerable time for women and are committed to ensuring tailored support is available.

- All establishments with a female population encourage women on remand to participate in the same rehabilitative regime offered to those who are convicted.
- Women on remand also have access to other purposeful activities such as life skills, positive choices courses and a range of counselling advice on ending abuse and domestic violence.
- In-person visits resumed in all prisons holding women and we are committed to maintaining our prison visitor centres which provide a range of vital support to children of those in custody, including those on remand.
- The Scottish Government funds SHINE a third sector mentoring partnership supporting women leaving custody after serving short sentences, SHINE also provides support for women leaving remand.

This Government has worked hard to keep children out of the criminal justice system by instigating measures that encourage alternatives to remand and custody where possible.

- We have seen dramatic changes in the youth justice sector since this government made a decisive shift towards prevention in 2007.
- This includes a reduction in the number of under 18s in custody down by 91% since 2006.
- A new vision for youth justice priorities with a primary focus on keeping children out of the criminal justice system was published in June.
- The vision continues to promote the whole system approach in Scotland – a multi-agency partnership approach focussed on preventing and changing offending behaviour by children and young people.

THROUGH-CARE AND REINTEGRATION

ISSUE: Access to through-care services differs depending on the length of sentence an individual is serving. Those serving less than 4 years can request through-care support from their local authority justice social work department (on a voluntary basis). The Scottish Government also provides £3.4m p.a. to third sector partnerships to provide through-care services to men and women leaving short sentences.

Those leaving custody after serving 4 years or more receive statutory through-care support from their local authority justice social work department.

ISSUE – July 2019 – the SPS announced that they were temporarily suspending the operation of their Through-care Support Officer (TSO) service and reallocating the 41 officers to mainstream duties. The TSOs had offered a voluntary service to individuals released from short sentences, working before and after their release to help them with practical problems that might hinder their reintegration.

The service was suspended by SPS as part of their efforts to manage the high prison population and address prison staffing problems. It was an operational decision taken by SPS. At the time of suspending this service, there was criticism of this decision from opposition parties as being against the principle of assisting individuals to desist from offending.

The Third Sector PSPs extended their services to pick up the TSO workload.

In addition to the through-care services provided by local authorities and the third sector, there are statutory duties on public bodies (local government, health) to support people leaving prison to enable them to reintegrate. For example, to access housing, benefits, healthcare. These needs are assessed by SPS at the point of an individual's admission to custody and this information is shared with relevant partners.

ISSUE: Friday Liberations – The Prisoner (Control of Release) Scotland Act 2015 (as amended by the Management of Offenders (Scotland) Act 2019) provides SPS, on behalf of Scottish Ministers, with the discretion to bring forward the release date by no more than 2 days for the purposes of benefiting a prisoner's reintegration into the community. Requests are not limited to people being released on a Friday, or a Thursday prior to a public holiday weekend. The final report of the Drugs Death Taskforce [REDACTED] includes a recommendation that introduce a blanket ban on Friday liberations (or in advance of a public holiday), rather than it being on an individually assessed basis.

TOP LINES

- We are committed to ensuring that people leaving prison are supported to reintegrate into their communities and not reoffend.
- And we recognise the importance of through-care and reintegration support.
- That is why we provide £3.4 million funding annually to third sector partnerships to support through-care services for men and women leaving short-term sentences.
- And we also provide funding to local authorities as part of the total £117m p.a. settlement to support the voluntary and statutory through-care services they provide people leaving custody.

THROUGH-CARE AND REINTEGRATION

When a prisoner's release is scheduled, SPS will offer to work with the prisoner to plan for their release – including assistance to contact housing offices, benefits offices, medical services, or third sector services – depending on their needs and intentions.

- Once an individual reaches their release date the SPS do not have legal authority to detain them any further. They are required to release the individual immediately.
- Support to help prisoners contact housing services, and other support services, is on a voluntary basis. It is up to the individual whether they accept that support, and up to them how they act once they are released. We cannot compel prisoners to engage with public services.
- When the prisoner's release has not been pre-planned, officers will offer support as well as is possible at that time.
- Only individuals serving long sentences, and those whom the court issue specific post-release orders, are compelled to be supervised by Justice Social Work after they are released. There are also court based social workers who can deal with social work issues that arise at court.



- We will work with stakeholders to consider the options available to us, including new models of care, as well as procedural or legislative change.
- We know that release from custody, and the subsequent transition to community based care, can be a vulnerable time for many individuals, and can lead to increased risk of drug related harms and deaths.
- This Government will continue as a priority to consider ways to improve the circumstances and support available for individuals leaving custody, and to mitigate any risks.

SG continue to invest in third sector throughcare services

- We have invested in third sector mentoring services since 2012-13, now at a level of £3.4m annually.
- This provides support to 3 third sector partnerships – supporting men, women, and young people leaving prison from short sentences.
- These services provide flexible, practical support which helps people leaving prison to reintegrate successfully into their communities.
- These services can advise and (where necessary) support individuals to engage with public services (housing, healthcare, benefits etc). But they

THROUGH-CARE AND REINTEGRATION

cannot replace such services, and do not have control over how other services operate.

- Throughcare services are not intended to be ongoing support services, but rather to support prisoners on their release and reintegration. These services are not resourced to provide an ongoing service, or to support other groups of people.
- The national third sector throughcare partnerships have demonstrated that they are providing effective support to their service users – typically helping to improve the individual's basic circumstances, achieving generally improved attitudes to offending, and helping them engage with public services.
- Covid has been a serious challenge to the throughcare services, with the PSPs having to suspend almost all in-person contact, as a result of public health guidance. The services increased efforts to maintain contact using phone, text and email-a-prisoner. And are beginning to undertake face to face contact again, in line with public health guidance.

Local Authorities also play a vital role in supporting individuals on release from custody.

- Each local authority area is required to provide some form of voluntary throughcare to short-sentence prisoner after release – if the individual requests it, up to 12 months after release.
- It is up to the local authority to decide what support is provided– as part of their duty to deliver such services as are required by local need.
- In addition, Individuals leaving long-term sentences will continue to be supervised by Criminal Justice Social Work, to ensure that they abide by the conditions of their release.
- This is supported by ongoing Scottish Government investment in community justice services of £117m a year.

COMMUNITY JUSTICE INTERVENTIONS

ISSUE: 9 August – National Care Service consultation published which includes questions on scope of the service including in relation to Justice Social Work services and related implications for community justice governance linked to reform of Integration Joint Boards. Open consultation on risks, benefits, and other options for reform, and no SG position at this time. Consultation ends 18 October.

ISSUE: July - Jamie Greene MSP, Scottish Conservative spokesperson on Justice and member of the Criminal Justice Committee, tabled 40 PQs in July 2021, including a number on Community Justice, which have been answered:

- S6W-01758 Impact of Unpaid Work on reoffending rates
- S6W-01779 Action to increase the CPO completion rate
- S6W-01780 Analysis of the decline in the percentage of CPOS which include unpaid work requirements
- S6W-01781 Response to Audit Scotland’s ‘Sustainable Alternatives to Custody’
- S6W-01786 The appropriateness of knitting as Unpaid Work

ISSUE: 15 July – Audit Scotland published a short report, ‘Community Justice: Sustainable Alternatives to Custody’, which attracted media coverage. It stated that the SG is yet to meet its aim of ensuring that people convicted of criminal offences increasingly receive community sentences instead of going to prison.

ISSUE: May – SNP manifesto included commitments on community justice, including to invest in a “substantial expansion” in diversion from prosecution and other community justice services, and to develop a new National Community Justice Strategy.

ISSUE: Ongoing (since pandemic) - Capacity to deliver community orders, in particular unpaid work or other activity requirements in Community Payback Orders, has been impacted by coronavirus. Regulations varying unpaid work requirements by 35% (with exceptions for domestic abuse, sexual offending, and stalking) approved by Parliament in March. Additional covid funding of £11.8m allocated to justice social work in 2021/22.

TOP LINES

- We remain committed to encouraging more widespread use of community-based interventions where appropriate, which are often more effective than custody in reducing reoffending and keeping our communities safe.
- Through continued investment in community justice services, the development of a new National Community Justice Strategy, and related work across the justice system, we will build on progress to date and ensure a renewed emphasis on early intervention and addressing the underlying causes of offending behaviour.

COMMUNITY JUSTICE INTERVENTIONS

- The pandemic has had a significant impact on community justice services, and we are grateful to all those who have worked hard over the past 18 months to ensure that vital support continued to be provided in extremely challenging circumstances.

Our firm focus on prevention and effective community interventions has helped see Scotland's reconviction rate fall to its lowest level since comparable records began.

- Over the past decade, the average number of reconviction per offender has decreased by 23%, from 0.60 in 2008-09, to 0.46 in 2017-18. The reconviction rate has decreased by 5.2 percentage points in the same period from 31.5% to 26.3%.
- In 2019-20, 22% (16,296) of all convictions resulted in a main penalty of a community sentence - the highest proportion of convictions where community sentences were imposed in the past ten years and up from 14% in 2010-11. This is a 7% increase in the number from 15,211 in 2018-19.
- Decisions on sentencing are rightly for the judiciary, having considered all facts and circumstances of the case.
- Evidence shows that individuals released from a custodial sentence of 12 months or less are reconvicted nearly twice as often as those given a Community Payback Order.
- CPOs are a robust and credible community alternative which make individuals pay back to the community or fulfil other requirements decided on by court while addressing the underlying causes of their offending behaviour.
- While no sentence – either in custody or in the community – can eliminate the possibility of some individuals offending in the future, both reconvictions and overall crime in Scotland are at historically low levels.
- [QUOTE] “If you think about the justice system like an infection, once you get infected once, it can become a chronic and life-limiting condition. Get infected again, and again, and again. So, getting people out at the earliest point in time, if that’s appropriate, is the right thing to do.” Karyn McCluskey, Community Justice Scotland – 1 June.

COMMUNITY JUSTICE INTERVENTIONS

We will review and revise the National Strategy for Community Justice

- Over this year we will review and revise the National Strategy for Community Justice, considering how to build on progress over recent years, set clear aims for all involved in delivering services, and further encourage the use of community interventions where appropriate.
- We recognise that taking a holistic approach – including recognising public health aspects of offending – can inform actions necessary to keep our communities safe.
- We will involve stakeholders throughout the sector in reviewing how well the current strategy has performed, before engaging more widely in exploring what approach a revised strategy might take.
- In addition, we will explore legislative options for a sustainable reduction in the prison population, with a focus on managing offending behaviour, protecting public safety and reducing re-offending .

We welcome Audit Scotland's report on community justice and its intention to carry out further work in this vital area in 2022.

- The report 'Community Justice: Sustainable Alternatives to Custody' was published on 15 July and looks at some of the key developments since Audit Scotland's 2012 report 'Reducing Reoffending in Scotland'.
- While sentencing decisions in individual cases are a matter for the independent courts, we are committed to encouraging more widespread use of community-based interventions where appropriate. These are often more effective at reducing re-offending, as Audit Scotland sets out, and for keeping our communities safe.
- We will consider the issues identified by Audit Scotland in its report, including as part of the review and expected refresh of the Community Justice strategy, which we anticipate will be published in 2022 alongside an updated Outcomes, Performance and Improvement Framework.
- It is important to note that, despite ongoing challenges, progress has been made – for example, in addition to continued investment in community justice services, which will total more than £117m this year, Parliament agreed in 2019 to extend the presumption against short custodial sentences from 3 to 12 months. Although it is too early to determine the impact of the extension, the use of such sentences has fallen significantly in recent years, with those receiving a sentence of 12 months or less reducing by 13% in the most recent data between 2018-19 and 2019-20.

COMMUNITY JUSTICE INTERVENTIONS

Consultation is underway on the creation of the National Care Service (NCS) which has the possibility to radically change how we deliver services.

- The primary focus of the proposals is on adult social care, but the consultation also rightly seeks views on the remit of the NCS and whether it should go beyond this to potentially include all social work services.
- This clearly has implications for justice social work – as well as other areas such as children and young people services – and the consultation seeks views on the potential risks and benefits of including such services in the NCS, as well as on whether any alternative reforms might be explored.
- No decisions have been taken as yet in relation to the justice aspects of the proposals, and views will be carefully considered to inform a decision on the scope of the National Care Service, including for potential future phases of development.
- Engagement is taking place during the consultation period with justice stakeholders including Community Justice Scotland, Social Work Scotland, and COSLA.

Regulations to reduce unpaid work requirements by 35% (with exceptions for domestic abuse, sexual offending and stalking) in response to the COVID-19 pandemic were scrutinised and approved by Parliament.

- This was a necessary and proportionate response to help ensure the justice system can operate effectively and ease pressure on local authorities as the pandemic continued.
- This proportionate measure helped address the unavoidable build-up of unpaid work resulting from essential public health restrictions, while ensuring that those on community orders still serve the majority of their sentences.
- All existing orders imposed up to and including 15 March 2021 were reduced.
- Approximately 270,000 hours of unpaid work were removed as a result of the regulations.
- Although the regulations and additional funding has mitigated risks to the system, the potential for community justice services to be overwhelmed has remained as unpaid work simply could not be delivered in reasonable timescales due to necessary public health restrictions and increasing demand.

COMMUNITY JUSTICE INTERVENTIONS

- This is why Parliament approved the extension of provisions on timescales for completion of unpaid work and a power to vary community payback orders, in the Coronavirus (Expiry and Extension) (Scotland) Bill. I can assure the Committee that these powers would be used only if absolutely necessary and that there are no current plans to use the powers to vary orders again.

The presumption against short prison sentences is not a ban

- We have not abolished jail sentences of less than 12 months.
- Judges retain the discretion to pass the most appropriate sentence based on the facts of the case, including a custodial sentence if they decide the alternatives are not appropriate.
- Between 2018-19 and 2019-20, there was a four percentage point reduction in custodial sentences of 12 months or less. The number of custodial sentence of “up to 3 months” decreased by 19% in the past year, from 3,139 in 2018-19 to 2,551 in 2019-20, and is less than half the number ten years ago.
- Short sentences disrupt many of the things we know are most likely to help reduce reoffending such as housing, employment, family relationships and access to health care and support.

Our long-standing, strategic investment in community justice is one that has helped drive down the country’s reconviction rate to its lowest level since comparable records began

- Scottish Budget for 2021/22 ensures at least £117 million is invested in community justice services and specialist third sector services.
- To support pandemic recovery work, an additional £50 million over 2021-22 has been allocated both to establish additional court capacity and to contribute to the wider associated costs across the justice system, including community justice, prisons, and legal aid.
- From that funding, approximately £11.8 million has been allocated for use by justice social work services in directly addressing the impact of the pandemic.
- In addition to funding arising specifically as a result of the pandemic, the Scottish Government will also invest around an additional £2.5 million that was agreed in the draft budget to community justice services.
- The SNP Manifesto contains a commitment that “building on our progress over the last 5 years, we will invest in a substantial expansion in diversion from prosecution and of community justice services including alternatives to remand and custodial sentences.”

COMMUNITY JUSTICE INTERVENTIONS

National statistics on community orders and non-court disposals are gathered and monitored on an ongoing basis

- 16,700 CPOs were commenced in 2019-20. 70% had an unpaid work or other activity requirement. 62% of orders had a supervision requirement, the highest level in the last seven years.
- Number of diversion from prosecution cases commenced rose by 8 per cent between 2018-19 and 2019-20 to around 2,000.
- A total of 470 bail supervision cases were commenced in 2019-20, a 40 per cent increase on 2018-19 and the highest level in any of the last seven years.

Jamie Greene tabled a large number of written PQs last month including a number on Community Payback Orders and unpaid work. I hope he found those answers helpful.

- CPOs are a valuable component of our focus on effective interventions and we know that CPOs do work to reduce reoffending - individuals released from a custodial sentence of 12 months or less are reconvicted nearly twice as often as those who are given a Community Payback Order.

ADDITIONAL POINTS FROM PQ ANSWERS IF NEEDED:

Reconviction rates

- The most recent reconviction rates show that 29% of people with a Community Payback Order (CPO) imposed in 2017-18 were reconvicted within a year, which is the lowest rate since they were introduced.

Completion rates

- The completion rate for Community Payback Orders (CPOs) has generally been around 70% over the last seven years. This is consistently higher than for the orders they replaced.
- There are a range of factors which can influence the likelihood that an order will be successfully completed. In particular, outcomes are likely to be influenced by the nature of the offending behaviour and individuals' underlying risks and needs.
- Local authorities are responsible for delivering CPOs and, we are continuing to work with national and local partners to help ensure orders are implemented as effectively as possible, and that completion rates are as high as they can be.

COMMUNITY JUSTICE INTERVENTIONS

CPOs with unpaid work requirement

- It is up to the independent sentencing judge to decide the most appropriate sentence, including which requirements are most appropriate, based on all of the circumstances of the case – for example, the nature of the crime, information contained in the criminal justice social work report and what is most likely to prevent the individual from reoffending.
- In certain circumstances the court may consider that an order without an unpaid work requirement is the most appropriate sentence to address the offending behaviour and its causes. This is particularly the case where an individual has more complex risks and needs that need to be addressed and unpaid work may not be suitable.

Type of unpaid work

- Unpaid work has a strong focus on reparation and providing opportunities to make amends and prevent reoffending through strengthening relationships with the community, and through developing useful skills.
- Justice social work staff and unpaid work managers in local areas are best placed to determine what unpaid work is suitable, taking into account each individual's particular circumstances, to help ensure that individuals complete their unpaid work hours in a way which benefits the community.

DEVELOPMENT OF ELECTRONIC MONITORING

ISSUE – Development of electronic monitoring covers both new policy and technological uses and those will be taken forward with different timescales.

Background:

The Management of Offenders (Scotland) Act 2019 (the 2019 Act) consolidates a number of existing pieces of legislation covering electronic monitoring. Once commenced, all the current policy uses of electronic monitoring will continue and some new additional policy uses will be brought in. As well as new policy uses, the longer-term plans for electronic monitoring development also include exploring use of new types of technology, for example to monitor by virtue of satellite tracking (GPS).

The current radio frequency (RF) technology is well established and familiar to the sector so we are introducing the new policy uses first with that proven technology, before we explore changing the technology used.

- The current electronic monitoring capability in Scotland is through radio frequency technology has a proven ability to monitor curfew.
- The vast majority of the current orders relate to curfew conditions (generally 1900-0700) and RF can also be used to restrict individuals away from a specified place, for 24 hours a day.
- RF is currently used to monitor a wide range of community disposals and licences.
- In terms of impact, it is likely opening up new policy uses will more clearly allow for greater use of EM with the technology as a constant to plan around, whereas introducing GPS may just mean a different way of monitoring with the impact across each policy use less certain.

We are still supportive of satellite tracking (GPS) but need to develop it at a pace that is manageable for the sector.

- The 2019 Act enables the use of new technologies such as satellite tracking and remote substance monitoring (when such equipment is prescribed, which it is not as yet).
- We have legislated to allow for this new technology and last year began a new national contract that will allow for GPS.
- We have said that we will explore the use of GPS in the lifetime of the five year monitoring contract.

DEVELOPMENT OF ELECTRONIC MONITORING

- The decision to explore new technologies *after* introducing new policy uses is predicated on keeping the scope and scale of change manageable for people, there will be longer lead-in and development time for GPS (e.g. would need ability to pilot and train people on new equipment during time of distancing, and many more consequential changes needed for partners – not all of which they will have yet considered).
- The ability to have prescribed exclusion zones already exists in many orders and licences and can be undertaken by radio frequency so RF offers much by way of functionality.
- Ultimately, electronic monitoring does not physically prevent a monitored person from failing to comply with an order or licence. It is the monitored person's own responsibility to ensure that they abide by the underlying terms of the order or licence.

We need all partners in the justice sector to be ready before the final stages of commencement of the new policy uses.

- The new policy uses of electronic monitoring introduced by the 2019 Act are: electronic monitoring with a Community Payback Order (CPO) (at first disposal, can currently be used for breach), electronic monitoring of supervised release orders (SROs), electronic monitoring of sexual offences prevention orders (SOPOs), electronic monitoring of sexual harm prevention orders (SHPOs), electronic monitoring of release on licence (extending EM to cover temporary release from prison) and electronic monitoring of bail
- The Scottish Government took forward legislative changes to include bail in the list of disposals that can be electronically monitored and those were brought before Parliament at the end of last year and agreed.
- We need to make sure, before this change is given effect, that all Justice partners are operationally ready.
- Discussions on operational readiness have been taking place in parallel and once all partners are content we will be able to move to commence the final parts of the legislation to give these powers effect.
- Examples of the practical steps needing taken to support this include: making changes to Court Rules, ensuring partners have resource in place to get swift access to those eligible for bail, ensuring timely and secure information exchange between partners such as the Police and COPFS and configuring IT systems.
- Coronavirus has to an extent delayed commencement due to other pressures on justice partners and the system.

DEVELOPMENT OF ELECTRONIC MONITORING

- We are appraised of the need to move swiftly but also safely here, to ensure assessment and enforcement are appropriately calibrated to keep those in the community safe and ensure no unintended consequences for the prison population.
- The impact of changes such as use of electronic monitoring with bail, will be dependent on use by the judiciary as they take the decisions about bail and remand.
- We still anticipate partners will be ready for this change later this year and the Criminal Justice Board (with Police, COPFS and SCTS representation) are being kept updated on progress so they can press this for their operational interests.

PUBLIC PROTECTION

MOVING FORWARD MAKING CHANGES (SEXUAL OFFENDING PROGRAMME)

Aug 2021: A New National Design Lead was appointed this month for re-design of the Moving Forward Making Changes (MFMC) sexual offending programme.

BACKGROUND: The MFMC programme is a treatment programme aimed at adults with a sexual offending history, delivered within Scottish prisons and in the community. The model is partly based on the principles of the Good Lives Model (GLM) but has been adapted to apply to those within a Scottish context. Programme delivery continued throughout the COVID pandemic but on a restricted basis (1-1 and 2-1) in the community given restrictions on group work and the threat that posed to public health. Delivery has been more challenging in custody. There were waiting lists for MFMC in custody prior to the pandemic and Covid has had an impact on these. The programme re-design initiated before Covid will address the waiting lists as will the new pilot.

Development of a new pilot programme in this area will be evidence led.

- The Scottish Prison Service have approached the Scottish Advisory Panel for Offender Rehabilitation (widely referred to as SAPOR) to act as a critical friend for the development of a new pilot programme for high risk offenders in custody.
- The pilot is due to commence in September 2021 and will run for a period of 18 months and SPS will present the pilot to for programme accreditation to SAPOR.
- The National Advisory Board (with representation from a range of partners including SG, SPS, justice social work and independent academics) has had oversight of the initial plans for the pilot and will receive regular updates from SPS on the development of the pilot.

Delivery of the the current MFMC programme continues in the community (and in a more limited form in custody) and MFMC will be re-designed as per the recommendations of the previous independent report.

- The MFMC programme underwent an evaluation in 2018 recommending a re-design of MFMC.
- That re-design work started prior to Covid but had to be paused during the pandemic.
- Delivery of MFMC will roll-down in custody but prisoners based at HMYOI Polmont will continue to receive the MFMC programme. Prisoners based at HMP Barlinnie with individual responsivity needs will continue to receive the MFMC programme.

PUBLIC PROTECTION

- In the community MFMC continues to be delivered to both high and medium risk individuals.
- The SG this month appointed a National Design Lead to lead the project of re-design. This work will apply to high risk individuals who are in the community and to medium risk individuals who are in custody and in the community. It is presently anticipated that the re-designed programme will be ready to pilot by around May 2022.
- As part of this project the National Design Lead will also collaborate with stakeholders to ensure a proper transition for high risk prisoners who have participated in the Scottish Prison Service high risk pilot and who continue to have treatment needs on release to the Community.
- I would be happy to write to you with further details about this area of work if it would be helpful.

The pilot and the programme re-design will expand the number of people that receive an intervention.

- On current planning the new pilot for high risk will expand the number of people who receive the programme while in custody.
- There have always been waiting lists for the programme in custody and priority for access to the programme follows an assessment of the individual.
- Programme completion is not mandated for release and the tests of harm around release remain in place for the Parole Board, who are able to consider a wide range of factors in their decisions.
- Where someone is released under licence they can if appropriate access the MFMC programme in the community.

PUBLIC PROTECTION

CENTRALISATION OF THE LS/CMI SYSTEM

ISSUE – 26 AUGUST 2021 – Local authorities and SPS begin transfer to the centralised LS/CMI system.

Since 2010, the Scottish Government has had a developed case management IT system for use by all 32 Scottish Local Authorities and the Scottish Prison Service. The system is underpinned by an internationally validated risk assessment instrument called LS/CMI. LS/CMI produces a scored risk of re-offending and identifies an individual's needs which can then be addressed by way of a treatment programme or intervention. The LS/CMI application is currently going through a process of centralisation moving from sitting on each area's own IT platform to a central system. This was due to complete in October 2020 and has been delayed to November 2021 due to the COVID pandemic.

Centralisation will bring a range of benefits.

- Stakeholders will receive better IT support through a service contract procured by Scottish Government.
- There are financial and time savings in relation to support and maintenance of a single IT platform as opposed to thirty three separate instances. There will no longer be multiple environment types requiring to be supported. Development can be on relevant and up to date technologies rather than relying on development to the 'lowest common denominator'.
- Improved record management with reduction in user time, linked to new and improved functionality.
- Data will represent a single point of truth for the Scottish Government Justice Analytical Services. In addition, use of powerful business intelligence tools to identify offending patterns and refine risk management pathways.
- Allowing where appropriate wider agency access to relevant offender information. In particular better assisting Multi-Agency Public Protection Arrangements (MAPPA) and Court Reporting procedures, adding to public protection.
- User training can be more easily virtualised and no longer relies on local training, improving consistency on how the applications are used and thereby improving data quality.

PUBLIC PROTECTION

While there was some delay in the project due to the impact of Covid as local IT functions had to support other business critical activity, this was used for additional development time and the project is still due for completion before the end of this calendar year.

- This is a technically complex project and centralisation involves the transfer of live data from the 32 Local Authority and the Scottish Prison Service legacy systems to the centralised IT platform.
- This migration began on 19 August 2021 and will take around 3 months to complete.
- The centralised LS/CMI, MFMC and Caledonian applications will be used by in excess of 2,000 users across Justice Social Workers, Scottish Prison Service Psychologists and by various support and management staff.
- It was more prudent to delay this work until partners could provide assurance they were ready given the Covid impact on core business and the public protection implications involved.

MULTI-AGENCY PUBLIC PROTECTION ARRANGEMENTS (MAPPA)

Issues: Police, Crime, Sentencing and Courts Bill - [REDACTED]

Prescribed Police Station Regulations - an SSI to amend the regulations which list the police stations where registered sex offenders can report under the sex offender notification requirements, was laid in Parliament on 26 August. It amends the address of Alloa Police Station which will move and co-locate with other public services in Clackmannanshire Council Headquarters, Kilnsraig Building, Greenside Street, Alloa on 25 October. This is a routine process and we do not expect particular issues with this SSI from Committee.

Costs of the additional duty on Police Scotland to police the positive obligations in English and Welsh SHPOs and SROs are considered to be negligible.

- Police Scotland already police the English and Welsh orders with prohibitive conditions attached to them, as well as managing the prohibitive conditions attached to the existing Scottish orders, which new Scottish Sexual Harm Prevention Orders and Sexual Risk Orders will replace. The new Scottish orders will also be able to contain positive obligations, which in turn will be enforceable in the other UK jurisdictions. The legislation creating them (Abusive Behaviour and Sexual Harm (Scotland) Act 2016) is not yet in force, because we have been waiting for this UK Bill which will provide this cross-border enforceability).
- No new systems are needed to enforce English/Welsh Sexual Harm Prevention Orders and Sexual Risk Orders in Scotland as they will be managed through existing IT platforms.
- We anticipate that the number of potential breaches will be very low. In 2019/2020, in Scotland, there were only two convictions for the breach of English and Welsh Sexual Harm Prevention Orders with prohibitive conditions attached.

Public protection is paramount in such changes to the estate and community consultation was undertaken with risk mitigation around physical security concerns put in place.

MULTI-AGENCY PUBLIC PROTECTION ARRANGEMENTS (MAPPA)

- A separate police entrance/exit and reception have been factored into the building refurbishment.
- Police Scotland engaged with the community on this move. The local division carried out a public service survey and the issue of multi-agency occupancy was discussed at a number of Council meetings during the planning process.
- This co-location is in line with the Police Scotland Estates Strategy which was published in 2019. The Scottish Police Authority and Police Scotland are committed to working closely with partner agencies to deliver efficiencies and best value.
- Estate co-location is a key plank of this approach which will enable more collaborative working between agencies to deliver more joined up services to people and communities.

We are committed to public protection and ensuring there are robust processes in place to keep our communities safe.

- Multi-Agency Public Protection Arrangements (MAPPA) provide a robust statutory framework to manage the risk posed by individuals convicted of sexual offences and other categories of serious offenders.
- MAPPA arrangements provide a number of safeguards, including increased police monitoring, special provision for victim protection and appropriate accommodation.
- In addition, we have taken robust action to tackle sexual offending including improving support for and encouraging more victims of recent and historical cases to come forward.
- Reoffending rates among individuals convicted of sexual offending remain lower than all the main categories of crimes reported in the Reconviction Rates in Scotland National Statistics.

