Thank you for your letter of 27 October requesting further information in relation to the Community Justice (Scotland) Bill. In particular, the Committee has asked about the interaction between the Bill and other relevant measures, including for female offenders and our recent consultation on strengthening the presumption against short prison sentences.

The Ministerial foreword to the consultation paper on the presumption against short sentences, prepared by the Cabinet Secretary for Justice, sets out clearly the drivers and vision for our approach to penal reform. As noted by the Cabinet Secretary, Scotland has a comparatively high imprisonment rate by international standards. Despite legislation by Parliament and positive work by justice agencies and other partners, our justice system continues to send far too many men and women to prison for short-term sentences, despite clear evidence of the adverse effects on housing, employment and family life, linked to poor outcomes in terms of rates of re-offending. We are determined to work with Parliament, local government, justice agencies, the third sector and other relevant stakeholders to take forward a range of legislative and non-legislative measures which can ensure a penal policy that reflects the values of a modern and progressive Scotland.

The Community Justice (Scotland) Bill provides the legislative basis for the new model for Community Justice in Scotland. As the Committee is aware, the Bill includes provisions to establish a new national body, Community Justice Scotland; to place specific duties on certain statutory bodies in relation to the achievement of outcomes; and to introduce a new National Strategy and Performance Framework for community justice in Scotland.

The Bill takes forward those elements of the new model for community justice which require new legislation. Our clear intention is that further policy developments in relation to community justice and penal policy will complement and support the new model introduced by the Bill. The model is designed to be sufficiently flexible to respond to new policy developments and opportunities, and changing context at national and local levels.
The consultation to strengthen the presumption against short sentences was published in September and responses have been requested by 16 December. As set out in the consultation, evidence of current sentencing practice shows that, despite the current statutory presumption, 29% of custodial sentences imposed by the courts in 2013/14 were for 3 months or less, with a further 37% being for between 3 and 6 months. We will consider carefully the responses to the consultation and any extension to the current presumption would require further legislation to implement. Subject to those decisions, I am confident that the new model for community justice set out within the Bill would not only be able to support any increase in the use of community disposals implicit in such a move, but would provide greater assurance that such disposals are being delivered as effectively as possible.

The Committee has also asked about the links between provisions in the Bill and our proposals for the future provision of custodial and non-custodial services for female offenders. In June this year, the Cabinet Secretary set out our new approach for female offenders, including the development of a new small national prison with 80 places, alongside smaller community-based custodial units, each accommodating up to 20 women. The units will provide access to intensive support to help the women overcome the drivers of their offending behaviour, whilst maintaining links with families and communities. The Cabinet Secretary's announcement confirmed that, alongside new custodial facilities, there will be increased emphasis on the use of community-based alternatives, including encouraging increased use of electronic monitoring. As with the presumption against short-term sentences, we are confident that the new model for community justice proposed within the Bill will both complement and support our vision for dealing with female offenders and the underlying factors that often drive the offending.

It is implicit within our proposals to strengthening the presumption against ineffective short-term sentences and for female offenders and, indeed, for our wider penal policy and community justice reforms, that we want to see a shift in resources from prisons to community-based disposals and alternative models. That shift is already being seen with resources transferred from the Scottish Prison Service (SPS) to invest in community-based services and work by the SPS to transform its role, for example with reference to throughcare and other services to help people leaving prison integrate back into the community.

The Scottish Government is also leading work with partners on a revised model for allocation of funding for criminal justice social work to ensure alignment with the national strategy and performance framework and to move to a 3 year funding agreement.

The Committee has also requested clarification about when the National Strategy for Community Justice will be produced, given that each local authority is expected to produce a transition plan by January 2016.

The transition plan due to be submitted by each authority by 31 January 2016 is not a community justice outcomes improvement plan. The transition plan will be focused on the structures, governance and resource arrangements partners intend to put in place to implement the new model locally. It will also set out each authority’s plans for engagement and involvement with the Third Sector, service users, people with convictions, and communities in their local arrangements, planning and delivery in 2016/17. These transitional plans are not, therefore, reliant on the availability of the National Strategy.

The first community justice outcomes improvement plan from each authority is due to be submitted by January 2017. The National Strategy and the National Performance Framework
will both be published once the Bill has received Royal Assent and the relevant sections have been commenced, which we hope will be in mid-2016. Work is currently underway to develop both the National Strategy and Performance Framework in partnership with the full range of community justice partners. Drafts of both documents will be shared with partners in advance of publication to aid the transition process.

In order to assist the Committee's consideration of its Stage 1 report on the Bill, the attached Annex A provides further information on how the new arrangements will operate in practice, along with an explanation of how the main components of the Scottish Government's plans for penal policy reform will be supported by the new model for community justice. Annex B provides two diagrams setting out how the various bodies impacted by the Bill will interact under the new arrangements; diagram (i) shows the new model in its entirety; diagram (ii) describes the assurance and improvement cycle including options for escalation in response to concerns over delivery of outcomes.

I am confident that the new model for community justice, and the proposals included within the Bill that support it, will support not only the developments described above, but also any future developments in relation to penal policy reform.

I hope the information provided in this letter and supporting Annex is helpful to the Committee in its consideration of its Stage 1 report on the Community Justice (Scotland) Bill. I would be happy to provide any further clarification or information that the Committee requires, either in writing or in person.

