

Part 1 of the request:

- 1) The full briefing provided to Angela Constance for her ministerial statement on Scotland's prison population delivered on 3 October 2023.

CABINET SECRETARY FOR JUSTICE & HOME AFFAIRS
Prison Population Statement

Briefing Pack

Date/Time	3 rd October – 14:20 – 14.50
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Speaking notes	10 min opening speech (enclosed separately)
Official support	[redacted] Section 38(1)(b) – Personal information]

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Annex A: PRISON POPULATION TOP LINES

- Crime, including violence, has fallen under this government. To reduce reoffending and therefore have less crime, fewer victims and safer communities, we will continue to invest in our prisons as well as justice in the community, ultimately shifting the balance between custody and community.
- We recognise that the impact of the rising prison population is felt across the justice system and the significant financial and operational pressures. The Scottish Government is working collaboratively with partners, including through the Prison Population Leadership Group to address these challenges.
- This is an issue that requires cross-Government, cross-public sector and cross-party collaboration and engagement to ensure the best outcomes for our communities.
- We have provided an extra £29 million this year to support the Scottish Prison Service to deliver a stable and secure prison system on top of the £97 million in capital funding that we are giving to continue the modernisation of the prison estate to better meet the needs of staff and prisoners.

Reasons for prison population increase

- Since the start of the current year, the prison population has been rising consistently.
- This rise was not predicted as it was anticipated that the remand population would likely reduce at broadly the same rate as the sentenced population increased, as the court backlog reduced.
- [redacted - section 30(b)(i) – free and frank provision of advice]
- The rise in the prison population is driven by a complex set of factors, including the court backlog caused by reduced court capacity over the pandemic, the increase in average sentences imposed for certain offences, and the increase in the number of serious sexual offence cases prosecuted in the courts.

The use of Imprisonment

- Scottish Government supports the use of prison as being necessary for those who pose a risk of serious harm.
- However, it is recognised that imprisonment damages the connections that prevent people from offending or reoffending, such as family relationships, accommodation, and employment.
- In particular, short-term periods of imprisonment, including for remand, can also have a hugely negative impact on individuals.
- To ensure greater success in reducing reoffending and therefore less crime, fewer victims, and safer communities, we will continue to invest in our prisons and support people within prison and on release.
- Research shows that many people in contact with the criminal justice system have already experienced severe and multiple disadvantage, including homelessness, substance misuse, mental ill health and domestic violence or abuse.
- 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.
- Care experienced people are disproportionately represented within the prison population. Around a quarter of the prison population in Scotland report being in care

as a child, rising to just under half when looking specifically at young people in custody.

SG actions to shift the balance from custody to community

- We recognise that the imprisonment rate in Scotland is high compared to many other Western European countries and we are taking action to address that.
- We're committed to shifting the balance between the use of custody and justice in the community.
- Our National Strategy for Community Justice sets out a clear roadmap for further improvement work, and a delivery plan was recently published to support its implementation.
- We have protected investment in community-based interventions and are providing a total of £134 million to support community justice services in 2023-24
- We have also taken action such as the extension of the presumption against short sentences from 3 to 12 months, and introduced electronic monitoring on bail.
- The Bail and Release from Custody (Scotland) Act 2023, passed by Parliament before recess, seeks to refocus how remand is used so that it is reserved for those who pose a risk to public and victim safety. The Act also improves support for people leaving prison, helping them to successfully resettle in their communities and not reoffend.

SPS actions to mitigate impact of increasing population

- The impact of the rising prison population is felt across the justice system, particularly in our prisons, affecting those in care of the Scottish Prison Service (SPS), staff and families.
- SPS is taking forward action to respond to the pressures caused by the rising prison population and remains committed to prioritising the health and wellbeing of those in its care and staff.
- SPS measures underway include repurposing and optimising use of the public sector prison estate and purchasing additional places at the private HMP Kilmarnock.

[redacted - section 30(b)(i) – free and frank provision of advice]

SPS Budget

- SPS's resource budget increased by £29m in 2023/24 to help meet increased costs linked to inflation. SPS also received £97m in capital funding to continue the modernisation of the prison estate.
- The 2023/24 budget will allow SPS to continue to deliver a stable and secure prison system.

Crime Rate

- Crime, including violence, has fallen under this government
- The latest figures show recorded crime is at one of the lowest levels seen since 1974, and down 41% since 2006-07.

- This is welcome as it means that every year there are thousands fewer victims in Scotland than there were 15 years ago.
- We have seen a 24% reduction in non-sexual violent crime since 2006-07, though agree there is more we must and will do to tackle this unacceptable behaviour.
- Despite a small reduction in the latest year, Scotland continues to see long term growth in reported cases of sexual crime.
- Multiple factors lie behind the long term increase in recorded sexual crime, including a greater willingness of victims to come forward, more historical reporting, more online offending and the impact of new legislation.
- Homicides are at their lowest level since comparable records began in 1976 (53 victims in 2021-22) and less than half the level of 2006-07 (120 victims).

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- I welcome the Chief Inspector's report which recognises the improvements made to the female prison estate in the past year, including the opening of HMP YOI Stirling and community custody units in Dundee and Glasgow, supporting the delivery of world leading, trauma-informed care and management for women in custody.
- The wellbeing, safety and human rights of all those who live in our prisons will continue to be a priority for the Scottish Government and the prison service, and we will work with them and other partners to respond to specific issues raised in the report including the increasing prison population.
- Positive developments like the growth of recovery cafes, use of community hubs, a drop in segregation of young people and greater use of technology to support family contact, are acknowledged in the report which I welcome.

Letter to The Criminal Justice Committee

- I have written to the Criminal Justice Committee setting out recent prison population trends and actions the Scottish Government, SPS and other partners are taking in response.
- The letter makes clear that since the start of 2023, the prison population across Great Britain has been rising steadily placing the prison systems in both administrations under acute pressure.
- With one of the highest per capita prison populations in Western Europe, we need to actively engage with this issue and the letter invites justice spokespeople from each political party for a discussion on the way forward.
- The response to this is likely to require cross-Government, cross-public sector and cross-party collaboration and engagement to ensure the best outcomes for our communities.

Prison Population Leadership group

- We have established the Prison Population Leadership Group, including partners such as SPS, Scottish Courts and Tribunal Service, Crown Office and Procurator Fiscal Service, Police Scotland, Community Justice Scotland and the Parole Board for Scotland.
- The group is meeting on a fortnightly basis to provide leadership and collective ownership of the challenges and mitigations associated with the rising prison

population, as well as providing support to the SPS and other partners in their contingency planning.

Annex B – Q&A

[redacted - section 30(b)(i) – free and frank provision of advice]

- The rise in the prison population is driven by a complex set of factors, including the court backlog caused by reduced court capacity over the pandemic, the increase in average sentences imposed for certain offences, and the increase in the number of serious sexual offence cases prosecuted in the courts.
- This rise was not predicted – at least not to the level seen - as it was anticipated that the remand population would likely reduce at broadly the same rate as the sentenced population increased, as the court backlog reduced.
- [redacted - section 30(b)(i) – free and frank provision of advice]

[redacted - section 30(b)(i) – free and frank provision of advice]

- While trends in recorded crime is a factor, the size of the population is largely determined by criminal justice policies, legislation, practice and procedures. This was set out in a paper from Justice Analytical Services in 2019.

If needed

- New or previously ‘hidden’ crime types such as domestic abuse and sexual offences have increasingly come to the attention of the courts, and can attract lengthy custodial sentences.
- There has also been an upward drift in average sentence lengths for some offences, in particular housebreaking, handling an offensive weapon, domestic abuse, and murder.
- [redacted - section 30(b)(i) – free and frank provision of advice]
- The early impacts of the ending of automatic early release for long term sentenced prisoners in 2016 was also identified as a contributing factor. Analyses indicated that the ending of automatic early release for long term sentenced prisoners would lead to substantial year on year increases in the sentenced population for a number of years.
- Taken together, these combined factors (greater ‘success’ in administering justice, greater throughput of serious offences, changes in sentencing and amendments to release mechanisms) offset the impacts of reductions in other recorded crimes and the presumption against short term sentences, leading to a rising prison population.
- In addition, subsequent analysis of historical data has revealed that the time individuals spend on remand had been increasing from 2017-18; a further contributing factor to the increasing population.

[redacted - section 30(b)(i) – free and frank provision of advice]

- As a share of their respective populations, the proportion of women on remand has consistently exceeded that of men and we recognise that, this year, there has been a rise in this.

- We recognise that remand is a vulnerable time for women and can take them away from children and other family members.
- The Bail and Release from Custody Act seeks to ensure that, as much as possible, the use of custody for remand is reserved for cases where public safety (including victim safety) requires it or there is a significant risk to the interests of justice.
- Additionally, under the Act Scottish Ministers will be required to publish certain statistical information about bail and remand. This data will help to improve our understanding of the reasons for use of remand generally and specifically the reasons why women are remanded including details of their background and outcomes post-remand.

If needed

- The funding we provide to local authorities includes specific additional funding of £3.2 million to support bail assessment and bail supervisions services (a direct alternative to remand). This additional funding will continue in 2023/24.
- The Scottish Government provides funding for the third-sector Shine partnership which provides one to one support for women leaving remand (and short-sentences). Shine provide practical and emotional support for the women using their services, helping them to resettle into their communities and link into the services and support they need.

[redacted - section 30(b)(i) – free and frank provision of advice]

[redacted - section 30(b)(i) – free and frank provision of advice]

- As I've said, I believe that this situation will require a collaborative, cross-party approach, and I look forward to discussing further with justice spokespeople how we might approach this.

[redacted - section 30(b)(i) – free and frank provision of advice]

- We are working with justice partners to address the issue, including making the best use of the current prison estate and sourcing additional prisoner places to ensure the safety and wellbeing of people living and working in prisons and those around them.
- We have established a Prison Population Leadership Group, including partners such as SPS, Scottish Courts and Tribunal Service, Crown Office and Procurator Fiscal Service, Police Scotland, Community Justice Scotland and the Parole Board for Scotland to consider the challenges and mitigations associated with the rising prison population as well as contingency planning.

[redacted - section 30(b)(i) – free and frank provision of advice]

- Scotland imprisons more people per head of population than almost every other western European nation - that is clearly not so-called "soft touch justice".

- Protecting the public from harm is our absolute priority and the most serious and dangerous offenders should, of course, go to prison.
- However, there is clear evidence that community sentences and other interventions can be more effective in reducing re-offending and assisting with rehabilitation than short custodial sentences.
- That's why the Scottish Government has a long standing aim to reduce the use of imprisonment and encourage more widespread use of community interventions – it's not “soft touch justice”, but rather basing our decisions on the evidence of what will help reduce crime, reduce victimisation, and keep our communities safe.

[redacted - section 30(b)(i) – free and frank provision of advice]

- We remain committed to modernising and improving the prison estate, to ensure it is fit for purpose for those that live and work in prisons, and supports the rehabilitation of people living there.
- Like many large scale capital projects, it has faced delays due to the global pandemic, increased costs due to inflation, and design improvements to meet our net zero ambitions.
- HMP Glasgow is being designed to deliver safe and secure accommodation. Estimated costs and time-scales will be set out once a final design is available and will deliver a real and lasting benefit, both in the city and surrounding area.
- HMP Highland, will better serve local communities and meet the needs of people in SPS care, and for all those who work and visit there.

[redacted - section 30(b)(i) – free and frank provision of advice]

- As I have already said, protecting victims and the public from further harm is my absolute priority for the justice system in Scotland.
- As we take forward our collective response to the prison population, we will, of course, engage with victims groups.
- We are awarding £48m to victims' organisations as part of our commitment to putting victims at the heart of the justice system. We have invested £93m through our justice budget alone, to support victims in the past five years.
- We have established the Victims Taskforce to coordinate and drive action to improve the experiences of victims within the Scottish criminal justice system.
- Our PfG contains a range of commitments to further improve victims' experiences of the justice system, including appointing a Victims' Commissioner to provide an independent voice for victims – the Victims, Witnesses, and Justice Reform Bill makes provision for the establishment of this commissioner.