COVID RECOVERY CONSULTATION: JUSTICE SYSTEM REFORMS

ISSUE 17 August : Launch of the Scottish Government's consultation paper "Covid Recovery: A consultation on public services, justice system and other reforms" which focuses on reviewing the legislative powers that have supported the Government's response to Covid and invites views on specific legislative proposals that have the potential to support COVID recovery. This includes proposals to respond to the impact of COVID in the justice system specifically where backlogs have unavoidably built up.

Top Lines

- The Scottish Government's highest priority is to continue to lead Scotland safely through and out of the Covid pandemic and to re-open the country as quickly and safely as possible.
- We therefore now have a real opportunity to achieve a fairer and more equal post-Covid Scotland, where no one is left behind.
- As one of the steps to harness lessons from the Covid pandemic, the Scottish Government is committed to reviewing the impact of Covid on the Scottish statute book.
- The consultation proposes making permanent, or to retain for an extended period, a range of justice related measures from the emergency Coronavirus Acts that have evidentially been found beneficial as measures during the COVID pandemic.
- The Government wants to remove measures no longer needed in order to respond to the pandemic whilst keeping those where there is demonstrable benefit to the people of Scotland.
- The consultation includes proposals to respond to the impact of Covid in the justice system specifically, where backlogs have unavoidably built up.
- Our current view is that to not retain on a longer term basis key elements of the temporary primary legislation, as it impacts on the criminal justice system, would seriously undermine the progress and ultimate achievement of this ambition.
- I would encourage anyone with an interest in ensuring that our justice system can continue to operate and progress its innovative and positive response to the impact of the pandemic, and address the backlog in caseload, to respond constructively to the consultation.

COVID RECOVERY CONSULTATION: JUSTICE SYSTEM REFORMS

Why do we need to extend the justice provisions for a further period of time if we are emerging from the constraints of the pandemic?

- On 10 June 2021, the Scottish Parliament debated the Scottish Government's ambition to achieve a faster, fairer, and more effective Justice system for the people of Scotland, building on the progressive Recover, Renew and Transform (RRT) programme in response to the Covid pandemic.
- The programme aims to recover essential services and transform how the justice sector operates to ensure a resilient and effective system for now and for the future.
- The ability to continue the recovery of our Justice system from Covid will be potentially dependent on retaining some or all of the justice provisions for a further period of time. That could encompass for example the retention of fully virtual summary trials and virtual custody courts.
- Recovery is a long term goal. It requires to be managed and underpinned by a strong legislative basis
- This work has progressed under the common goal of recovering a viable justice system which is able to respond flexibly to meet the public health challenges of Covid, and deliver a more effective and efficient justice system.

How is this interlinked to current plans to address the backlog?

- Based on current modelling, it is currently envisaged that the backlog of solemn trials will be cleared in 2025, with the summary trial backlog expected to be cleared by 2024; the consequences of this backlog for sentences involving community justice services will not begin to reduce until 2027.
- That assessment is based on a number of assumptions, not least that the existing court system has returned to pre-pandemic capacity by March 2022 and service delivery organisations being able to recruit staff for the additional courts to allow them to start in September 2021.
- This is of course by no means certain and should be looked at in cautionary terms.
- Statistics published by SCTS on 17 August for example already highlight that Petitions, which provide a useful indicator of future solemn business, are 21% higher than the average monthly pre-COVID level.
- That being said, the use of digital technology to allow procedural steps to be taken electronically and virtual courts to be convened will potentially facilitate and enhance the ability of the courts to deal with the backlog.
- Continuing for a longer period, the provisions which impact on community sentencing will also be critical in allowing the backlog of community sentences to be progressed quickly and effectively.

COVID RECOVERY CONSULTATION: JUSTICE SYSTEM REFORMS

- Not retaining on a longer term basis key elements of the temporary primary legislation, as it impacts on the criminal justice system, would seriously undermine the progress and ultimate achievement of this ambition.

How will you ensure that the concerns of victims, witnesses and the accused are considered equally alongside operational priorities?

- That is an important aspect of the consultation process and why we provided a detailed rationale for considering extended justice system provisions.
- Continuation of many of these provisions would lend themselves well to a sustained progressive response to the pandemic which embraces the opportunity that technology provides whilst safeguarding the key principles of our justice system for users.
- Operational decisions will always be considered alongside the impact on users, with appropriate analysis and evaluation.

COVID RECOVERY CONSULTATION: JUSTICE SYSTEM REFORMS

At a glance – Responding to the impact of Covid in the justice system chapter (Longer Extension)

- **Courts and tribunals: conduct of business by electronic means**

Provisions allow documents to be signed and transmitted electronically in courts and tribunals

The use of written submissions, the digital transmission of documents and the use of electronic signatures have enabled swift process changes that have enabled court services to operate more efficiently.

- **Courts and tribunals: virtual attendance**

Provisions allowing people to attend a court or a tribunal by electronic means (for example, by live video link)

These provisions have been utilised to good example, most particularly through the remote jury model, and have enabled the justice sector to respond to wider challenges out with their control in order for business to continue and adapt. These provisions have also enabled a systemic response to the impact of public health restrictions. The systemic response often represented improvements previously identified as features of a modern criminal justice system and something that should be retained in the immediate term.

- **Criminal justice: early release of prisoners**

Provisions allowing by regulations, that a person who falls within a class of persons specified in the regulations is to be released from prison earlier than their scheduled release date.

In order to reduce pressure on the prison system, and help prison management to maintain safe and effective operations under these capacity and staffing challenges, the First Scottish Act gave Scottish Ministers powers to release a limited number of prisoners earlier than their scheduled release date. The specific criteria identifying which prisoners were to be released early had to be set out in regulations, which were to be approved by the Scottish Parliament. This power was only to be used when it was necessary and proportionate to do so, to deal with problems arising from Covid.

COVID RECOVERY CONSULTATION: JUSTICE SYSTEM REFORMS

- **Criminal justice: expiry of undertaking**

During the Covid pandemic people have been unable to attend court in accordance with their undertaking due to public health guidance or infection. Without action, in this situation there is a risk that protective conditions attached to undertakings will expire in an increasing number of cases, raising safety concerns and an increased risk for the public, with particular risks associated with domestic abuse cases.

These provisions addressed this risk by providing the court with the power to prevent the expiry of an undertaking given under section 25(2)(a) of the Criminal Justice (Scotland) Act 2016 and any conditions attached to it by changing the time the person is due to appear at court where certain conditions are met.. The need to self-isolate because of possible infection with Covid (or the continued existence of other Covid related reasons which prevent people from attending court) may continue for some time to come. These provisions ensure that in any case where a person is unable to attend court for a Covid-related reason, the court has a power to ensure that any conditions associated with the undertakings on which they were released can continue to have effect until they are able to appear in court.

- **Criminal justice: fiscal fines**

These provisions increased the maximum level of a fiscal fine from £300 to £500 and introduced a new scale of fixed penalties to give practical effect to this measure, enabling a wider range of cases to be dealt with by fiscal fine, without the need for court procedure and associated appearance at court.

- **Criminal justice: national court for cases beginning with an appearance from custody**

Provision for Scotland-wide jurisdiction for sheriffs dealing with first appearances from police custody and any continuation of the case up until a not guilty plea is tendered (or full committal in petition proceedings).

- **Criminal justice: time limits**

Provisions suspend certain time limits contained in the Criminal Procedure (Scotland) Act 1995 with the effect of increasing the max time period that an accused person can be held on remand prior to trial in both solemn and summary cases as well as the max period prior to trial where the accused is not in custody and the maximum period between the alleged commission of an offence and the trial for certain summary-only offences.

COVID RECOVERY CONSULTATION: JUSTICE SYSTEM REFORMS

Provisions dis-apply certain time limits on the length of an adjournment, such as on the power of the court to adjourn a summary case at first calling, the power to remand an accused for inquiry into their physical or mental condition where the accused has committed an offence punishable with imprisonment, and the power to adjourn a hearing and remand an offender for inquiry in respect of their apparent failure to comply with a requirement of a Community Payback Order, Drug Testing Treatment Order or restriction of liberty order.

The consultation explores a range of issues relating to the time limit extensions and seeks views on the extent to which extension of time limits should or should not continue beyond March 2022 – including whether a different approach should be taken to different time limits.

- **Proceeds of crime.**

Provisions provide that, for the purposes of section 99(4) of the Proceeds of Crime Act 2002 “exceptional circumstances” includes the effect (whether direct or indirect) of coronavirus on the proceedings .

Provisions enable an accused to make application to the court for a further extension of the time to pay a confiscation order where the court accepts that an accused’s inability to pay has been affected (whether directly or indirectly) as a result of coronavirus, and further provides that the payment of interest on the outstanding amount as set out at section 117 of the 2002 Act is dis-applied where an extension under section 116A has been granted.

Supportive Quotes:

Ken Dalling, President of the Law Society of Scotland, said: “We welcome this consultation, which will give the Law Society as well as other interested organisations and individuals the opportunity to consider the impact of the policy changes brought in to respond to the pandemic. As public health restrictions are lifting it is important to examine exactly what is in place and to consider where there are longer term benefits in continuing as we are, where changes are no longer needed, and where there should be additional measures to help support this next phase of recovery. The Law Society looks forward to considering and responding to the consultation in detail in the coming weeks.’

RANGERS INQUIRY

ISSUE: The action raised by Mr Charles Green has settled for £6.39 million.

On 11 August 2021, the Times reported that Duff & Phelps were seeking £120 million for reputational damage. This case remains live.

Compensation for Mr David Whitehouse and Mr Paul Clark has been paid. Three other cases remain live before the courts. COPFS advise that no comments should be made on the specifics of any case given on-going live proceedings.

In a Parliamentary debate in February, SG committed to a “process of inquiry” into events once all live proceedings are complete. Exchanges have been on the form of inquiry and if it should be judge-led, and by a judge from outwith Scotland.

The Lord Advocate has recused herself and Solicitor General for Scotland is issuing instructions on these matters.

The Solicitor General for Scotland is issuing instructions in relation to these cases

- On 16 August 2021 the Sun reported comments attributed to MSP Russell Findlay in which it said that the Solicitor General is conflicted in relation to these matters. The Solicitor General is not conflicted, her knowledge of these cases is an asset.

The previous Lord Advocate has apologised, acknowledging certain individuals should not have been prosecuted

- Proceedings are ongoing in some of the cases however and it would be inappropriate to comment further on any specifics in respect of these cases.

The Scottish Government is committed to a process of inquiry once all legal proceedings are at an end

- In February Parliament debated these issues and voted in favour of a judge-led inquiry.
- During that debate the previous Lord Advocate and the then Minister for Parliamentary Business gave a public commitment that a process of inquiry would be held into the events surrounding these prosecutions.
- The exact form of inquiry will be determined at the point once all legal proceedings are concluded.

The exact form of inquiry is best determined once all legal proceedings are concluded

- There are a number of considerations as to whether to establish an inquiry under the Inquiries Act 2005.

RANGERS INQUIRY

- Ministers must consider whether the circumstances of the matter in question justify the use of 2005 Act powers, the considerable expense associated with such an inquiry, and its likely duration.
- Non-statutory inquiries, or other forms of review or investigation, may be more proportionate and report more quickly.
- Such decisions will be taken in light of all the available information once legal proceedings are complete.
- It is also important to be clear that it is never the purpose of a public inquiry to determine civil or criminal liability.

Funding to cover the necessary settlements will not affect delivery of justice

- The settlement of these cases will not have to be met from the COPFS resource allocation.
- The overall budget and emerging underspend are managed across the Scottish Government and, as happens every year, any overall funding changes required to support expenditure are confirmed as part of budget revisions.

Police Scotland have made allowance for settlements affecting them

- In relation to these matters, Police Scotland agreed settlements with Mr Clark and Mr Whitehouse in November 2020.
- In evidence to the Public Audit and Post-Legislative Committee on 11 February 2021, the Chief Constable confirmed that settlements were agreed with Mr Clark's and Mr Whitehouse's representatives.
- These were within the limit of the Chief Constable's delegated financial authority in terms of litigation.
- Given this position, I can confirm that the Scottish Government has not received any requests for approval of legal settlements.
- These payments have been made from the SPA resource budget.
- No additional funding has been provided to the SPA for the purpose of these payments.
- On 4 December 2020 a sum of £150,000 was paid to lawyers representing Mr Whitehouse in agreed full resolution of his civil action.
- This sum comprised £75,000 in damages and £75,000 as a contribution to Mr Whitehouse's most recent legal expenses.
- The Chief Constable also confirmed separate payment of Mr Whitehouse's previous legal expenses totalling approximately £160,000.
- The Chief Constable gave his commitment that the Police Service of Scotland will contribute to and co-operate fully with any inquiry that arises.

JUDICIAL REGISTER OF INTERESTS

ISSUE:

- SNP manifesto commitment to create a register of interests for members of the judiciary.
- Scottish Government publicly confirmed this policy will be taken forward in answer to a PQ in June.
- Daily Record article on Monday 14 June highlighted that the judiciary are strongly opposed to a register.
- Since 2012 there has been a petition at the Scottish Parliament for a register.
- The Justice Committee kept the petition open for their successor committee to 'hear views, and perhaps explore a little why the Lord President is opposed to the creation of such a register'.
- The Citizen Participation and Public Petitions Committee has referred it to the Criminal Justice Committee for this session.
- The current and previous Lord Presidents have expressed strong views to the Committees against a register of interests, citing other safeguards in place, potential detrimental effect on recruitment to the judiciary and risk to members of the judiciary.
- A register of interests for the judiciary has been resisted by Scottish Ministers previously. Most recently in a letter from the Cabinet Secretary for Justice to the Justice Committee in February 2020.
- There are different types of JRIs that have been proposed by proponents and could be introduced:
 - A register of financial interests; and/or
 - A register of extra-judicial interests (which could include relationships, membership of organisations, gifts and hospitality and commercial interests).
- Introduction of a register will require careful consideration. New Zealand abandoned the introduction of such a register following parliamentary evidence sessions.

Top Lines

- It was a SNP manifesto commitment to introduce a register of interests for members of the judiciary to improve transparency and trust in the justice system.
- The Scottish Government will now begin work to engage with stakeholders to consider how best to bring forward this justice reform.

We recognise the need to engage with the senior judiciary and other relevant interests on this matter

- The Scottish Government is aware that the Lord President has said he does not consider a register to be necessary, as did Lord Gill when he was Lord President.
- We will engage with the Lord President and the judiciary as part of a thorough process to introduce the register and will listen to any concerns raised and take these into consideration.

JUDICIAL REGISTER OF INTERESTS

- The Scottish Government also recognises that there is support for a register from other areas. A judicial register of interests has been under consideration in the Scottish Parliament for a number of years due a petition calling for one.
- After 5 years of consideration the Public Petitions Committee reached the conclusion that a register should be introduced and referred it to the Justice Committee in 2018.
- The Justice Committee kept the petition open in March 2021 as, having considered the evidence before it already, members considered further evidence was needed.

It is essential that necessary preparation is undertaken

- The Scottish Government will carry out a thorough policy development process before introduction of a register of judicial interests and will engage with stakeholders.
- This will involve determining whether a register will include financial interests such as share-holdings and/or extra-judicial interests such as membership of organisations and relationships.
- Work is at an early stage and until further developed I am unable to say what interests a judicial register would cover and whether this would be a statutory register.

JUDICIAL DIVERSITY

TOP LINES

- The Judicial Appointments Board for Scotland (JABS) is responsible for making recommendations for appointment to judicial office based on merit and has a legal duty to encourage diversity in applications.
- The Scottish Government fully support JABS in its commitment to contribute to the creation of a more diverse judiciary in Scotland and we're also working collaboratively with the legal profession to reduce barriers and promote diversity in the profession, which will ultimately broaden the diversity of the pool of applicants to the judiciary.
- The Scottish Government is considering whether legislative changes would assist in improving the diversity of the judiciary.

Background

JABS is a advisory non departmental public body, established under the Judiciary and Courts (Scotland) Act 2008. It is responsible for making recommendations to Scottish Ministers for appointment to judicial office based on merit. JABS is an independent body.

Scottish Government's role

The Scottish Government has a sponsorship role for JABS and fully supports JABS in its commitment, as set out in its Strategic Plan, to contribute to the creation of a more diverse judiciary in Scotland - which 'reflects the growing diversity in our communities and which helps to build public trust and confidence.'

We are considering whether there are statutory changes that could assist increasing diversity in the judiciary, such as changing eligibility criteria. This work is at an early stage of policy consideration and will require further engagement with the Lord President to seek his views.

Diversity and appointments to the judiciary

JABS have a statutory duty to encourage diversity in applications, whilst recommendations for judicial appointment must be solely on merit.

A further constraint on applications for judicial appointment is the statutory requirement that individuals must have been legally qualified as a solicitor or advocate consistently throughout the 10 year period preceding their appointment. There is currently no court judiciary under the age of 40, with the vast majority over the age of 50. In considering the ethnic diversity of the judiciary, consideration of the legal profession is relevant as this is the sole route into the judiciary in Scotland.

JUDICIAL DIVERSITY

Diversity statistical information

Gender diversity statistics are available for the court and tribunal judiciary. For the court judiciary these show that in January 2021 25.2% of the judiciary were female (this includes salaried and fee paid judiciary). This is the same gender split as at September 2016 despite a considerable number of judicial appointments in the intervening period. Until the 2020 Judicial Attitudes Survey was published in February this year, there was no statistical information on the ethnicity for the Scottish court judiciary. 79% of salaried judiciary responded to the survey, 2% identified as non-white compared to 4% of the Scottish population.

Diversity Steering Group (DSG)

Lady Wise currently chairs the DSG which is a collaborative group set up under the auspices of JABS in June 2010. The Group has in mind JABS's obligations under section 14 of the 2008 Act. Representation on the group includes the Judiciary, Judicial Office, the Faculty of Advocates, the Law Society for Scotland and JABS. The Scottish Government currently has observer status. The DSG's aims include:

- identification of ways in which increased diversity of applicants applying for judicial office can be achieved;
- advice on removal of perceived obstacles to diversity;
- consideration of best practice in other jurisdictions; and
- discussion of areas in which there could be a common programme of action.

JABS Diversity Strategy

JABS published its latest 5 Year Strategic Plan in October 2018 which sets out how they intend to contribute to the creation of a more diverse judiciary in Scotland. It identifies the following priorities for JABS:

- To understand precisely how diverse Scotland's judiciary currently is.
- To develop and implement a communications plan that ensures JABS get the right messages to the right people at the right time so that they provide the appropriate level of information and attract a broad range of applicants.
- To collaborate with others in order to encourage judicial diversity within the wider social environment.
- To ensure that its appointment processes help and not hinder the pursuit of diversity.
- To learn lessons from the approach to promoting diversity in other legal systems.
- To provide strong, active and strategic leadership on diversity.

JUDICIAL DIVERSITY

JABS updated its diversity strategy in March 2019 to reflect new activity that is planned. This activity will:

- Develop and implement an Engagement Strategy that includes diversity.
- Make sure Board Members and staff understand what diversity means for JABS.
- Work with external partners to attract diverse applicants.
- Ensure JABS online application process is accessible for all candidates with all reasonable adjustments provided on request.
- Evaluate how best to support underrepresented groups who want to apply to join the judiciary to remove any perceived barriers to entry.

POLICE SCOTLAND - CROSS JUSTICE WORKING GROUPS ON: RACE AND WORKFORCE, DATA AND EVIDENCE

ISSUE – The issue of race equality has long been recognised as essential to ensuring the effective and fair operation of Scotland’s justice system. Events in the UK and internationally have brought this into even sharper focus. Concerns raised by the Black Lives Matter movement, as well as the differential impacts of COVID-19 on people from minority ethnic backgrounds, continue to evidence the need for an increased focus on issues of race to understand and improve the experience of minority ethnic individuals in Scotland, in relation to the justice system in 2020.

Top Lines

- We value Scotland’s diverse minority ethnic communities, the contribution they make, and the important role they play in enriching Scotland socially, culturally, and economically.
- Minority ethnic communities play a vital role in our communities and should also be represented across all workforces to create a more diverse and inclusive workforce which will bring benefits to the communities across Scotland.
- Scotland’s Justice organisations aspire to have a workforce which is representative of the people and communities of Scotland that they serve.
- It is vital that we have the evidence to understand the experience of different people and communities in Scotland and their experience of justice in Scotland in order to ensure that our justice system is fair for all.
- Initiated under the Justice Board, two Cross Justice System Working Groups have been established in collaboration with Justice organisations; one with a focus on race and workforce, the other with a focus on race, data and evidence.

Cross Justice Working Group on Race and Workforce

- The group on race and workforce recognises that the issue of race inequality is essential to ensuring the effective and fair operation of Scotland’s justice system.
- It aims to provide a comprehensive picture across the Justice system of the current activity to address recruitment, retention, promotion and leadership, a strategic and cohesive approach to tackling barriers to employment, and to support cross system learning.
- The Group will publish its progress report this autumn.

POLICE SCOTLAND - CROSS JUSTICE WORKING GROUPS ON: RACE AND WORKFORCE, DATA AND EVIDENCE

Cross Justice Working Group on Data and Evidence

- The group on data and evidence's purpose is to improve both the collection and reporting of race data and evidence on people's interactions with the justice system.
- The aim is to develop a comprehensive and sustainable evidence strategy that not only seeks to identify race inequality in policing, court and prison, and also contributes to the evidence on the systemic issues that perpetually see minority ethnic citizens being held back in all areas of life.
- The work of both of these groups chimes with the vision laid out in the introduction to the Race Equality Framework for Scotland, published in 2016.

Specifically;

'Our vision for a fairer Scotland is that by 2030 Scotland is a place where people are healthier, happier and treated with respect and where opportunities, wealth and power are spread more equally. The Race Equality Framework aims to ensure that this vision is achieved equally for people from all ethnicities, helping to build a Scotland where we all share a common sense of purpose and belonging.'

POLICE SCOTLAND - RACE EMPLOYMENT

ISSUE: 11 August - Green Park, a leadership, recruitment and consultancy service, published a report based on analysis of the FTSE 100 senior leadership. It found that although boardroom diversity had improved, white males continued to dominate direct routes to leadership whilst women and ethnic minorities were sidelined into roles traditionally less likely to lead to top executive leadership positions.

ISSUE: 13 June - A joint report from the Trades Union Congress and the equality organisation Race on the Agenda (Rota) warned that zero-hours contracts were trapping minority ethnic women in low pay and insecure work. The report shows that the highest proportions of those on zero-hour contracts in the last three months of 2020 were found among minority ethnic women, at 4.5% compared to 3.2% of white women and 2.5% of white men. (The Guardian)

ISSUE: 24 May - The Poverty and Inequality Commission have published a report on intersectionality in policy making and the need for more data on outcomes, and a more intersectional approach in key areas for tackling poverty such as Fair Work.

Top Lines

- We want to improve employment outcomes for all minority ethnic groups that face barriers and challenges because of their race or ethnicity.
- We recognise the importance of increasing employment rates for specific groups who are disadvantaged in the labour market, including minority ethnic communities.
- The pandemic has further exacerbated this disadvantage and widened the social and economic inequalities experienced by these communities.
- We believe that individuals from different racial or ethnic backgrounds enrich Scotland socially, culturally and economically.
- The Race Equality Framework for Scotland sets out how we will progress this over the period from 2016 to 2030 in partnership with its agencies and other key stakeholders.
- Our race equality employment actions aim to address the structural and institutional barriers that minority ethnic workers face. These actions will be taken forward within the context of our Fair Work policy.
- In March this year we held a public sector leadership summit on race equality in employment to address and take forward the recommendations by the Equalities and Human Rights Committee Report on race equality, employment and skills.
- The summit unveiled a joint commitment which pledges Scottish Government and public sector leaders to take forward the Committee's recommendations and embed them in the strategic objectives of their organisation and in their performance objectives.
- We will continue to support and encourage public authorities to honour the commitment to tackle race inequality by hosting a series of

POLICE SCOTLAND - RACE EMPLOYMENT

engagement sessions. These sessions will inform the national conference we will hold at the end of the year where authorities will provide an update on their progress.

- We published a Minority Ethnic Recruitment Toolkit to support employers in their recruitment of people from minority ethnic backgrounds.
- As the second phase of this work, we will be developing guidance on how employers can use positive action to address under-representation, retention and progression of staff in their workforce.
- These actions will be taken forward within the context of our Fair Work policy and our commitment to make Scotland a leading Fair Work Nation by 2025.
- The Scottish Government strongly encourages all employers to apply Fair Work principles.
- Central to our Fair Work approach is the expectation that employers, trades unions and workers should work together to ensure workers are treated fairly and that concerns from employees are taken seriously.
- We recognise that refugees are especially vulnerable and face additional barriers to employment.
- We are working with stakeholders to develop a Fair Work position on race equality to articulate a clear message on race equality in Fair Work and we will ensure this message is embedded in engagement and communication of Fair Work practice to employers.

SHEKU BAYOH PUBLIC INQUIRY

Top Lines

- Our thoughts remain with the family and friends of Mr Bayoh.
- The family of Mr Bayoh have shown remarkable dignity and perseverance during their wait for an Inquiry.
- The setting up of the Public Inquiry hopefully gives them comfort that the incident surrounding his death will be examined in a public and transparent manner.
- As the Public Inquiry is independent of Ministers, it is for the Chair to direct how the Inquiry will carry out its duties.
- This is a complex and wide-ranging Inquiry, one that needs to be properly resourced and supported, and we will ensure that it is supported to do its important work effectively.

We fully appreciate that the wait for answers will have weighed heavily on all those involved

- It would not have been possible to move to a Public Inquiry whilst the Crown Office investigation was underway and a decision on prosecution still pending.
- In January 2020 Lord Bracadale was appointed as Chair and in May 2020 the Terms of Reference were announced following engagement with a wide range of stakeholders.
- On 26 November 2020 the Cabinet Secretary for Justice announced the setting up date for the Inquiry and the appointment of two assessors – Raju Bhatt and Michael Fuller QPM to support Lord Bracadale.
- On 30 November 2020 the Public Inquiry was officially passed over to Lord Bracadale to begin work.
- On 30 April 2021 Lord Bracadale outlined the progress made by the Inquiry in a video update and said that work is moving forward with focus and determination.
- Lord Bracadale confirmed that public hearings will be held in Edinburgh, although it is not yet possible to say when they will take place.

SHEKU BAYOH PUBLIC INQUIRY

The Inquiry will examine the role (if any) that Mr Bayoh's race played in his death

- The former Cabinet Secretary for Justice met with a range of interested parties to discuss the Inquiry's remit.
- For any independent scrutiny of this case to be rigorous and credible, it must address the question of whether Mr Bayoh's race played a part in his death.
- That is not prejudging the answer to that question; that will be for the Inquiry which is independent of Ministers.
- Ultimately, it will be for Lord Bracadale to determine how the Inquiry's terms of reference are interpreted and delivered.
- Lord Bracadale has designated the Coalition for Racial Equality and Rights as a core participant in the Inquiry.

Any individual or organisation can apply for Core Participant status after the setting up date

- Under the Inquiries (Scotland) Rules 2007, Core Participants are likely to include those who have:
 - played a significant role in matters to which the Inquiry relates;
 - have a significant interest in an important aspect of those matters; or
 - may be subject to significant or explicit criticism.
- The Chair can also call expert witnesses to give opinion on matters which call for expert skill and knowledge, and assist the Inquiry in delivering its Terms of Reference.
- Whether a person is called to appear before an Inquiry as an expert witness or is designated as a "Core Participant" is entirely a matter for the Chair.
- Core participants for the Inquiry include the family of Mr Bayoh including his two sons; Police Scotland Chief Constable Iain Livingstone and a number of officers and retired officers from the force; the Lord Advocate; the Police Investigations and Review Commissioner; the Scottish Police Federation; and Coalition for Racial Equality and Rights.

POLICE SCOTLAND – COP26 SAFETY AND SECURITY

Top Lines

- COP26 will be one of the most significant policing and security operations to take place in the UK.
- One of the four key objectives for the Scottish Government with regards to COP26 is to deliver a safe, secure and successful event.
- This will be underpinned by a coordinated security plan that brings together the key elements of **policing**, UN security and private security.
- COP26 will take place in a period when COVID-19 remains a global public health issue.
- The pandemic continues to be closely monitored by all relevant agencies and, while it is too early to predict the course of the pandemic in October/November, the Scottish Government will be closely involved in decisions around the planning.
- The detail of Covid mitigations at the event are evolving but will be based around the principles of vaccination and compliance with existing Government guidance.
- It is essential that Police Scotland and others are fully engaged in Covid planning to allow preparations and exercising to proceed with confidence.
- The recent HMICS review on Police Scotland's preparations for the event offers a high degree of assurance with a single recommendation made. HMICS inspectors continue to evaluate progress.