Kind regards,

Paul Wheelhouse MSP
New Model for Community Justice

Elements within the Bill (this is displayed in Annex B diagram (i)).

1. The Bill requires Scottish Ministers to publish national strategy for community justice. This will set out the Scottish Government's approach to reducing reoffending through increasing use of community sentences; reducing use of short term custodial sentences; and improving reintegration from custody to community;

2. The Bill requires Community Justice Partners (CJPs) to work in partnership to produce a plan that responds to the national strategy, performance framework and local priorities for community justice. In preparing the plan, CJPs must consult with community bodies and any others they consider appropriate, including the Third Sector.

3. The Bill requires CJPs to publish an annual report on performance against their plan. Performance will be measured against a set of national outcomes and indicators that are applicable at the local level. This will provide transparency on how local areas are performing on key issues, such as: provision of diversions; quality and quantity of community sentences; length of custodial sentences; and access to suitable, sustainable housing on release from prison.

4. A new national body, Community Justice Scotland, will review all local plans, providing feedback to CJPs to share good practice. It will review reports to provide assurance to Scottish Ministers, Elected Members and all other partners on delivery of outcomes. Where improvement is required, it will provide advice to local partners and targeted improvement support as required. Where performance issues persist, it will provide recommendations to Scottish Ministers on action required which may include a multi-agency inspection or, in exceptional circumstances, a rescue task group. Further detail on the assurance and improvement cycle, including options for escalation, is set out in Annex B diagram (ii).

Elements being developed alongside the Bill process

5. Alongside the consideration of the Bill by Parliament, Scottish Government officials are leading work with partners onto develop:
   - the draft National Strategy for Community Justice;
   - a consistent Performance Framework for Community Justice in Scotland;
   - a revised funding model for the allocation of circa £95m p.a. for criminal justice social work to ensure alignment with the Strategy and Performance Framework and move to 3 year funding agreement.
The new model for community justice contributes towards Scottish Ministers wider vision for penal policy reform. Key elements of this reform process include:

1. **Consultation on strengthening presumption against short sentences**
   The consultation, published in September and due to close in December, seeks views on strengthening the current presumption against short sentences of 3 months or less to 6 months, 1 year or more. Depending on outcome of consultation, any change to the presumption would require approval by Parliament, either through secondary legislation or, for more significant reform, primary legislation, separate from the Community Justice (Scotland) Bill. The consultation acknowledges that any decision to increase the presumption against short term sentences will increase the use of community disposals and associated provision. This would be taken into account in the National Strategy, Performance Framework and funding model.

2. **Use of Electronic Monitoring (EM)**
   An expert group is currently exploring the scope for enhanced use of EM to support a proposed increase in use of community disposals and to aid desistance. The outcome of this work will be reflected in the National Strategy and Performance Framework. Certain new uses for EM would require primary legislation, including use for Bail and in community custodial units.

3. **Penal Policy Improvement Project**
   The Improvement Methodology is recognised as a way of delivering measurable improvements in outcomes. Following dialogue with senior judiciary and key local partners, work at Paisley, Hamilton and Dundee Sheriff Courts aims to deliver measurable reductions in the use of short-term sentences and the unnecessary use of remand. This will not restrict sentencers' independent decision making, but will focus on building confidence in bail options and community sentences. If effective, the approaches will be shared across other locations.

4. **Increased use of Community Disposals**
   There is an existing infrastructure in place which is supporting diversions from prosecution and is also delivering increased use of community sentences. Recent developments include: the national roll out of Fiscal Work Orders; increased investment in community-based justice services for women; and evidence of increased Shrieval confidence in Community Payback Orders. The National Strategy will promote the use of effective, evidence-based community disposals. The Performance Framework will also provide increased visibility of the use of both diversion from prosecution and the use of community sentences.

5. **Female Custodial Estate**
   Following the decision not to proceed with the construction of a large new prison for women at HMP Inverclyde, the Cabinet Secretary for Justice set out in June a bold and innovative vision for the female custodial estate and reducing female offending. The Scottish Government's aims to reduce the use of custody with investment in a
smaller custodial estate for women, including a small national facility and innovative community-based custodial units. The proposed Community Custodial Units will: support a recovery ethos; provide a level of security proportionate to the risk posed and allow women to be located as close as possible to communities.

6. Improved Community Reintegration
The work of the Ministerial Group on Offender Reintegration emphasised the need for Community Justice Partners to support more effective models of reintegration to the community. This was reflected in the legislative change to allow the Scottish Prison Service some flexibility to avoid Friday liberations, if this will assist in helping people leaving prison to access the services and support they need in the community. The proposed Performance Framework will identify how partners are supporting reintegration through indicators relating to areas such as speed of access to suitable, sustainable housing and access to healthcare (e.g. GP, substance misuse).
Established lines of accountability for individual partners would remain e.g. local authorities will be subject to overview and scrutiny by local elected members.
Multi-agency Inspection
Recommendations to Ministers
Assurance to Local Government Leaders

New Model for Community Justice -
The Assurance and Improvement Cycle
Diagram (ii)

Community Justice Partners

The assurance and improvement cycle offers supportive engagement between Community Justice Scotland and community justice local arrangements. This will ensure assurance to Scottish Ministers, Elected Members and all other partners on the delivery of improved outcomes.

Community Justice Scotland

Where performance issues persist, Community Justice Scotland will provide recommendations to Scottish Ministers on potential escalation action.