[redacted - section 30(b)(i) – free and frank provision of advice]

- Community-based interventions and sentences help ensure justice is done, and can be more effective in reducing reoffending and assisting with rehabilitation than short term custodial sentences, leading to fewer victims and safer communities.
- We are investing a total of £134m in community justice services in 2023-24, which includes the continuation of an additional investment of £15m from 2022-23 to support recovery efforts, bolster capacity, and strengthen alternatives to remand.

- Community Payback Orders are a robust, flexible sentence with multiple potential requirements which can be tailored to fit the circumstances of individual cases.
- The reconviction rate for individuals given community payback orders is consistently lower than for those given short sentences.
- In 2021-22, 74% of CPOs that ended were successfully completed. The reconviction rate for those given Community Payback Orders in 2018-19 was 29.2% compared to 51.7% for those completing custodial sentences of one year or less.
- We are confident in the ability of local authorities to deliver unpaid work and other community orders, and we continue to monitor recovery from the pandemic.

[redacted - section 30(b)(i) – free and frank provision of advice]

- We know in principle that community sentences are far cheaper to deliver than custodial sentences
- SPS's latest published annual accounts estimate that, taking into account the wider cost of providing and running our prisons, on average, a prisoner place cost £41,858 in 2021-22. The actual cost per prisoner on remand would depend on the length of their stay.
- Estimates for 2016-17 have suggested for example that a Community payback order cost on average £2K per order - which is lower than the cost of for example a one month stay in prison.

[redacted - section 30(b)(i) – free and frank provision of advice]

- Electronic monitoring is a tried and tested feature of Scotland's justice system and a key tool to support moving on from prison or alternatives to custodial sentences.
- Between 2014-15 and 2022-23 we saw a 65% increase in the use of EM in Scotland, showing this is a measure that is trusted.
- There are currently around 400 people on electronically monitored bail in Scotland – the highest since its introduction last year. Future development of the service will include exploring use of GPS.
- As at 25 September 2023 the number of people being electronically monitored was 1,765. This compares to 1,405 people being electronically monitored at the same time last year (a 25% increase).
- Electronic monitoring can help support people reintegrating into their communities providing structure to an order or licence, but it also allows for swift responses from Police and other justice partners where any conditions are breached. It provides an important function in monitoring those at various points in the justice system, including those on release from prison or those on a community order.

[redacted - section 30(b)(i) – free and frank provision of advice]

- Our National Strategy for Community Justice maintains our focus on taking a person-centred, rehabilitative approach and encouraging a shift in the balance between custodial and community interventions, which is a key part of our overall vision for justice.
- The strategy recognises that while public protection is paramount, there is clear evidence that community-based interventions and sentences can be more effective in

reducing reoffending and assisting with rehabilitation than short term custodial sentences.

- Underneath these high level ambitions, the strategy sets out four national aims relating to diversion and early intervention; the provision of robust and high quality community interventions; responsive services which meet the needs of individuals; and strong leadership and partnership working.
- We have recently published a delivery plan to sit alongside the strategy, setting out more detailed and time limited deliverables which will be progressed in relation to the aims and priority actions in the strategy.

[redacted - section 30(b)(i) – free and frank provision of advice]

- The arrangements for the release of people convicted of sexual offences depends on the sentence which was imposed by the court.
- All individuals convicted of sexual offences who receive custodial sentences of six months or over are subject to licence conditions on release for the remainder of their sentence, in addition to sex offender notification requirements.
- Release decisions for individuals sentenced to four years or more – including those convicted of sexual offences - are taken by the independent Parole Board, based on the facts and circumstances of each case, at the appropriate point in their sentence.
- Individuals convicted of sexual offences are managed via Multi-Agency Public Protection Arrangements (MAPPA) which provide a robust statutory framework to manage risk, including after a custodial part of a sentence has been served.

[redacted - section 30(b)(i) – free and frank provision of advice]

- Whole life sentences are simply not needed. The law in Scotland allows for the length of time the most serious offenders should serve to extend beyond the rest of an offender's life.
- The power lies with the court to decide if and when to use their powers – and I do not think it is for politicians to usurp the role of the court.
- I trust Scotland's most senior judges in the High Court to decide when to use their very significant powers in the worst cases. And they have used them.
- Angus Sinclair, the 'World's End' murderer, received a punishment part that would have meant he could not be released until aged 106.

[redacted - section 30(b)(i) – free and frank provision of advice]

- While a high prison population limits, for all those sentenced, the ability of the justice system to work with people and tackle the factors underlying the offending behaviour, it is also the case that public safety must be protected.
- The Order for Lifelong Restriction (OLR) is a sentence available to the High Court for offenders who pose the most serious risks to public safety.
- A person subject to an OLR can be released where the Parole Board assess it is justified in terms of public safety. Any release can only happen after the offender has served a minimum period of time set by the court.
- They were introduced in 2006 and are reserved for the highest risk of offender with approximately 15 to 20 imposed each year. This is line with the expected number when legislation was developed.

- Aware of issues with the broadly comparable indeterminate public protection (IPP) sentence in England and Wales; however such issues have not arisen in Scotland with the OLR sentence

[redacted - section 30(b)(i) – free and frank provision of advice]

- The Scottish Government cannot comment on decisions made by the Crown, including diversions from prosecution. These are a matter for the Lord Advocate as independent prosecutor.
- The joint inspectorate review on diversion from prosecution published in February, reports (based on data from the Crown) that the five most common charges where diversion from prosecution was used were:
 - offences relating to drugs (25%)
 - breach of the peace etc (23%)
 - common assault (19%)
 - shoplifting (8%)
 - dangerous and careless driving (7%).
- The review also notes that accused persons can be diverted in respect of serious offences, such as sexual crime, although this tends to be rare. In such cases, the accused person tends to be under the age of 18. Over the period from 2016-17 to the first half of 2021-22, only 1% of single charge cases initially marked for diversion involved a sexual offence.

[redacted - section 30(b)(i) – free and frank provision of advice]

- We have protected investment in community-based interventions and are providing a total of £134 million to support community justice services in 2023-24
- Since the new model for community justice was introduced in April 2017, funding for community justice services has increased by approximately £26m – from around £108m in 2017-18 to around £134m this year.
- An additional £11.8m was distributed to local authorities in 2021-22 to assist with pandemic recovery and transformational work, and this was increased to £15m in 2022-23, while signalling our intention to maintain that funding for the remainder of the spending review period.

[redacted - section 30(b)(i) – free and frank provision of advice]

- We have seen dramatic positive changes in the youth justice sector since our decisive shift towards prevention and reducing reoffending.
- Since 2008-09 to 2019-20, there has been an 85% reduction in the number of children and young people prosecuted in Scotland's courts and a 93% reduction in 16- and 17-year-olds being sentenced to custody.
- The Whole System Approach to preventing offending by young people focused on early intervention, diversion from prosecution, and alternatives to custody has played a key role in this.

- Provisions in the Children's Care and Justice Bill will end the incarceration of children in prison settings in Scotland, with secure care as the primary alternative.
- As we have seen with the rising prison population there is a need to take a collective response. This is not simple a matter for the Prison service. We will take an evidence led approach which increases opportunities for early intervention while remaining absolutely clear that public protection remains paramount.

[redacted - section 30(b)(i) – free and frank provision of advice]

- Any decision on bail and remand is of course a matter for the court, based on the individual case before it.
- The consistent provision of alternatives to remand however (bail supervision and electronically monitored bail) is critical to support a change in how remand is used. The Bail and Release from Custody (Scotland) Act 2023 seeks to refocus how remand is used by changing the legal bail test so that remand is reserved for those who pose a risk of public safety, and victim safety and, in certain circumstances, the administration of justice.

If needed

- We are investing a total of £134m in community justice services in 2023-24, which includes the continuation of an additional investment of £15m from 2022-23 to support recovery efforts, bolster capacity, and strengthen alternatives to remand.
- This includes specific additional funding of £3.2 million to support bail assessment and bail supervision services (a direct alternative to remand).
- This has supported the establishment of bail supervision services in more local authority areas, with plans to ensure it is available across Scotland by December 2023.
- There are currently around 400 people on electronically monitored bail in Scotland – the highest since its introduction last year. Future development of the service will include exploring use of GPS.
- Over 1,200 EM bail orders have been granted since May 2022. (source is G4S weekly data up to second week in September).
- We continue to work with justice partners to support the use of EM bail as an alternative to remand where appropriate.
- All areas except Eilean Siar now offer assessment for EM bail.

[redacted - section 30(b)(i) – free and frank provision of advice]

- Ensuring that those leaving custody have their basic needs met on release is critical for a safe transition back into the community. This reduces the risk of reoffending, results in less crime, fewer victims and provides safer communities.
- All individuals leaving custody in Scotland can gain support on their release from their Local Authorities, including those leaving time spent on remand.
- We also provide £3.8m a year to support third sector throughcare services across Scotland, which offer one-to-one support to individuals leaving prison.
- Individuals serving short-term sentences can access voluntary throughcare support if they wish after their release. These services are funded by the Scottish Government, and are delivered by Third Sector organisations and Local Authorities.

- Long-term prisoners, sex offenders (sentenced to six months or more), or those with post release supervision orders, are supervised and supported by Justice Social Work after release.
- It is important that public & justice services work together to support an individual before, during & after their release to achieve a well-managed and safe transition.
- The Bail and Release from Custody Act includes provision for a release planning duty on named public bodies, and a requirement for the Scottish Government to publish national statutory standards of throughcare support for prison leavers. Both of these will apply to individuals leaving remand, as well as those released after completing a sentence.

[redacted - section 30(b)(i) – free and frank provision of advice]

- It is vital to ensure that the right women are sent to CCUs, therefore eligibility criteria and risk assessments must be considered when deciding who can be placed there.
- The Scottish Prison Service is actively considering ways in which it could change the criteria for admission, while ensuring public safety, to allow more women to be considered for admission to CCUs.
- Since opening, 46 women have benefited from a placement in the CCUs, allowing them to evidence that they can be successfully integrated back into the community

[redacted - section 30(b)(i) – free and frank provision of advice]

[redacted - section 30(b)(i) – free and frank provision of advice]

[redacted - section 30(b)(i) – free and frank provision of advice]

- HMIPS is conducting a thematic Review of Progression which will be published towards end of 2023. This will inform further work towards improving progression and rehabilitation regime within our prisons.

[redacted - section 30(b)(i) – free and frank provision of advice]

We committed to developing a prison estate which is effective and fit-for-purpose.

[redacted - section 30(b)(i) – free and frank provision of advice]

We send way too many people and this is evident as prison imprisonment rate in Scotland is high compared to many other Western European countries. We have always said that prison is absolutely the place for serious and dangerous offenders.

[redacted - section 30(b)(i) – free and frank provision of advice]

As Audit Scotland mentioned last week that efficient use of the public estate is crucial to reforming public services. [redacted - section 30(b)(i) – free and frank provision of advice]

[redacted - section 30(b)(i) – free and frank provision of advice]

- Sentencing guidelines can be issued either by the independent judiciary themselves or developed by the independent Sentencing Council, which is led by a senior member of the judiciary, for approval by the judiciary.
- Decisions about whether to issue and/or approve the guidelines are entirely for Scotland's most senior judges in the High Court.

We currently have no plans to use police cells as additional capacity for prisons.
[redacted - section 30(b)(i) – free and frank provision of advice]

[redacted - section 30(b)(i) – free and frank provision of advice]

- We are investing almost £3.4 billion across the justice system in 2023-24, with a 5.8% increase in the resource budget – an additional £165m.
- This will strengthen and reform vital front-line services, provide support for victims and witnesses, and tackle the underlying drivers of offending.
- We have protected investment in community based interventions and are investing a total of £134m in community justice services in 2023-24, which includes the continuation of an additional investment of £15m from 2022-23 to support recovery efforts, bolster capacity, and strengthen alternatives to remand by improving and increasing the use of bail services.
- This funding will also support the delivery of the revised National Community Justice Strategy, which was published in June 2022.