Policing

- The policing operation is significant and will require large deployments of mutual aid officers from England and Wales, given the scale of protest expected.
- The handling of planning for COP26 is an operational matter for the Chief Constable, however Police Scotland continue to work closely with the Scottish Government as plans for the conference COP26 develop.
- This includes regular meetings between SG and senior officers, which provide an opportunity to receive updates on developments.
- I joined the First Minister and other members of the cabinet at a briefing from the Chief Constable and his executive team last month which was an opportunity to discuss COP26 planning and governance measures.

Activism

- Thousands of activists are expected to attend COP26, meaning that there is a risk of large-scale public gatherings and marches before and during the event which may disrupt preparations for, or delivery of COP26.
- Police Scotland are engaging with a wide range of activist groups in advance of the Conference in order to facilitate and support their right to

POLICE SCOTLAND - COP26 SAFETY AND SECURITY

peaceful protest. SG Safety and Security officials are also working with the COP26 team and Police Scotland to develop a collaborative approach to the risk tolerance and management of protest-related issues.

- A workshop on risk tolerance was attended by Police Scotland, Home Office, Cabinet Office and SG and it was indicated there that Police Scotland/Cabinet Office planning on risk mitigation and protestor segmentation was broadly agreeable.

Business as Usual (BAU)

- The impact of COP26 on the day-to-day business of delivery partners will be a particular focus of planning as the event approaches, including additional service delivery capability demands and any required contingency planning to ensure essential services continue during the event.
- The recent HMICS review into Police Scotland's planning for the event offers a high degree of assurance around the service's ability to balance business as usual policing with delivering a safe and secure COP26.
- The Scottish Government's Safety and Resilience Board, attended by key partners involved in the planning for COP26 (including Glasgow City Council) will meet regularly in the lead up to the event.
- The main role for the Board during this time will be to act as a platform for situational awareness and will focus in particular on the protection of BAU leading up to and during the event.
- Lessons learned from recent high profile events including G7 and Euro 2020 will help to assist partners in the final stages of planning for the event ensure that BAU is maintained.

POLICE SCOTLAND - 101 CALL HANDLING DELAYS

We continue to be hugely grateful to Police Scotland's staff for keeping their call handling service functioning and efficient during this difficult period.

- Police Scotland receives around 2 million non-emergency 101 calls each year.
- In the financial year 2020/21, the average time to answer an emergency 999 call was 8 seconds, and a non-emergency 101 call was 2 minutes 30 seconds.
- When calling 101, callers are advised to end the call and dial 999 if they are experiencing an emergency, or the incident is escalating.
- When a caller is on a 101 call, the messaging also advises an online form is available for non-emergency enquiries via our website, and these are submitted directly to our Service Centre for triage.
- Police Scotland is committed to keeping its staff safe and have been operating within Scottish Government restrictions around physical distancing. Staff have come into work, during a very difficult time, to answer calls from the public.
- Police Scotland, as every other emergency service, has been affected by Covid. Staff still have to physically distance within offices and staffing levels are affected if people have to self-isolate. Staff within our contact centres have worked throughout the pandemic to answer calls from members of the public – many of which are seeking advice and guidance on Covid related restrictions.
- The SPA closely monitors Police Scotland's approach, demand and response times to calls received from the public through 999 and 101. This is undertaken through its board, committee and oversight structures, and weekly reports on 101 and 999 call volumes are made publicly available.
- The Authority's Policing Performance Committee will consider 101 call handling performance in detail at its meeting in September.
- Despite constraints on Scotland's public services through a decade of UK austerity, policing services have been maintained and improved, including an increase in the policing budget by £75.5 million in 2021-22.
- This means that the Scottish Government has invested over £10 billion in policing since the creation of Police Scotland in 2013.

POLICE SCOTLAND - FUNDING

Manifesto commitment on police funding: We will protect the police resource budget in real terms for the entirety of the next parliament.

Despite constraints on Scotland's public services through a decade of UK austerity, policing services have been maintained and improved.

- We have increased police funding year-on-year since 2016-17, investing more than £10bn in policing since the creation of Police Scotland in 2013.
- We will protect the police resource budget in real terms throughout the lifetime of this new Parliament, as we did during the last Parliament.
- For 2021-22, we have increased the policing budget by £75.5m to over £1.3bn, including £15m one-off funding specifically to mitigate the impact of COVID-19 on the police budget.

Our total budget for policing in 2021-22 is over £1.3 billion.

- We increased the SPA's resource budget by 5.2% (or £60m) for 2021-22.
- This has eliminated Police Scotland's structural deficit, enabling the SPA to set a balanced budget for 2021-22.
- The funding has also enabled officer numbers – currently higher than at any time during the previous administration – to be maintained.
- We continue to invest in both Scotland's police staff and officers, supporting the delivery of the Joint Policing Strategy to meet changing demands and strengthen support to our communities.
- The Chief Constable welcomed the 2021-22 budget (28 Jan), saying, **QUOTE** *"I welcome the announcement to eliminate the structural deficit in policing's funding."*
- Calum Steele of the Scottish Police Federation also welcomed the funding (28 Jan), saying: **QUOTE** *"An additional £60m for policing, wiping out the structural deficit is good news indeed. A mature political decision"*

POLICE SCOTLAND - FUNDING

Despite Westminster cuts to the SG capital budget in their Spending Review, we have maintained the police capital budget.

- We have more than doubled the SPA capital budget since 2017-18, supporting continued investment in police assets – estate, fleet, specialist equipment and ICT.
- It is for the SPA and the Chief Constable to prioritise the allocation of this funding to meet their priorities and to deliver their ICT, estate and fleet strategies.
- We have maintained the police core capital budget at £45 million in 2021-22.
- We have also provided an additional one-off £0.5m to invest in body worn video for specialist officers.
- We awarded the SPA a further £10m capital in March 2021 to invest in modernising the police fleet, including 235 new ultra-low emission vehicles allowing Police Scotland to move faster on plans to decarbonise its fleet.
- This further supports Police Scotland's vision of having the UK's first ultra-low emission blue light fleet by 2030.
- This additional capital support builds on the £12 million made available to Police Scotland in 2019-20 to introduce mobile working to 10,000 frontline officers.

We have continued reform funding for a further year to support police transformation.

- This year we are providing £29.6m reform funding to the SPA, supporting a range of transformation projects including work to modernise ICT infrastructure, enhance mobile technology for officers and to support staff pay, reward and harmonisation.
- This investment supports the delivery of the Joint Policing Strategy, to meet changing demands, and to strengthen support to communities.

We have a higher number of officers than at any time during the previous administration.

- The total number of officers – 17,289 (as at 30 June 2021) – is an increase of 1,055 police officers (+6.5%) from the position inherited in 2007 (31 March 2007).
- Scotland's officer numbers compare favourably with England and Wales.
- The latest figures show that there were around 32 officers per 10,000 population in Scotland, compared to around 23 officers per 10,000 population in England and Wales as at 31 March 2021.

DAME ELISH ANGIOLINI REVIEW - IMPLEMENTATION

MANIFESTO COMMITMENT: “We will implement the remainder of Dame Elish Angiolini’s review into complaints against the police and introduce a Police Complaints Bill into Parliament.”

BACKGROUND

- The Final Report of the Independent Review of Complaints Handling, Investigations and Misconduct Issues in relation to Policing was published by Dame Elish Angiolini on 11 November 2020.
- The final report includes 81 new recommendations for Police Scotland, SPA, PIRC, COPFS and the Scottish Government.
- This is in addition to 30 recommendations in the preliminary report published in June 2019.
- In June 2018, the then Cabinet Secretary for Justice and Lord Advocate invited Dame Elish Angiolini to conduct an independent review which commenced in September 2018.
- The purpose of the Review was to:
 - consider the current law and practice in relation to complaints handling, investigations and misconduct issues, as set out in relevant primary and secondary legislation
 - assess and report on the effectiveness of the current law and practice; and
 - make recommendations to the Cabinet Secretary for Justice and the Lord Advocate for improvements to ensure the system is fair, transparent, accountable and proportionate, in order to strengthen public confidence in policing in Scotland.

OVERVIEW – MAIN LINES

Dame Elish’s recommendations provide a platform for bold reform of the framework and systems governing this complex landscape.

- We are very grateful to Dame Elish Angiolini for leading the independent review of complaints handling, investigations and misconduct issues in relation to policing in Scotland and delivering two comprehensive and incisive reports
- We acknowledge the findings of the Justice Committee consideration of police complaints as part of its Post Legislative Review of the Police and Fire Reform (Scotland) Act 2012, which shared themes with Dame Elish’s review.

DAME ELISH ANGIOLINI REVIEW - IMPLEMENTATION

- We remain confident that the systems for handling police complaints, investigations of serious incidents and misconduct are fundamentally sound, but recognise there is a clear case to make improvements.
- Together, working with partners, it remains our intention to accept the majority of Dame Elish's recommendations, many as specifically set out, but with options being explored where other routes or mechanisms may achieve the desired outcome.

OVERVIEW – PROGRESS

The Thematic Report published in June set out the position at that point regarding the overall 111 recommendations:

- **19 recommendations fully completed**, with a further **4 awaiting sign off**;
- **35 recommendations requiring legislation** (we will bring forward a public consultation on those proposals in due course);
- of the remainder, **48 recommendations in progress** and a number of these expected to be submitted for sign off and included as complete in the next Thematic Progress Report; and
- **5 recommendations** from the Preliminary Report overtaken by the Final Report recommendations.

Since June, other recommendations may well have been completed. We look forward to receiving further updates from partners and publishing the next Thematic Progress Report later this year.

COMPLAINTS PROCESS – MAIN LINES

We are confident the structures and procedures brought in under the 2012 Act have strengthened the governance, accountability and scrutiny arrangements for policing.

- Five years after the creation of Police Scotland in 2013, the timing was right to explore how the structures and processes of PIRC, the SPA and Police Scotland were working and any improvements needed.
- The Review provided an opportunity to look across the system and identify areas for improvement that will further build the trust and confidence of those involved and of the wider public.

DAME ELISH ANGIOLINI REVIEW - IMPLEMENTATION

PUBLIC CONFIDENCE – MAIN LINES

We greatly value the work of Scotland’s police officers and staff in keeping communities safe, particularly as a vital part of our public health response to the challenges of the pandemic.

- Public confidence is a key part of the Standards of Professional Behaviour and Code of Ethics for Policing in Scotland
- The Scottish Crime and Justice survey published in 2020 found the majority of people who have come into contact with the police in recent years reflect positively on their experience
- A survey by the Scottish Police Authority in February 2021 confirmed that 58% of respondents rated their local police as excellent or good.
- To sustain that confidence, it is essential that when things go wrong, the police are held to account, lessons are learned and improvements made.
- The principle of policing by consent, so central to our justice system, is built on this accountability.
- While public confidence in policing is high, we intend to seize the opportunity to make it even stronger in the field of complaints, investigations and misconduct.

PROGRESS SINCE PRELIMINARY REPORT – MAIN LINES

It’s important to recognise the significant progress each organisation has made since the preliminary report was published in 2019.

- We commend the significant steps taken by Police Scotland, the Scottish Police Authority (SPA), the Police Investigations and Review Commissioner (PIRC) and the Crown Office and Procurator Fiscal Service (COPFS).
- Each of the partner organisations is putting in place important measures which will provide the foundations on which to build progress towards implementation.
- In her Final Report, Dame Elish acknowledges these developments and a “sea change in the relationships”, resulting in an ability to address and resolve issues more effectively than before.
- That can be evidenced by the fact that of the interim report in 2019’s 30 recommendations, approximately 21 have already been implemented, either fully or partly. The remainder have not been implemented because they require legislative change.

DAME ELISH ANGIOLINI REVIEW - IMPLEMENTATION

EQUALITY, DIVERSITY AND INCLUSION – MAIN LINES

We take extremely seriously the concerns raised by both police officers and the public of discriminatory conduct and attitudes within Police Scotland

- Eliminating discrimination is critical to ensuring we have a fair and equal justice system.
- The findings of the Dame Elish Angiolini Review are a stark reminder that we cannot be complacent and those of us in public service, including policing are, quite rightly, held to a high standard.
- Police Scotland is committed to addressing discriminatory attitudes and behaviours and developing service to better reflect the society which they serve.
- As the progress report sets out, Police Scotland has established a Strategic Oversight Board and Independent Review Group to scrutinise delivery of diversity, equality and inclusion workstreams to address Dame Elish's recommendations
- We commend the commitment of partners across the policing landscape to tackling discriminatory conduct, attitudes and cultures; to improving the diversity of our workforces; and enhancing the quality of our data, to better understand and serve the needs of our communities.

GOVERNANCE AND ASSURANCE – MAIN LINES

Given the complexity and breadth of the Review, we have put in place clear governance structures to oversee, direct and report on progress

- The governance framework is designed to provide assurance and accountability to Ministers, who in turn are accountable to the Scottish Parliament and the communities we serve.
- The governance framework consists of 3 groups: Ministerial Group chaired jointly by the Cabinet Secretary for Justice and Veterans and Lord Advocate, Strategic Oversight Group and Practitioner Working Group, with all partners represented on each group.
- In taking forward the work, we are also committed to adopting a collaborative and inclusive approach to engagement with the whole policing community and recognise the key role that staff associations will play.
- We are working with the Scottish Police Consultative Forum (SPCF) to consult staff associations on the issues impacting their members, across the themes and on future proposals for legislative amendments.

DAME ELISH ANGIOLINI REVIEW - IMPLEMENTATION

REPORTING FRAMEWORK – MAIN LINES

We are committed to publishing thematic progress reports outlining progress on a triannual basis, with the first report published on 24 June 2021.

- We recognise the importance of transparency, the need to be open about our plans and provide clear updates on their delivery.
- The aim of the overarching reporting framework is to provide a coherent picture of progress across the areas Dame Elish identified for improvement.
- We are committed to sharing information in a way that is meaningful and accessible to a range of audiences.
- The Scottish Government is committed to publishing reports on implementation, which include updates on specific recommendations to track progress.
- The first progress report was published on 24 June 2021 on the Scottish Government website.
- The second progress report is planned for the end of this calendar year.

RIGHTS & ETHICS – MAIN LINES

We are working with partners to ensure that human rights remains central to the framework and systems for police complaints handling, investigations and misconduct.

- We want to create an inclusive Scotland that protects, respects, promotes and implements internationally recognised human rights.
- The commitment to upholding fundamental human rights is embedded in police training and the oath that is taken by officers - and it is at the core of Police Scotland's professional ethics and values.
- All partners remain committed to ensuring that policing operations respect the human rights of all people and officers, who, in turn, should have their rights respected.
- We will give positive consideration to the recommendation that the Code of Ethics be underpinned in statute, as part of the consultation on proposals for future legislative amendments.

DAME ELISH ANGIOLINI REVIEW - IMPLEMENTATION

JURISDICTION & POWERS – MAIN LINES

We welcome recommendations on the legislative framework and the jurisdiction and powers of its principal agencies, particularly in relation to officers who have resigned or retired

- In a letter to the Justice Committee in January 2020, the then Cabinet Secretary for Justice acknowledged the fundamental importance of clarifying the definition of “person serving with the police” in legislation
- We accept the pressing requirement to address the unforeseen consequences that have arisen and commit to fully exploring the options for clarifying the definition in consultation.
- We are aware the current legislative framework does not provide powers to the PIRC to investigate incidents involving officers from other territorial forces operating in Scotland and are committed to engaging with appropriate colleagues and stakeholders from across the other nations to discuss this. As a short term solution, we have worked well with UK Government to agree a Memorandum of Understanding of how this will be addressed in advance of COP26
- We will work with our counterparts and partner bodies across the four nations to address cross-border jurisdictional issues and assess whether some of their arrangements could be adapted to work well here, accepting the different legislative and policing context in Scotland.

DAME ELISH ANGIOLINI REVIEW - IMPLEMENTATION

ROLE OF PIRC – GOVERNANCE AND ACCOUNTABILITY – MAIN LINES

We have committed to consider the recommendations set out in the report that address PIRC’s current governance and accountability arrangements.

- It is essential that both the public and policing bodies have confidence in a police oversight body such as the PIRC.
- This includes being able to demonstrate its independence from the influence of Scottish Ministers or others, ensuring that appropriate governance and accountability arrangements are in place, and that it is adequately resourced to ensure it can fulfil all statutory duties placed upon it.
- Recommendations suggest a new suite of powers for the PIRC, so it is an opportune time to consider any enhancement to the current arrangements.
- The PIRC have already made progress in taking forward changes that do not require legislation. These include putting their Audit and Accountability Committee on a more formal footing, issuing revised guidance to clarify timescales for the submission of complaints, confirming their performance targets are already published in their recent Annual Report as well as updating their website.

Both the Justice Committee and Dame Elish addressed the accountability of the PIRC.

- Any changes to the current governance and accountability structure would need to be necessary and proportionate.

TRANSPARENCY & ACCESSIBILITY – MAIN LINES

We are committed to working with Police Scotland, the SPA and PIRC to ensure we have a complaints system in place which is fair, accountable, transparent and accessible to everyone.

- As Dame Elish states it should be easy to complain, easy to get a response and easy to learn the lessons.
- We welcome Dame Elish’s recommendations to reduce barriers and improve access to policing and the complaints process for everyone.
- We are pleased to note there is agreement by partners to make improvements to deliver on the intent of all recommendations in this area and plans are in progress to take these forward.

DAME ELISH ANGIOLINI REVIEW - IMPLEMENTATION

CONDUCT & STANDARDS – MAIN LINES

Any allegation of misconduct against a police officer must be taken seriously, investigated thoroughly and dealt with impartially

- Dame Elish's detailed recommendations to improve the handling of misconduct cases are in the interests of greater independence, fairness and transparency.
- These are significant changes, many of which will require legislation. We will engage further with stakeholders before responding more fully.
- We welcome recommendations in relation to improving gross misconduct procedures and recognise that further discussions, consultation and engagement will be required to develop legislative proposals.
- As part of this, there will be extensive engagement with police staff associations, who will provide insight and expertise from the workforce perspective.

MENTAL HEALTH – MAIN LINES

We will continue to work with Health Boards to retain, develop and support Mental Health Assessment Services, as part of a broader approach to helping people with mental health needs or in distress.

- We note Dame Elish's observations regarding NHS accident and emergency facilities and remain committed to improving mental health services in Scotland, as set out in the Mental Health Strategy 2017-2027, assuring delivery through our Mental Health Delivery Board.
- Scotland's Transition and Recovery Plan prioritises modernising pathways into mental health services from primary and unscheduled care services.
- We are working with the Redesign of Urgent Care Programme to improve the integration of physical and mental health within the urgent care setting.
- We are working alongside partners from other sectors, to ensure that support that is easy to access, quick and responsive is available at the earliest possible point.
- This will ensure that people who present with unscheduled care needs find our various systems easy to access and are supported by a clearer referral pathway to the right intervention.
- The intention is to build on the significant progress already made toward providing an unscheduled care response, this will include embedding mental health unscheduled care pathways for adults, children and young people.

DAME ELISH ANGIOLINI REVIEW - IMPLEMENTATION

FINANCIAL IMPLICATIONS – MAIN LINES

We will continue to work with partners on budgets and resourcing required, recognising that timescales will in part be influenced by the investment required to underpin delivery.

- There will be longer term resource and finance implications associated with changes to current roles and responsibilities, jurisdiction and powers that may flow from implementation.
- The Scottish Government's total budget for policing in 2021-22 is over £1.3 billion.
- This includes a £60 million increase in the SPA resource budget which has eliminated the structural deficit thereby delivering a sustainable budget position.
- In addition, the SPA has been allocated a further £15 million, one-off COVID-19 consequentials, to mitigate the impact of COVID-19 on the policing budget in 2021-22.
- This budget supports officers and staff and will ensure that officer numbers can be maintained.
- The Grant in Aid awarded to PIRC for this current financial year is £5.474m, an increase of £778,000 on the amount initially awarded last year. Part of this allocation is to support the implementation of recommendations that do not require legislation to take forward.

COSTS

The estimated final cost of the review is £932,000 which is 3% over budget

- The original estimated cost was £902,000. With the duration of the review being 27 months instead of 24 months this is in line with our expectations.
- This was a complex and wide-ranging review which needed time and resources allocated to scrutinise and appraise the complaints handling framework.

INDEPENDENT ADVISORY GROUP ON EMERGING TECHNOLOGIES (ETIAG)

Manifesto Commitment: We recognise concerns that exist over technologies such as facial recognition. We will build on the recommendations of the Independent Advisory Group on Emerging Technologies and ensure robust scrutiny and oversight is provided at all times.

Top Lines

- On 13 June 2019 the former Cabinet Secretary announced to the Scottish Parliament Justice Sub-Committee on Policing his intention to form an independently-chaired reference group to scope the possible legal and ethical issues arising from emerging technological developments in policing, with a view to advising whether future legislative changes may be required.
- This work will help deliver the ambition set out in the SG digital strategy to support digital transformation by delivering public services that meet the needs of the public.
- In the last parliamentary session, the Justice Sub-Committee on Policing explored issues and raised concerns about the introduction of various new technologies by Police Scotland, including cyber kiosks, facial recognition, body-worn video and remote piloted aircraft systems.
- It was announced on the 10th September 2020 that Dr. Elizabeth Aston, Director of the Scottish Institute for Policing Research and Associate Professor of Criminology at Edinburgh Napier University, agreed to take on the role of Chair.

Facial Recognition

- The decision to use any technology with facial recognition capability is an operational matter for Police Scotland.
- The Scottish Government (SG) has noted the 2020 report by the Justice Sub-Committee on Policing and its concerns around ensuring public engagement on the use of this technology before it is deployed; robust testing of the technology; and justifying its use.
- The SG therefore recognises that assurances are required in order to secure public trust and support for any future use of the technology. We also note that legal and regulatory provisions must be sufficient to ensure accountability and transparency.
- These matters are not solely for the SG, and we stand ready to work with Police Scotland, the Scottish Police Authority and others (including Her Majesty's Inspectorate of Constabulary in Scotland, the new Scottish Biometrics Commissioner and the UK Information Commissioner) to develop an approach to the use of facial recognition technology which is effective, proportionate and ethical.

INDEPENDENT ADVISORY GROUP ON EMERGING TECHNOLOGIES (ETIAG)

BODY-WORN CAMERAS – MAIN LINES

We welcome Police Scotland's on-going work to adapt to changes in society, including the use of technology which can present both challenges and opportunities.

- The issue of body-worn cameras is a policy and operational decision for Police Scotland, acting under the oversight of the SPA.
- However, it is worth noting that on 1 June Police Scotland launched a three-month consultation on the use of body worn cameras following the positive findings from an online survey in February 2021.
- That earlier public survey showed support for the introduction of body worn video, with a majority saying it would make them feel safer and increase trust in police.
- We have provided one off funding of £0.5m in 2021-22 to the SPA, to support the use of body-worn cameras in a limited capacity.
- It is important that the service continues to gather and manage evidence efficiently, appropriately, and in a way which supports victims and witnesses during the investigation process.
- The Scottish Government is supportive of the use of Body Worn Cameras for Police Officers and will work with justice partners to understand its costs and benefits across the whole criminal justice system.

DIGITAL EVIDENCE SHARING CAPABILITY (DESC)

Top Lines

- The Digital Evidence Sharing Capability (DESC) programme will **improve how evidence is accessed across the justice system**, making it easier to share and supporting cases to be resolved more quickly, benefiting victims and witnesses.
- DESC is a collaborative programme led by the Scottish Government in partnership with **Police Scotland, Crown Office and Procurator Fiscal Service (COPFS), Scottish Courts and Tribunals Service (SCTS) and the defence community** to design a digital evidence sharing service that meets needs of the criminal justice system.
- The procurement of technology and a digital partner to deliver DESC is almost complete and implementation will begin in Autumn 2021 with Police Scotland leading the delivery on behalf of the partnership.

BACKGROUND

Strategic Context

- Digital Evidence Sharing Capability (DESC) is a major transformation programme supported by the Scottish Government which will deliver significant modernisation in the way that evidence is accessed across the criminal justice system, benefiting victims and witnesses and supporting system recovery from the Covid pandemic

SERIOUS ORGANISED CRIME TASKFORCE

ISSUE: The Convener of the Criminal Justice Committee is a former serving police officer in Police Scotland, and another committee member, Russell Findlay, is a former investigative journalist with a particular interest in organised crime.

Top Lines

- The Scottish Government and its partners on the Serious Organised Crime (SOC) Taskforce oversee work being carried out to reduce harm caused by serious organised crime in Scotland.
- Serious organised crime is no respecter of borders or any of society's norms and Scotland is not immune from its impact.

BACKGROUND

The Committee has been sent an overview of the work of the Taskforce and SOC ahead of the committee session planned for 01 September.

SOC TASKFORCE

- 13 organisations, including the Lord Advocate, COPFS, Police Scotland, National Crime Agency, HMRC, Local Authorities and others are represented on the SOC Taskforce, which in turn is bolstered by a wide range of organisations working across the Strategy's four strands: Divert, Deter, Detect and Disrupt. The Taskforce is chaired by the Cabinet Secretary for Justice and Veterans.
- This collaborative approach, bringing together a range of bodies, is essential given the global nature of organised crime.

STRATEGY REFRESH

- The Serious Organised Crime Taskforce commissioned a refresh of the 2015 strategy and has agreed a new draft strategy in principle.
- While the aims and objectives are likely to remain broadly the same, changes include strengthening the links between intelligence and tasking, improving the use of analysis and encouraging increased collaboration.
- We hope to publish it by the end of the year, once the changes to structures have been agreed and finalised.

SERIOUS ORGANISED CRIME TASKFORCE

DISRUPTING DRUGS SUPPLY

Quote: *“Record 1,264 drugs deaths in Scotland. Focus rightly on reducing this obscene toll. But what about drugs gangs operating with apparent impunity, profiting from death & with zero fear of toothless proceeds of crime law? In every community of Scotland, we all know who they are.”* [Source: Russell Findlay (Con.) 15 Dec 2020 – Twitter]

- We are committed to continuing to bring to justice those who supply drugs to our communities.
- Police Scotland work with agencies around the UK and internationally to take illegal substances off Scotland’s streets and to dismantle the groups responsible.
- And after a prosecution is secured, the Crown will use the Proceeds of Crime legislation to ensure funds obtained through crime are confiscated from those who do not deserve them.

COUNTY LINES / CUCKOOING

- The Scottish Government is working with partners on the Serious Organised Crime Taskforce to reduce the harm caused by organised crime groups, including county lines gangs.
- The importation of drugs, particularly to the north-east from England, predates the emergence of county lines and cuckooing.
- Police Scotland has implemented an anti-cuckooing initiative in partnership with councils in the north east which aims to identify, engage with and safeguard those at risk of cuckooing.
- Those forced to become involved in county lines should be seen as victims and it is important that the appropriate support and safeguards are put in place to prevent them from being further exploited.
- Successful enforcement action has been taken against county lines gangs, resulting in the recovery of large amounts of Class A drugs, weapons and money, disrupting the practices of county lines groups impacting on Scotland.

SERIOUS ORGANISED CRIME TASKFORCE

ILLEGAL PUPPY TRADE

- A 'Tackling the Puppy Trade Working Group', chaired by Kirsteen Campbell, Chief Exec of the SSPCA has been established involving a wide range of organisations (including the Scottish Government).
- Operation Delphin is the specific ongoing operation tackling the illegal trade of puppies through Cairn Ryan.
- A number of mapped OCGs have been identified as involved in the breeding and sale of designer dogs. Puppy farms/illegal trade in puppies is seen as high reward for little risk.
- At the Working Group meeting in April it was noted that 103 puppies had been seized in the previous 12 months.
- A number of prosecutions are in the pipeline, some high profile.
- There have been a number of campaigns to raise awareness among the public on the illegal puppy trade.

PROCEEDS OF CRIME ACT 2002

ISSUE: The Proceeds of Crime Act 2002 (POCA) provides for the criminal confiscation or civil recovery of the financial benefit derived from criminal activity. It also contains the principal money laundering legislation throughout the UK (reserved).

There are four main routes for recovery through POCA - criminal confiscation (post-conviction); civil recovery (used where no conviction has been secured); cash seizure/forfeiture; and taxation.

POCA provides a number of investigative powers, such as search and seizure, production and disclosure orders, and allows for the “restraint” of assets to prevent their dissipation prior to a confiscation order being made.

The Scottish Government has responsibility for leading on POCA policy and legislative matters (as they relate to Scotland) in a complex area of reserved and devolved competence.

Police Scotland and the Crown Office and Procurator Fiscal Service (COPFS), are responsible for the investigation and prosecution of criminality and pursuing confiscation orders.

The Civil Recovery Unit (CRU) pursue civil recovery of cases where no conviction has been brought but the Court has decided, on the balance of probability, that there has been benefit from unlawful conduct.

Enforcement of criminal confiscation orders is a matter for the courts.

POCA receipts are primarily used to fund the CashBack for Communities Programme. In 2014, the Serious Organised Crime Taskforce (SOCT) agreed that the first £7 million of POCA receipts ingathered annually would be earmarked for re-investment through the CashBack Programme.

For 2020-21 £9.5 million was recovered and the Organised Crime Unit are considering how some of those funds could be used to further benefit operational partners in tackling serious organised, maximizing POCA and tackling economic crime in Scotland.

Top Lines

- POCA is an extremely powerful and effective tool in the fight against organised crime in Scotland.
- The enforcement of Confiscation Orders is a matter for the courts. Due to the size of the sums involved this can take time. If an offender defaults on payments they will be called back before the courts.
- Between 2006/07 and 2020/21, almost £124 million of ill-gotten gains has been recovered under the Proceeds of Crime legislation.
- £63.79 million has been recovered through Criminal Confiscation.
- £60.14 million has been recovered through Civil Recovery, of which:
 - £28.52 million has been seized and forfeited cash; and,
 - £31.62 million has been from the realization of recovered assets.
- Recovered monies are paid into the Scottish Consolidated Fund (SCF). POCA receipts are unpredictable and it is not possible to forecast the levels of receipts that will be remitted to the SCF in the coming year.

UNEXPLAINED WEALTH ORDERS

ISSUE: An Unexplained Wealth Order (UWO) is one of a suite of powerful investigatory orders available under the Proceeds of Crime Act 2002 (POCA) and came into effect on 31 January 2018. So far no UWOs have been sought in Scotland and only four have been sought elsewhere throughout the United Kingdom. It is an investigatory tool, and not a means of recovering property in its own right.

A UWO is a court order which requires persons who are suspected of involvement in, or being connected with serious criminality, or who are Politically Exposed Persons, to explain how they obtained certain property where the value of the property appears to exceed their known, lawfully obtained, income.

Scottish Ministers can make an application to the Court of Session to grant an UWO in respect of any property valued at over £50,000.

A Politically Exposed Person (PEP) is a person who is, or has been entrusted with prominent functions by an international organization or by a State other than the UK or another EEA State; or a family member or close associate of such a person. PEPs, by the very nature of their role, have power and access that can be abused for private gain and therefore have been identified as high risk under UK and international anti-money laundering rules.

A failure to provide a response to the UWO would give rise to a rebuttable presumption that the property is recoverable for the purposes of any subsequent civil recovery action. A person could also be convicted of a criminal offence, if they make false or misleading statements in response to an UWO.

If the respondent cannot demonstrate that the purchase of the property was legitimate, then a civil recovery case to recover the property can be instituted against them.

Investigation of these civil cases is done by the CRU investigators, on behalf of Scottish Ministers, and not by Police Scotland, but all operational partners in Scotland are committed to working together to recover the proceeds of crime.

Top Lines

- Unexplained Wealth Orders (UWOs) are an investigatory tool for the recovery of the proceeds of serious crime and international corruption. Decisions on if, and when, to apply for an unexplained wealth order need to be based on the specific circumstances of each case.

UNEXPLAINED WEALTH ORDERS – AVAAZ LITIGATION

ISSUE: On 24 May 2021, the global campaigning group, the Avaaz Foundation, served a petition for Judicial Review of the Scottish Ministers’ “unlawful policy of delegating responsibility for Unexplained Wealth Orders.”

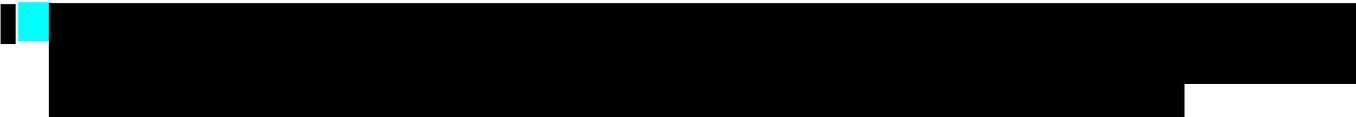
This followed a letter of 7 May to the First Minister, seeking certain assurances regarding the arrangements for seeking an Unexplained Wealth Order (UWO). This letter was responded to by the Civil Recovery Unit (CRU) on Friday, 21 May.

Further to a Continued Oral Permission Hearing on 29 July 2021, Lord Sandison issued his opinion on the matter on 11 August 2021. Lord Sandison has granted permission for the Judicial Review to proceed and extended the time limit for lodging the petition in the interests of justice. Senior and Junior Counsel have been appointed and we await detail on when the case will begin. SGLD has now received a timetable setting down a Procedural Hearing on 15 September and a Substantive Hearing on 26 and 27 October. The timetable also sets down when various documents require to be lodged with the court.

It would not be appropriate for Scottish Ministers to comment on an on-going litigation.

Further Background

- Decisions on whether to apply to the Court of Session for an UWO are a matter for the Scottish Ministers.

- 
- It is an operational decision for the CRU to consider which Part 8 POCA investigative orders are most appropriate for individual cases and to make the relevant applications to the courts.
 - The Avaaz Foundation initially wrote to the First Minister on 12 April 2019 calling on Scottish Ministers to apply for a UWO against then President Trump in relation to his acquisition of Turnberry Golf Club Resort.
 - Further correspondence was sent by Avaaz to the First Minister and CRU on 23 August 2019; 14 July 2020; and 15 and 25 January 2021. This final letter enclosed a Joint Opinion by Aidan O’Neill, QC, and David Welsh dated 20 January 2021.
 - These letters were responded to by OCU policy officials and the CRU.
 - Patrick Harvie, MSP, has also raised the issue at FMQs on 27 February 2020, 12 November 2020 and 20 January 2021; and the Scottish Green Party secured a Motion Debate in the Scottish Parliament on 3 February 2021. An amended motion (S5M-24030.1) tabled by Humza Yousaf was passed by the Parliament. Following that debate the First Minister responded to Patrick Harvie and a further reply was sent by SG officials to AVAAZ on 22 February 2021.

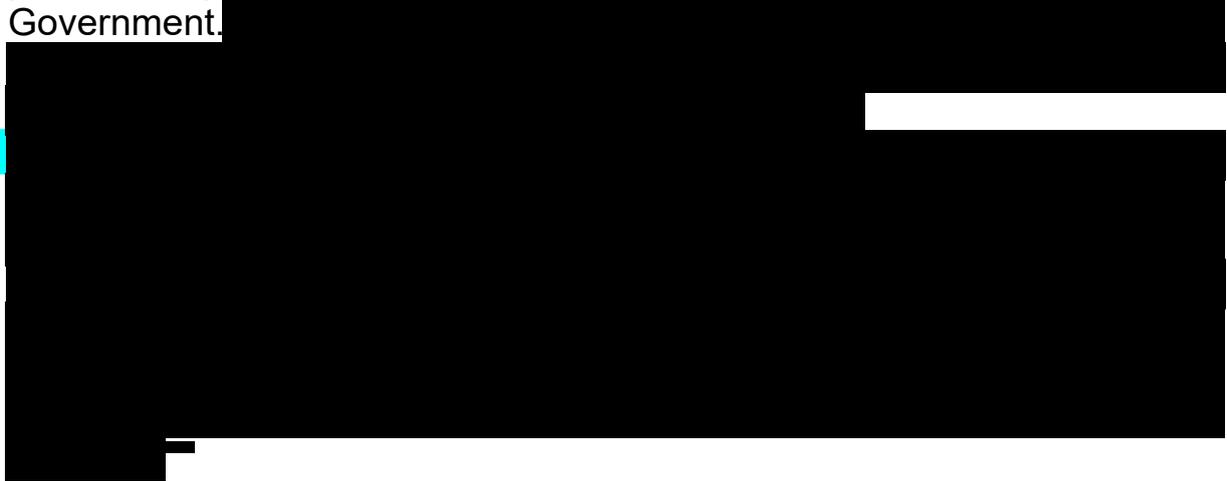
Top Lines

- I am aware that Lord Sandison has granted permission for the judicial review to proceed.
- It would not be appropriate for me to comment on any on-going litigation.

UNEXPLAINED WEALTH ORDERS – AVAAZ LITIGATION

ONLY IF PRESSED

- As the committee knows, statutory functions of Scottish Ministers are exercisable by any member of the Scottish Government, but in practice, portfolio responsibilities are allocated to particular members of the Scottish Government.



The CRU neither confirms nor denies the existence of any on-going investigation. To do so would only serve to alert individuals to the fact that they are under investigation and allow them the opportunity to dissipate assets or destroy evidence; or it could unfairly impugn an individual's character or reputation if the investigation comes to nothing.

SERIOUS ORGANISED CRIME – FRAUD AND SCAMS

ISSUE: Fraud accounted for 11% of crimes of dishonesty in 2019/20.[†]

Crimes of fraud have increased by 3 per cent since 2010-11, including a 23% increase between 2018-19 and 2019-20.[†]

After a relatively stable period between 2010-11 and 2013-14, and a decrease in 2014-15, crimes of fraud have experienced an upward trend since 2014-15.[†]

Police recorded crimes of Fraud cover a wide range of actions by the perpetrator. The most common types include fraudulent use of a bank card; failure to pay for products or services; fraudulent selling; and phishing-type frauds.[‡]

An estimated 28% of cases in 2018-19 were cyber enabled (i.e. the internet was used as a means to commit the crime).[‡]

The average amount defrauded for each crime of Fraud in 2018-19 was £150. This was higher for cyber enabled Frauds (£490) than for those that weren't (£80).[‡] In 2018-19, victims were more likely to be male (56%), and had an average of age of 48 years old. Victims of Phishing-type frauds tended to be older, with an average age of 60 years old.[‡]

Criminals are exploiting the current COVID-19 pandemic, particularly as people adapted to new working patterns and personal circumstances as a result of restrictions introduced.

We have been working closely with a number of partners throughout the pandemic period to help strengthen effective communication of the latest threats posed by scammers. Through this partnership working we have contributed to a number of resources available to the public which provide up-to-date information and advice on the latest scams.

[†]Scottish Government, *Recorded Crime in Scotland, 2019-20*, p.34

[‡]Scottish Government, *Recorded Crime in Scotland, 2018-19; 'Crimes of Dishonesty: An Additional Analysis of Fraud'*, pp.46-52)

Top Lines – Fraud

- Fraud is committed by a broad range of criminals, from domestic lone actors to complex international organised crime groups
- The Scottish Government is working with partners on the Serious Organised Crime Taskforce to raise awareness of the potential risks that exist and on how criminals are looking to defraud individuals and organizations, particularly during the COVID crisis.
- It will be important for Government and partners to continue to share knowledge and learning around fraud activity at this time.
- This effort to raise awareness among the public is being delivered through various means such as Police Scotland's 'Shut out Scammers' campaign, the opportunity for the public to subscribe to Trading Standards Scotland's Scam Share e-Bulletin and the CyberScotland Bulletin.
- The Scottish Government, Police Scotland and the National Cyber Security Centre are working together to help protect organisations from cyber criminals, by identifying fraudulent websites, preventing phishing emails, blocking phone numbers and ultimately bringing those responsible to justice. **We encourage everyone to report suspicious sites to NCSC using their reporting tool on their website.**

SERIOUS ORGANISED CRIME – FRAUD AND SCAMS

- There is a range of advice to help people improve their online safety, including from the National Cyber Security Centre, the CyberScotland online portal, the Cyber Essentials Scheme, Cyber Aware, Take Five and Get Safe Online.
- These types of fraud and scams are constant and not new. They have ‘increased’ because of the fear and uncertainty that COVID-19 has engendered. People will remain vulnerable if they do not protect themselves.

Top Lines – Scams Strategy

- Scams have an enormous cost, both to the individuals who suffer as a result of them, and to our wider economy. Tackling this criminal behaviour cannot be achieved through enforcement practices alone.
- That is why the Scottish Government published **Scotland’s Scams Prevention, Awareness & Enforcement Strategy** on 19 March 2021, in order to facilitate a more coordinated approach to tackling scams in Scotland.
- My colleague, the Minister for Public Finance, Planning and Community Wealth (Mr Arthur), and his officials are taking forward work on the Strategy.
- As a first step in implementing the strategic framework set out in the strategy, a new **Scottish Scams Prevention Strategic Partnership** has been established in order to support and embed greater stakeholder coordination and collaboration longer term.
- The first meeting of this new partnership took place on 12 August 2021.

SERIOUS ORGANISED CRIME – CYBERCRIME

ISSUE: Cybercrime is a serious and evolving issue. It ranges from cyber-dependent crimes, such as hacking, to cyber-enabled crimes, such as online child exploitation. Cybercrime is difficult to detect and prosecute. It is frequently anonymous, committed remotely, and can be cross-border. International co-operation is vital to tackling cybercrime. As technology changes, there are increasingly new opportunities for criminals to exploit. The scope, frequency and impact of cybercrime is also expected to increase in future. Cybercrime is likely underreported. Underreporting may be linked to incidents being viewed as having no emotional or physical impact or as an inconvenience. This is in addition to the relatively high rates of financial reimbursement. It is estimated that 20% of all sexual crimes in 2016/17 in Scotland had a cyber-element. More than half of fraud incidents were coded as cyber in the Crime Survey for England and Wales 2017. The figures are likely to be similar in Scotland. Police Scotland are currently developing accessible language and set definitions around cybercrime.

Top Lines

- The Scottish Government and partners are working together to build a cyber-resilient, safe and strong Scotland. Individuals and businesses can help to protect themselves from cybercrime by using strong passwords, patching devices regularly, and taking other simple steps to improve their safety online.
- The Scottish Government works closely with the National Cyber Security Centre (NCSC) and Police Scotland to ensure Scotland is prepared for cyber threats and would urge all organisations to follow NCSC's advice and guidance.
- Sharing intelligence and experience is key to responding to cyber threats. The National Cyber Security Centre has established the Cyber Security Information Sharing Partnership to help organisations share information and increase resilience. The Scottish Government is an active member, and encourages all organisations in Scotland to join.
- Police Scotland and the Scottish Police Authority work together to ensure the necessary resources and expertise are in place to tackle emerging areas of threat, such as cyber-crime and fraud. It is for the Scottish Police Authority and the Chief Constable to allocate Scottish Government funding across their priorities.
- There is a range of advice to help people improve their online safety and protect themselves from cybercrime, including from the National Cyber Security Centre, CyberScotland, the Cyber Essentials Scheme, Cyber Aware, Take 5, and Get Safe Online.

SERIOUS ORGANISED CRIME – CYBERCRIME

- The Strategic Framework for a Cyber Resilient Scotland was launched in February 2021 and sets out a vision of a Scotland that thrives by being a digitally secure and resilient nation. The Framework is being delivered collaboratively and using a whole-of-government approach, strengthening the place of cyber resilience across multiple policy areas and across the *CyberScotland Partnership* – a leadership collaboration of national delivery partners.
- Cybercrime is a priority in Scotland’s Serious Organised Crime Strategy. Outcomes include ensuring that ‘individuals are aware of cyber threats and able to safely use the internet and social media.’ The Serious Organised Crime Taskforce is taking forward a range of activities to achieve the outcomes in the Strategy, including in relation to cybercrime.

PROCEEDS OF CRIME ACT 2002 – CASHBACK FOR COMMUNITIES PROGRAMME

ISSUE: Ministers announced in June 2007 that they would use the funds recovered from criminals under the Proceeds of Crime Act 2002 (POCA) in a positive way to expand young people's horizons and increase the opportunities they have to develop their interests and skills. Funding for CashBack commenced in 2008.

£110 million has been committed to the CashBack for Communities Programme since 2008. As at the end of Phase 4 in March 2020, the programme had delivered more than two and a half million activities and opportunities for young people across all 32 local authorities in Scotland. Phase 5 runs from April 2020 to March 2023. £19 million has been awarded to a total of 24 organizations to deliver a wide range of community initiatives and activities for young people between the ages of 10-24 that:

- Support people, families and communities most affected by crime
- Support those most at risk of being involved in antisocial behaviour, offending or reoffending into positive destinations
- Support young people most at risk of entering the justice system.
- Are not limited by age, meet the criteria above and provide intergenerational support for parents, families and children impacted by Adverse Childhood Experiences.

The majority of our CashBack projects include elements that support young people who have lived experience of addiction and/or substance misuse, or who are vulnerable to developing such risk taking behaviours.

However, all of the CashBack projects engage with vulnerable and disadvantaged young people, providing support and diversionary activities to help them improve their life opportunities and make better life choices.

Top Lines

- The CashBack for Communities programme takes money seized from criminals under the proceeds of crime legislation and invests them in young people. The programme reinvests criminal assets into community projects to support young people most at risk of being involved in antisocial behaviour, offending or reoffending into positive destinations.
- Since 2008, £110 million has been committed to community initiatives to improve the quality of life of young people right across Scotland.
- All CashBack projects engage with vulnerable and disadvantaged young people, providing support and diversionary activities to help them improve their life opportunities and make better life choices.
- Every phase of the CashBack for Communities programme is subject to formal evaluation. Phase 4 (2017-2020) of Cashback:
 - reached more than 100,000 young people;
 - directly improved the wellbeing of over 80,000 young people;
 - moved 35,000 young people on to a positive destination such as a new job or further education; and
 - specifically reduced anti-social or criminal behaviour of over 8,000 young people.

SERIOUS ORGANISED CRIME – CYBERCRIME

- Over two-thirds of the young people involved were from the most deprived areas in Scotland. I have a quote from one of our Cashback participants, which demonstrates the impact this programme has on the young people of Scotland.

Quote

"I was'nae doing anything with my life... Now, seven months down the line I'm in my first year of training and I'll be starting an apprenticeship... In four years I'll be a fully qualified electrician."

Participant, Action for Children (Behavioural Change, Wellbeing and Inclusion Service)

POLICE SCOTLAND - INCREASE IN USE OF TASERS

ISSUE: Sunday Mail article states that the number of people being tasered by police in Scotland has doubled in the past two years.

[Source: [Taser use by police in Scotland rising as stun gun use doubles in two years - Daily Record](#) 01 August 2021]

Background: Increase in number of officers trained to use Tasers

Police Scotland plans to embark on a recruitment and training process which will see around 500 additional specially trained officers (STOs) in each of the next three years. Following completion of the uplift it is expected that Police Scotland will have around 1700 trained STOs, some 12% of frontline officers. This number takes account of natural wastage, transfer of officers, sick and annual leave. In addition the number of hubs will increase from 70 to 110 once the uplift is complete.

Top Lines

- The use of Taser is an operational matter for Police Scotland;
- Scottish Ministers have made an unequivocal commitment that Police Scotland continues to be an unarmed service but with an appropriate armed capability which includes Taser; and
- Any discharges are notified to the Police and Investigations Review Commissioner who may carry out an independent investigation into any incident.

Statistics

Discharge of Tasers by Specially Trained Officers (STOs)

Year	Number of Discharges
2018	18
2019	27
2020	36
(to June) 2021	34

Notes to Table 1: STOs were deployed in Police Scotland from 1st June 2018. There is no data prior to this date.

This data refers only to STOs and does not include Taser use by AFOs.

[Source: [Police Scotland FOI response](#) published 16 July 2021]

SPA analysis from incidents in 2018, provides the following:

- Baton used - 28% officer injury rate, 52% subject injury rate
- PAVA [irritant spray] used - 24% officer injury rate, 16% subject injury rate
- Taser used - 0.2% officer injury rate, 0.6% subject injury rate

[Source: [SPA Briefing paper](#) published 9 March 2021]

PRISON POPULATION

ISSUE: After an initial decrease in the prison population during the start of the pandemic (largely due to court shut down) the population has stabilised slightly to around 7,500 since October 2020. It is likely that the resumption of court activity (particularly solemn and high court business) will drive an increase in the prison population [REDACTED]

Top Lines

- We recognise that the rising prison population has put operational pressures on the infrastructure and rehabilitative regime being provided in our prisons.
- The prison service has actively managed operational responses to relieve pressure and to their credit we must acknowledge that despite these pressures- our prisons are well run and safe and stable, all of which has been recognised by HM Chief Inspector of Prisons.
- In recent years, the Scottish Government has taken action aimed at reducing the use of imprisonment and increasing the use of community-based interventions.
- This has included legislative changes – including extending the presumption against short sentences and ongoing investment in community interventions.
- Decisions on sentencing and the use of custody in individual cases are of course a matter for our independent courts based on the facts and circumstances before them.

No one reason why the prison population in Scotland is rising. It is likely that a variety of immediate and longer-term factors are contributing to this overall trend.

- We must first acknowledge, the complex range of factors from across the Scottish justice system and beyond that impact on the prison population. These factors are societal and systemic.
- Following several years of sustained decrease, the prison population rose sharply from 2017-18 to an annual average of around 8,200 in 2019-20. It then took a decline from April last year, largely due to the suspension of court activity during the start of the pandemic, and is now currently at around 7500.
- We must be vigilant to possible future growth of the population due to resumption of court activity.
- There is a continued long-term upward trend in sentence length, with the average sentence length now 16% longer than in 2009-10 (281 days).

PRISON POPULATION

- Those serving sentences of longer than 12 months has driven the increase in the prison population overall. While the overall annual average prison population has increased, the number of individuals imprisoned in each year has fallen with people spending longer times in custody on average.
- Sentences for the most serious offences have increased, including the punishment part of life sentences. Long-term prisoners are also serving longer on average in prison before being granted release by the Parole Board.

In addition to increases in numbers, the prison population is becoming increasingly complex.

- There are clear links between experience of area level deprivation and likelihood of imprisonment in Scotland.
- Individuals from the 10% most deprived areas are over-represented in prison arrivals by a factor of three, a finding consistent across the last decade.
- With that, the prison population is also more likely - in comparison to the wider population - to experience poor mental health, chronic underlying health conditions and to suffer from substance misuse.
- We also have an increasingly ageing prison population which brings with it health and social care need implications for SPS.
- As well as increasing remand population, there are more people in prison for certain types of offences, in particular sexual offending and offending associated with serious and organised crime. Again this presents an additional challenge for the SPS in managing the separation and segregation of different prison populations.

The Scottish Government has already taken action to reduce the use of imprisonment – and will continue to do so

- In, 2019, we **extended the presumption against short sentences** to 12 months or less (from 3 months or less) in 2019. The extension came into force on 4 July 2019 and applied to offences committed on or after that date.
- Under the presumption, Sheriffs should not impose sentences of 12 months or less unless there are no reasonable alternative community based disposals available that are appropriate to the case.
- The extension of the presumption against short sentence is part of an evidence-based approach to rehabilitation, both in communities and custody. A firm focus on prevention and effective community interventions has helped see Scotland's reconviction rate fallen to its lowest level since comparable records began.

PRISON POPULATION

- In autumn of 2019, we brought forward regulations made under the Management of Offenders Scotland Act 2019 to provide for the **expansion of electronic monitoring**, including use with electronically monitored bail and Temporary Release.
- Work is now on-going with operational partners to prepare for these new uses to have effect and it is anticipated that expanded use of electronic monitoring will offer an additional capability for the Scottish Prison Service in the management of the prison population, as well as alternative options for Courts in sentencing and community based disposal.
- We have continued to **invest in community justice services**. Scottish Budget for 2021/22 ensures at least £117 million is invested in community justice services and specialist third sector services.
- In April 2020, the funding allocated to justice social work was increased by £4.0 million, specifically to support diversion from prosecution, bail supervision, and structured deferred sentences and this continues.
- We have also been supporting increased access to supervised bail services, and publishing guidance on structured deferred sentences (which can provide a flexible and effective intervention in certain cases).
- To support pandemic recovery work, an additional £50 million over 2021-22 has been allocated both to establish additional court capacity and to contribute to the wider associated costs across the justice system, including community justice, prisons, and legal aid.
From that funding, approximately £11.8 million has been allocated for use by justice social work services in directly addressing the impact of the pandemic

COVID 19 RESPONSE IN PRISONS

BACKGROUND

As of 18 August 2021 [REDACTED]

- There are a total of **111** individuals in SPS custody in isolation across 7 sites in the estate.
- There are **22** confirmed cases across the estate (16 at HMP Barlinnie, 1 at HMP Grampian, 1 at HMP Glenochil and 4 at HMP Perth).

KEY LINES

COVID RESPONSE IN PRISON- GENERAL

Following peaks of approximately 375 COVID-19 cases recorded in February this year across the prison estate, the number of positive cases in the prison estate has since decreased significantly and continues to remain stable.

- To the credit of prison and health staff, our prisons for the vast majority of this pandemic have been settings of low infection rates and the operation of our prisons remains safe and stable.
- The prison service's response to the pandemic has been recognised as responsive and rapid.

SUPPORTIVE QUOTE:

- Her Majesty's Chief Inspector for Prisons Wendy Sinclair-Gieben said QUOTE: **"The decisive action to minimise risks has meant that there has been no explosion of COVID-19 infections in prisons, as feared, and far fewer deaths than in comparator populations. That is no mean feat, given the vulnerability and close confinement of those in prison"** (Annual Report 2019-20, published 12 November 2020, page 3)
- Consistent with the wider community, the prison service is now gradually and cautiously lifting regime restrictions that were necessary to protect the health and wellbeing of those who live and work in our prisons.
- The prison service will remain vigilant due to the transmissibility of the virus in vulnerable prison settings.
- A range of robust protective measures such as strict hygiene control, physical distancing, wearing of PPE by staff and prisoners in certain circumstances will remain in place in every prison.
- SPS' National Coronavirus Response Group will continue to work in partnership with Public Health Scotland, Health Protection Scotland and local Health Protection Teams to ensure monitoring and appropriate response to national rates of COVID spread or additional risks caused by new variants.

COVID 19 RESPONSE IN PRISONS

- The SPS pandemic plan will continue to be monitored and updated.
- A clinical advisory group for prisons is in place to ensure the prison service is provided with strategic national clinical and public health advice in response to COVID-19.

CURRENT REGIME/LIFTING OF RESTRICTIONS

While neither this government or the SPS underestimate the impact restrictions have had on those in SPS's care and on their families, reducing the spread of the virus and mitigating the real threat it still poses must remain the priority in order to protect those who live work and visit prisons.

- Decisions to restrict prison regime are never taken lightly but have been necessary and proportionate in order to ensure the safety and wellbeing of those that live, work and visit our prisons.
- SPS has its own COVID-19 Routemap, which aligns with Scottish Government and Public Health advice. This Routemap details the series of connected, and carefully controlled steps which will be taken to ensure that SPS can move forward with recovery.
- From 26 April, SPS has enabled greater access to in-person visits in establishments with robust local risk assessments in place and implementation of protective measures for staff, prisoners and visitors.
- Physical contact is allowed at the start and end of a visit with appropriate face coverings.
- Fife College are now delivering education services across all SPS sites in line with local risk assessments and regime requirements and all indoor gymnasiums and exercise areas are open and operating to appropriate restrictions.
- Community work placements have recommenced for individuals in SPS's care who are eligible to access them in HMPs Castle Huntly, Greenock and Barlinnie.
- Measures taken by SPS to restrict the regime over the past year have been necessary, proportionate and aligned to public health advice to support the safe operation of prisons and to protect the health and wellbeing of those who live and work in them.

COVID 19 RESPONSE IN PRISONS

DATA ON COVID RESPONSE

Note: You wrote to Pauline McNeill MSP on 11 August in response to points she raised during the stage 3 debate on the Coronavirus (Extension and Expiry) Bill regarding covid data in prisons.

Ms McNeill lodged an amendment to this Bill (which was not passed) seeking additional requirements on SPS to report on conditions with the custodial estate (for example, amount of time prisoners spend outdoors, on activities and in their cells).

- Throughout the pandemic, the prison service has strove to provide regular and up to date information on covid-19 in prisons. Members will recognise that the quickly evolving nature of outbreaks mean things can change at pace.
- SPS maintain a dedicated and regularly updated web page which contains a range of information in relation to the SPS's response to Covid for the duration of the pandemic.
- This includes a daily update of details of confirmed cases of Covid and the number of individuals who are self-isolating, and a weekly update with details of cases in each establishment.
- The SPS website also provides updated guidance for the families of prisoners and other individuals on the operation of visits and other contact throughout the pandemic.
- In addition, the SPS report on an annual basis on a range of Key Performance Indicators (KPIs) – these include reporting on the overall number of hours of purposeful activity carried out and the average purposeful activity hours per week per convicted prisoner.

PRISONER HUMAN RIGHTS

The wellbeing, safety and human rights of all those who live in our prisons has been and will remain a priority for the Scottish Government and the prison service for the duration of this pandemic and beyond.

- We remain vigilant and take very seriously the current pressures facing the prison service. We are actively considering what further action is required to both reduce the use of imprisonment and maintain a lower prison population.
- Independent and robust scrutiny and monitoring of conditions and treatment in our prisons has been maintained during the pandemic through a remote monitoring framework and on-site liaison visits.

COVID 19 RESPONSE IN PRISONS

- The HMCIPS Remote monitoring and liaison visit inspection frameworks are grounded in human rights principles. These ensure that HMCIPS fulfils its obligations under OPCAT and that independent scrutiny continues into the treatment and conditions for prisoners throughout the pandemic.
- The frameworks are also consistent with the Council of Europe's Committee for the Statement of Principles for COVID-19 in places of detention and WHO guidance on scrutiny.
- Inspection activity has been increased during the pandemic with liaison visit inspections being undertaken three-weekly as opposed to 4 per annum. All liaison visits reports are published on the Inspectorate's website.
- On-site inspection liaison visits were temporarily paused on 5 January due to national restrictions but independent remote monitoring remained in place and a blended model that includes some on-site inspection liaison visits was adopted in February.
- The Inspectorate's full inspection regime is expected to resume in October.