[redacted - section 30(b)(i) – free and frank provision of advice]

- It is clear that the Geo Amey contract has not been working in the way it should, and is causing disruption for courts and for SPS
- [redacted - section 30(b)(i) – free and frank provision of advice]
- Justice partners have met to agree a range of measures aimed at reducing pressure on GEOAmey and minimising this disruption, including time limits on custody courts and the removal of the requirement for in-person attendance at procedural hearings for those on remand or serving custodial sentences.
- SPS leads the management of the contract on behalf of justice partners and is working collaboratively with GEOAmey to resolve the issue.
- [redacted - section 30(b)(i) – free and frank provision of advice]
- We are determined to ensure that the care, welfare, and service delivery on non-court elements of the contract are supported and delivered with equal priority as the management of court operations and the secure escorting of those in custody.

[redacted - section 30(b)(i) – free and frank provision of advice]

- I know the Scottish Prison Service takes the safety and security of its staff extremely seriously and offers full support to anyone affected in this way.
- [redacted - section 30(b)(i) – free and frank provision of advice]
- The Scottish Government, and partners across the justice sector, including the SPS, is fully committed to tackling these gangs and reducing the harm caused.
- [redacted - section 30(b)(i) – free and frank provision of advice]
- [redacted - section 30(b)(i) – free and frank provision of advice]
- [redacted - section 30(b)(i) – free and frank provision of advice]
- Our thoughts are with the family and friends of [redacted] Section 38(1)(b) – Personal information]. To have lost [redacted] Section 38(1)(b) – Personal information] in such horrendous circumstances must have been devastating.

- I cannot comment on individual cases.
- Decisions on whether to grant bail ahead of trial or sentencing are rightly for the independent courts based on the facts and circumstances of the case before them.

Annex C - Prison Background Lines

HMIPS Annual Report 2022-23

- I recognise the challenges raised in the Chief Inspector's report which also recognises the improvements made to the female prison estate in past year.
- This includes the opening of HMP YOI Stirling and community custody units in Dundee and Glasgow, supporting the delivery of world leading, trauma-informed care and management for women in custody.
- Positive developments like the growth of recovery cafes, use of community hubs, a drop in segregation of young people and greater use of technology to support family contact, are acknowledged in the report which I welcome
- We recognise the issue raised in the report including the increasing prison population and overcrowding and will work with other partners to respond to these issues.

Threat to Prison Officers

- Incidents of alleged criminality are reported to Police Scotland, by the Scottish Prison Service, and it would not be appropriate to comment on a specific case.
- I know the Scottish Prison Service takes the safety and security of its staff extremely seriously and offers full support to anyone affected in this way.
- [redacted - section 30(b)(i) – free and frank provision of advice]
- Serious and organised crime has a devastating impact in Scotland and our communities and disproportionately affects the poorest and most vulnerable people in society.
- The Scottish Government, and partners across the justice sector, including the SPS, is fully committed to tackling these gangs and reducing the harm caused.
- [redacted - section 30(b)(i) – free and frank provision of advice]

GEOAmey Transport Concerns

- It is clear that the Geo Amey contract has not been working in the way it should, and is causing disruption for courts and for SPS
- [redacted - section 30(b)(i) – free and frank provision of advice]
- Justice partners have met to agree a range of measures aimed at reducing pressure on GEOAmey and minimising this disruption, including time limits on custody courts and the removal of the requirement for in-person attendance at procedural hearings for those on remand or serving custodial sentences.
- SPS leads the management of the contract on behalf of justice partners and is working collaboratively with GEOAmey to resolve the issue.
- [redacted - section 30(b)(i) – free and frank provision of advice]
- We are determined to ensure that the care, welfare, and service delivery on non-court elements of the contract are supported and delivered with equal priority as the management of court operations and the secure escorting of those in custody.

Women in Custody

HMP & YOI STIRLING

The new national facility will deliver world leading and trauma-informed care and management for women in custody, giving them the best possible chance of a successful return to their communities upon liberation.

- It fulfils the key recommendations of the Commission for Women Offenders for a smaller and more detailed environment and one that is in keeping with a trauma informed approach.
- This is the third new facility built for women in the past year, with the Bella and Lilius Community Custody Units opening in Dundee and Glasgow, last year. This represents an unprecedented period of Scottish Government investment in how women are managed and supported while in custody.

COMMUNITY CUSTODY UNITS

The community custody units opened last year in Dundee and Glasgow, represent a step change in the rehabilitation of women in custody.

- The Bella Centre, in Dundee, and Lilius Centre, in Glasgow, help women develop key life skills and a greater degree of independence, to give them the best possible chance of a successful return to the community after leaving custody
- The level of security in the CCUs is proportionate to the level of risk posed by a woman and women are accommodated there will be able to benefit from engagement with local services and increased community contact.
- The Scottish Prison Service is actively considering ways in which it could change the criteria for admission to the CCUs, to maximise their benefit to women in their care. A formal evaluation of the CCUs is currently underway.

SPS STRATEGY FOR WOMEN

The prison services published its Strategy for Women in Custody in August last year, which is founded on the principle that all aspects of the care of women in custody should be designed for and take account of their likely experience of trauma and adversities.

- This is a significant change for both women in custody, and the staff who work with them, and they are being supported to make those adjustments, which will bring long-term benefits to themselves, the communities they return to upon liberation, and wider Scotland.
- The strategy's values and principles recognise the distinctive needs and circumstances of women and the impact of time in custody, no matter the length. They are intended to guide policy and practice for the future care of women in custody so that women can be appropriately supported in leading a healthy and fulfilling life.

Deaths in Custody

My thoughts are with every family tragically bereaved by a death in prison custody and I fully understand the desire for prompt answers following the death of a loved one.

- Everyone who enters custody is assessed by both prison and NHS staff to identify exactly what mental health, social care, substance misuse, and other support is needed. SPS also have peer mentors and listeners, trained by the

Samaritans, to support people when they first arrive and throughout their time in custody.

- The safe treatment and mental health of all those in custody is a key priority for this Government and the SPS, who care for people with higher levels of risk and vulnerability than the general population as a whole.
- Improving and analysing data available on deaths that occur in prison custody is key to understanding and preventing deaths in prison custody.
- I welcome Gillian Imery's initial publication on analysis of deaths in prison custody. The findings in this report will help us work with partners including SPS and NHS to inform prevention work.
- This report sets out that, as with the general population, deaths occur for a number of reasons including disease and natural causes.
- This is the initial report and future publications will include more in depth analysis, particularly around causes of deaths.

Replacement Prisons/Modernising Prison Estate

HMP Highland

- The creation of a new HMP Highland will better serve local communities, meet the needs of people in SPS care, and provide an improved environment for all those who work, live, and visit.
- Whilst good progress is being made on the new state-of-the-art HMP Highland, like many large scale capital projects, it has faced delays due to the disruption in supply chains and labour market challenges, and increased costs due to inflation.
- [redacted - section 30(b)(i) – free and frank provision of advice]
- Significant cost increases are being seen across all of the wider construction sector, including prison builds in England and Wales.
- The construction industry has been hit particularly hard by inflation, as well as by the supply chain and labour market challenges we have seen as a result of the pandemic, Brexit and geo-political uncertainty.

HMP Glasgow

- We are committed to replacing HMP Barlinnie with HMP Glasgow which is being designed to deliver safe and secure accommodation, with maximum possible benefit and opportunity to those who live and work there.
- We continue to modernise the prison estate to deliver a world leading custodial environment, which supports rehabilitation and a safer Scotland.
- HMP Glasgow will provide a better quality of living environment and enable strong relationships with staff and will help those in custody move forward.
- The new prison will be a strong and supportive partner, both locally and to the wider Scottish justice system, delivering a social value that benefits the wellbeing of our wider communities.
- HMP Glasgow joined the IIP in 2011, and the early estimates were made prior to a site or design being identified and under different market conditions.

- The design of the new prison has developed considerably since early estimates, including in response to the current targets for carbon emissions and like all large scale projects has been subject to inflationary cost rises.
Costs are dependent on market conditions and inflationary pressures, as well as the final design. SPS will receive indicative cost plans with increasing cost certainty over the coming period
- Estimated costs and time-scales for HMP Glasgow will be set out once a final design is available.

HMP Kilmarnock Transition

- SG is clear that prisons should be owned and operated by the public sector.
- Preparations are on track for Scotland's first privately-operated prison, to become the first private prison to transfer to public ownership in March next year.
- I visited HMP Kilmarnock last month and was pleased to speak to staff and hear of the robust transition arrangements in place to make the transition as smooth as possible for all impacted. This has clearly been a result of sustained early engagement of SPS and Serco with staff and encourage that this will continue as the transition progresses.
- I of course commend the strong working relationship between SPS, Kilmarnock Prison Services Limited and Serco, with collaborative working and mutual continued improvement over the contract period.

HMP Greenock

- SG and SPS fully recognise the need to ensure prison infrastructure is fit for purpose for those that live and work in prisons and supports the rehabilitation of people living there.
- Given the current significant financial and operational pressures, we are having to prioritise capital investment on areas of highest need. It is unlikely that work will commence at the site before 2025/26.
- SPS have prioritised the creation of a Development Strategy for HMP Greenock to ensure that the establishment remains operational until at least 2030. This strategy will identify and prioritise all maintenance and improvement work required and address the uncertainty that has impacted on the maintenance of the establishment over the past 10 years.
- SPS is about to commence a series of improvements at HMP Greenock including roofing upgrades and replacements, and refurbishment of the kitchen.

[redacted - section 30(b)(i) – free and frank provision of advice]

Safer Cells

- The Scottish Prison Service cares for and supports some of the most complex and challenging individuals in our society, often at times of personal crisis.
- This government supports the important work of the Scottish Child Abuse Inquiry, and it is important it has the opportunity to hear from a range of individuals, including, of course, those who have lost loved ones in prison custody.

- [redacted - section 30(b)(i) – free and frank provision of advice]

Annex D - Prison Population Analytical Projections Lines

There has been a sustained increase in the prison population across 2023. The prison population has risen from around 7,300 at the start of the year to 7,893 on 15 September.

- However, over the past decade the number of people entering prison each year has fallen substantially, from around 14,900 in 2011-12 to 10,950 in 2019-20 - a reduction of around 26%.
- This reduction broadly mirrors overall reductions in the volume of recorded crime, criminal proceedings and convictions over the same period.
- Prison population levels did not match these changes. Prior to the pandemic, Scotland's prison population had been rising.
- Over the decade to 2019-20, the sentenced prison population became increasingly comprised of individuals convicted of violent and sexual offences, and those serving longer sentences.
- Those with an index offence of serious violence were the single largest group in the sentenced average daily population in 2019-20, accounting for just over a third of the total.
- The average daily population serving sentences for rape and attempted rape (offences that attract long custodial sentences) trebled between 2009-10 and 2019-20, and the long term prison population overall grew substantially.
- There has been long term growth in the average daily population serving indeterminate sentences (life sentences and Orders of Lifelong Restriction) and rapid rises in those serving determinate sentences (4+ years) from 2017-18 to 2019-20.
- Following the introduction of Community Payback Orders in February 2011, the proportion of people receiving community sentences rose from 16% to 22% in 2019-20.
- While the average daily prison population declined between 2011-12 to 2017-18, by late 2018 it was rising rapidly. The average daily prison population peaked at c.8,200 in 2019-20.

Analyses conducted by Justice Analytical Services (JAS) in 2019 show that, over the long term, the composition of the prison population is influenced by trends in recorded crime, but the size of the population is largely determined by criminal justice policies, legislation, practice and procedures.

- New or previously 'hidden' crime types such as domestic abuse and sexual offences have increasingly come to the attention of the courts, and can attract lengthy custodial sentences.
- There has also been an upward drift in average sentence lengths for some offences, in particular housebreaking, handling an offensive weapon, domestic abuse, and murder.
- [redacted - section 30(b)(i) – free and frank provision of advice]
- The early impacts of the ending of automatic early release for long term sentenced prisoners in 2016 was also identified as a contributing factor. Analyses indicated that the ending of automatic early release for long term

sentenced prisoners would lead to substantial year on year increases in the sentenced population for a number of years.