EMERGENCY EARLY RELEASE UNDER CORONAVIRUS LEGISLATION

The early release of 348 prisoners under this legislation in May 2020 was undertaken in line with the legislation – as approved by Parliament – and was carefully planned with local partners with public protection a key consideration.

- The Parliament passed the Coronavirus (Scotland) Act on 1 April, which set out the powers for early release - and the Parliament Covid 19 Committee approved the specific regulations for the release process on 21 May.
- The only prisoners considered for early release were within 90 days of their scheduled release date, on sentences of 18 months or less.
- A 'triple lock' set of restrictions prevented those convicted of more serious offences from being released under the scheme:
 - Those sentenced to more than 18 months were not eligible,
 - Those convicted of sex offences, terrorism offences, recent domestic abuse offences or aggravations, harassment offences, or Covid-related offences, were automatically excluded.
 - And prison governors had the power to exclude any prisoner where there was evidence that their early release presented an immediate threat to an identified person.
- It's important to see this process in context, as around 120 prisoners can be released from prison in a normal week.

COVID 19 RESPONSE IN PRISONS

- All those eligible were short sentenced prisoners who were due to return to their communities within 12 weeks – who would typically do so without additional risk assessment or monitoring when their time in custody ends.

Public safety was a central consideration for the provisions.

- The process specifically excluded long sentence prisoners, sex offenders, or categories of high-risk prisoner who are supervised after release.
- The regulations also excluded prisoners whose offences related to domestic abuse, harassment, or Covid-19 related offences.
- Prison Governors could veto the release of any prisoner under the early release process – if there is a clear risk of harm to a specific individual.

Plans for the covid early release process were worked out in advance with local government, housing services and the third sector.

- COSLA leadership, Chief Housing Officers, and Scotland's Housing Options Hubs were closely involved at the time, to help them plan.
- Local authorities were notified in advance of the process, and provided with lists of individuals who were eligible for early release.
- The early release process is just one part of the continuing effort that public and third sector services make to support all prisoners being released.

The early release plans were broadly welcomed by the justice sector, and most other parties

- Wendy Sinclair-Gieben, HM Chief Inspector of Prisons for Scotland, said **QUOTE:** *“These powers are necessary to protect the health of prison staff, NHS and local authority staff working in prisons, and prisoners”* (21 April).
- Alex Cole-Hamilton MSP **QUOTE:** *“Liberal Democrats think that emergency release, with the right protections in place, is the right thing to do”* (20 April, Scottish Parliament).
- Labour's James Kelly MSP described these plans as a **QUOTE:** *“correct and proportionate response”* (20 April, Scottish Parliament).

AMENDMENTS TO PRISON RULES- REGIME RESTRICTIONS

- The prison service has laid 4 SSIs over the last 18 months which made amendments to the Prison Rules during the pandemic in order to ensure it is prepared for all eventualities.
- These Rule changes were subject to parliamentary scrutiny and the current SSI will be in force until the end of September.
- They have been necessary and proportionate and aligned to public health advice to ensure the prison service keep those who live, work and visit our prisons safe throughout this pandemic.

COVID 19 RESPONSE IN PRISONS

- The Rule changes allow Governors flexibility to adapt regimes to ensure they are prepared for all eventualities including any resurgence of the virus, either nationally or locally or new variants.
- A review was undertaken during each Rule change to ensure provisions were necessary.
- The Prison Service has recently consulted with key stakeholders including Scottish Human Rights Commission, Howard League and others on proposals to the Prison Rules to retain, still on a temporary basis, some of the flexibility afforded by the previous rule amendments.
- It is actively considering the responses to the consultation. The majority of the comments received were outwith the scope of the proposed SSI. Those comments that were relevant are concerned with: (1) ensuring that the powers are only used when absolutely necessary; and (2) that there be enhanced SPS HQ and external oversight of the use of the powers.
- Rule 40A provides SPS and NHS staff with the means to isolate large groups of individuals who are symptomatic or who are close contacts in line with Public Health Scotland / Scottish Government advice.
- Consistent with the use of regime restriction measures throughout the pandemic, the prison service will only be used *if* necessary and appropriate.
- The SSI to take forward these changes is to be laid at the end of August 2021 with a proposed date of coming into force on 29 September 2021.

COVID-19 VACCINATION IN PRISONS

All those aged 16 and over in custody are being offered covid-19 vaccination by Health Boards in line with when they would be offered it in the community.

- Consistent with the wider community, vaccination deployment by Health Boards in the prison setting has followed JCVI age categories.
- Tailored communications to maximise uptake of the vaccine for the prison population was developed in collaboration with NHS partners and has been distributed to those in SPS' care. Work is ongoing to maximise uptake of the vaccine in prisons.
- We recognise the important role key workers play, including prison officers in our prisons, particularly during the pandemic. All prison staff have been offered the vaccination in their communities consistent with age and other priority categories.
- We recognise that the rate of vaccination in prisons is challenging to establish, with some people leaving after they have received their vaccination and other people, who may not have taken up the offer of

COVID 19 RESPONSE IN PRISONS

vaccination in the community, arriving in prison and still requiring vaccination.

STAFF COVID-19 TESTING

Regular asymptomatic testing for prison staff is in place across the prison estate.

- A once-weekly asymptomatic PCR testing pathway for prison-based staff is now running in 13 of 15 prisons across Scotland. HMPs Addiewell and Kilmarnock are expected to commence a testing pathway shortly.
- Testing for staff is voluntary and Unions are supportive.

PRISONER COVID-19 TESTING

An asymptomatic PCR testing pathway for prisoner admissions is now being implemented in a phased approach across the prison estate with all sites expected to go live by early September

- Testing of prisoner admissions has commenced in 7 establishments with the remainder expected to go live by early September.
- As in the wider community, new admissions who display symptoms of COVID-19 can be tested and all health boards with a prison in their area provide symptomatic testing for those in custody.

VIRTUAL VISITS AND MOBILE PHONES

The provision of virtual visits and mobile phones have been vital in maintaining family contacting and reducing the detrimental impact of restrictions on visiting on families.

- Virtual visits commenced across the prison estate in June last year and these are now in place in every prison with over 54,367 virtual visits having taken place.
- Authorised mobile phones are now in use in all establishments, with the exception of HMP Kilmarnock who have instead implemented an in-cell telephony option, which provides similar functionality in enabling contact with family and friends.
- The restrictions on the phones are similar to those on the existing landline system and their use will be continually monitored.
- The use of these new methods of contact will continue to provide support to prisoners throughout the pandemic and are vital to ensure contact during local resurgence of the virus.

COVID 19 RESPONSE IN PRISONS

- The roll out of authorised mobile phones and virtual visits was welcomed by HM Chief Inspector of Prisons in her most recent annual report. **QUOTE:** “I am delighted to see the introduction of in-cell telephony and virtual visits coming to fruition, which provides much needed alternative family contact capability. This is a step forward in Scotland’s enlightened approach to penology.” (page 35)

TACKLING VIOLENCE AND DRUGS IN PRISONS

Our prison estate holds increasingly complex and challenging populations. We recognise the importance of providing a safe and secure environment for those in custody and those who work in our prisons.

- The SPS has a zero tolerance approach towards violence. SPS staff are trained to recognise and respond to the precursors of violence and manage any incidents when they do occur.
- Through its national Strategic Risk and Threat Group, the SPS continues to seek to understand the changing nature of the prison population profile and the subsequent impact on violence, particularly in relation to serious organised crime.
- Violence Reduction meetings take place on a monthly basis across Scottish Prisons to discuss all notable incidents, trends and identify preventative actions.
- CCTV cameras operate within all Scottish prisons to deter violent incidents and assist in any post-incident investigations. Violent incidents are always reported to Police Scotland.
- A comprehensive range of robust security measures are in place to prevent the introduction of contraband entering our prisons. Rapiscan machines, which specifically assist in detecting substances which may have been concealed in items of mail and personal property, are in use in every prison.

DEATH IN PRISON CUSTODY & MENTAL HEALTH

Background

SPS publish deaths in custody data on their website and this is updated on a quarterly basis with the medical cause of death reported as stated on the death certificate.

The last update was in July 2021, which reported **26** deaths in custody in Q1 and Q2, **9** of which are suspected suicide.

Two apparent suicides in HMP&YOI Polmont in 2018 have received Parliamentary and media attention. More recently this has centred around the reconsideration of alleged breaches of health and safety law and corporate manslaughter charges in respect of failure to apply suicide prevention strategies in custody. We understand this is currently being investigated by COPFS.

The Solicitor General met with the family of William Lindsay and their representative Aamer Anwar on 16 August, and with Katie Allan's parents on 4 August. Media have reported that the Solicitor General admitted FAI processes have taken too long and promised progress will be made.

William Lindsay, (also known as Brown) aged 16, died by apparent suicide in HMP&YOI Polmont on 7 October 2018 shortly after being placed there on remand.

Katie Allan, aged 21, died by apparent suicide in HMP&YOI Polmont on 4 June 2018. She was a first offender, having received a sentence of 16 months imprisonment for dangerous driving and drink driving. Since her death her family have campaigned substantially on wider justice system concerns and are highly critical of her care while in custody.

No FAI dates have yet been set for both these deaths.

KEY LINES

If pressed on death in custody of Katie Allan and/or William Lindsay/Brown

- **My thoughts are with the families of Katie Allan and William Lindsay.**
- **Members will be aware it would not be appropriate for Scottish Ministers to comment on any ongoing investigation, legal action or circumstances of specific deaths in custody, and until any related processes, have concluded.**

Death in custody – general

- My thoughts are with every family tragically bereaved by a death in prison custody and I fully understand the desire for answers following the death of a loved one.
- **The safe treatment and mental health of all those in custody is a key priority for Scotland's prisons, which care for people with higher levels of risk and vulnerability than the general population as a whole.**
- A Fatal Accident Inquiry (FAI) is an independent, judicial process and is mandatory for all deaths in custody (unless the circumstances of the death have been explained through a criminal trial) and we have provided additional funding to help expedite fatal accident inquiries.

DEATH IN PRISON CUSTODY & MENTAL HEALTH

- SPS formally respond to all recommendations arising from FAI determinations within 8 weeks of an FAI determination being published as required by Section 28 of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016.
- The SPS takes all instances of self-harm and threats to suicide very seriously and have been continuing to robustly monitor throughout the pandemic.
- Suicide prevention and self-harm policy will be key area of focus of SPS in their developing Health and Wellbeing Strategy.
- The Scottish Government takes these issues very seriously and my predecessor commissioned two independent reviews to make improvements to the provision of mental health support for young people in custody and to improve transparency in the handling of deaths across the prison estate.
- On 24 March 2021, the former Cabinet Secretary for Justice gave a comprehensive update of progress in response to the recommendations of the Expert Review of Mental Health to Parliamentary Committees, HM Chief Inspector of Prisons for Scotland and also informed bereaved families.
- HM Chief Inspector of prisons has recently written to me indicating a pleasing number of areas of progress following the Review.
- HM Chief Inspector of Prisons for Scotland provided an update on 9 October 2020 to the Justice Committee of progress to date of the independent review into the handling of deaths in prison custody. The review will report to me later this year.
- The prison service, with the NHS and other relevant organisations, carry out a Death in Prison Learning Audit and Review meeting normally within 12 weeks of all deaths in custody. This provides a system for recording any learning and identified actions from individual incidents.
- The prison service is committed to the publication of transparent death in prison custody data and posts a notification of all deaths which occur in prison custody on their website as soon as possible, following confirmation that the next of kin have been informed. In response to concerns raised by the Allan family, confirmation of the medical cause of death as listed on the death certificate have been published since 2019, and are updated quarterly.
- The Scottish Prison Service published a revised vision for young people in March 2021, and is piloting a new self-harm policy, enhanced training in trauma informed practices in working with young people and is developing a new health and wellbeing strategy for people in custody for issue later this year.

DEATH IN PRISON CUSTODY & MENTAL HEALTH

- NHS Forth Valley appointed additional healthcare staff, including mental health nurses and occupational therapy staff. Clinical support and leadership have also been strengthened to support the healthcare team.

INDEPENDENT REVIEW OF DEATHS IN PRISON CUSTODY

The independent review into the handling of deaths in prison custody announced on 7 November 2019 by the former Cabinet Secretary for Justice will inform improvements to ensure that all processes and communication with families are as open and transparent as possible, including a focus on prevention.

- The independent review is being led by the HM Chief Inspector of Prisons for Scotland who has the statutory function and powers to carry out independent inspections into the treatment and conditions of prisoners as provided for by the Prisons (Scotland) Act 1989.
- In addition, Judith Robertson Chair of the Scottish Human Rights Commission is co-Chair to the review along with Professor Nancy Loucks from Families Outside to ensure external expertise in human rights and the views of families impacted by a death in prison custody including preventative approaches.
- It is being informed by a wide range of views including academics, other experts and families impacted by death in prison custody, who will be invited to contribute their views.
- I met with HM Chief Inspector for Prisons last month and she advised that the review is in the final stages of development and will report in autumn.

ADDRESSING MENTAL HEALTH IN CUSTODY

The safe treatment of any mental health issues of all those in custody is a key priority for Scotland's prisons and our Prison Service takes the mental health of all those in its care very seriously

- I recognise that addressing the mental health needs of those in custody is a key area of concern and it will be a priority for the portfolio and the Minister for Mental Health and Wellbeing. Mr Stewart and I will be meeting on 21 September to discuss these matters.
- Many people in custody have complex needs and our frontline prison officers and NHS staff work hard every day to support people in custody, including those who use challenging behaviours as a means to communicate their distress.

DEATH IN PRISON CUSTODY & MENTAL HEALTH

- We know that people in custody present higher levels of risk and vulnerability than the general population as a whole and often have complex mental health needs.
- The Scottish Government takes seriously the responsibility to ensure prisoners with mental health issues are appropriately supported, treated and cared for, while ensuring their rights are being maintained.
- Our Mental Health Transition & Recovery Plan published in October 2020 made clear our commitment to continue to work with partners to seek better support for those with mental ill health within the criminal justice system, including prisons.
- Mental health policy are in the early stages of planning a new strategy to look at the mental health support for those at risk of offending, accused of offending and those who have offended.
- Furthermore, the Scottish Prison Service are currently working in partnership with mental health experts to co-produce a revised mental health strategy for those in custody. A first draft is expected later this year.
- The Scottish Prison Service has developed self-harm guidance and bespoke training is being developed in partnership with NHS and rolled out across the estate.
- Action 15 of our Mental Health Strategy outlines the Government's commitment to funding 800 additional mental health workers in key settings, including police station custody suites and to our prisons, ensuring that local provision and support is at the heart of our plans.
- We have made over £51 million available to date since 2018-19 to deliver Action 15, and we will continue to invest in 2021-22 as necessary to ensure we meet the commitment.
- As at 1 January 2021, 559.64 whole time equivalent (WTE) mental health roles have been filled through Action 15 of the Mental Health Strategy. This includes 41.26 WTE staff located within prisons.
- SPS re-issued revised Talk To Me Guidance to all staff to make clearer the circumstances in which a risk assessment and / or health care assessment should be carried out and these remain in place throughout the pandemic.
- Everyone entering prison is assessed for their risk of suicide by a prison officer and, if there are concerns, a healthcare professional.
- If a person is deemed to be at risk, an immediate care plan is put in place that sets out issues such as appropriate accommodation and a checking schedule.

DEATH IN PRISON CUSTODY & MENTAL HEALTH

ACTION TO PREVENT SELF HARM

The SPS takes all instances of self-harm and threats to suicide very seriously and robust processes are in place to ensure those at risk are identified and supported effectively.

- SPS review the number of self-harm incidents on a monthly basis and liaise with local Suicide Prevention Co-ordinators in each prison to monitor these incidents.
- SPS works closely with NHS and other partners to provide the highest level of care and support; and encourages those with thoughts of self-harm to speak to staff so appropriate support can be provided.
- Throughout the pandemic, incidents of self-harm have been monitored to ensure any possible issues were identified early and action taken.
- There has not been a significant rise in self-harm during the pandemic. Enhanced family contact through the In-Cell Prisoner Telephony system, virtual visits and recommencement of social visits has been a factor in this.
- The prison service has worked to mitigate against the impact of social isolation during the pandemic and continues to do so through a number of measures.

FATAL ACCIDENT INQUIRIES

The Lord Advocate is constitutionally responsible for the investigation of all sudden, unexpected and unexplained deaths in Scotland. These functions are exercised independently.

- Fatal accident inquiries are mandatory for all deaths in custody.
- We fully understand the desire of families to get to the truth following a loved one's death and the stress caused by long delays. That is why we have provided additional funding to help expedite fatal accident inquiries and other Crown investigations.
- The investigation of deaths, the decision to hold a fatal accident inquiry, and the timing for initiating it, are matters entirely for the Crown Office and Procurator Fiscal Service, independent of government. They are committed to providing more information for bereaved families.
- The decision to hold a FAI will not be taken until other proceedings, such as any criminal charges have been completed or ruled out.
- Where family members seek their own legal representation in order to participate at an FAI, applications for legal aid are subject to statutory tests of probable cause, reasonableness and financial eligibility.
- Financial means testing will continue to be a feature of legal aid for Fatal Accident Inquiries in the future.

PRISON BUDGET AND PRISON ESTATE

ISSUE: Delays likely in construction of the new Women's National Facility (currently estimated 3 months delay) and the 2 CCUs (currently estimated 4 – 6 weeks delay). SPS are working with contractors to understand the impact of delays due to construction industry. Delays are not yet in the public domain.

ISSUE: 24 August: the UK's National Preventive Mechanism (NPM) report published – concerns around the state of HMP Barlinnie, in particular the reception area and the 1m² holding cells ('dog-boxes').

ISSUE: 5 August: P&J reports '*New Inverness prison delayed until 2026 – and the cost is expected to soar*' and follow up article on **17 August** about the date mix-up. The correct estimated operational date for the new HMP Highland is 2024.

ISSUE: 29 July: Publication of Prisons Inspectorate (HMCIPS)'s visit report on HMP Greenock, media coverage focuses on physical infrastructure concerns.

Top Lines

- We are committed to modernisation of the prison estate. Current priorities for investment are the new female custodial estate and progressing with replacements for HMP Barlinnie and HMP Inverness
- Despite constraints on public services through a decade of UK austerity, we have invested significantly in Scotland's prison service. Our ongoing investment in our prison estate will ensure it is fit for the future.
- Since 2007, the Scottish Government has invested almost £600 million in the prison estate, including both for 3 new prisons (Low Moss, Addiewell & Grampian) and refurbishment of existing prisons including Polmont, Edinburgh and Glenochil.
- We consider that all prisons should be owned and managed in the public sector.

The New Women's Estate

- Construction of the Women's National Facility (WNF) and the two Community Custodial Units in Glasgow and Dundee is underway.
- Due to industry-wide supply chain issues brought about by EU Exit and the COVID-19 pandemic, we are now seeing some delay to construction.
- SPS are working closely with their contractors to establish the extent of delay and the broader impact of this.
- **if pressed** – currently a 3 months delay to the WNF and 4 – 6 weeks delay to the CCUs look likely, making operational dates autumn/summer 2022 (rather than spring as previously reported)
- Our plans for the new female estate are transformative and world-leading.
- The facilities will be managed by SPS. SPS are creating and will work in partnership with multi-disciplinary teams to create a recovery-based ethos that will respond to the specific needs of women in custody.
- The new female estate has a total capital budget of £98m, £74m WNF and £13m and £12m for the CCUs in Glasgow and Dundee respectively.

PRISON BUDGET AND PRISON ESTATE

HMP Barlinnie / HMP Glasgow

- Improvement works within HMP Barlinnie are progressing, including upgrades to the prisoner healthcare facilities and reception area. A contractor was appointed in November 2020 and work commenced in March 2021.
- The work includes nine phases whilst the prison continues to operate and is scheduled to run until November 2022.
- The acquisition of the site for the replacement for HMP Barlinnie near Provanmill in Glasgow is now complete.
- Construction work is currently scheduled to commence in September 2023 and the operational date is estimated for 2026.
- Estimated cost for the new HMP Glasgow is £400m.

HMP Inverness / HMP Highland

- Procurement activity is underway for HMP Highland at the chosen site at Inverness Retail and Business Park.
- We expect pre-construction work to start this autumn and the operational date is estimated for 2024.
- Estimated cost for HMP Highland is £110m

HMP Greenock Report – Infrastructure Concerns

- The Inspectorate found HMP Greenock was positive in its response to the pandemic with strong communication between prisoners and staff and that the health and safety of those who live and work there is apparent.
- The prison service responded swiftly to the infrastructure issues identified during the liaison visit in March. This included significant roof repair work and internal refurbishment to address water damage. Further maintenance is being taken forward.
- Given the current significant financial and operational pressures, alongside other prison investment priorities, it is unlikely that the prison service will be able to commence work on any HMP Greenock replacement before 2025/26.
- SPS remain committed to a replacement for HMP Greenock and have already made significant investment in the new prison site.

SPS Budget

- We have committed a total of £460.2 million to the Scottish Prison Service for 2021-2022, an increase of £18 million compared to 2020-2021 to help manage multiple pressures including a rising and increasingly complex prison population.
- This includes a 4% increase in their resource budget (total £354.6m) and a capital investment of £72.8m in the prison estate.

SCOTTISH FIRE AND RESCUE SERVICE

ISSUE 16 June: Daily record reporting: 'Shock as fire deaths double in twelve months during coronavirus lockdown' (53 compared to 27 the year before).

ISSUE 16 June: Matt Wrack, General Secretary of FBU has sent an open letter to the Prime Minister about concerns regarding the planned Home Office White Paper on reform of fire and rescue in England.

Top Lines

- **Any death from fire is one too many and it is crucial that we avoid any complacency when it comes to fire safety.**
- **Fire reform has enabled resources to be located strategically across the country without the geographical borders which were in place during the existence of the eight legacy fire services.**
- **A priority for the Scottish Government and Scottish Fire and Rescue Service safety is to prevent fires and reduce their social and economic impact.**
- **The Scottish Government and SFRS are determined to ensure that those who are most at risk of harm from fire get the help and support they need.**
- **It was a commitment in the SNP manifesto to continue to modernise and invest in SFRS.**
- **The availability of firefighting appliances is an operational matter for the Scottish Fire and Rescue Service.**

We committed in our manifesto to continue to modernise and invest in SFRS.

- UK Government are proposing changing some aspects of how Fire and Rescue Services operate in England.
- The Home Secretary announced in March that the Home Office would be consulting on a White Paper on Fire and Rescue Service Reform in England.
- Aspects of the Home Office reforms could have an impact on Scotland, for example if changes are made to the current UK wide Collective Bargaining arrangement on firefighter terms and conditions. The Scottish Government is closely monitoring developments and is in discussion with Home Office officials on this aspect of potential change.
- The SNP manifesto committed to "supporting the modernisation of our fire and rescue service so that SFRS can do more to protect communities and deliver positive outcomes for the people of Scotland".

SCOTTISH FIRE AND RESCUE SERVICE

- Further, it stated: “We have continued to invest in the modernisation of SFRS with an additional £8.7 million allocated for 2021-22. Central to this modernisation - which must be achieved in partnership with the trade unions - is broadening the role of firefighters in Scotland”.

The availability of firefighting appliances is an operational matter for the Scottish Fire and Rescue Service.

- One of the advantages of a national service is that SFRS has the flexibility to use its resources to ensure fire and rescue cover is maintained in all communities across Scotland.
- In common with other parts of the UK and beyond, recruitment and retention of volunteer and retained firefighters it is an on-going challenge for SFRS.
- We understand SFRS is actively pursuing a number of initiatives to address this issue.

The Scottish Government is continuing to invest in our Scottish Fire and Rescue Service with an increase in resource funding of £8.7m in 2021-22. This is on top of an increase in spending capacity of £15.5 million in 2018-19 and further increases in budget of £5.5 million in 2019-20 and £6.1 million in 2020-21.

Some fire stations are operating on temporarily reduced staffing levels as a result of Covid related absences.

- SFRS has well developed business continuity arrangements to ensure fire and rescue cover (including availability of fire appliances) is maintained across Scotland.
- Any temporary staffing changes remain under constant review by the SFRS Strategic Leadership Team.
- There were no staffing issues over the weekend of the tragic water incidents and all 20 SFRS water rescue resources were fully crewed and available.
- Whilst over the period of the pandemic, some multi-pump Water Rescue Stations have had reduced staffing levels (from 9 to 8 firefighters), this still allows for SFRS water resources to be available and deployed safely from those locations.
- All Water Rescue incidents receive additional specialist resources from other stations in order to support safe operations in line with agreed guidance.
- During the COVID pandemic SFRS have never failed to respond to any incident, including water incidents.

SCOTTISH FIRE AND RESCUE SERVICE

We are continuing to invest heavily in the service delivery and modernisation of the Scottish Fire and Rescue Service

- We committed in our manifesto to continue to modernise and invest in SFRS.
- We continue our commitment to support SFRS service delivery and modernisation with a further uplift of £8.7m resource for 2021-22.
- The spending capacity of SFRS was increased by £15.5 million in 2018-19 and further increases in budget continued of £5.5 million in 2019-20 and £6.1 million in 2020-21.
- The equivalent annual budget for SFRS (with VAT being reclaimed) is now over £35.8m higher than it was in 2017-18.
- The overall SFRS budget is now £343m and the SFRS Chief Fire Officer Martin Blunden has publically welcomed the increase.
- We continue to press the UK Government for return of the £50 million paid in VAT.
- The SFRS capital draft budget for 2021-22 has been maintained at £32.5m.
- However, SFRS received an additional £4.35 million capital allocation in 2020-21 specifically for minor capital works across its network of fire stations as part of the Covid fiscal stimulus package.
- While operations are matter for SFRS, they have confirmed there is no risk in terms of its operational response in relation to maintaining the capital draft budget.
- The Audit Scotland report, published on 31 May 2018, made it clear that modernisation of the Service is needed to reflect the risks facing the public.
- The draft budget for 2021-22 provides the Service the funding required to progress with its plans in order to meet the changing risks facing our communities.
- This continued resource investment means that SFRS can do more to keep our communities safe and deliver positive outcomes for the people of Scotland.
- The level of funding should allow SFRS to recover from Covid, in due course, resuming training and recruitment along with more Home Fire Safety Visits.
- The number of firefighters per head of population is higher in Scotland than in other parts of the UK. At March 2020, in Scotland there were 12.0 firefighters per 10,000 population. In England, that figure is just 6.2 and in Wales 8.8.

SCOTTISH FIRE AND RESCUE SERVICE

Fire reform has enabled resources to be located strategically across the country without the geographical borders which were in place during the existence of the eight legacy fire services.

- While various major incidents attended by SFRS, have benefitted from better access to specialist resources this was perhaps best demonstrated during Storm Frank in the winter 2015/16.
- During Storm Frank in the winter 2015/16 SFRS received over 350 calls in relation to flooding across all parts of Scotland. As the former Chief Officer alluded to in SFRS's evidence to Committee SFRS was able to strategically position and mobilise its resources according to rapidly changing risk and demand, often under the most challenging and dramatic conditions.
- Responses to major incidents like these have improved, including the capacity to maintain 'business of usual' at a local level during times of high demand.
- SFRS can now make evidence-based decisions on the allocation of its national specialist resources based on risk and location activity levels. This is one of a wide-range of measures designed to ensure equitable access to resources across Scotland and deliver the SFRS commitment to prioritise, maintain and enhance the safety of every community and its firefighters.
- Following a review of specialist resources SFRS improved the national coverage provided by its specialist water rescue units, increasing them to 20 units (and improving coverage in the north-east, west coast and Borders).

The Scottish Government has a very clear, zero tolerance approach to deliberate fire raising because it puts our communities at great risk.

- It presents a danger to life, property and the environment – not to mention the potential impact on businesses which are important to the economy.
- Deliberate fires are not only reckless and dangerous, but can divert SFRS resources away from genuine emergencies where people require its help.
- I urge the public to continue to support their firefighters by reporting any fire related anti-social behaviour because there may be people out there in need of the fire service's assistance at genuine emergencies – and every second counts.
- SFRS will continue to work very closely with its police and local authority partners to ensure that those responsible are identified and dealt with accordingly.
- The Scottish Government works in partnership with Police Scotland, SFRS, local authorities and the courts to tackle crimes of antisocial behaviour including fire-raising and vandalism.

SCOTTISH FIRE AND RESCUE SERVICE

- The Antisocial Behaviour etc. (Scotland) Act 2004 provides a wide range of measures for dealing with all forms of antisocial behaviour and our national strategy is based on prevention, early intervention and diversionary activities.
- SFRS run a host of engagement programmes which are utilised to engage with young people, with the aim of educating and supporting them and reduce and/or prevent the instances of deliberate fire setting and fire related anti-social behaviour.

Any death from fire is one too many and it is crucial that we avoid any complacency when it comes to fire safety.