- Taken together, these combined factors (greater 'success' in administering justice, greater throughput of serious offences, changes in sentencing and amendments to release mechanisms) offset the impacts of reductions in other recorded crimes and the presumption against short term sentences, leading to a rising prison population.
- In addition, subsequent analysis of historical data has revealed that the time individuals spend on remand had been increasing from 2017-18; a further contributing factor to the increasing population.

The average length of prison sentences has increased by 14% 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.
- Also important to reflect recent comments by retired prosecutor, Nigel Orr about use of long sentences by the courts.
- While sentencing is rightly of course for the courts, need to keep in context average sentence lengths in recent years have increased.

Compliance with public health measures during the pandemic impacted on the operation of the criminal justice system.

- The Lord Advocate issued revised guidelines on the use of police custody, and courts had to close for extended periods or operate at reduced capacity.
- Prison establishments had to ensure sufficient space to allow prisoners to observe public health measures.
- The impact of operational responses to public health measures was observed across the justice system during the pandemic period: a decreased volume of custody cases reported to the Crown Office and Procurator Fiscal Service, and an increased volume of undertakings reports; a reduced likelihood of an accused being remanded; a reduced volume of concluded cases in courts, and a growth in the trial backlog; and an agreement in the initial stages of the pandemic response to early release of eligible short term sentenced prisoners.
- However, at the same time, the volume of serious violent and sexual recorded crimes (typically those most likely to result in a custodial sentence) remained at a very similar level to pre-pandemic, suggesting continued demand on the justice system. The 2023 increase in the prison population appears to relate to an increased in-flow to the prisons, which outstrips present out-flows.
- Between March 2020 and May 2020, the prison population fell from just over 8,000 to just under 6,900.
- From the end of May 2020 the prison population began to rise rapidly, driven almost entirely by a growth in the remand population.
- From autumn 2020 to late 2022, the prison population was broadly stable between 7,300 and 7,600. The remand population stabilised at a historic high (sitting between 1,800 and 2,200 on any given day), while the sentenced population remained at a lower level than the immediate pre-pandemic period (over 1,000 lower than the average daily population in 2019-20).

- This changing pattern partly reflects the progress of court recovery activity, with an increase in solemn court activity in 2023 while summary caseload continues to put pressure on the system.
- Time spent in custody also contributes to higher population levels. The number of people held on remand for more than 140 days has remained high (>650) since July 2022 (when monthly reporting began), while the sentenced population has grown.
- The current long term sentenced population (4+ years) exceeds 2020 levels (2,292 on 18th September 2023 compared to 2,168 on 26th March 2020), and the short term sentenced population continues to recover.

It was always predicted that the recovery of court activity would impact not just on courts but on community justice and prisons.

- As part of the initial Justice Recover Renew and Transform (RRT) programme, an additional £11.8m was provided in 2021-22 to support recovery and expansion of community justice services
- This was increased to £15m in 2022-23 and maintained at the same level in 2023-24. Additional revenue funding was also provided to prisons, although this has been more than fully absorbed by pay and inflation pressures.

International evidence

Research points to a number of measures put in place to reduce populations. The evidence from international case studies suggest that it was often spiralling prison numbers and acute budget pressures that was the trigger for many of these jurisdictions to reduce their incarceration rate

- long-term investment in non-custodial options and community sentences (Sweden, Finland, Netherlands)
- focus on rehabilitation, purposeful activity and throughcare (Sweden, New York State)
- increased use of early release and parole (Germany, Finland)
- increased used of suspended sentences (Germany, Finland, Netherlands)
- postponed execution of prison sentences to allow drug treatment for addicts and an increase in releases as an act of mercy (Germany)
- introduction of upper limits of proportionality in sentencing (Finland)
- replacement of short custodial sentences with fines (Finland)
- widened use of electronic tagging (Netherlands)
- expansion of drug treatment programs (US states Georgia, New York State, Texas).

The evidence also point to a number of themes in understanding success factors:

- Driving down imprisonment rates is a multi-year, multi-phase process. Reductions in prison numbers has only been achieved using a combination of measures – there is no single fix. Success requires persistence and determination across multiple different legislative terms.

- Focus on alternatives to imprisonment. International evidence underlines the central importance of robust and credible alternative to imprisonment to attempts to drive down prison numbers.
- Both 'front end' and 'back end' measures can play a useful role in attempts to reduce prisoner numbers. This includes potential usefulness of pre-trial diversion ('front-end' measures) as well as early release schemes ('back-end' measures) as part of a whole-system strategy aimed at reducing prison numbers.
- Driving down imprisonment rates requires a 'whole system' approach. All criminal justice agencies including police, prosecutors, courts, probation and prison services, need to work to deliver on a national strategy. But the approach also need to extend beyond justice agencies to include other agents of social policy as well as other levels of government, in particular local government.
- The operation of welfare and justice systems are intimately interlinked. Failing welfare systems substantially increase pressure on criminal justice systems tending to drive up imprisonment rates.
- Need for strong political support and cross-party consensus. Many of the case studies highlighted a consensual and pragmatic approach which was able to build on shared recognition of the challenges and commitment to solutions.

Annex E - Release/Throughcare Lines

Throughcare

Ensuring that those leaving custody have their basic needs met on release is critical for a safe transition back into the community. This reduces the risk of reoffending, results in less crime, fewer victims and provides safer communities.

- We provide £3.8m a year to support third sector throughcare services across Scotland, which offer one-to-one support to individuals leaving prison.
- We are currently reviewing how these services are commissioned and delivered, to inform our plans for how best to deliver voluntary throughcare services in the future.
- Community Justice Scotland have been tasked to review the current provision of throughcare support by the third sector, and to provide recommendations to the SG on how we should commission such services in the future.
- We have agreed to extend CJS' work on this task, and will aim to implement any changes ahead of 2025-26.
- The work to examine future commissioning is not based on dissatisfaction with existing services. But after 10 years, it is appropriate to take time to reflect on how best to support such services in the future.
- We will consider these issues carefully before deciding how to proceed. It is not appropriate to make commitments about future funding to particular organisations at this time.
- All individuals leaving custody in Scotland can gain support on their release from their Local Authorities, including those leaving time spent on remand.
- Individuals serving short-term sentences can access voluntary throughcare support if they wish after their release. These services are funded by the Scottish Government, and are delivered by Third Sector organisations and Local Authorities.
- It is important that public & justice services work together to support an individual before, during & after their release to achieve a well-managed and safe transition.
- Long-term prisoners, sex offenders (sentenced to six months or more), or those with post release supervision orders, are supervised and supported by Justice Social Work after release.
- Sex offenders and, where appropriate, other released prisoners who pose a risk of causing serious harm, will be managed under the Multi Agency Public Protection Arrangements (MAPPA).

We recognise the particular challenges that can be faced by individuals released from custody or remand at short notice, typically at the instruction of the court.

- It can be difficult for the SPS or external services make plans to support a prisoner who is being released, when their release date is unpredictable.
- I held a roundtable meeting with justice leaders back in May to examine this issue, and we will continue to work together to examine how to secure better outcomes for this group.
- The Bail and Release from Custody Act includes provision for a release planning duty on named public bodies, and a requirement for the Scottish Government to publish national statutory standards of throughcare support for prison

leavers. Both of these will apply to individuals leaving remand, as well as those released after completing a sentence.

- It would be an operational decision for SPS to decide whether or not they wish to reinstate their Throughcare Support Officers.
- The SPS established the Throughcare Support Officer Service independently, and funded it from their core budget – and made the decision to suspend it. It is not appropriate for Scottish Ministers to instruct SPS how to decide on this issue.
- It is important to recognise that the SPS provide support and advice to prisoners to prepare for their release, both as part of day-to-day activities, and through the work of Links Centres in each prison.

Bail and Release from Custody (Scotland) Act 2023

- The Bail and Release from Custody (Scotland) Bill has received Royal Assent and become an Act.
- The Act will ensure that remand is focused on those that pose the greatest risk to public safety and that improved support is available for people leaving prison custody.
- Work to implement the Act will be commenced in the coming year. Implementation planning will involve ongoing engagement with relevant stakeholders, including those named within the Act, as appropriate.
- The legislation is part of a wider programme of work designed to shift the balance between custody and justice in the community.
- The Bail and Release from Custody Act introduces provisions to improve release planning processes and the support available to people leaving prison, including a release planning duty on named public bodies and a requirement for the Scottish Government to publish national statutory standards of throughcare support for prison leavers.
- This recognises the need for early and co-ordinated pre-release planning so that people leaving prison have access to the services they need on their release.
- The Act will also end release on a Friday, or the day before a public holiday. This recognises the difficulties people experience accessing the community-based services they need, like housing, when released on those days.
- The Act also contains provision that will ensure the Victim Notification Scheme (which provides eligible victims with information about an offender's release) functions in a more trauma-informed way by enabling victim support organisations to receive information under the scheme on behalf of, or as well as, a victim.

[redacted - section 30(b)(i) – free and frank provision of advice]

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Early Release

Under Covid legislation, Scottish Ministers continue to hold the power to instruct the early release of groups of prisoners – under certain circumstances

- Such an early release could only be instructed if it was necessary and proportionate to do so, to protect the health of prison staff and prisoners, or to maintain the safe operation of prisons – in response to the effects of Covid.
- If any such emergency action became necessary, the details of the release would be presented to the Scottish Parliament.
- In an emergency, the Covid legislation permits the use of a made affirmative statutory instrument. This will allow swift action when time is a factor.
- In the longer term, the Bail & Release from Custody Act did establish wider provision for Ministers to instruct early release in response to other forms of emergency.
- That provision is not in force at the moment. But we will work with stakeholders in due course to develop the necessary plans for any future application, before it is brought into force in due course.
- Any use of the new power will require a similar test – to be used only when it is a necessary and proportionate action, to protect the safe operation of prisons, and protect prison staff and prisoners.

Parole

The Parole Board is an independent body and as such the Scottish Ministers cannot comment on individual cases or intervene or influence the decision making process of the Board.

- The Board aim to ensure those prisoners who are no longer regarded as presenting a risk to public safety may serve the remainder of their sentence in the community on licence under the supervision of a supervising officer.
- The Parole Board for Scotland may recommend the recall to custody of those serving a sentence of four years or more who have been released on licence in circumstances where such action is considered to be in the public interest.
- [redacted - section 30(b)(i) – free and frank provision of advice]
- We are committed to ensuring that those individuals on licence who do represent an ongoing risk to the public can be quickly returned to custody to then serve the remainder of their sentence.

Research on Bail

- Independent research on decision-making on bail was completed in summer 2023.

- The aim of the research was to improve our understanding of the process of bail decision making, the current strengths and weaknesses in the system, and what criminal justice stakeholders need to be best supported in their decision making. [redacted - section 30(b)(i) – free and frank provision of advice]

Annex F - Community Interventions Lines

Community Sentences

Community-based interventions and sentences help ensure justice is done, and can be more effective in reducing reoffending and assisting with rehabilitation than short term custodial sentences, leading to fewer victims and safer communities.

- Community Payback Orders are a robust, flexible sentence with multiple potential requirements which can be tailored to fit the circumstances of individual cases.
- Once imposed, the management of community payback orders is a matter for the courts and justice social work.
- The reconviction rate for individuals given community payback orders is consistently lower than for those given short sentences.
- The reconviction rate for those given Community Payback Orders in 2018-19 was 29.2% compared to 51.7% for those completing custodial sentences of one year or less.
- We are investing a total of £134m in community justice services in 2023-24, which includes the continuation of an additional investment of £15m from 2022-23 to support recovery efforts, bolster capacity, and strengthen alternatives to remand.

We are confident in the ability of local authorities to deliver unpaid work and other community orders, and we continue to monitor recovery from the pandemic.

- Having some outstanding hours in the system is normal, as it takes time for individuals to undertake the unpaid work they have been sentenced to.
- In 2021-22, 74% of CPOs that ended were successfully completed.