- Effective fire safety, to prevent fires and reduce their impact, remains a priority for the Scottish Government and SFRS.
- SFRS's latest annual published statistics for 2019/20 confirmed a reduction in the total number of fires, fire fatalities, non-fatal fire casualties and accidental dwelling fires – the lowest on record across all four categories.
- We fully support SFRS's work to reduce fires and fire fatalities, including providing support to local communities and promoting safety.
- SFRS will continue to support local communities and promote safety, ensure that it has the technology and resources available to enable appropriate mobilisation to incidents across Scotland, and that Scotland's communities will continue to be fully protected.
- We will continue to work with emergency services and are happy to consider any further steps we can take to reduce the risk of fire fatalities.

A priority for the Scottish Government and Scottish Fire and Rescue Service safety is to prevent fires and reduce their social and economic impact.

- Fires and fire deaths in all domestic premises have reduced in the last 20 years, indicating the successful impact of the range of fire prevention and protection measures delivered.
- Scottish Fire and Rescue Service (SFRS) work in partnership with communities and organisations in the public, private and third sectors, on fire prevention, protection, response and wider community safety.
- Scottish Fire and Rescue Service deliver the programme of Home Fire Safety Visits (HFSVs). These give fire safety advice to people for their homes.
- In 2019-20 SFRS carried out **69,227 HFSVs** in people's homes, prioritising vulnerable people assessed at being at higher fire risk. SFRS also provide online bespoke advice.

SCOTTISH FIRE AND RESCUE SERVICE

- Following an increase in fire injuries and fatalities in early 2020, SFRS rapidly established the Make the Call campaign. This encouraged referral for Home Fire Safety Visits from friends, family and people at higher risk of fire: over 50 and smoke, and also either live alone, have mobility issues or are using medical oxygen.

A priority for Scottish Government continues to be learning from and responding to the Grenfell Tower Fire Inquiry to strengthen fire safety.

- The Ministerial Working Group on Building and Fire Safety was established following the Grenfell Tower fire. It continues to oversee reviews of building and fire safety frameworks, regulations and guidance, to improve the safety of homes in Scotland.
- Scottish Government produced a single source of Fire Safety Guidance for High Rise Domestic Building in 2019. This was a key recommendation by the Review of Fire Safety in Scotland and accepted by the Ministerial Working Group.
- No legislative change was recommended, but this remains under active consideration.

Scottish Government published its response to the Grenfell Inquiry Phase 1 report in October 2020.

- Scottish Fire and Rescue Service (SFRS) have led on the 31 recommendations for the fire service and emergency services. SFRS have completed the majority and the remainder are progressing, although some have been impacted by Covid-19 restrictions.
- There were actions from the remaining 15 recommendations, directed towards those responsible for fire safety in high rise domestic buildings and the Government. These have been, or are being, addressed by the Scottish Government Grenfell Inquiry Fire Safety Working Group.
- The approach for Scotland was to focus on outcomes that maintain and strengthen people's safety. The specific responses and actions reflect and build on the different fire safety legislation, regime and practice in Scotland, in a proportionate way, in line with the intent of the Grenfell Tower Inquiry Phase 1 recommendations.
- The actions have are being taken forward largely via amendments to the current the Fire Safety Guidance for High Rise Domestic Buildings.
- An Inspection of Firefighting in High Rise Domestic Buildings by Her Majesty's Fire Service Inspectorate has commenced and will report in 2022.

SCOTTISH FIRE AND RESCUE SERVICE

The Fire (Scotland) Act 2005 and associated regulations, provide the legislative basis for SFRS's fire safety work.

- The 2005 Act establishes the duty to promote fire safety and appoints SFRS as an enforcing authority for relevant premises.
- It includes enforcement of fire safety legislation, that generally applies to non-domestic premises, termed "relevant premises", to protect employees, residents and the public.
- Responsibility for compliance in these premises is with employers and others with control of the premises, known as dutyholders. They are required to undertake a fire safety risk assessment to determine what fire safety measures are required.
- SFRS carry out Fire Safety Audits, that are the examination of premises to ensure that they are managed and in line with the legislation. If a Duty Holder is not meeting their legal duties, or there are deficiencies, SFRS can take action, ranging from giving advice to legal enforcement.
- SFRS provide advice and support to those legally responsible for fire safety in premises. This has included advice from changes due to COVID restrictions.
- Under Covid-19 restrictions SFRS suspended its programme of routine Fire Safety audits to reduce staff accessing premises and person to person contact. Advice was given to dutyholders by phone and in writing to them to remind them of their fire safety duties. SFRS have plans to return to the fire safety audits programme.

The Scottish Government and SFRS are determined to ensure that those who are most at risk of harm from fire get the help and support they need.

- SFRS awareness raising work, such as the Make the Call campaign, is often aimed at those who are older, poorer, have health issues and live alone as well as fire safety advice to the general population.
- During their home fire safety visits SFRS officers are trained to recognise the fire safety risks in vulnerable people's homes and can make referrals to appropriate third party organisations for support.

SCOTTISH FIRE AND RESCUE SERVICE

The Scottish Government produced a single source of fire safety advice to protect people that live in supported accommodation or a domestic home.

- Fire Safety Guidance for Existing Specialised Housing's purpose is to strengthen fire safety for people who receive care or support. It is also be useful for those receiving "care at home" services or support in "general needs" housing. It provides practical fire safety advice on how to prevent fires and reduce their risk.
- The guidance uses a person-centred approach, that recognises the increased risk associated with people who are particularly vulnerable to fire, due to physical, cognitive or mental impairments. Personal characteristics can increase the likelihood of fire, the severity of the fire and the ability to respond effectively.

Targeted testing was introduced on 1 March 2021 to support essential public service functions, including all emergency service control rooms and NHS24.

- For SFRS, this means twice weekly testing for all operations control firefighters and other essential staff who need to come in close contact with others.
- Symptomatic testing at rural fire stations has been expanded to cover 24 sites across North and West Scotland to ensure more people are within 30 minutes of a testing centre.
- This is a good example of collaborative working between the Scottish Government, NHS and SFRS.

SFRS has robust plans in place to minimise Covid 19 infection between staff.

- This includes ensuring proper ventilation and maintaining physical distancing along with crews operating in bubbles to minimise the extent should an outbreak occur.
- Key staff groups such as Operations Control and those who come in close contact with others are routinely tested.
- In cases of Covid outbreaks, SFRS procedures quickly identify the need for action and ensure self-isolation of appropriate staff.
- SFRS works closely with Health Protection Scotland if any operational firefighter tests positive for Covid.
- Deep cleans are undertaken if any fire stations are affected and robust staff management arrangements mean that fire cover should be maintained at all times.
- As a national organisation SFRS can flex its resources to ensure cover is maintained to keep communities safe.

SCOTTISH FIRE AND RESCUE SERVICE

SFRS supports partners and local communities in a variety of emergencies and other challenging circumstances via local partnership arrangements delivering additional duties.

- For example, during Covid SFRS has delivered prescriptions and food parcels to the shielded and hand sanitisers to care homes.
- SFRS has supported the Scottish Ambulance Service through driving ambulances in times of pressure for SAS.
- SFRS stands ready to support other organisations and communities in any way it can.
- A strength of the national fire and rescue service is SFRS can bend and flex resources ensuring essential community safety cover is maintained at all times.

The Scottish Government takes the issue of water safety very seriously.

- The Scottish Government supports the work of Water Safety Scotland, and welcomed its publication in 2018 of Scotland's first Drowning Prevention Strategy, with a target to reduce accidental drowning deaths by 50% by 2026.
- The Scottish Government works closely with many partners on water safety; this includes providing grant funding to RoSPA and the Scottish Community Safety Network to help promote a co-ordinated and preventative approach.
- The Minister for Community Safety convened a meeting of senior stakeholders on 11 August, to secure agreement to work collaboratively to identify practical steps to accelerate progress in reducing water-related fatalities.
- The Minister for Community Safety is convening a follow-up meeting in September in order to assess progress and address any barriers to the effective delivery of water safety.

HUMAN TRAFFICKING AND EXPLOITATION

5 August

The Home Office Single Competent Authority released Q2 National Referral Mechanism (NRM) statistics for 2021 (1 April – 30 June) which showed 115 referrals related to Scotland.

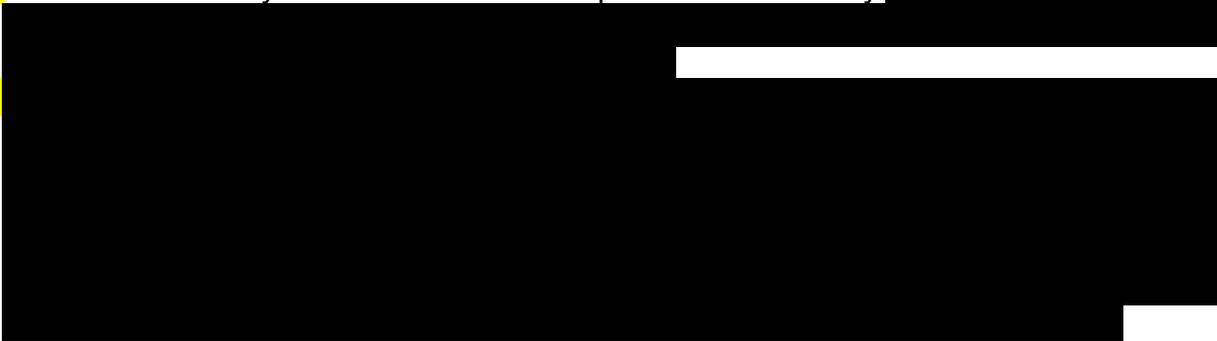
The NRM is the UK-wide framework for identifying victims of human trafficking and ensuring they receive appropriate support and assistance.

KEY POINTS

- A total of **115** referrals relating to Scotland were made to the NRM in Q2 2021, which is an **increase of 31%** on Q1 2021 (88 referrals)
- **86 males** and **29 females** were referred in Q2 2021.
- 76 referrals were for adults with 28 referrals for children. In 11 cases, age was unknown/not specified.
- **Vietnamese** (31 referrals) was the largest nationality grouping, followed by Romanian nationals (12), Albanian (10), Iranian (10), Chinese (6), Iraqi (6) and UK nationals (6)
- 57 Scottish referrals for adults included indicators of **labour exploitation**, followed by **criminal exploitation** (24) and **sexual exploitation** (14)
- 16 Scottish referrals for children included indicators of **labour exploitation**, followed by **sexual exploitation** (6) and **criminal exploitation** (6). **[NB: a referral can include multiple exploitation types]**.
- There were 3,140 UK referrals in Q2 2021, compared to 2,942 in Q1 2021
- Of the 500 Conclusive Grounds Decisions made in Q2 2021, the **median timeframe** for a decision was **435 days**.
- Adults **must provide informed consent** to enter the NRM but consent **is not required** for children.

UK Nationality and Borders Bill

The UK Nationality and Borders Bill was published on 6 July. 



TOP LINES

- Any form of human trafficking or exploitation is completely unacceptable.
- The content of the New Plan for Immigration and subsequent Nationality and Borders Bill is likely to have a significant impact on victims of human trafficking and exploitation.
- Human trafficking and exploitation policy is devolved to Scottish Ministers.

HUMAN TRAFFICKING AND EXPLOITATION

- The Human Trafficking and Exploitation (Scotland) Act 2015, which was passed unanimously by the Scottish Parliament, gives police and prosecutors greater powers to detect and bring to justice those responsible for trafficking as well as strengthening protections for survivors.
- We are working closely with partners to ensure support for victims of trafficking continues during the COVID-19 pandemic.
- Police Scotland carried out Operation Perceptive last year, visiting premises in the fishing, forestry and agricultural sectors. This proved a useful source of intelligence, improved the resistance of those businesses vulnerable to hiring exploited labour and raised awareness of trafficking and exploitation.
- Police Scotland continue to work closely with partners across the UK and beyond to share intelligence and coordinate work to tackle human trafficking.
- Equally Safe, Scotland's strategy for preventing and eradicating violence against women and girls, adopts the position that commercial sexual exploitation, of which prostitution is one aspect, is a form of gendered violence.
- Scotland's serious organised crime strategy recognises the links between human trafficking and serious organised crime and underpins a joined-up approach to tackling this alongside our Trafficking and Exploitation Strategy.
- The National Referral Mechanism statistics published on 5 August show in no uncertain terms that human trafficking and exploitation is happening in Scotland, despite the significant restrictions that have been in place during reporting period.
- It is more important than ever that the public report any concerns to the Modern Slavery Helpline or Police Scotland - if something doesn't look right, report it.
- Information on spotting the signs of human trafficking and exploitation can be found on the Scottish Government or Modern Slavery Helpline websites.

New Plan for Immigration & Nationality and Borders Bill

- The UK Government chose to announce significant proposals for change to the UK immigration system the day before the pre-election period.
- These are significant proposals, which will impact people living in communities across the UK, including victims of human trafficking and exploitation.
- Scottish Ministers have statutory responsibilities to support victims of human trafficking and exploitation.

HUMAN TRAFFICKING AND EXPLOITATION

- Human trafficking and exploitation is an abhorrent and complex crime. Victims can be highly traumatised and take time to fully describe what has happened to them and who was involved. Any changes to the identification of victims must have appropriate safeguards in place to avoid penalising genuine victims who require time to reveal the extent of their abuse.
- We are unclear on the evidential basis for any change to the threshold for Reasonable Grounds (RG) decisions. Extensive training on the National Referral Mechanism for First Responders should be prioritised to improve the quality of referrals, before any change to the Reasonable Grounds threshold is implemented.
- The Scottish Government recognises the need to deter and prevent abuse of our immigration and asylum systems, but careful consideration should be given to the scope of offences under ‘public order’ which may preclude access to support and assistance.
- Further detail is required about the parameters of ‘temporary leave to remain’ to fully assess the potential impacts for victims of human trafficking

The latest figures on National Referral Mechanism show Scotland continues to play its part in helping victims out of human trafficking and exploitation.

- The National Referral Mechanism is the UK framework for identifying potential victims of human trafficking and exploitation and ensuring they receive the appropriate support.
- Sections 9 & 10 of the Human Trafficking and Exploitation (Scotland) Act 2015 requires Scottish Ministers to secure support and assistance for adult victims of human trafficking where there are reasonable grounds (as determined through the NRM) to believe an adult is a victim of human trafficking and/or slavery, servitude and forced or compulsory labour.
- This support is set at 90 days in Scotland, or until a Conclusive Grounds Decision is reached, whichever comes first.
- The data published on 5 August makes clear that anyone can be a victim, including UK nationals.
- The level of referrals reflect, in part, continuing work with partners to raise awareness and improve training and practice.
- In collaboration with partners, we published a Toolkit on 19 March to assist professionals and survivors navigate the National Referral Mechanism
- The Toolkit is available to all First Responder organisations in Scotland and will help to ensure survivors get the support and assistance they require.
- We recognise the serious impact delays in decision making within the NRM can have on the recovery process for victims of trafficking and we have

HUMAN TRAFFICKING AND EXPLOITATION

raised the need for significantly faster decision making with the Home Office.

- We understand that the SCA are recruiting a substantial number of new decision making staff in order to deal with the volume of NRM cases. However, we are aware that this will not have an immediate impact on waiting times.
- A Conclusive Grounds Decision should be taken as soon as the necessary information is available. Faster decision making would support victim recovery and avoid significant periods of uncertainty which can be detrimental to wellbeing.
- We will look to work with the Home Office to reflect on learning from the current pilot being undertaken in Glasgow around NRM decision making for children.
- In Q2 2021, 98% of child and 80% of adult CG decisions taken by the Single Competent Authority within the Home Office were positive.

We have increased funding for victims of trafficking

- TARA and Migrant Help will share over £1.4 million in 2021/22 to support adult victims of trafficking and exploitation.
- Funding in 2021/22 amounts to £580,800 for TARA and £903,806 for Migrant Help
- This funding is enabling both organisations to deliver support and assistance to victims of trafficking, with a particular focus on digital inclusion.
- The Scottish Government has provided £2.5 million in funding to the Scottish Guardianship Service since 2010. (£50k – 2010-12; £200k: 2013-15; £300k: 2016-present).
- We are also providing over £186k this year to NHS Greater Glasgow and Clyde to provide a psychological trauma support service to adult trafficking victims.
- This represents a 28% increase compared to 2020/21 funding to support the rise in victims of trafficking requiring psychological trauma support.
- We increased weekly subsistence rates with effect from 13 January 2021 for victims of trafficking in Scotland. Following changes to asylum support payments by the UK Government, this ensures all trafficking victims are entitled to the same weekly amount.

We are identifying more victims and getting them the help they need

- Since 1 April 2018, support for victims of offences under the Human Trafficking and Exploitation Act has been placed on a statutory footing.
- This support can be provided for up to 90 days, or longer in some circumstances, and can include accommodation, assistance with day to

HUMAN TRAFFICKING AND EXPLOITATION

day living, medical advice and treatment including psychological help, language translation and interpretation, counselling, legal advice, help accessing other services and, if the victim wishes, repatriation.

- Throughout the pandemic we have worked closely with TARA and Migrant Help to overcome digital connectivity issues for victims, including funding significantly greater access to electronic devices to assist with remote support.

The Human Trafficking and Exploitation (Scotland) Act 2015 strengthens legal protections and police powers but why are there so few convictions?

- Decisions in relation to prosecution are for the Crown Office and Procurator Fiscal Service and are taken in line with the published Prosecution Code.
- The Act gives police and prosecutors greater powers to detect and prosecute those responsible.
- Trafficking and Exploitation Prevention Orders (TEPOs) came into force in June 2017 and Trafficking and Exploitation Risk Orders (TEROs) came into force in October 2017.
- The first convictions under the 2015 Act resulted in two men being sentenced to ten years and seven years imprisonment respectively on 15 March 2018.
- Trafficking is a complex crime, with control and coercion often exerted by traffickers over victims in subtle and hidden ways. Victims can be highly traumatised and elect not to assist with investigations or take time to fully describe what has happened to them and who was involved. These factors can combine to make building a case a time consuming process.
- Crimes relating to human trafficking may also be prosecuted under separate more general criminal offences.

We are working in partnership to raise awareness and strengthen protections for victims

- In May 2017 we published Scotland's first Trafficking and Exploitation Strategy.
- The Strategy sets out our vision to eliminate human trafficking and exploitation.
- We have worked with partners, including victims and support organisations, to review the Trafficking and Exploitation Strategy.
- The Strategy review and third annual progress report was published on Friday 29 May 2020, in line with statutory requirements.

HUMAN TRAFFICKING AND EXPLOITATION

- The review identified a need to further consider gendered aspects of human trafficking and exploitation, child criminal exploitation and longer term outcomes for survivors.

Duty to Notify

- Section 38 of the Act allows for the collation and processing of wider information about trafficking activity in Scotland not currently collected through the NRM or the criminal justice system.
- It is considered this should provide a more accurate picture of the scale and extent of trafficking in Scotland, and enable more effective targeting of enforcement activity and provision of support services.
- A consultation on implementing Duty to Notify in Scotland closed on 6 September 2019. We have published all consultation responses online.
- The consultation analysis report was published on 30 April 2020. Overall there was strong support for the Scottish Government proposals.
- Legislative implementation of the duty has been delayed due to the priority response to COVID-19 and its impact on public services.

We took forward Scotland's first national consultation on prostitution to discuss our future approach to this important issue within the context of how women and girls should be treated in an equal society.

- The consultation attracted over 4,000 responses and the analysis of the findings from the consultation and the Scottish Government response was published 16 June.
- As a Government we have a strong track record in bringing forward bold policies to tackling violence against women and girls and the harmful societal norms which perpetuate gender inequality.
- In line with these ambitions, our progressive policies on women's rights, and our Manifesto commitment, we have committed to developing a model for Scotland to tackle prostitution and challenge men's demand.
- The development of this will model will consider international approaches to challenge men's demand for prostitution and best practice to reduce harms.
- In addition, we will engage with those with direct or lived experience to shape services and design measures which will protect them from harm and provide the support they need, including helping them exit prostitution.
- We know that these challenging and unprecedented times are impacting those involved in prostitution and we continue to work with third sector partners to fully understand the impact of Covid-19 and encourage people to access mainstream and specialist support services available to them.

HUMAN TRAFFICKING AND EXPLOITATION

- The Scottish Government funds a range of services aimed to address commercial sexual exploitation and to support women who may be exploited through it.

Combating child exploitation and supporting victims to recover is a priority for the Scottish Government.

- In all cases where it is suspected that a child may be a victim of exploitation or trafficking, the child's safety is paramount and child protection procedures must be activated immediately.
- Where it is suspected that a child may be a victim of human trafficking or exploitation a referral to the National Referral Mechanism should be made.
- We are committed to tackling any form of child exploitation, as set out in our National Action Plan to Prevent and Tackle Child Sexual Exploitation; our Trafficking and Exploitation Strategy; Serious Organised Crime Strategy; Youth Justice Strategy and our National Action Plan on Internet Safety for Children and Young People.
- The Scottish Government's revised National Guidance for Child Protection is also currently being finalised and will include an updated section on identifying and supporting victims of exploitation including trafficking, criminal and sexual exploitation.
- Work is underway to develop the new Independent Child Trafficking Guardian service and in the meantime the Scottish Government continues to fund the Scottish Guardianship Service to provide additional legal and practical support to unaccompanied children and victims of trafficking.

HATE CRIME AND PUBLIC ORDER (SCOTLAND) ACT 2021

The Hate Crime and Public Order (Scotland) Act 2021: Received Royal Assent in April 2021. The new Act was developed in response to recommendations made by Lord Bracadale’s independent review of hate crime legislation in Scotland. It consolidates and modernises Scotland’s hate crime legislation. It also:

- adds age as an additional hate crime characteristic;
- extends standalone stirring up hatred offences to cover all listed characteristics;
- updates the definition of transgender identity applicable for the purposes of hate crime legislation and creates a separate category of hate crime offences relating to variations in sex characteristics;
- includes a power to allow the characteristic of ‘sex’ to be added to the lists of hate crime characteristics by secondary legislation at a later date; and
- abolishes the common law offence of blasphemy.

Commencement:

- An implementation plan and commencement date(s) for the Act’s various provisions need to be agreed with stakeholders and justice partners.
- There are ongoing discussions with Police Scotland to confirm if their IT systems can allow for the Act to be commenced in spring/summer 2022.
- [REDACTED]. Some stakeholders did expect to be involved in the process to finalise the content of the Notes following a commitment made by the previous Justice Secretary.
- Media reports on an FOI release over summer stated that the Act would cost Police Scotland more than £1m to implement – however, the figures quoted related to estimated costs for a range of justice partners and not just Police Scotland.

Characteristic of ‘sex’: Independent Working Group on Misogyny and Criminal Justice in Scotland, chaired by Baroness Helena Kennedy QC, will explore whether there should be a standalone offence of misogyny and whether ‘sex’ should be added to the hate crime framework. Final recommendations due by February 2022.

Top Lines

- Hate crime threatens community cohesion and can be an extremely distressing and pernicious form of criminality.
- The Act consolidates, modernises and extends hate crime legislation - ensuring it is fit for 21st Century Scotland. It is the product of years of research, consultation and engagement.
- The Act includes rigorous safeguards on free speech. It does not prevent people expressing controversial, challenging or offensive views nor does it seek to stifle criticism or rigorous debate in any way.
- The Working Group on Misogyny and Criminal Justice (chaired by Baroness Helena Kennedy) is, among other things, looking at whether the characteristic of “sex” should be added to the hate crime framework. The previous Parliament afforded the Working Group the space so that it can

HATE CRIME AND PUBLIC ORDER (SCOTLAND) ACT 2021

deliver, uninhibited, on its role and remit and provide its recommendations early next year for us to consider.

- Implementation of the Hate Crime Act provides a good opportunity for the Scottish Government, justice partners and stakeholders to take stock of and refresh their approach to tackling hate crime.
- We will work with stakeholders to develop a new hate crime strategy later this year, which will support implementation of the Hate Crime Act.

STIRRING UP HATRED + FREEDOM OF EXPRESSION

Part 3 of the Act introduces new standalone offences criminalising the stirring up of hatred against people based on the listed = characteristics. During parliamentary scrutiny this area attracted significant controversy, with those opposed to offences of stirring up hatred arguing they would stifle free speech. The Act contains explicit provision on freedom of expression to provide clarity and reassurance as to the boundaries of the new stirring up hatred offences.

The Act extends the protections provided against hate crimes through introducing new offences criminalising the stirring up of hatred for characteristics other than race, and modernises and consolidates existing offences in relation to stirring up racial hatred.

- The concept of stirring up hatred offences is not new to Scots law.
- Long-standing stirring up racial hatred offences have operated effectively in Scotland and across the UK since the mid-1980s.
- The Act creates new offences of stirring up hatred in respect of the characteristics of age, disability, religion, sexual orientation, transgender identity, and variations in sex characteristics.
- For the new stirring up hatred offences, people can express controversial, challenging or offensive views as long as this is not done in a **threatening or abusive** way that is **intended** to stir up hatred.
- For the long standing stirring up racial hatred offences, the threshold remains threatening, abusive or insulting behaviour, accompanied by an intention or likelihood to stir up hatred.

Behaviour that stirs up hatred is corrosive, and it can leave entire communities feeling isolated, scared and vulnerable to attack.

- If someone cannot offer strongly held views without doing so in a threatening or abusive way which is intended to stir up hatred of others, then the criminal law should be able to be used if necessary to protect people.
- Whether conduct is “threatening” or “abusive” and intended/likely to stir up hatred in any given case is for the police, prosecutors and ultimately the

HATE CRIME AND PUBLIC ORDER (SCOTLAND) ACT 2021

courts to determine to the standard of beyond reasonable doubt on the basis of an independent, objective assessment of the available evidence. **The freedom of expression protections in the Act provide reassurance that offences of stirring up hatred will not inadvertently cause anyone who wishes to debate, discuss or criticise any matters in a non-threatening or abusive manner to self-censor because they fear they may be committing an offence.**

- The approach taken in the Act answers the calls for more comprehensive freedom of expression protection without singling out specific communities.
- More detailed freedom of expression provision is provided for the characteristic of religion, including expressions of antipathy, dislike, ridicule or insult.
- There is no freedom of expression provision for the longstanding offence of stirring up racial hatred.
- The ECHR protects everyone's right to express views even if they shock, offend or disturb others, but it does not give the right to threaten or abuse others where it is intended to encourage a hatred of them.

HATE CRIME DATA

Data provisions: The Act makes provision requiring information about police recorded hate crime and convictions to be published annually, with greater detail where known.

- We are working with Police Scotland to ensure their new Crime Management System can provide the level of detail required (i.e. disaggregated hate crime data). We will work with justice partners (SCTS, COPFS and PS) to determine how best to ensure disaggregated data on convictions can be taken forward.

Hate Crime statistics: Publication of Scottish Government research report - '*A Study of the Characteristics of Police Recorded Hate Crime in Scotland*' which presents (i) statistics on the number of hate crimes recorded by police in Scotland over 2014-15 to 2019-20 and (ii) findings from a study into the characteristics of these crimes, based on the review of a large sample of records from 2018-19.

- The police recorded 6,448 hate crimes in 2019-20. Around three-fifths (62%) had a race aggravator, one in five (20%) included a sexual orientation aggravator, 8% religion, 4% disability and 1% transgender identity.
- The most frequently recorded hate crimes were public order offences, such as threatening or abusive behaviour (51%). Since 2014-15, the number of hate crimes recorded by the police has fluctuated between 6,300 and 7,000. Rates are highest in Edinburgh and Glasgow.

The Hate Crime Act's provisions on the recording of hate crime data will provide vital information on what groups are being targeted.

HATE CRIME AND PUBLIC ORDER (SCOTLAND) ACT 2021

- Under-reporting of hate crime is a significant issue that must be tackled, and having the data and evidence to inform our response will be key to ensuring it is effective and provides the necessary support for victims.
- We are working with Police Scotland to ensure their new Crime Management System will have the capability of capturing the data, where it is available, on a sustainable basis.
- We will also work with COPFS and SCTS to determine the most effective way for Scottish Ministers to receive further information on hate crime convictions.
- Until Police Scotland's systems are in place, we have committed to produce a further study into the characteristics of police recorded hate crime for 2020/21, which will cover the exceptional circumstances of the COVID pandemic.

FIREWORKS

ISSUE 15 AUGUST: Consultation on proposed Fireworks and Pyrotechnics Bill closed, with over 1,700 responses.

ISSUE 30 JUNE: The Fireworks (Scotland) Miscellaneous Amendments Regulations 2021 come into force. The regulations implement a number of the Firework Review Group recommendations and restrict the time of day the general public can use fireworks, restrict the time of day fireworks can be supplied to the general public, and restrict the volume of fireworks that can be supplied the general public at any one time.

ISSUE 20 JUNE: Launch of 8 week consultation on Fireworks and Pyrotechnics Bill seeking views on 1. changes to how fireworks can be sold and used in Scotland; 2. the use of pyrotechnic devices. The launch received positive coverage in the press and over 200 responses were received within the first few days.

ISSUE NOV 2020: Independent Fireworks Review Group recommends changes are needed to how fireworks are accessed and sold in Scotland requiring a combination of secondary and primary legislation to implement.

ISSUE NOV 2020: Police Scotland and Scottish Fire and Rescue Service report a higher number of incidents through Operation Moonbeam involving fireworks and bonfires.

ISSUE NOV 2020: Various media reports of incidents on Bonfire Night including 12 reported attacks on fire crews (no injuries), specialist police support resources deployed in Greenock as 200 youths gathered for an illegal firework display and two houses in Motherwell catching fire after being hit by a firework.

ISSUE JAN 2020: [REDACTED]

Top Lines

- There is a strong desire for greater control on the sale of use of fireworks in communities across Scotland for reasons ranging from the misuse of fireworks, attacks on our emergency services, firework related injury as well as the noise and disturbance of fireworks both on those with noise sensitivity as well as to animals.
- The misuse of fireworks in our communities – including setting off fireworks in public places or out with designated times - is not acceptable; and causes fear, alarm and distress.
- I am committed to introducing any legislation that is needed to ensure fireworks are used safely and appropriately.
- Following the final report from the independent Fireworks Review Group that recommended a fundamental shift is needed to how fireworks are accessed and used, I announced my intention to implement the recommendations from the Group as a matter of urgency to ensure positive change is in place for communities going forward.

FIREWORKS

- The Scottish Government has progressed three recommendations from the independent Review Group through secondary legislation via the Fireworks (Scotland) Miscellaneous Amendments Regulations 2021 to: restrict the times of day that fireworks can be sold; restrict the volume of fireworks that can be sold; and restrict the time of day that fireworks can be set off. These changes came into force on 30 June 2021.
- I launched a consultation on 20 June to seek views on implementing the remaining recommendations from the Review Group - specifically the introduction of four specific requirements in law in relation to the supply and use of fireworks in Scotland.
- I also sought views on a new offence in relation to carrying a pyrotechnic device in a public place (including in a vehicle) without reasonable excuse or lawful authority, and for police powers to be extended to allow a stop and search provision for anyone reasonably suspected of committing the offence.

The Scottish Government is committed to introducing legislation that is needed to ensure fireworks are used safely and appropriately going forward

- The Firework Review Group, chaired by Alasdair Hay, provided its recommendations on tightening legislation on fireworks in Scotland on 3rd November last year.
- I strongly welcomed the recommendations from the Review Group.
- I laid regulations in the Scottish Parliament in February to restrict the times of day that fireworks can be sold; restrict the volume of fireworks that can be sold; and restrict the time of day that fireworks can be set off. These came into force in June 2021 and will lead to positive and tangible change for individuals and communities in time for the November 2021 fireworks period.
- The recommendations were welcomed by Labour, Greens, and Liberal Democrats with the Conservatives recognising the Group's serious endeavour and the expertise of Alasdair Hay as Chair.

FIREWORKS

The Scottish Government recently sought views on changes to how fireworks can be sold and used in Scotland; and also the use of pyrotechnic devices in a consultation which closed on 15 August 2021

- The Scottish Government sought views on four changes to how fireworks can be sold and used in Scotland to ensure fireworks are used safely, handled with care and do not cause harm, distress or injury, including: introducing a fireworks licencing system before the general public can purchase, possess and use fireworks; restricting the days fireworks can be sold to and set off by the general public; introducing no firework areas where it is not possible for the general public to set fireworks off; and the introduction of a proxy purchasing offence to criminalise the supply of fireworks to people under the age of 18.
- The consultation also sought views on the use of pyrotechnic devices and specifically whether it should be an offence to carry a pyrotechnic device in a public place without reasonable excuse or lawful authority, and whether police powers should be extended to allow a stop and search provision for anyone reasonably suspected of committing the offence.
- The consultation closed on 15 August and received over 1,700 responses.
- These responses are being analysed by an independent consultant and the results will inform next steps and development of legislation relating to fireworks and pyrotechnics.
- A programme of communication and engagement took place to support the consultation, including virtual engagement events where individuals, communities and stakeholders were invited to attend and share their views on the measures proposed in the consultation.
- The 2021 consultation builds on views that were expressed through the 2019 consultation, which began a conversation about fireworks with the people of Scotland.

The Scottish Government recognises that legislation in and of itself is not enough to tackle the issue of fireworks misuse

- In October 2019, I published the **Fireworks Action Plan** setting out how the Scottish Government will address concerns expressed through the 2019 consultation.
- The Action Plan sets out activities that were taken forward immediately, as well as longer term actions that will collectively support a change in how fireworks are used in Scotland, including the establishment of the Fireworks Review Group.
- The Action Plan also sets out the range of non-legislative actions that have been progressing, including greater awareness raising, education and

FIREWORKS

preventative activity in communities across Scotland, including launching three public awareness and safety campaigns ahead of bonfire night.

There are specific laws in place to protect emergency workers through the Emergency Worker(s) Act (Scotland) 2005

- This Act, which was opposed by the Scottish Conservatives, is an important piece of legislation offering specific criminal law protections for our emergency services.
- In 2008 this administration extended the Emergency Workers Act to cover GPs, other doctors, nurses and midwives when working in the community.
- Under common law offences of assault and breach of the peace, penalties are available to the courts up to life imprisonment and unlimited fines to deal with the most serious assaults.
- For more serious assaults, the common law of assault can be used which carries maximum penalties up to life imprisonment.
- We keep the law under review and are happy to consider if any new reforms in the area of emergency workers law is needed.

The overwhelming results of the 2019 national consultation on fireworks demonstrates strong support for a change in how fireworks are sold and used in Scotland

- Almost all of those who responded to the 2019 consultation (94%) said they would welcome increased controls on the sale of fireworks.
- Most of those who responded to the 2019 consultation (92%) felt there should be more control on how fireworks can be used.
- This message is backed up by findings from a nationally representative opinion poll that provides findings representative of people across Scotland that confirmed:
 - A majority of adults in Scotland (71%) feel there should be more controls over the sale of fireworks.
 - A majority of adults in Scotland (68%) feel there should be more control on how fireworks can be used in Scotland.
- The subsequent Action Plan on Fireworks sets out clear actions that the Scottish Government will take to reduce the negative impact of fireworks. The Action Plan was welcomed by Labour and the Liberal Democrats, with the Conservatives welcoming the appointment of Alasdair Hay in 2019.

LEGAL AID AND REFORM

Legal Aid and Legal Aid Reform

The Scottish Government has consulted on plans for reform of the legal aid system and will seek to take forward primary legislation.

The Legal Aid Payment Advisory Panel reported its findings to Ministers during the summer recess. The recommendations were welcomed by the Scottish Government and are being addressed. Further information on next steps will be provided to the Committee.

The Scottish Government has engaged with legal aid providers to sustain legal advice throughout the Covid-19 pandemic and to secure provision as we enter the recovery and renewal stage.

Top Lines

- The role of legal aid solicitors in the justice sector is crucial and they have played a key role in supporting the continuation of court business during the worst of the pandemic. Their continued contribution will be crucial to the recovery of the justice system and the resolution of problems associated with the pandemic and resulting economic shock.
- That is why in 2020 we committed to bringing forward a package of measures worth £20 million to help support the legal aid sector.
- As part of this package, we have delivered the first stage (+5%) of a 10% uplift in legal aid fees in March 2021 and expect the next uplift to be taken forward later this year. We also provided a total of £2.3m in resilience fund grants to 94 firms in February this year.
- Funding up to £1 million was provided to the Law Society of Scotland to support the cost of up to 40 legal traineeships, to legal aid providers and encourage graduates to remain within the legal aid system post qualification.
- In addition to the resilience fund, a further fund of £6.7 million was launched at the beginning of August 2021 to support the legal aid sector and the recovery and renewal programme as we emerge from the pandemic. This fund was developed in partnership with the Scottish Solicitors Bar Association and the Law Society of Scotland and will lead to a distribution of a further £6.7m in grant funding.

LEGAL AID AND REFORM

Legal Aid Reform

- Following a period of public consultation there is support for developing a new statutory framework for a modern, forward-looking and user-centred legal aid service for Scotland.
- Analysis shows the majority of respondents supported that the user should be at the centre of the legal aid system.
- The majority of respondents agreed that the current model of provision could be strengthened.
- Overwhelmingly respondents supported not only retaining the current scope of legal aid but also widening it, specifically legal aid provision for group actions, tribunals and issues related to Human Rights.
- There is real value for both users and providers in achieving a user-focused and diverse delivery model; users can access appropriate interventions at the right time, and providers can better target their expertise to those who require it.
- More targeted provision could improve access to legally aided services in certain geographical areas or for groups with specific legal needs, such as domestic violence, disability or persons from a BME background.

Legal Aid Payment Advisory Panel

- The legal aid payment advisory panel was established in response to recommendations made in the Independent Strategic Review of Legal Aid.
- The panel reported its findings and recommendations to Ministers during summer recess.
- The panel identified the potential to improve significantly the transparency in how fee levels are set, to ensure an evidence guided process that is subject to regular review. The panel recommended that independent research be commissioned to consider, amongst other things, the cost to firms of providing legally aided advice.
- We agree that this research is necessary and timely and the Scottish Government will begin the process of identifying an appropriate contractor to carry this out in the coming weeks.
- The panel also recommended that the Scottish Government consult on criminal legal aid reforms. Engagement with the Scottish Bar Associations and the Law Society of Scotland has begun on these proposals.

LEGAL AID AND REFORM

Resilience Fund - background

- The Covid Resilience and Recovery Fund for Legal Aid opened on 10 February and closed on 31 March.
- The Fund focussed support on legal aid firms, who had experienced a drop in projected income from new legal aid business once other forms of COVID-related support were taken into account.
- The fund brought firms back up to the income they could reasonably have expected had the pandemic not impacted on their levels of new legal aid business.
- We received 288 applications – representing fewer than half of the potentially eligible active firms - and have offered awards totalling circa £2.3 million to 94 firms who were able to demonstrate net loss of legal aid income.
- The fund was made available to applicants who could demonstrate that they had experienced adverse financial consequences in the year 2020-21 and who would commit to continue to deliver legal aid services until March 2022.
- The sum of funding provided was lower than anticipated; we received less than half of anticipated applications, and applicants who's shortfall in income was compensated through other forms of government Covid support received proportionate grant offers as a result.

Legal Aid Fee Increase (worth £10m)

- On 1st February 2021 regulations were laid in the Scottish Parliament to provide a 5% across all legal aid fees from 22nd March 2021, followed by a further 5% increase in 2022. Therefore a compound increase of 10.25% over two years will be provided. This is a significant rise.

Support for Traineeships (worth £1m)

- We have also committed to providing £1 million of funding to the Law Society of Scotland to support 40 additional traineeships.
- We have worked closely with the Law Society of Scotland on the development of this scheme and the Society is managing the recruitment process.
- The fund launched on 3 June and the recruitment process for trainees is well underway.

LEGAL AID AND REFORM

Recovery, Renewal and Transformation

- We have also provided extra funding to the Scottish Courts and Tribunal Service to restore and enhance the capacity of the courts to progress business when the current restrictions are lifted.
- Increased business leads to increased income therefore this investment in our courts will be beneficial to legal aid providers in the future.
- At the end of 2020 we saw a recovery in a number of areas of legal aid to the levels previously seen and in some areas surpassing it indicating that the slowdown was time-limited and recovery was underway.

Earlier Support for the Profession

- At the beginning of the pandemic, we acted immediately to bring in an enhanced scheme of interim payments, recognising the difficulty firms could be placed in financially.
- During the first months of the crisis, Coronavirus legislation also allowed for named solicitors to be paid the full court fee when the duty solicitor covered the court, rather than a half fee, facilitating solicitors to comply with travel restrictions and assist with social distancing.

CONTROL OF DOGS POLICY

ISSUE: Control of dogs policy where there is a specific focus on public safety was the focus of Parliamentary scrutiny during the last session of Parliament, when the PAPLS Committee undertook post-legislative scrutiny on the Control of Dogs (Scotland) Act 2010 (“the 2010 Act”). Issues in relation to dog control and dangerous dogs continues to attract political, media and Ministerial interest. The Minister for Community Safety has policy responsibility for this issue.

Relevant legislation covers both criminal law and civil law. The Dangerous Dogs Act 1991 (“the 1991 Act”), provides for criminal law measures for dog owners and persons in charge of dogs which can be applied when a dog is ‘dangerously out of control’. While the 2010 Act provides for a civil regime which gives local authorities powers to impose dog control notices on dog owners who allow their dogs to be out of control.

The SNP Manifesto contained the commitment: “We will review the Dangerous Dog Act to ensure our communities are kept safe from dangerous dogs and irresponsible dog owners.”

TOP LINES

- Any dog attack is one too many. Working with justice agencies and local authorities, we want to keep communities safe from irresponsible dog owners and their ‘out of control and ‘dangerously out of control’ dogs.
- The vast majority of the owners of Scotland’s estimated 600,000 dogs are responsible people who take good care of their animals and enjoy the widespread benefits of dog ownership and companionship. However, a small minority of owners fail to keep their dog under proper control, which can put people at risk and cause public safety concerns across our communities.
- The SG is committed to reviewing the Dangerous Dogs Act 1991.
- A range of actions are underway to support enforcement by the police and local authorities, including work to establish a Scottish National Dog Control Notice (DCN) Database. The database is to hold information from all local authorities relating to DCNs served in Scotland.
- The SG undertook an awareness raising digital campaign, in partnership with the Scottish Society for the Prevention of Cruelty to Animals (SSPCA) in March 2021 to promote responsible dog ownership. The SG re-ran elements of the campaign on SG Facebook Safer Scotland page during w/c 9 August.
- The SG has consulted on practical measures to improve the operational effectiveness of the 2010 Act, and earlier this year we also consulted on possible options for reform of dog control legislation, primarily looking at the offence of a dog being dangerously out of control under the 1991 Act.
- The views offered in response to both consultations are helping to shape and inform policy development decisions going forward.

What action has the SG taken following the PAPLS Report last session

CONTROL OF DOGS POLICY

- The SG welcomed the PAPLS Committee report and committed to take a range of actions. The Minister for Community Safety appeared before the PAPLS Committee in March 2019, August 2020 and February 2021.
- Out of the 21 recommendations that require some form of action, 6 have been delivered, 14 are in progress and 1 is a longer-term recommendation which will be considered once reforms to the dog control system are in place.
- Many of the recommendations related to operational practice and the SG established a working group involving local authorities, Police Scotland, COSLA and other key stakeholders including a victim's voice, to progress this work.
- The SG launched a review of the 2010 Act in September 2019. This looked at technical aspects of the control of dogs legislative regime. The review confirmed strong support for new enforcement powers for local authorities. No legislative vehicle existed in the previous session and these changes consulted upon, along with possible change to the 1991 Act, require primary legislation.
- SG published updated statutory guidance on the 2010 Act in December 2020.
- SG led discussions between Police Scotland and local authorities to update the Joint Protocol (non-statutory status) between these enforcement agencies
- SG commissioned the Improvement Service to undertake a scoping study on a national DCN database. The scoping study ran from late November 2020 to February 2021. The SG is committed to having a Scottish National DCN Database operational by the end of 2021. The Improvement Service has recently carried out a 'proof of concept' exercise with 6 local authorities to make further progress towards the establishment of a national database.
- Earlier this year the SG consulted on possible options for reform of dog control legislation, primarily looking at the offence of a dog being dangerously out of control under the 1991 Act. The consultation closed on 30 April. [This has relevance to the SNP Manifesto commitment to 'Review the Dangerous Dogs Act'.]
- The SG carried out a marketing campaign on dog control with the SSPCA on in March 2021, with further activity to re-run elements of the campaign on the SG Safer Scotland page on Facebook during w/c 9 August.
- This digital led campaign was a continuation of activity undertaken last summer where we used social media channels to promote key messages / video scripts on Facebook and Twitter to promote responsible dog ownership.
- The SG is funding the development of a dog warden training fund (up to £100,000) and pilot scheme (up to £184,000) to look at enhancing training

CONTROL OF DOGS POLICY

for dog wardens and additional resource – progress will be kept under review by the SG led working group, which includes COSLA as one of its members.

Will the Scottish Government bring forward new legislation to tackle out of control dogs and consider any policy change on ‘banned breeds’

- Between September 2019 and January 2020 the SG carried out a public consultation looking at practical measures to improve the operational effectiveness of the 2010 Act.
- There was strong support for new enforcement powers. For example the ‘obstruction offence’, and more powers for local authorities that would enable dog wardens to consider and issue fixed penalty notices for a breach of a DCN. There was also strong support for a national DCN database.
- The SG is committed to reviewing the 1991 Act.
- A consultation on wider dog control law, primarily looking at the offence of a dog being dangerously out of control under the 1991 Act was published earlier this year, and ran until 30 April 2021.
- The views offered in response to both consultations are helping to shape and inform policy development decisions going forward.
- To further inform policy development, SG Justice Analytical Service will be undertaking a literature review to help understand approaches taken in other jurisdictions to help tackle and address irresponsible dog ownership and review the effectiveness of measures designed to improve dog control to keep communities safe.
- On banned breeds – SG is aware of the recent petition launched by the SSPCA. The SSPCA’s ‘No Bad Breed’ campaign urges members of the public to sign a petition asking for a review of the Dangerous Dogs Act. We agree with the SSPCA that responsible ownership is key to dogs being well looked after while keeping communities safe. In line with a 1997 amendment, a dog on the prohibited breed list can be kept legally subject to certain conditions, but we are happy to consider if changes are needed as part of work to consider the 1991 Act.”
- Without wishing to pre-empt the outcome of the ‘Review of the Dangerous Dogs Act’, the views offered will help inform whether legislation is brought forward during this parliamentary term.

CONTROL OF DOGS POLICY

The PAPLS Committee called for a National database to be established. What has the SG done.

- Where a person subject to a Dog Control Notice (DCN) moves from one local authority to another, a national database will be a valuable tool in helping enforce that notice.
- The Minister for Community Safety has given a commitment to Parliament that a Scottish National DCN Database will be operational by the end of this year.
- The SG commissioned the Improvement Service to undertake a Scoping Study exercise in relation to DCN management to develop a fuller understanding of the current approach towards DCN management.
- The Improvement Service has recently completed a tightly designed proof of concept exercise with a number of local authorities, and Police Scotland, in order to inform the ongoing work to develop and deliver a national database by the end of 2021.

The SG has previously acknowledged that there is a need for improved recording of A&E and primary care data in relation to dog bite incidents. What is the SG doing about this.

- Public Health Scotland (PHS) collects information on attendances at A&E due to dog bite incidents. However we do recognise that there is a need for improved recording of A&E and primary care data.
- PHS continue to work with NHS Boards to identify ways to improve the recording of diagnostic information in A&E data systems.
- A joint PHS/ SG Working Group has been set up to help to address the issues around accuracy and reliability of recorded data.

Do local authorities and Police Scotland need to do more

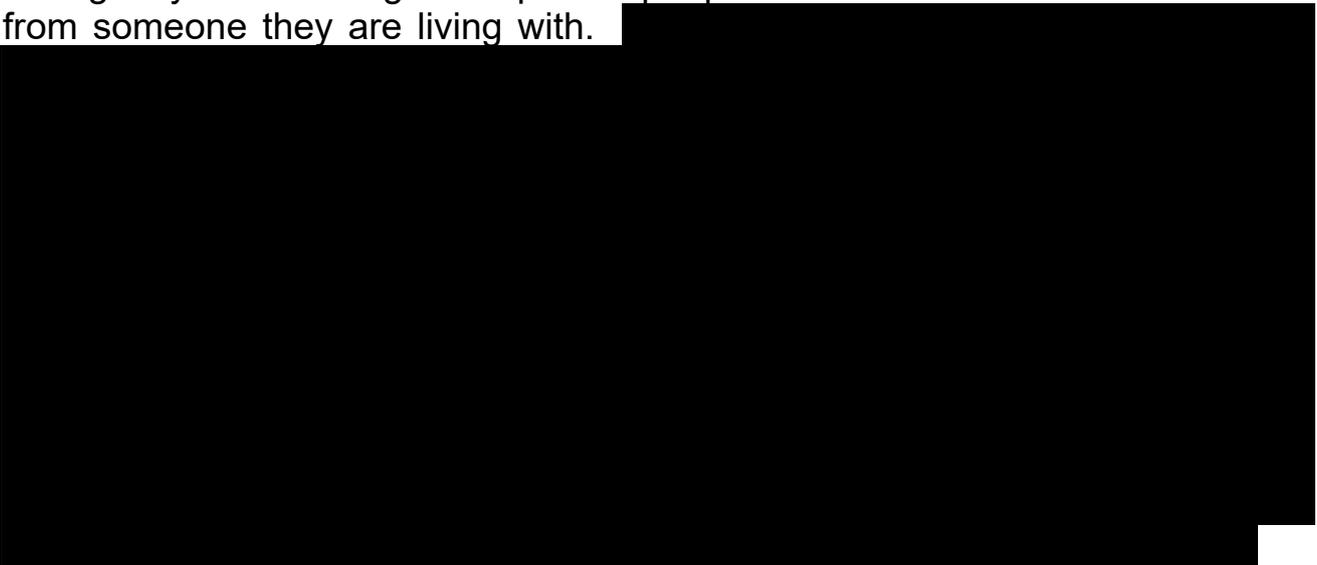
- The SG recognises the importance of ensuring all possible measures and actions are considered by independent operational agencies to protect our communities from dogs who pose a risk.
- The SG brought together representatives from the police and local authorities in a working group established last year. The working group is helping to drive forward improvements in the area of operational enforcement.
- With the assistance of the working group, the SG published updated statutory guidance on the Control of Dogs (Scotland) Act 2010 (“the 2010 Act”) in December 2020.
- Through the working group the SG also led and facilitated discussions between Police Scotland and local authorities to update the Joint Protocol agreement (non-statutory status) between these enforcement agencies.

CONTROL OF DOGS POLICY

- The SG has committed up to £100,000 to support the creation of a ‘training fund’ for local authority staff to help drive forward national improvement in local authority operational enforcement.
- The primary aim of the fund is to make sure that local authority staff involved in dog control in all 32 local authority areas have received suitable training that helps to ensure effective and consistent enforcement across Scotland. We want to see a step change in the level of expertise and competence in how dog wardens go about their day to day business.
- With the assistance of members of the SG led working group, officials have just recently received formal approval through COSLA to initiate this work.
- The SG has committed up to £184,000 to take forward a dog warden pilot scheme to test whether additional resources given to one or two local authorities proves to be successful in strengthening local authority enforcement, and in turn reducing the number of dog incidents / attacks on people. All local authorities were invited to apply to take part.
- The bids received from interested local authorities for the pilot scheme are currently being considered by the SG.

DOMESTIC ABUSE (PROTECTION) (SCOTLAND) ACT 2021 - IMPLEMENTATION

ISSUE: The Domestic Abuse (Protection) (Scotland) Act 2021 will, when it comes into effect, provide new powers for the police and courts to make emergency orders designed to protect people who are at risk of domestic abuse from someone they are living with.



TOP LINES

- This legislation helps progress further fundamental reform to improve how people at risk of domestic abuse are protected.
- In 2018, a new criminal offence of domestic abuse was legislated for and this new legislation complements that with powers to protect people at risk especially where no criminal case can be progressed.
- The Act provides the police and courts with powers to make emergency notices and orders to protect people at risk of domestic abuse
- When commenced, these will provide powers to remove a suspected perpetrator from a home they share with a person at risk and prohibit them from contacting or approaching them.
- Unlike existing civil measures, the person at risk does not have to make the application to the court themselves.
- The Act also creates a new ground for social landlords to apply to the court to end the tenancy of a perpetrator of domestic abuse with a view to transferring it to the victim of abuse.
- These powers are intended to provide protection for people at risk of domestic abuse and make it easier to stay in their own home.
- We will work with Police Scotland, the Scottish Courts and Tribunals Service, Scottish Women's Aid and others to take the necessary steps to enable the new protective notices and orders scheme to be implemented.

DOMESTIC ABUSE (PROTECTION) (SCOTLAND) ACT 2021 - IMPLEMENTATION

The Act provides the police and courts with new powers to remove a suspected perpetrator from the home of a person at risk of domestic abuse

- The Act gives the police a power to make a very short-term notice – a Domestic Abuse Protection Notice – which can bar a suspected perpetrator from the home of a person at risk.
- The police are then required to apply to the court for a protective order – a Domestic Abuse Protection order - that can remain in force for up to two months (extendable on application to three months).
- Breach of a police notice or a court order will be a criminal offence.

In contrast with existing civil protective orders, the person at risk does not have to apply to court themselves

- We know that people experiencing domestic abuse can face significant barriers to taking court action themselves to exclude an abusive partner from their home.
- Providing the police with powers to take action on behalf of the person at risk will provide space for a person to take longer-term steps to secure their safety.
- This might involve seeking an exclusion order, non-harassment order or interdict or steps to remove a person from a shared tenancy.
- This is intended to reduce the risk that a person experiencing domestic abuse may have to make themselves homeless to ensure their safety.

An Implementation Group, including Police Scotland, Scottish Courts and Tribunals Service and Scottish Women's Aid has been established

- It will have a role in the development of training and operating procedures, court rules and associated processes for courts' consideration of applications for protective orders, legal aid issues, support for people for whose protection an order is made, and steps needed to monitor and evaluate the use of the legislation once in effect.
- The group is considering the timetable for when the Act can be commenced.

The Act makes it easier for a local authority or registered social landlord to transfer a tenancy to a victim of domestic abuse

- The Act creates a new ground on which the landlord can apply to the court to end the tenancy of the perpetrator with a view to transferring it to the victim of abuse.
- It applies where the perpetrator is a tenant in a Scottish secure tenancy and the victim is either the partner or ex-partner of the tenant.

DOMESTIC ABUSE (PROTECTION) (SCOTLAND) ACT 2021 - IMPLEMENTATION

- This aspect of the Act is not directly linked to the protective notices and orders scheme and implementation will be a matter for Ministers responsible for housing policy.

OFFENSIVE WEAPONS ACT 2019 - IMPLEMENTATION

ISSUE: The UK Government's Offensive Weapons Act 2019 covers both reserved and devolved areas relating to offensive weapons. The 2019 Act provides for new restrictions relating to the sale and supply of, corrosives such as acids, bladed articles such as knives, other offensive weapons and firearms. Much of the 2019 Act is for the UK Government to implement (e.g. certain restrictions on corrosives and all the firearms provisions) but there are some areas for the Scottish Government to implement as they fall within devolved areas. There was a delay across the UK in terms of implementation due to Covid-19.

The Scottish devolved areas include:

- Banning possession of a corrosive substance in a public place,
- Tightening the operation of the existing offence banning sale of bladed articles to under 18s when sales take place remotely (e.g. online),
- Banning sellers from arranging the delivery of a bladed article to residential addresses or a locker where purchase is made remotely (e.g. online),
- Banning delivery companies from delivering bladed articles to under 18s where seller is outwith the UK,
- Banning possession in all places of certain dangerous knives and certain offensive weapons (where current restrictions only apply to public places) which will include a surrender and compensation scheme,
- Publishing statutory guidance for the provisions that extend to Scotland.

Top Lines

- Following re-prioritisation of work as part of post-Covid-19 planning, work is now well underway to develop an implementation plan for the devolved aspects of the 2019 Act.
- Scottish Government officials are in the final stages of drafting (in consultation with Police Scotland and the COPFS) Scottish statutory guidance for publication in relation to devolved aspects of the 2019 Act. It is anticipated that the draft guidance will be consulted on and amended where necessary before final publication, subject to Ministerial approval.
- Most large retailers that sell weapons have already implemented new policies that, for example, mean knives are no longer delivered to lockers.
- Implementation of the relevant provisions will back this up on a statutory basis.

OFFENSIVE WEAPONS ACT 2019 - IMPLEMENTATION

- A constraint on implementation of the corrosives provisions under Part 1 of the 2019 Act across the whole of the UK including Scotland is that new corrosives testing procedures which are necessary for Part 1 to be implemented are not yet developed.
- The new testing procedures are in the process of being developed through a UK Government scientific group which Scottish stakeholders and the Scottish Government are involved in.
- The police need to be able to identify types of corrosives to help enforce the new corrosives offences. Scottish Government officials are working with the Scottish Police Authority, Police Scotland and the COPFS regarding evidential testing procedures for corrosive substances.

Scottish Government officials are working with Police Scotland to develop a surrender and compensation scheme for specific knives that will be banned entirely.

- Secondary legislation (affirmative procedure) for approval by the Scottish Parliament will be needed in order for the surrender and compensation scheme to take place and this work is underway.
- It will also be necessary to set the amount of compensation that will be available per relevant knife and draft a claim form for compensation to be paid. Subject to approval by the Cabinet Secretary, the compensation to be paid per different type of weapon will be the same as the UK Government scheme. Therefore, the likely cost to the Scottish Government will be around £25K. It is considered the operation of this scheme will be a complex aspect of the project.

CHILDREN (SCOTLAND) ACT - IMPLEMENTATION

ISSUE: The Children (Scotland) Act gained Royal Assent on 1 October 2020.

Implementation of the Act will take time as a number of the provisions require secondary legislation, court rules or significant further work.

The Act covers a range of areas. The key areas of the Act are:

- Establishing registers of Child Welfare Reporters and curators ad litem;
- Introducing the regulation of child contact centres;
- Encouraging the views of younger children to be heard by decision makers;
- Protecting victims of domestic abuse by prohibiting person conduct of a case in certain circumstances and authorising special measures to be used in family court cases; and
- Promoting contact between looked after children and their siblings.