Diversion from Prosecution

The Scottish Government cannot comment on decisions made by the Crown, including diversions from prosecution. These are a matter for the Lord Advocate as independent prosecutor.

- We welcome the joint inspectorate review report (published 21 February 2023) into diversion from prosecution, and are working with justice partners to consider the recommendations outlined.
- I am aware that the Lord Advocate has announced a review of diversion from prosecution for sexual offences, but that is entirely a matter for the Crown Office and Procurator Fiscal Service.

While entirely a matter for the Crown, they have advised Parliament of their prosecutorial policy approach in the use of diversions for young people and children in the context of evidence on the Children's Care and Justice Bill.

- The Crown's approach requires careful consideration of the public interest and, where relevant, the impact on victims in deciding how best to approach individual cases involving children and young people as accused persons.
- The Scottish Government is taking a wide range of steps to strengthen how victims and witnesses, including complainers in sexual offence cases, are supported and informed through the justice system.
- Our Equally Safe strategy aims to tackle and prevent gender-based violence, and includes £19 of annual funding currently supporting 121 projects from 112 organisations that focus on early intervention, prevention, as well as support services.

Bail/Alternatives to Custody

The consistent provision of alternatives to remand (bail supervision and electronically monitored bail) is critical to support a change in how remand is used.

- The Bail and Release from Custody (Scotland) Act 2023 seeks to refocus how remand is used by changing the legal bail test so that remand is reserved for those who pose a risk of public safety, and victim safety. And, in certain circumstances, the administration of justice.
- We are investing a total of £134m in community justice services in 2023-24, which includes the continuation of an additional investment of £15m from 2022-23 to support recovery efforts, bolster capacity, and strengthen alternatives to remand.
- This includes specific additional funding of £3.2 million to support bail assessment and bail supervision services (a direct alternative to remand).
- This has supported the establishment of bail supervision services in more local authority areas, with plans to ensure it is available across Scotland by December 2023.

Electronic Monitoring

- Electronic monitoring is a tried and tested feature of Scotland's justice system and a key tool to support moving on from prison or alternatives to custodial sentences.
- Between 2014-15 and 2022-23 we saw a 65% increase in the use of EM in Scotland, showing this is a measure that is trusted.
- There are currently around 400 people on electronically monitored bail in Scotland – the highest since its introduction last year. Future development of the service will include exploring use of GPS.
- As at 25 September 2023 the number of people being electronically monitored was 1,765. This compares to 1,405 people being electronically monitored at the same time last year (a 25% increase).
- Electronic monitoring can help support people reintegrating into their communities providing structure to an order or licence, but it also allows for swift responses from Police and other justice partners where any conditions are breached.
- Electronic monitoring provides an important function in monitoring those at various points in the justice system, including those on release from prison or those on a community order.

- Our international evidence review demonstrated the effectiveness of electronic monitoring, including providing structure and an ability to respond to the behaviour of those on orders and licences.
- The expansion of electronic monitoring was strongly supported in the consultation responses that informed the Management of Offenders (Scotland) Act 2019.

Community Interventions Funding

We have protected investment in community-based interventions and are providing a total of £134 million to support community justice services in 2023-24

- The bulk of this funding – around £123m – is distributed to local authorities for the delivery of justice social work (JSW) services, enabling them to meet their statutory responsibilities and to target local priorities aimed at reducing reoffending.
- The remaining funding is provided directly to third sector organisations for the delivery of relevant services.
- Since the new model for community justice was introduced in April 2017, funding for community justice services has increased by approximately £26m – from around £108m in 2017-18 to around £134m this year.
- An additional £11.8m was distributed to local authorities in 2021-22 to assist with pandemic recovery and transformational work, and this was increased to £15m in 2022-23, while signalling our intention to maintain that funding for the remainder of the spending review period.
- Of the additional £15m, £3.2m has been specifically targeted at improving bail services in an attempt to reduce historically high levels of remand.

Turning Point Scotland 218 Service

Decisions about the commissioning of individual community justice services are a matter for local authorities.

- We have not reduced the overall funding available for community justice services across Scotland nor asked local authorities to reduce any specific funding within that.
- Community justice funding is primarily based on a local model, with the Scottish Government providing funding to local authorities which then provide or commission services according to local needs.
- Even where aspects of that funding are targeted at more specific needs, the commissioning and management of those services – including any re-tendering exercises - is entirely a matter for the relevant local authority.

Caledonian Programme

- Over the last year we have taken forward formal accreditation of the Caledonian Programme and expect that process to conclude this year, when the programme is considered by SAPOR (Scottish Advisory Panel on Offender Rehabilitation).
- We are in active discussion with one local authority area who expect to start delivering Caledonian shortly, and will be able to say more about that in due course once they can confirm readiness.

- We continue to delivery training and support to the 19 areas currently delivering the programme.
- We will consider further role out in due course but current capacity is in support of the new local authority area due to go live delivering later this year.

Annex G - Sentencing Lines

The most serious and dangerous offenders of course should go to jail.

- The decision on the most appropriate sentence in any given case is for the court with all the facts and circumstances before it.
- When I was at the Court of Session in March, the Lord President rightly emphasised that the judiciary is independent and Ministers – and most certainly the First Minister - shouldn't intervene in sentencing decisions.
- The Crown Office have a power to appeal against a sentence if they consider it to be unduly lenient.
- The Sentencing Council are required to review all guidelines they make and, in line with this, are currently reviewing the sentencing guideline on young people.

Across all ages, 98% of all those convicted of rape and attempted rape between 2018-19 and 2020-21 received a custodial sentence.

- It is for the courts to sentence and this data shows how frequently custody is used for these horrific offences.
- The average custodial sentence imposed on a person convicted of rape or attempted rape in 2020-21 was 6 years and 8 months.
- The Sentencing Council is currently developing guidelines on the sentencing of rape and sexual assault, and has a statutory duty to periodically review the operation of guidelines it has made.

Crime, including violence, has fallen under this government

- The latest figures show recorded crime is at the lowest level seen since 1974, and down 42% since 2006-07.
- This is welcome as it means that every year there are thousands fewer victims in Scotland than there were 15 years ago.

The average length of prison sentences has increased by 14% between 2011-12 and 2020-21, 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.
- While sentencing is rightly of course for the courts, need to keep in context average sentence lengths in recent years have increased.

Our sustained focus on prevention and early intervention has made a difference.

- The number of young people going through the criminal justice system has reduced dramatically in recent years and community interventions have a key role to play.
- Between 2008-09 and 2019-20, there was an 85% reduction in the number of children and young people prosecuted in Scotland's courts and a 93% reduction in 16- and 17-year-olds being sentenced to custody (source: Criminal Proceedings in Scotland publication).

Court Backlog

The Scottish Government has a strong track record on court investment and we continue to prioritise supporting justice partners to address the backlog.

- The 2023/24 budget allocates £42.2m for justice recovery.
- That builds on the justice recovery fund of £53.2m allocated in 2022/23 and the £50m in 2021/22 for recovery, renewal and transformation activity as we emerge from the pandemic.
- The budget for 2023/24 protects recovery funding of over £26m to SCTS to maintain enhanced court capacity. We have also increased SCTS's resource funding by £5m, and provided a record of £196.6m resource funding for the Crown Office and Procurator Fiscal Service – that's over 50% more than its funding at the start of the last Parliament.
- The Coronavirus (Recovery and Reform) (Scotland) Act, passed by Parliament last June, continues the extension of a range of temporary measures to help mitigate the impact of the backlog on our justice system. Those temporary measures are due to expire at the end of November, but with Parliament's agreement any or all of them can be extended, initially for a further year.
- Last month (20 September) I laid regulations in the Scottish Parliament which, if passed, will extend some of the temporary justice measures for another year, until 30 November 2024, to ensure that they remain available to support the system while it continues to address the backlog.
- By all main measures, crime, including violent crime, is now considerably lower than a decade ago, with fewer victims.

Significant progress has been made in reducing the backlog. The total number of scheduled trials outstanding has fallen by over a third since January last year. (To 27,851 at the end of August 2023 – still far higher than pre-Covid levels of approx. 18,000 cases.)

- Significant progress has been made in the summary courts. From April, SCTS has shifted recovery resources from summary courts to solemn courts, creating two more High Courts and six Sheriff and jury courts, which provide extra capacity to deal with the most serious cases.
- Justice agencies have been clear that the recovery programme will take several years to address the backlog, and we will continue to support that work.
- The Criminal Justice Board, composed of leaders from across the sector, meets regularly to keep the court recovery programme under review.

Offenders Being Present for Sentencing

We will consider if any new laws are needed to support the existing approach in Scotland

- Offenders are brought before the court to hear their sentencing in Scotland.
- Courts can use existing laws such as the common law of contempt of court in circumstances where an accused in custody refuses to be brought to the court room to be sentenced.
- We will consider carefully if any new laws are needed in this area.

Whole Life Sentences

Whole life sentences are simply not needed. The law in Scotland allows for the length of time the most serious offenders should serve to extend beyond the rest of an offender's life.

- The power lies with the court to decide if and when to use their powers – and I do not think it is for politicians to usurp the role of the court.
- I trust Scotland's most senior judges in the High Court to decide when to use their very significant powers in the worst cases. And they have used them.
- Angus Sinclair, the 'World's End' murderer, received a punishment part that would have meant he could not be released until aged 106.
- This sentence was imposed when he was 69 years old. It was effectively a whole life sentence.

Annex H - Healthcare/Substance Misuse Lines

We are committed to working with key partners to improve the health and wellbeing of those in prison and are determined that safe, effective, and person-centred care is provided.

- We recognise that people in custody often present with higher levels of risk and vulnerability than the general population as a whole and often have complex health needs.
- Health Boards with prison estates within their locality are funded by the Scottish Government, to provide safe, effective, person-centred care, that is as a minimum, equivalent to that available in the community.
- We recognise the increase in the prison population will have an impact on healthcare delivery, and we are in discussions with health boards who are significantly impacted to ensure healthcare needs of people living in prison continue to be met.
- Representatives from NHS are members of the fortnightly Prison Population Leadership Group, ensuring that the impacts on healthcare delivery are factored into contingency planning.
- Recognising the need to provide impetus, leadership and direction to resolving the challenges in prison healthcare, leaders from across the system have come together as a short-life Strategic Leadership Group to support the delivery of improved healthcare experience and outcomes for people in prison.
- A Cross-Portfolio Ministerial Group for Prisoner Health and Social Care has been established to provide collective ministerial leadership from across the relevant portfolios of Health and Social Care, and Justice, to help deliver an integrated approach to prisoner health and social care, within the context of shared and competing priorities.
- The Scottish Government is providing funding for Prison Healthcare Clinical IT to reduce clinical risk and improve the continuity of care for people as they enter, live in and leave prison.
- A network of Executive-level Health Board leads has been established to drive improvement in prison healthcare.
- We are committed to working with our partners to implement the recommendations of the Independent Review of the Response to Deaths in

Prison Custody. NHS Chief Executives have agreed to deliver the outstanding recommendations for NHS Scotland from the Deaths in Custody report by the end of this calendar year.

- The National Prison Care Network brings together key partners to drive improvement in the quality of healthcare delivered to people in prison. The Network is leading on the implementation of a number of recommendations within the Independent Review of the Response to Deaths in Prison Custody.
- The Scottish Prison Service are currently working in partnership with mental health experts to co-produce a mental health strategy for those in custody.
- Action 15 of the Scottish Government's Mental Health Strategy 2017-2027 outlined our commitment to funding 800 additional mental health workers in key settings, including prisons, by 2022. At the end of the commitment, an additional 958.9 whole time equivalent (WTE) mental health roles were filled using Action 15 funding – exceeding the original commitment. This included 54.4 WTE mental health workers posts recruited to our prisons to provide mental health and wellbeing support.

The aim of the National Mission on drugs, supported by an additional £250 million over the lifetime of this Parliament, is to reduce drug deaths and improve the lives of those impacted by drugs.

- We will do this by preventing people from developing problem drug use; reducing harms from the consumption of drugs; getting more people into high quality treatment and recovery services; addressing the needs of people with multiple and complex needs and supporting families and communities affected by problem drug use.

The supervision of drug treatment and testing orders is a matter for local authorities, working in collaboration with relevant health services to ensure that support and treatment is provided.

- We are aware that Edinburgh have temporarily suspended DTTO services for the second time in the last year (from 29 June 2023), due to clinical recruitment challenges.
- Edinburgh are working alongside Health Improvement Scotland to define a new model of service delivery and implementation plan.
- We are aware of the suspension of DTTO services in East Lothian for at least three months whilst a review of the options for meeting the needs of those with drug-related offending behaviour is undertaken.
- The Scottish Government published a review of DTTOs and other relevant orders on 31 August 2023 to assess how they have been used, their outcomes, and whether they are the most effective mechanism to support recovery and reduce recidivism rates.
- The picture of service delivery and outcomes for people subject to mandated drug treatment in Scotland is unclear. What is clear is that services vary widely in their structures and approaches across the country.

In prison settings, mapping of the process measures required to implement the MAT standards demonstrates that there is not a consistent approach to access and choice across community and justice settings.

- There is a need for packages of care to be tailored to meet emerging drug trends.

- Clinical capacity to deliver the MAT standards in prisons is insufficient.
- Lack of coordinated data systems in justice settings and across community and justice settings are a constraint to the provision of continuity of care.
- Without an upgrade of data systems it will be very difficult to conduct improvement work or measure progress with implementation of the standards.
- The MAT Implementation Support Team (MIST) based within PHS are working to deliver a programme of support for justice and custodial settings.
- This work includes mapping individual justice and custodial settings to identify good areas of practice and gaps for improvement; mapping out and strengthening pathways between prison, police custody and community services so that consistent care can be offered as people move between locations.

We are providing financial support for people to access residential rehabilitation on release from prison through the prison to rehab pathway funding.

- The Prison to Rehab pathway enables individuals with problem substance use to access residential rehabilitation immediately on release from prison.
- The pathway supports people to continue their recovery at a time when community support and connection with others in recovery can be challenging.
- The pathway has established a clear route of continuing care for individuals leaving prison who have shown a strong motivation to become substance free.

The Scottish Government funds the Scottish Recovery Consortium to integrate and embed recovery from alcohol and drug dependency across the prison estate since 2021.

- The vision is to create systemic, cultural, and operational change by building understanding and implementation of a recovery focused approach.
- This work builds coordinated and connected recovery pathways throughout SPS establishments and our communities.
- The Scottish Recovery Consortium are currently working in partnership with 14 establishments with the remaining 3 in the initial stages of collaboration and we are working with them to expand the programme of work.

Annex I - Victims Lines

We are investing almost £3.4bn across the justice system in 2023-24, with a 5.8% increase in the resource budget – an additional £165m.

- We are investing £1.45bn in policing in 2023-24, increasing the resource budget by 6.3% - an additional £80m. This provides a stable basis from which to improve the delivery of policing and enhance the safety and security of communities across Scotland.
- Due to successive increases, the Crown Office budget is over 50% higher than at the start of the last Parliament.
- We are awarding £48m to victims' organisations as part of our commitment to putting victims at the heart of the justice system.
 - More than 20 organisations have received awards from the new Victim Centred Approach Fund for the 2022-25 period, including Victim Support Scotland who were awarded over £18m to support the Families Bereaved by Crime Service.

- Over £917,000 has been awarded from the Victim Surcharge Fund to provide practical help to victims.
- We have invested £93m through our justice budget alone, to support victims in the past five years.
- Over and above this, we provide around £15.6m each year to support victims of violent crime in Scotland through the Criminal Injuries Compensation Scheme.
- On 31 May, we published a Violence Prevention Framework, to strengthen our efforts to prevent violence and when it does occur, to reduce its harm, helping to reduce the number of victims of violent crime.

Victims' experiences are directly informing our action.

- The Victims Taskforce engagement with survivors is supported by reference groups, established by Victim Support Scotland, Rape Crisis Scotland and Scottish Women's Aid.
- Additionally, a Victims Advisory Board has been developed which will embed lived experience within the work of the Taskforce.
- Our PfG contains a range of commitments to further improve victims' experience of the justice system, including appointing a Victims' Commissioner to provide an independent voice for victims.

The Victims, Witnesses and Justice Reform Bill puts victims and witnesses of crime at the heart of the justice system.

- The Bill has been informed by the work of the Victims Taskforce, Lady Dorrian's independent and cross-sector Review on Improving the Management of Sexual Offence Cases, and by the landmark jury research published when I was Justice Secretary.
- We are rightly proud of our unique Scottish justice system, but it is vital that it reflects the needs of people now.
- We have listened to survivors, victims and their families, and these major reforms will lead to services and processes that are much more trauma-informed and person-centred.
- Victims of crime have told us that they often feel unheard and cannot access information, that they do not feel safe and that they often do not experience compassion.

'Michelle's' Law

- The Scottish has already taken action in line with the 'Michelle's Law' campaign.
- The Parole Board Rules were amended in March 2021 to make clear that the Board can take account of the safety and security of victims and families when deciding upon a prisoner's release.
- In addition, individuals who sign up to the Victim Notification Service will be advised when a prisoner is first being considered for temporary release, and those that wish to can provide their views about that decision to the Scottish Prison Service.
- Victims can also make representations to the Parole Board for Scotland when someone is being considered for parole. From 1 April 2023 those representations can be treated as 'non-disclosure' so the person being considered for parole does not see them. Giving victims the same rights as the prisoner not to have their representations disclosed.

- The Parole Board Rules were also amended in 2021 to allow victims to observe parole hearings and to allow victims to receive a summary of the Board's recommendations with reasons for its decision. Since March 2021, the Parole Board has published a summary of its decisions to release on its website – with 44 decisions published in 2021, 80 in 2022 and 62 published this year to date.

'Suzanne's' Law

- We have considered the proposal to deny parole to people who do not disclose the location of their victim.
- There are a number of practical and legal considerations that have to be taken into account. In particular the proposal raises potential issues of ECHR compatibility. Particularly, with Articles 3,5,6 and 7.
 - [redacted] Section 38(1)(b) – Personal information]
- The court can and will also take into account the refusal to disclose the location of a body when sentencing.
 - [redacted] Section 38(1)(b) – Personal information]
- The Parole Board has confirmed that they have always taken matters such as this into account when considering release but the new provision in the Parole Board (Scotland) Rules 2022 (Rule 12) puts beyond doubt the Parole Board's established practice and makes that clearer for victims and families.
- Depending on how it is applied in practice, ineligibility to be considered for parole in the case of an individual convicted of murder who refuses to disclose the location of the body, would, in part, roll back the amendments made by the Convention Rights (Compliance) (Scotland) Act 2001 and could be viewed as incompatible with numerous ECHR grounds.

Restorative Justice

We remain committed to having Restorative Justice services across Scotland

- We are clear that the needs of persons harmed and their voices must be central to the process.
- 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.
- We want services to be available at a time that is appropriate to the people and case involved; consistent; evidence-led, trauma informed and of a high standard.
- We have been working in partnership with Community Justice Scotland and the Children and Young People's Centre for Justice on delivering this commitment – recognising that the requirements and needs of those accessing the service may differ where young people are involved.

We are working with partners to develop a 'hub and spoke' model for delivery

- We want to develop RJ services in Scotland that are safe, consistent, and of a high standard nationally, but at the same time deliver a service that is person-centred and that reflects local needs and circumstances.
- We are adopting a 'hub and spoke' model for delivery, that is being developed with, and has support of, stakeholders.

- A national Hub has been established within Community Justice Scotland (CJS) (focused on RJ for adults) and the Children and Young People's Centre for Justice (CYCJ) is developing similar services for children and young people.
- Work is currently focussed on developing a policy and practice framework and on testing the model within the Lothian and Borders area.
- This will test how RJ referral mechanisms can best be set up and work in practice: build evidence on levels of demand for the service; and how to best set up the administrative arrangements and identify the resources required to establish a regional hub.

Domestic Abuse Progress

It is vital that perpetrators are held to account, and that women and children have access to frontline services dealing with violence and domestic abuse.

- The Domestic Abuse (Scotland) Act 2018 created a specific offence of domestic abuse that covers not just physical abuse, but also other forms of psychological abuse as well as coercive and controlling behaviour.
- We are clear that must treat domestic abuse survivors with compassion, and availability of services which acknowledge the significant trauma they experience.
- Research on the operation of our ground-breaking Domestic Abuse legislation found that it does better reflect victims' experiences.

Since the launch of the 2018 Domestic Abuse (Scotland) Act, the Scottish Government has:

- Established a Domestic Homicide Review taskforce to help prevent homicides in Scotland where domestic abuse is suspected.
- Invested £53.2m in 2022/23 and £50m in 2021/22 for recovery, renewal and transformation activity as we emerged from the pandemic. The budget for 2023/24 protects justice recovery funding, with £42.2m allocated. This includes over £26m for SCTS for enhanced court capacity, to help address backlogs.
- Introduced new Evidence by Commission suites – to improve the experience of vulnerable victims when providing evidence for court cases.
- Awarded £48m of funding to 23 organisations in Scotland over three years (until March 2025), through our Victim-Centred Approach Fund, including £18.5m for specialist advocacy support for survivors of gender-based violence.
- We welcome the Criminal Justice Committee's report on their post-legislative scrutiny of the Act and will give careful consideration to the recommendations in conjunction with our Justice partners.

Scrutiny

The HMICS Thematic Review of Domestic Abuse found that much progress has been made over recent years but that significant challenges still exist in preventing domestic abuse and protecting those who are vulnerable from its harmful effects.

- The report contained a number of recommendations directed at Police Scotland, who are committed to continuing to improve their response to domestic abuse and deliver a service that meets the needs of victims.
- A number of the findings, which relate to victim safety, police officers' awareness of the Domestic Abuse (S) Act and investigation of cases, are consistent with the findings of research we did with victims, which was published on Tuesday (10 January).
- These reports are clear that more is required to tackle domestic abuse and we are committed to working with Police Scotland, and other justice partners, to consider and respond to the review and recommendations.

Criminal Justice Committee report on the Domestic Abuse Scotland Act

- We welcome publication of the Criminal Justice Committee's report on their post-legislative scrutiny of the Domestic Abuse (Scotland) Act 2018 and will give careful consideration to the eight recommendations before responding formally.
- Important that we discuss these in detail with our Justice partners and reflect on how we might collectively respond, recognising that we are all actively considering the areas identified within the report on the operation of Act which was published in January.
- The Scottish Government is absolutely clear that any form of abuse is unacceptable and the new domestic abuse offence, which has been heralded as gold-standard legislation, has given more powers to police and courts to punish perpetrators of abuse and protect people at risk.
- However, as this report highlights, there is still more that needs to be done to improve the justice response to domestic abuse and we will work with justice agencies to consider the recommendations.

Domestic Abuse (Scotland) Act 2018 – publication of reporting requirement

- We recognised the importance on delivering the requirement to report on the operation of Act and to acknowledge the findings that the legislation better reflects victims' experiences, according to new research. I am glad that we delivered on that earlier this year.
- At the time of publication the Scottish Government acknowledged the clear message that improvements could be made to how domestic abuse cases are handled to provide victims with a greater voice in proceedings and better support through the process.
- As then Justice Secretary made clear, while the pandemic has had an impact, we must recognise that the justice system, which has been historically designed by men, for men, needs reform.
- It is also vital that we ensure that services which recognise the significant trauma that occurs in cases of domestic abuse are available to victims when they need them.
- This is why we have established a Victim-Centred Approach Fund that has awarded £48m to provide practical and emotional support to victims including £18.5m for specialist advocacy support for survivors of gender-based violence.