Top lines

- Our priority is to ensure that the interests of children are at the heart of family justice modernisation and to ensure the views of the child are heard.
- In cases involving domestic abuse, the Scottish Government wants to ensure that victims and children are protected appropriately during the family court process.
- Issues around family law and parental responsibilities inevitably raise sensitive issues and can give rise to competing viewpoints.
- The key policy aims of the Act are to:
 - Ensure the child's best interests are at the centre of any contact and residence case;
 - Ensure that the views of the child are heard; further compliance with the United Nations Convention on the Rights of the Child (UNCRC); and
 - Further protect victims of domestic abuse and their children in family court proceedings.
- We will take forward implementation of the Act as quickly as possible. However, implementation will take time as in many areas it will require secondary legislation, changes to court rules or significant further work.
- Regulations commencing a few sections of the Act were laid in the Scottish Parliament on 3 December and came into force on 17 January 2021.
- We have undertaken consultations on the register of child welfare reporters, curators ad litem and solicitors appointed where a person has been prohibited from personally conducting a case themselves and on the regulation of child contact centres shortly.

CHILDREN (SCOTLAND) ACT - IMPLEMENTATION

- During the consultation period we engaged with a range of stakeholders including children and young people and victims of domestic abuse.

The welfare of the child is paramount

- The current law lays down that the welfare of the child is paramount in these cases. This will remain the position.

Family Justice Modernisation Strategy

- We recognise that primary legislation is only part of the action necessary to improve the operation of family justice. We published a Family Justice Modernisation Strategy (FJMS) at the same time as the Children (Scotland) Bill was introduced into Parliament.
- The FJMS sets out ongoing work by the Scottish Government and others; work that can be done by secondary legislation or improved guidance; areas covered by the Act; and areas that are for longer term work.
- The key areas covered by the FJMS are:
 - Guidance for parties and children on attending court;
 - Further work to protect victims of domestic abuse;
 - Further work to ensure, where it is safe for the child and resident parent, that non-resident parents are involved in their child's learning;
 - Longer term work in relation to allowing a child with capacity to apply to record a change of name; and
 - Prioritisation of sibling relationships for children in care.
- The Scottish Government published information for children on speaking to a child welfare reporter in December 2020. We are now working on a version for younger children.

LICENSING – AUGUST 2021

ISSUE: The Coronavirus (Scotland) Act 2020 (“the 2020 Act”) amended both alcohol and non-alcohol (e.g. taxi & private hire car) areas of licensing legislation to provide additional flexibility and discretion to help minimise, as far as practicable, license holders (such as individuals & businesses) & other key licensing interests (such as Police Scotland) being adversely affected. These temporary modifications had been due to expire on 30 September 2021. However The Coronavirus (Extension and Expiry) (Scotland) Act 2021 has now extended the expiry date for most of the emergency measures to 31 March 2022 (and possibly 30 September 2022 if needed). **NB. These temporary modifications are completely separate from the “lockdown” regulations which required hospitality premises to close/ limited their ability to open.**

Top lines

- In response to the COVID outbreak, the SG took swift action last year and made a number of temporary but significant changes to the alcohol and civic government licensing regimes through The Coronavirus (Scotland) Act 2020 (“the 2020 Act”). The changes made by the 2020 Act were designed to assist users of the licensing system as well as licensing authorities with the significant challenges posed by the outbreak.
- The aim of these modifications was to provide additional flexibility and discretion to enable both the alcohol and civic government licensing regimes regime to continue to function. These temporary modifications had been due to end on 30 September 2021. However following the passing of further emergency legislation by the Scottish Parliament, the expiration date for most of these emergency measures has now been extended to 31 March 2022 (and possibly 30 September 2022 if needed).
- The SG did however support the amendment to the Coronavirus (Extension and Expiry) (Scotland) Bill brought forward by Graham Simpson in relation to public access to alcohol licensing board meetings.
- To ensure meetings of Licensing Boards take place in public in future, Parliament removed the flexibility previously provided to Licensing Boards by the 2020 Act to decide that meetings of the Board cannot be held in public for a reason relating to COVID. However it is important to note that there is a distinction between a **meeting** of a Licensing Board and a **hearing** of a Licensing Board. Boards continue to have discretion to determine that a hearing cannot be held in person for a reason relating to COVID.

Why has the SG extended most of the emergency measures?

- The SG recognises the continued need to allow for additional flexibility in timescales etc. which will benefit many given the strict demands of existing licensing laws as public authorities and businesses recover from the effects of the pandemic.

LICENSING – AUGUST 2021

- Extending the licensing provisions will assist businesses as they begin to recover from the adverse impact of the pandemic. The extension will also enable all users of the licensing systems to react quickly to any further COVID related restrictions, thus enabling the licensing systems to continue functioning.
- The SG is sure that in operating under these provisions Licensing Boards and Licensing authorities will continue to take a pragmatic and sensible approach in the circumstances we all face.

Why did the SG support Graham Simpson's amendment in relation to alcohol licensing board meetings?

- Having listened carefully to members during the debate on The Coronavirus (Extension and Expiry) (Scotland) Bill, and assessing further the complex licensing legislation, the SG was content to support the amendment put forward by Graham Simpson.
- While this change will ensure **meetings** of Licensing Boards will need to be held in public, Boards will continue to have discretion to determine that a **hearing** cannot be held in person for a reason relating to COVID.
- In such a case the Board must offer alternate means for the participants to be heard remotely. That would mean that Boards could continue to conduct hearings via remote means rather than in person.
- A Licensing Board would not do that lightly and nor should it. But if a hearing – which is the forum within which certain decisions under licensing legislation is made – needs to be conducted in this manner and done separately from a Licensing Board meeting due to coronavirus, then that can still happen.

New flexibility/discretion in licensing including alcohol licensing

- Key changes made by the emergency legislation last year included new powers for Licensing Boards to be able to extend the period of effect of personal licences if considered necessary in context of the COVID outbreak. This is to minimise the chances of a licence holder losing their rights during the pandemic through no fault of their own.
- New flexibility for Licensing Boards to be able to relieve any procedural failings that arise from the coronavirus outbreak, and taken together, a package of change designed to protect the rights of licence holders during this challenging period has been welcomed by licensing stakeholders.

Remote Hearings

- The 2020 Act gave Licensing Boards discretion to provide parties with an opportunity to be heard by remote means where an in person hearing is not possible because of reasons relating to Covid. This was a response

LICENSING – AUGUST 2021

to the pandemic and the inability of Licensing Boards to be able to hold face-to-face meetings.

- However, as we move through the pandemic it has become clear this particular discretion for Licensing Boards may have value outwith times of pandemic.
- The SG takes the view that ensuring the availability of remote hearings will allow Boards to consider how best to conduct their business and as such continue to provide welcome flexibility that will benefit and assist all users of the licensing systems as they begin to recover from the adverse impact of the Covid pandemic.
- SG is currently seeking responses on the COVID Recovery consultation on public services, justice system and other reforms. The licensing proposals would enable Licensing Boards / Licensing Authorities to make discretionary decisions as to whether it would be appropriate for a hearing to be held remotely as opposed to “in person”. The additional flexibility will be of benefit to users (e.g. licence holders) of the licensing system as well as Licensing Boards / Licensing Authorities. Where a Licensing Board / Authority decides to make use of this discretion to hold a remote hearing, it is proposed that no dilution of public access will be permitted with the Licensing Board / Authority requiring to put in place appropriate arrangements to allow for the public to observe the hearing and, where relevant, participate as an objector.

ALCOHOL LICENSING

- Independent licensing boards are responsible for the day to day administration of the alcohol licensing regime in Scotland, as set out in the Licensing (Scotland) Act 2005.
- Licensing Boards have considerable discretion to determine appropriate licensing arrangements according to local needs and circumstances and their own legal advice.

Social Responsibility Levy – Alcohol

- The Scottish Government has no plans to introduce a social responsibility levy at present.
- We do not believe that the economic circumstances are suitable for the introduction of such a levy, particularly at a time when the hospitality sector and the licensed trade is facing well publicised difficulties as a result of the COVID pandemic.

TAXI AND PRIVATE HIRE CAR LICENSING

- Taxis and private hire cars are licensed under the Civic Government (Scotland) Act 1982 (“the 1982 Act”). Independent licensing authorities - in

LICENSING – AUGUST 2021

effect the 32 local authorities - are responsible for the day to day administration of the licensing regime in Scotland, as set out in the 1982 Act.

- The Finance Secretary has met with Unite the union and the Scottish Association for Private Hire Operators last month to discuss a range of issues in relation to the taxi sector.
- SG Licensing officials are due to meet with representatives of the taxi sector in the coming weeks (likely to be September).

Taxi and private hire car licence fees

- Fees are decided at a local level by the 32 independent licensing authorities. Each authority is required to ensure the level of fee set is sufficient to cover its costs in carrying out their functions as set out in the legislation.
- There is no legislative provision for the Scottish Ministers to make provision for licence fees for taxis/private hire cars. It is therefore entirely a matter for each independent licensing authority to decide on the licensing fee levels for their authority area.
- While the Scottish Government is happy to listen to any concerns about the operation of the licensing system, the Scottish Government expects independent licensing authorities to take a pragmatic and sensitive approach to licence holders during the challenges of Covid-19.

Extending the length of a taxi licence

- The 1982 Act provides that the duration of a licence is set by the licensing authority, up to a maximum of three years.
- There is no legislative provision for the Scottish Ministers to extend the length of a taxi/private hire car licence.

Taxi vehicle age requirements

- The 1982 Act does not provide that vehicles have to be replaced after a certain period of time. However, some local licensing authorities do set a vehicle age limit as part of their policies for licensing.
- Any decision regarding the practical operation of the licensing regime for taxis and private hire cars and their drivers is the responsibility of the relevant local authority.

Should taxis and private hire operators install protective screens in their vehicles?

- The decision whether or not to install protective barriers or safety screens is for licensing authorities, operators and the firm or individual operating the vehicle to make based on their own assessment of risk. Before

LICENSING – AUGUST 2021

considering installing a safety screen, operators should contact the relevant licensing authority to check that they will permit the installation and ensure that the screen and installation will meet their requirements.

- Updated non-statutory guidance providing advice for drivers, operators and owners of taxis or private hire cars who choose to fit a screen or barrier to their vehicle(s) to reduce the spread of COVID-19 was published in July and shared with the SOLAR Group of local authority licensing lawyers, and other stakeholders.

FUNFAIR LICENSING

- The SG is carefully considering the Stage 1 report by the Local Government and Communities Committee that was published just before the pre-election period. Officials are engaging with the travelling funfair sector and other licensing stakeholders with SG officials scheduled to have a meeting with representatives of the Showmen's Guild on Tuesday 24 August.

WATER SAFETY

ISSUE: 14th August: BBC report family of 16-year old Connor Markward, who drowned in Loch Lomond on 23rd July, are calling for a safety campaign in schools and better access to swimming lessons.

(Other relatives of deceased, from recent and previous incidents, have called for diverse action to improve awareness (through signage and education), and access to swimming tuition, and the availability of rescue equipment.)

ISSUE: 11th August: meeting with senior leaders of stakeholder organisations convened by the Minister for Community Safety, Ash Denham, securing agreement to collaborate further to identify and deliver tangible improvements.

ISSUE: 26th July: on BBC Drivetime the Cabinet Secretary for Justice and Veterans, Keith Brown, committed Scottish Government to hold an early meeting with water safety stakeholders.

ISSUE: Friday 23rd - Sunday 25th July: 5 separate incidents resulting in 7 deaths by drowning, along with several subsequent near misses.

Top Lines

- Our thoughts are with all those who tragically drowned, and our hearts go out to their grieving families and friends.
- The Scottish Government takes the issue of water safety very seriously.
- The Scottish Government supports the work of Water Safety Scotland, and welcomed its publication in 2018 of Scotland's first Drowning Prevention Strategy, with a target to reduce accidental drowning deaths by 50% by 2026.
- The Scottish Government works closely with many partners on water safety; this includes providing grant funding to RoSPA and the Scottish Community Safety Network to help promote a co-ordinated and preventative approach.
- The Minister for Community Safety convened a meeting of senior stakeholders on 11 August, to secure agreement to work collaboratively to identify practical steps to accelerate progress in reducing water-related fatalities.
- The Minister for Community Safety is convening a follow-up meeting in September in order to assess progress and address any barriers to the effective delivery of water safety.

WATER SAFETY

The Scottish Government is working with key partners to deliver improvements in water safety

- It is important that all relevant organisations, including the Scottish Government, should stocktake and review the effectiveness of approaches to water safety.
- The Minister for Community Safety convened a meeting of emergency services and other key partners precisely because we appreciate the importance of reviewing activity in this area, for mutual reinforcement and maximum impact.
- The need for vigilance is underscored by the size of the challenge here: 90% of standing freshwater in the UK is in Scotland and we also have 52% of the UK coastline.
- The Water Incident Database (WAID) had shown a picture of gradual improvement, with accidental deaths in Scotland falling from 52 in 2016, to 37 in 2019.
- WAID sadly showed improvement stalling in 2020, with accidental deaths in water at 39.
- The task for the Scottish Government and our partners is, through collaboration and innovation, to ensure that the pattern of improvement shown from 2016 to 2019 is resumed and accelerated.

The Scottish Government supports important water safety initiatives, not least by providing funding to some of the key agencies

- The Scottish Government provides annual funding to RoSPA (£117,000 in 2021-22) to deliver its annual home and water safety programme, and to the Scottish Community Safety Network (£255,000 in 2021-22) to support its work in supporting local community safety partnership activity.
- The Scottish Government is assessing whether additional funding could further enhance the impact of water safety partners, such as Water Safety Scotland.
- As importantly as funding, key partners, such as the emergency services, are exploring how to better engage with and support Water Safety Scotland in its work to improve education and communication.

WATER SAFETY

The Scottish Government believes a multi-faceted approach can best promote water safety

- There is no single, simple answer to the challenge of drowning prevention. In addition to education, there's a role for signage and for life-saving equipment.
- All water can be dangerous, but there are some locations where the dangers are particularly significant and where, therefore, it is especially important that there is clear warning signage and appropriate life-saving equipment.
- The Scottish Government's expectation is that relevant stakeholders will routinely review provision in locations for which they have responsibility, to ensure that it is fit-for-purpose.
- It is important that, rather than proceeding on the basis of assumptions and good intentions, we learn lessons from recent fatal and near-fatal incidents – what worked and what didn't – and listen to those with real expertise.
- The group that has been convened by the Minister for Community Safety is focused on learning and listening, so the resources are focused on delivering the most effective action to promote water safety and save lives.

The Scottish Government wants every child to learn to swim, as it's such an important life skill

- Because swimming is an important life skill, ensuring that every child learns to swim is a priority for both Scottish Swimming and the Scottish Government.
- The National Learn to Swim Framework is supported by Scottish Water and delivered by aquatic partners every week.
- The Framework helps children to become safe, competent, and confident swimmers and these water safety themed lessons are an essential part of helping to educate on water safety.
- We are working with stakeholders to consider greater opportunities for children and young people to engage in community swimming lessons.
- But we need to be clear, as several of those who drowned in recent times have been able to swim, that it is not enough to teach people to swim: the importance of floating to live, the dangers of cold water shock, all need to be communicated.

WATER SAFETY

The Scottish Government acknowledges that schools can be one of the contributors with a part to play in promoting water safety

- Within schools, Curriculum for Excellence's flexible guidelines allow teachers to decide upon the content of lessons at the local level.
- When deciding upon the content of lessons, schools should consider how they can best meet the local needs and circumstances of all children and young people in attendance.

SCOTTISH LAW COMMISSION PROJECT TO EXAMINE THE LAW OF HOMICIDE

ISSUE: On 27 May the Scottish Law Commission (SLC) published a Discussion Paper to examine the law of homicide. The SLC's project (which was announced in their Tenth Programme of Law Reform in February 2018) is examining the law of Homicide which includes the principles underlying and the boundaries between the crimes of murder and culpable homicide; and the mental element required for the commission of each of these offences. The consultation period will last until 15 October 2021 (extended from 27 August). The project is ongoing and split into two phases. Currently, the SLC envisage that their ownership of the project will be a medium-term one expected to take 5 years to complete (i.e. a final report will be delivered to the Scottish Government in 2023).

The SLC consider that under the current law the mental element of these crimes is defined in terms of concepts and language from a bygone age. As such, this may give rise to difficulties in understanding and applying the law and in directing juries in modern and accessible terms. In addition, the Discussion Paper examines the nature, scope and definitions of the complete defences of self-defence, necessity and coercion and the partial defences of provocation and diminished responsibility that arise in the context of homicide. They have also included discussion on the effect of domestic abuse in the context of homicide and also included brief discussion as to the so-called 'rough sex' defence.

On 30 May media coverage of the discussion paper focused solely on the discussion of the so-called 'rough sex' defence. This is included at pages 188-190 of their 254 page Discussion Paper and briefly raises awareness of steps taken by the UK Government to place on statute previous common law in England and Wales as regards it not being a defence for a person accused of murder to claim their victim consented to being harmed. Coverage is often confused on this issue as it is often portrayed as the UK Government having 'banned' such a defence whereas pre-existing common law did not permit it in any event. Under existing Scots law, no-one can escape criminal liability by claiming their victim consented to being harmed, though in certain cases it could be relevant in terms of whether a murder has been committed or the lesser crime of culpable homicide. The SLC is considering this as part of their much wider consideration of homicide law.

The Scottish Government has not made any commitments to legislate in this area. However, any recommendations taken forward would need to be consulted on. In line with normal practice, the Scottish Government will consider any recommendations made by the SLC as a result of their Homicide law project when their final report is published.

Top Lines

- The SLC's project is a medium-term one and is expected to complete in 2023.
- The consultation process for the Discussion Paper will run until 15 October to allow consultees the time to absorb its detailed contents and provide comments and views.
- The Scottish Government notes that the SLC is progressing this important project.
- In line with normal practice, the Scottish Government will consider any recommendations made by the SLC as a result of their Homicide law project when their final report is published and any recommendations taken forward would need to be consulted on.
- This includes in the area of what is known as the 'rough sex' defence.

SCOTTISH LAW COMMISSION PROJECT TO EXAMINE THE LAW OF HOMICIDE

- Under existing Scots law, no-one can escape liability under the criminal law by claiming their victim consented to being assaulted or worse.
- However, I support the SLC in looking to see if the law should be made clearer including in respect of whether lesser charges become available through claiming of this type of defence.
- We are also pleased the review is covering the law on provocation which is an area ripe for reform.
- We are hopeful the eventual outcomes in this area will be an improved set of homicide laws which can be used to appropriately hold to account those who commit acts of homicide and which give confidence to those affected by homicide that justice is being done.
- The Scottish Government looks forward to seeing the outcome of the SLC's extensive and comprehensive work in this area of law.

YOUTH JUSTICE

- Scotland has seen dramatic changes in the youth justice sector since this government made a decisive shift towards prevention. We take a strong focus on early and effective intervention, diversion and appropriate support to address offending behaviour by young people. This is done in a timely and effective way through a whole system approach to offending behaviour, based on multi-agency partnerships.
- Our Whole System Approach was rolled out in 2011 as the Scottish Government's programme for addressing the needs of under 18s involved in, or at risk of becoming involved in, offending.
- Based on the principles of GIRFEC, it aims to prevent the use of custody and secure accommodation wherever possible, seeking opportunities to engage young people in a preventative way, and putting in place a more streamlined and consistent response that works across all systems and agencies to achieve better outcomes for young people and their communities.
- This ensures that young people get the right support at the right time, offering better outcomes for young people, victims and safer communities.
- Local authorities are engaged with the Whole System Approach. In order to support our continued commitment to early intervention and reducing re-offending, and keeping young people out of formal systems as far as possible, we provided £800,000 in 2018-19 and a further £800,000 in 2019-20 to all local authorities in Scotland to support, renew and extend the Whole System Approach.
- This was to allow for deepened partnership working, strengthened links between youth justice, community justice, education, third sector and children's services and where possible to extend the Whole System Approach to young people aged 21, and 26 for care experienced young people.

YOUTH JUSTICE

Youth Justice Vision and Action Plan

- We launched a youth justice strategy (Preventing Offending: Getting it Right for Children and Young People) in June 2015. This strategy built on the shift to prevention in 2008 which has seen numbers of children and young people in justice system reduce substantially.
- A new **vision** for youth justice in Scotland, and accompanying **action plan**, were announced by Ms Haughey in her keynote speech at the Youth Justice Conference on 16 June 2021.
- This vision is based on the Promise, incorporation of the UNCRC and other influential documents, along with views from key stakeholders, partners and, most importantly, children and young people. It will continue to drive a whole system approach with a focus on reducing the number of young people in the Criminal Justice System and in custody.
- The vision will be supported by the action plan. The action plan is a dynamic, two-year plan which is designed to be flexible to new and emerging priorities, and will be regularly reviewed by the Youth Justice Improvement Board.

YOUTH JUSTICE

Secure Accommodation and 16 – 17 Year Olds in Polmont Young Offender's Institute

Scottish Government are committed to delivering the following asks from The Promise:

- 16- and 17-year-olds will no longer be placed in Young Offenders Institutes (YOI) for sentence or on remand.
- There will be sufficient community-based alternatives so that detention is a last resort.
- Children who do need to have their liberty restricted will be cared for in small, secure, safe, trauma-informed environments that uphold their rights
- Scotland must stop selling care placements to Local Authorities outside of Scotland.
- Scotland must avoid the monetisation of the care of children and prevent the marketization of care.
- We are in discussions with Secure Care providers and other key partners to consider future changes to secure care to enable all 16 – 17 year olds a pathway in to secure accommodation rather than YOI. All four of the independent secure care providers are keen to deliver on the Promise.
- Currently young people can only access secure care if they are under 16, or 16/17 years old on a supervision order. When a young person reaches the age of 18 they must leave secure care. This can result in a young person having to go to Polmont for a matter of weeks to complete their sentence.
- This is a complex issue and will require legislative change to the Criminal Procedure (Scotland) Act 1995 to allow all 16/17 year olds access to secure accommodation.
- Discussions are under way for a Care and Justice Bill in this Parliamentary session.

Young People in Polmont YOI

The latest most up to date total of young people aged 16 – 17 years old in Polmont Young Offender's Institute is 16. This includes:

- 11 remanded males
- 1 remanded female
- 3 sentenced males
- 1 male awaiting sentence

YOUTH JUSTICE

16 and 17 Year Olds in the Justice System

- There is long-standing debate around the definition of children and the position of 16 and 17 year olds within Scotland's criminal justice system, and how cases are progressed either through the Children's Hearings System or adult courts.
- There are different current legal protections offered to 16/17 year olds navigating the justice system. This is dependent on a number of factors, including the severity of the crime and whether they are under a Compulsory Supervision Order. 16/17 year olds going through the courts and being treated as adults aren't able to access the same support as children and young people who are referred to the children's hearings system.
- The 2019 Programme for Government committed to consult on enabling joint reporting to the Crown Office and the Scottish Children's Reporter Administration of all 16 and 17 year olds' offence cases.
- The consultation ran from June to October 2020 and an independent analysis was published on 7 December 2020. There was overwhelming support to raise the maximum age of referral to 18 for care, protection and offence cases, allowing equal opportunities for young people to get the right support at the right time.

We are working with partners to explore the operational and practical implications of any future legislative change re 16/17s

- In November 2019, the Youth Justice Improvement Board (YJIB) established a working group to undertake cross system planning ahead of a wide range of potential policy and practice changes.
- Membership of the group includes COPFS, SCRA, CHS, Police Scotland, Community Justice Scotland, Social Work Scotland, SPS and COSLA.
- The group has focussed on 4 main themes:
 - Data and throughput of 16/17 year olds subject to prosecution;
 - Assessment of the current range of supports, services and interventions available;
 - Current provision of support and advice to victims; and
 - Understanding the profile, needs and background of young people currently on remand/sentences at HMYOI Polmont and across the Secure estate.
- The group will present its closure report and recommendations to YJIB on 15 September 2021.

YOUTH JUSTICE

Age of Criminal Responsibility (Scotland) Act 2019

- The age of criminal responsibility is part of the portfolio of the Minister for Children and Young People.
- The Equalities and Human Rights Committee was the lead Committee for the Age of Criminal Responsibility (Scotland) Bill.
- The Age of Criminal Responsibility (Scotland) [Act 2019](#) increases the age at which a child is considered to have the capacity to commit a crime from 8 to 12.
- Raising the age of criminal responsibility to 12 will protect children from the harmful effects of early criminalisation.
- Primary school-aged children will no longer be stigmatised from being labelled as an offender at such a young age, which will improve their life chances and well-being.
- The Act sets out a number of measures to ensure that action can still be taken by the police and other statutory agencies when children under 12 are involved in serious incidents. These measures will ensure that the harmful behaviour of children under 12 can continue to be investigated, and that authorities respect, and respond to, the needs of victims
- Part 6 of the Act places a duty on the Scottish Ministers to review the age.
- We must take the time of the review period – 3 years, once the Act is fully commenced - to fully assess the implications of going to a higher age, including identifying how to ensure that the rights of victims are upheld and community confidence is maintained.
- Implementation of the Act will be undertaken as quickly and safely as possible.

YOUTH JUSTICE

Implementation of the Act

- Commencement of the Act is being phased. The Scottish Government wanted to make a positive difference to children's lives as early as possible, by removing the offence ground of referral. This came into effect in November 2019, as part of the first set of commencement regulations. These regulations removed the offence ground of referral to a children's hearing and commenced provisions in relation to information for victims.
- Since November 2019, children have only been referred to a children's hearing on care and protection grounds.
- The removal of the offence ground means that children younger than 12 cannot accrue convictions or criminal records.
- The second set of commencement regulations came into force in March 2020 and commenced the guidance-making and regulation-making powers of the Act and enable children's legal aid to also be available for proceedings before the sheriff which relate to applications for orders under Part 4 of the Act.
- The third set of commencement regulations came into force in November 2020 and brought into force those provisions in Part 2 of the Act (which relates to disclosure of information) which had not already been commenced.
- The fourth (and final) set of commencement regulations will bring into force the remainder of the Act. This is planned to take place in autumn 2021.

YOUTH JUSTICE

Detail of the Act

Part 2 - Disclosure of Information

- Any conduct by a child below the age of 12 that would previously have been recorded as a conviction will no longer be recorded as such.
- This means that it will no longer be possible for a person to acquire a criminal conviction on the basis of behaviour that occurred when they were aged under 12. In the future there will be no conviction information relating to this period in a person's life to disclose later in life.
- The Act makes changes to the disclosure system to ensure that non-conviction information relating to harmful behaviour that occurred when a child was under 12 cannot automatically be disclosed by the State. Whilst such information may be disclosed as "Other Relevant Information" on two specific types of (enhanced) disclosure, this can only take place following determination by an independent review.

Part 3 - Information for victims

- Children under 12 are no longer referred to the children's reporter on an offence ground. Previously such referrals allowed the alleged victim to access information about the referral.
- The Act ensures that people affected by the behaviour of a child under 12 will still be able to ask for information and can request the Principal Reporter provides them with information about action taken to address the behaviour.
- The provisions in the Act for both of these (the removal of the offence ground, and information for victims) came into force at the same time in November 2019.

Part 4 – Police investigatory and other powers

- The Act creates a package of powers designed to ensure that serious behaviour by any child under the age of 12 can still be investigated by the police, and for this to be carried out in a child-centred way that is in keeping with the ethos of removing young children from criminal justice processes.
- The Act restricts the application of most of these powers so that they are only available in the most serious of cases. This is where it is thought

YOUTH JUSTICE

that a child has caused (or risked causing) death or serious injury by acting in a violent or dangerous way, or that the child has harmed (or risked harming) someone with sexually violent or sexually coercive behaviour.

- The Act sets out procedures for the questioning of children by way of an investigative interview. The purpose of these interviews is both to help the police to establish what has happened, and to help identify any additional support or protection needs that the child may have.

Child Interview Rights Practitioner (ChIRP)

- The Act introduces the role of the ChIRP who must be a suitably qualified solicitor registered with the Children's Legal Assistance Scheme.
- The ChIRP will provide the child with advice, support and assistance in connection with, and during an investigative interview with the police. ChIRPs are required to undertake detailed training on their role and responsibilities.

Part 5 - Children's hearing: duty to consider additional reports

- Requesting reports has always been optional under the Children's Hearings Procedural Rules. The Act places a duty on a children's hearing to consider whether to require the Principal Reporter to obtain any report that the hearing considers relevant to any matter.
- This provides clarity that a hearing *must* consider whether they need more information, and has a statutory right to require it.

Part 6 – Review of the age of criminal responsibility

- The Act places a duty on the Scottish Ministers to review the operation of the Act both generally, and with a view to considering the future age of criminal responsibility.
- The Scottish Ministers are required to prepare and publish a report on that review.
- A copy of the report of the review must be laid before the Scottish Parliament no later than 12 months after the end of the review period.
- The review period is the period 3 years beginning with the day on which section 1 comes into force.