- I was reassured to read, from the evidence heard, that the legislation has been welcomed, including the recognition of psychological, on-going, and coercive abuse.
- However, we cannot be complacent, and as I set out in my response to the Committee, I intend to reconvene the group which supported the implementation of DASA for a roundtable discussion.
- That group is made up of key Justice stakeholders including Police Scotland, the Scottish Courts and Tribunal Service and Crown Office and Procurator Fiscal Service.
- I consider that it will provide an opportunity to reflect with these partners on where we are with our response to domestic abuse and what more is required to address the concerns raised in the reports.
- It will provide a platform to consider what further actions are required, including opportunities to progress a collective response to domestic abuse in a more strategic way.

Domestic Abuse (Prevention) (Scotland) Bill – Pam Gosal MSP

I am aware that Pam Gosal MSP has now lodged her final proposal for a Domestic Abuse (Prevention) (Scotland) Bill

- As the First Minister has outlined before, and in common with the Cabinet Secretary for Justice and Home Affairs, we will carefully consider any proposal that would further our work to tackle incidents of domestic abuse and will do likewise with the current proposal.

Preventing Homelessness due to Domestic Abuse

We are currently exploring what we can do to provide financial support to women experiencing domestic abuse so that financial uncertainty does not prevent someone from leaving that relationship.

- We are working with Scottish Women's Aid, the Convention of Scottish Local Authorities and Child Poverty Action Group to explore how a fund providing financial support to women leaving an abusive relationship could be delivered.

Annex J Youth Justice

Our sustained focus on prevention and early intervention has made a difference.

- The number of young people going through the criminal justice system has reduced dramatically in recent years and community interventions have a key role to play.
- Between 2008-09 and 2019-20, there was an 85% reduction in the number of children and young people prosecuted in Scotland's courts and a 93% reduction in 16- and 17-year-olds being sentenced to custody (source: Criminal Proceedings in Scotland publication).

The Children (Care and Justice) (Scotland) Bill is undergoing scrutiny at Parliament, with stage 1 completed in June 2023. The Bill will make important changes across a wide range of issues.

- These include raising the maximum age of referral to the Children's Reporter to 18 and ending the placement of under 18s in Young Offenders Institutions.
- In Scotland we take a strong focus on early and effective intervention, diversion and appropriate support to address offending behaviour by children. This is done in a timely and effective way through a whole system approach to preventing offending behaviour, based on multi-agency partnerships.
- Scotland has seen dramatic changes in the youth justice sector since this government made a decisive shift towards prevention. From 2008 to 2020, the number of under 18s in custody decreased by 89.9%. Since 2008-9, the number of 12-17s proceeded against in Scotland's courts has fallen by 85%. There has been a 73% reduction in children referred to the children's reporter on offence grounds from 2008-9 to 2022-23. We recognise that there is more to do.
- Our Whole System Approach seeks to address the needs of those under the age of 18 who are involved in, or at risk of becoming involved in, offending.
- This approach is based around the principles of GIRFEC (Getting it Right for Every Child) and aims, through availability and use of services, to provide early intervention and prevention and divert children from custody and secure accommodation where possible, ensuring that they get the right support at the right time, providing better outcomes for children, victims and safer communities.
- In June 2021 we published a new Youth Justice Vision and Action Plan. This Vision builds on the work of the previous Youth Justice Strategy and is based on the Promise, the incorporation of the UNCRC and other influential documents, along with views from key stakeholders, partners and importantly, children and young people.
- The Vision continues to promote the Kilbrandon ethos of addressing needs as well as the behaviours of children and continues to support the delivery of a WSA to preventing offending by young people.
- The key priorities within the Vision focus on rights and understanding, participation and engagement with children, support for victims, diversion from the criminal justice system through delivery of the Whole System Approach, ending the placement of children in YOI, use of data and evidence to inform policy development, offering support at an early stage to improve mental health and wellbeing and ensuring that speech, language and communication needs are taken in to consideration.

- Two implementation groups have been set up to progress work on the priorities of the Vision: Advancing the Whole System Approach and Children's Rights. There are also sub-groups for Speech, Language and Communication Needs (SLCN) and Participation.

Sentencing

- The decision on diversion from prosecution or sentence in any given case is for the court with all the facts and circumstances before it. Decisions made by the crown are a matter for the Lord Advocate as independent prosecutor, this is not something which I can intervene in.
- Sentencing guidelines are entirely the responsibility of the independent Sentencing Council, and decisions about whether to approve the guidelines are for Scotland's most senior judges in the High Court.
- The Council is currently reviewing the sentencing guideline on young people in line with its standard approach on reviewing all guidelines.
- The Council used their expertise to develop an evidence-based approach on the sentencing of young people, which places rehabilitation as a primary consideration when sentencing young people under 25.
- In Scotland we take a strong focus on keeping children out of the criminal justice system, where appropriate, ensuring that they receive the right support to address their behaviour as well as their wider needs.
- The Lord Advocates guidelines on offences committed by children determine categories of offence which require to be jointly reported to the Procurator Fiscal and the Children's Reporter.

Annex K - National Strategy for Community Justice/Justice Vision Lines

- Our National Strategy for Community Justice maintains our focus on taking a person-centred, rehabilitative approach and encouraging a shift in the balance between custodial and community interventions, which is a key part of our overall vision for justice.
- The strategy recognises that while public protection is paramount, there is clear evidence that community-based interventions and sentences can be more effective in reducing reoffending and assisting with rehabilitation than short term custodial sentences.
- Underneath these high level ambitions, the strategy sets out four national aims relating to diversion and early intervention; the provision of robust and high quality community interventions; responsive services which meet the needs of individuals; and strong leadership and partnership working.
- We have recently published a delivery plan to sit alongside the strategy, setting out more detailed and time limited deliverables which will be progressed in relation to the aims and priority actions in the strategy.

Our Vision for Justice remains to deliver a just, safe resilient Scotland. This will see us living in safer, more tolerant and inclusive communities, free from inequality and hate.

- Despite the challenging financial situation, the Scottish Government is coordinating a set of three, cross-sector Transformational Change Programmes with a focus on delivering improvement across the justice sector in line with the Justice Vision.
- In addition to working with partners on reform Programmes there are also two key pieces of legislation which support the reform programmes currently progressing through Parliament: the Victims, Witnesses and Justice (Reform) Bill and the Bail and Release from Custody (Scotland) Act, passed by Parliament earlier this year.
- We will be publishing a three-year delivery plan setting out the key areas of work within the justice sector aligned to the aims set out in the Vision of Justice, shortly.
- Alongside this plan will be an update on progress since publication of the Justice Vision; a measurement framework which will set out how we are measuring the progress we are making; and how we, and our partners, will look to continue to focus on delivery and reform in the future.

Annex K – Additional Statistical Information from JAS

Management information from the SPS collated by JAS up to Monday, 2nd October 2023 shows:

	2 nd October 2023	1 st January 2023	Change in 2023	2019-20 average pop
Total prison pop	7,937	7,303	+634	8,197
Remand	2,198	2,069	+129	1,524
Sentenced	5,739	5,234	+505	
- Less than 4 years	2,296	1,931	+365	N/A
- 4+ years	2,291	2,159	+132	N/A
- Life	748	761	-13	N/A
- OLR	228	219	+9	N/A
Women	317	274	+43	402
U21	171	147	+24	326

Prison population trends in 2023

- The steep overall prison population increase in 2023 contrasts with broad stability across 2021-2022.
- The remand population has increased in 2023, but has fallen slightly in recent weeks.
- In the sentenced population, most sub-populations have increased in size in 2023.
- Throughout 2023, net weekly flows to prison have trended positive – arrivals have consistently exceeded departures.
- The proportion of the prison population on remand remains high at 28% (34% for women) on 2nd October 2023 – compared to 19% in 2019-20

Peak population figures

Highest peak of total prison population - 8,336 (21st October 2019, SPS)

Highest peak of remand population – 2,312 (30th May 2023, SG JAS)

Highest peak of women population (average daily only) – 468 (2011-12, SG JAS)

Highest peak of u21 population (average daily only) – 1,040 (2007-08, SG JAS)

The use of Electronic monitoring (EM) has increased rapidly from the extension of its use to Bail and Community Payback Orders in May 2022.

According to data from G4S, on the 2nd October 2023 there were:

- 375 individuals on electronically monitored bail conditions
- 70 individuals subject to CPO restriction of movement with electronic monitoring
- A further 1,279 individuals were subject to electronic monitoring through a range of other orders.
- A total of 1,724 people were subject to electronic monitoring in the community on the 11th September 2023.

[redacted - section 30(b)(i) – free and frank provision of advice]

Bail Supervision is at its highest level in the last ten years.

- There were 565 bail supervision cases commenced in 2021-22, 20 per cent higher than the latest pre-pandemic year of 2019-20.
- 78 per cent of cases commenced in 2021-22 were for males.
- In the years 2012-13 to 2018-19, the total number of cases commenced were lower, sitting between 260 and 440 in each year.

Population Comparisons:

- As of the 1st January 2023, the prison population rate per 100,000 in Scotland was 131.9 (Council of Europe statistics)
- This compares with 136.8 in England and Wales and 86.6 in Northern Ireland
- Other European jurisdictions (per 100,000): Spain (98), France (106), Bulgaria (101), Belgium (92), Germany (67), Netherlands (51) and Norway (56)

RECORDED CRIME BETWEEN 2006-7 AND Year Ending June 2023

Recorded Crime	2006-07	YE June 2019	YE June 2022	YE June 2023	Change in latest year	Change since 2006-07
National Statistics						
Total Crimes	497,424	305,300	285,974	292,702	6,728 (+2%)	-204,722 (-41%)
Non-sexual violence	92,266	67,407	70,156	70,136	-20 (0%)	-22,130 (-24%)
Sexual crimes	6,726	13,678	14,880	14,834	-46 (0%)	+8,108 (+121%)
Crimes of dishonesty	183,760	112,796	97,207	104,495	7,228 (+7%)	-79,265 (-43%)
Damage and reckless behaviour	129,734	48,176	44,455	42,932	-1,523 (-3%)	-86,802 (-67%)
Crimes against society	84,938	63,243	59,180	60,305	1,125 (2%)	-24,633 (-29%)
Coronavirus legislation	n/a	n/a	96	0	-96 (-100%)	-96 (-100%)

[redacted - section 30(b)(i) – free and frank provision of advice]

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Bail and Release from Custody Act – Hot Topic Q&A

Implementation	
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Prison population (inc. international comparisons and impact on remand population)	
New Bail Test	
EM Bail	
Emergency release (inc. reoffending following Covid release)	
Temporary Release Licences	
Resourcing	

Implementation

[redacted - section 30(b)(i) – free and frank provision of advice]

A. Work to implement the Act is underway, to ensure that remand is focused on those that pose the greatest risk to public safety and that improved support is available for people leaving prison custody.

Implementation planning will involve ongoing engagement with relevant stakeholders, including those named within the Act, as appropriate. It is likely that different sections of the Act will be commenced at different times, with the timeline being influenced by multiple factors, including engagement with stakeholders around resource and readiness.

The legislation is part of a wider programme of work designed to shift the balance between custody and justice in the community.

Prison Population

[redacted - section 30(b)(i) – free and frank provision of advice]

A. Recognising the independence of the Court's decision making, setting a target for remand figures to arbitrarily seek to influence judicial decision making entirely unrelated to the facts and circumstances of the case would be inappropriate.

The number of individuals held on remand at any given time is subject to a wide range of factors. These factors will include; the nature of the offence the accused is charged with, any previous convictions and other factors which inevitably vary from case to case.

There is also uncertainty as to the length of time a person may remain on remand which could be due to various factors such as court scheduling.

I have been clear that the remand population is too high. Because of this we should ensure that for everyone on remand that it is necessary for public or victim protection, or in some circumstances, to protect the interests of justice. That is not something that can be expressed through an arbitrary number.

PART 1 - Bail

New Bail Test (sections 2 and 3)

[redacted - section 30(b)(i) – free and frank provision of advice]

A. In simple terms, the removal of section 23D allows the same core bail test, which prioritises victim safety, to apply in all cases. As I have set out public safety and victim safety lie at the heart of the new bail test.

Critically, for the first time, the Act makes clear that victim safety includes safety from both physical and psychological harm. This explicitly recognises factors like a history of coercive and intimidating behaviour.

The new bail test will ensure those who previously would have been remanded under the presumption in favour of remand will continue to be remanded under the single bail test where it is necessary to protect victim safety.

[redacted - section 30(b)(i) – free and frank provision of advice]

A. The new bail test ensures public safety and victim safety is at the forefront of the court's decision-making.

Where a person breaches the trust placed in them by offending while on bail, there are a range of existing enforcement measures available to deal with offending.

The Scottish Government supports law enforcement having powers to deal with bail offending and has invested an additional £3.2 million in 2022 towards strengthening alternatives to remand, including further expansion of bail supervision.

[redacted - section 30(b)(i) – free and frank provision of advice]

A. The Bail and Release from Custody (Scotland) Act is underpinned by a commitment to public protection and victim safety. The provisions within the Act are intended to reduce crime, reoffending and future victimisation. This is about following the evidence of what works to reduce reoffending.

As I have made clear – the bail provisions will refocus how remand is used so that it is reserved for those who pose a risk to public and victim safety and, in limited circumstances, the delivery of justice.

And the provisions in part 2 are intended to improve pre-release planning and the throughcare support provided to individuals on release from prison with the aim of enabling successful reintegration.

The Act also provides a different approach to structured and monitored temporary release for certain long term prisoners to support their successful reintegration and reduce their risk of reoffending - with an emphasis on risk assessment and robust community monitoring and support.

This is about considering how we use imprisonment now and in the future in a modern and progressive Scotland in order to create a safer society.

EM Bail may be accounted for at sentencing (section 5)

[redacted - section 30(b)(i) – free and frank provision of advice]

A. Rather than tying the hands of the court, as suggested, the Court will have complete discretion to determine whether to take such time into account when making sentencing decisions. The formula within the Act is based on long-standing law in England and Wales.

The Bail and Release from Custody Act will require the court to have regard to any period of time spent on bail subject to a relevant electronically monitored curfew condition. However, it will be for the independent courts to determine if some, all, or none of that time should count as time served against a custodial sentence.

If a court does not wish to take any period of electronically monitored bail into account for sentencing, they may do so.

[redacted - section 30(b)(i) – free and frank provision of advice]

A. I agree that time spent on EM bail is not equivalent to time spent in custody – the Act does not say that. However, the Act does recognise that EM is a more intense restriction of liberty than a curfew condition not monitored with a tag.

Bail with electronic monitoring is a significant restriction of rights and liberties and the law should therefore recognise in a fair and consistent way. As I have said, the Court will have complete discretion to determine whether to take such time into account when making sentencing decisions.

PART 2 – RELEASE

Emergency power to release prisoners early (section 11)

[redacted - section 30(b)(i) – free and frank provision of advice]

A. As I have said, the Emergency release power as provided for by the Bail and Release from Custody Act is intended to be used as a very last resort. The provision only allows Scottish Ministers to use this release power in response to the effect an emergency situation is having on the security and good order of prisons and the safety and wellbeing of prisoner and prison staff. The power can only be used if it is necessary and proportionate.

[redacted - section 30(b)(i) – free and frank provision of advice]

In order to ensure the security and good order of our prisons, and the health and safety of prisoners and prison staff, it is imperative that we have mechanisms in place to respond immediately to emergencies within our prisons.

The risk of not having such a power was highlighted early in the pandemic. Such a power is necessary, we cannot rely on Parliament being able to pass bespoke legislation in every emergency situation.

The approach we have taken through the Bail and Release from Custody Act is not unique – in fact Scotland is an outlier in not having this power to protect the security of our prisons and the people who live and work there.

I would also highlight the safeguards we have included in the Bail and Release from Custody Act – including statutory exclusions and the Governor veto. The governor may now prevent a prisoner who is otherwise eligible for release under this section if the governor considers that the person would, if released, pose an immediate risk of harm to either an identified person, or an identified group of people.

Furthermore there will be a duty on Scottish Ministers to publish guidance relating to the use of this duty to ensure it is applied consistently.

The governor veto is not the only safeguard built into this provision as statutory exclusions will apply and people will only be eligible for release if they have less than 180 days left on their sentence.

[redacted - section 30(b)(i) – free and frank provision of advice]

[redacted - section 30(b)(i) – free and frank provision of advice]

[redacted - section 30(b)(i) – free and frank provision of advice]

[redacted - section 30(b)(i) – free and frank provision of advice]

Resourcing

[redacted - section 30(b)(i) – free and frank provision of advice]

A. We appreciate the concerns about the potential financial impacts of the Act, [especially relating to the enhanced role for Justice Social Work].

We worked with Social Work Scotland, COSLA, the Scottish Courts and Tribunal Service and others in establishing the estimates in the Financial Memorandum.

We will continue to work with our justice partners on the implementation plans for the Act. An implementation group will be established to work through issues including; reviewing resource requirements, workforce implications and timescales for commencement of each section.

[redacted - section 30(b)(i) – free and frank provision of advice]

Electronic monitoring is a tried and tested feature of Scotland’s justice system and a key tool to support moving on from prison or as an alternative to a custodial sentence. It supports reintegration and also allows for swift responses from Police and other justice partners where any conditions are breached. You will know we introduced electronic monitoring of bail last May, and this option has become widely used.

[redacted - section 30(b)(i) – free and frank provision of advice]

However this is likely to be a medium term option given the scale of change, bail curfews can be monitored electronically right now where the courts wish to use that option.

[redacted - section 30(b)(i) – free and frank provision of advice]

- The Scottish Government is committed to expanding electronic monitoring use across a broader range of licences and community orders, including exploring use of remote alcohol monitoring as provided for by the Management of Offenders (Scotland) Act 2019.
- A new national contract for electronic monitoring was procured in 2020 that would allow for use of new technologies. In May 2022, provisions in the 2019 Act were commenced to allow electronic monitoring as part of bail and to allow electronic monitoring with Community Payback Orders at first disposal.
- As work continues to embed these recent changes, we are now engaging with justice partners to explore the potential uses of new technologies, including remote substance monitoring technologies.

[redacted - section 30(b)(i) – free and frank provision of advice]

[redacted - section 30(b)(i) – free and frank provision of advice]

Whilst I recognise prison is necessary for those who pose a risk of serious harm, the member is right that there are often better outcomes for the individual and society.

The reconviction rate for individuals given community payback orders is consistently lower than for those given short sentences with the latest statistics from 2019/20 showing a reconviction rate of 25% for those given a Community Payback Order and 47.3% for those given a custodial sentence of 1 year or less.

It is clear that people in custody often present with higher levels of risk and vulnerability than the general population as a whole and often have complex health needs, including mental health. We are working with key partners to improve the health and wellbeing of those in prison and are determined that safe, effective, and person-centred care is provided.

Our National Mission on drugs aims reduce drug deaths and improve the lives of those impacted by drugs. This includes preventing people from developing problem drug use, reducing harms from the consumption of drugs, addressing the needs of people with multiple and complex needs and supporting families and communities affected by problem drug use.

[redacted - section 30(b)(i) – free and frank provision of advice]

We have considered a range of options and are keen to learn from other jurisdictions. However decisions about whether to issue and approve sentencing guidelines are entirely for Scotland's most senior judges in the High Court and we have no plans to change that.

We also currently have no plans to use police cells as additional capacity for prisons and before taking such a step, I would have to carefully consider the practical feasibility its impact.

And whilst I am of course wanting to mitigate the current pressures on our prisons in the short term, the Prison Population Leadership Group, will be important forum to identify long term solutions.

[redacted - section 30(b)(i) – free and frank provision of advice]

Community-based interventions and sentences rather than short term custodial sentences can help ensure justice is served and be more effective in reducing reoffending and assisting with rehabilitation leading to fewer victims and safer communities which is what we all want to see.

That's why we extended the presumption against short sentences to 12 months in 2019 so community sentences should be the default when dealing with less serious offences.

We are investing a total of £134 million in community justice services this year to bolster capacity and strengthen alternatives to remand. We have also targeted some funding in recent years to encourage more widespread use of structured deferred sentences, which can be an effective way of supporting those with a range of complex needs and addressing offending behaviour.

[redacted - section 30(b)(i) – free and frank provision of advice]

- Community Payback Orders are a robust, flexible sentence with multiple potential requirements which can be tailored to fit the circumstances of individual cases.
- The reconviction rate for individuals given community payback orders is consistently lower than for those given short sentences.
- In 2021-22, 74% of CPOs that ended were successfully completed. The reconviction rate for those given Community Payback Orders in 2018-19 was 29.2% compared to 51.7% for those completing custodial sentences of one year or less.

[redacted - section 30(b)(i) – free and frank provision of advice]

The remand population increased substantially in 2020 but concerns about how remand is used pre-date the pandemic. We know that as a share of their respective population, the proportion of women on remand has consistently exceeded that of men. There is no single reason why that is. Decisions about remand are always for the court and always relate to the specific case, but generally relevant issues would include the nature and gravity of the offence(s) before the court, the previous convictions of the accused person and other factors which vary from case to case.

Addressing the use of remand requires a multifaceted approach. It includes ensuring alternatives are available through community justice interventions.

The new focused bail test in the Act emphasises reserving remand for those who pose a risk to victim and public safety and the delivery of justice. Whilst decisions will continue to be for the court, the Act will require certain information about bail and remand to be published – including about women on remand.

[redacted - section 30(b)(i) – free and frank provision of advice]

- The funding we provide to local authorities includes specific additional funding of £3.2 million to support bail assessment and bail supervisions services (a direct alternative to remand). This additional funding will continue in 2023/24.
- The Scottish Government provides funding for the third-sector Shine partnership which provides one to one support for women leaving remand (and short-sentences). Shine provide practical and emotional support for the women using their services, helping them to resettle into their communities and link into the services and support they need.

[redacted - section 30(b)(i) – free and frank provision of advice]

There are a range of community sentences and other interventions available to decision makers in the criminal justice system as alternatives to custody and I am open to further improvements which could encourage more widespread use of community sentences and other interventions.

Our National Strategy for Community Justice, along with its accompanying delivery plan, sets out a range of actions to improve the delivery and effectiveness of community justice and related services.

Current work includes ensuring the availability of bail supervision services and increasing knowledge and awareness of restorative justice.

We also remain committed to developing Restorative Justice services that are safe, consistent, and of a high standard nationally, whilst delivering a service that is person-centred and that reflects local needs and circumstances.

[redacted - section 30(b)(i) – free and frank provision of advice]

We have seen dramatic positive changes in the youth justice sector since our decisive shift towards prevention and reducing reoffending.

Since 2008-09 to 2019-20, there has been an 85% reduction in the number of children and young people prosecuted in Scotland's courts and a 93% reduction in 16- and 17-year-olds being sentenced to custody.

The Whole System Approach to preventing offending by young people focused on early intervention, diversion from prosecution, and alternatives to custody has played a key role in this.

Integral to this approach is partners working collaboratively to provide timely and tailored support to respond to the individual needs and behaviours of children.

As we have seen with the rising prison population there is a need to take a collective response. This is not simply a matter for the Prison service.

As outlined in the Youth Justice Vision published in 2021, we are committed to considering an expansion of the whole system approach to those over the age of 18, increasing opportunities for early intervention while remaining absolutely clear that public protection remains paramount.

If needed re Children's Care and Justice Bill

- Provisions in the Children's Care and Justice Bill will end the incarceration of children in prison settings in Scotland, with secure care as the primary alternative.

[redacted - section 30(b)(i) – free and frank provision of advice]

As I said in my statement, our prisons contain some of society's most vulnerable individuals – we know that people from the most deprived communities and those who have been in care are overrepresented there.

They have often already experienced severe and multiple disadvantage, including homelessness, substance misuse, mental ill health and domestic violence or abuse.

The cross-Government, cross public sector and cross party approach means collaborating to address the underlying causes for much of that offending. We need to work together on tackling poverty and inequality and substance misuse as well as wider work to grow the economy and improve educational standards and reduce health inequalities.

For the justice system this means using multi-agency partnerships and having a clear focus on early and effective intervention, diversion and rehabilitative support.

