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Justice Committee

To consider and report on a) the administration of criminal and civil justice, community safety and other matters falling within the responsibility of the Cabinet Secretary for Justice and b) the functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.

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Introduction

Background

1. The Community Justice (Scotland) Bill was introduced in the Parliament on 7 May 2015. It would replace the eight regional community justice authorities with a model for community justice services based around a new national body, Community Justice Scotland (CJS), and local community justice partners.

2. The Bill would require Scottish Ministers to publish a national strategy and a national performance framework in relation to community justice. It would create and give powers to CJS to oversee performance, promote improvement, and publish a strategy for innovation, learning and development regarding community justice. It would also define a set of community justice partners with responsibility for planning, delivery and monitoring of community justice services at local authority level.

3. The Justice Committee was designated as lead committee for Stage 1 consideration of the Bill on 13 May. It issued a call for written evidence on 19 May which received 70 written submissions. The Committee took evidence on the Bill over three meetings in September, hearing from a range of local authority bodies and partnerships, third sector and victims’ groups, the Commission on Women Offenders, the Scottish Prison Service, Police Scotland and Audit Scotland. The Committee thanks all witnesses and those who responded to the call for evidence.

4. The Committee heard from Paul Wheelhouse, Minister for Community Safety and Legal Affairs, on 6 October. The Committee subsequently requested additional explanation from the Minister, both in writing and at a further evidence session on 3 November, on how any extension to the presumption against short sentences (currently under consultation) and the final configuration of the women’s prison(s) would interact with the proposals in the Bill. These issues are explained later in the introduction to this report.

5. The Finance Committee received 15 responses to its call for views on the Financial Memorandum (FM) and took oral evidence from the Scottish Government Bill Team at its meeting on 9 September. That Committee published its report on the FM on 1 October. The Delegated Powers and Law Reform Committee published its report on the Delegated Powers Memorandum on the Bill on 30 September. The issues raised in these reports were explored by this Committee during evidence and are therefore reflected later in this report.
Current arrangements

Overview

6. The Scottish Parliament Information Centre (SPICe) briefing on the Community Justice (Scotland) Bill provides the following description of community justice—

Community justice covers a range of services, including the provision of community sentences (e.g. community payback orders) and supervision of/support for released prisoners. Those involved in providing such services include local authority criminal justice social workers, third sector organisations, the Scottish Prison Service and Police Scotland. Organisations providing services which are not focussed on the criminal justice system also play an important role in the effective rehabilitation of offenders (e.g. providers of health and housing services).  

7. The Management of Offenders etc. (Scotland) Act 2005 introduced the current arrangements for community justice services in response to a Scottish Government consultation on Reducing Reoffending in Scotland (2004) which identified a need for closer integration at a local level. Prior to that, the 32 local authorities worked in various criminal justice social work groupings and responsibility for managing offenders in communities lay with criminal justice social work staff, working in partnership with relevant support agencies.  

8. The 2005 Act created eight community justice authorities (CJAs) covering Scotland’s 32 local authorities. CJAs came into operation on 1 April 2007, with each one being responsible for:

- preparing, in consultation with other relevant bodies, a plan for reducing reoffending in its area,
- monitoring the performance of constituent local authorities and the Scottish Ministers in taking forward that plan,
- promoting good practice in reducing reoffending and supporting the sharing of information,
- distributing Scottish Government funding to local authority criminal justice social work services, and
- reporting to Scottish Ministers on the delivery of services.

9. The membership of each CJA Board is made up of councillors nominated by the local authorities within the CJA’s area. CJAs employ a small number of staff but do not themselves have operational responsibility for the delivery of community justice services. Scottish Ministers, local authorities and CJAs are under a statutory duty to cooperate with each other and a number of other bodies are defined as statutory partners of CJAs, including the police and certain third sector organisations.
Problems identified with current model

10. Although the CJA-based model for community justice services only came into effect in 2007, reports published by the Commission on Women Offenders and Audit Scotland in 2012 highlighted serious concerns about how it was working in practice.

11. In its final report, the Commission found that—

> “Although there was some evidence that, over the past 10 years, there have been improvements in how criminal justice bodies work together, we heard strong evidence that there still exist inherent barriers in the structural and funding systems for criminal justice social work, and working practices which inhibit greatly the potential to reduce reoffending.”

12. The Commission identified more than 200 organisations and partnerships with an interest in community justice services and described this as a “grossly cluttered landscape.” It further noted:

- a lack of opportunity for strategic leadership and accountability in the delivery of offender services in the community,
- the short-term nature of funding and the difficulties in measuring impact;
- the inconsistency of service provision across Scotland, and
- that interventions delivered in prison very often cease at the gate.

13. The Commission recommended, amongst other things, that a radical reform of existing systems and working practices was required to address these issues and that:

- a new national service, called the Community Justice Service, be established to commission, provide and manage adult offender services in the community, and
- a national Community Justice and Prison Delivery Board, with an independently appointed Chair, be set up to promote integration between the Community Justice Service and the Scottish Prison Service.

14. Audit Scotland, in its report on Reducing Reoffending in Scotland (2012), also identified a large number of bodies involved in reducing reoffending with “different governance and accountability arrangements and geographic boundaries, resulting in a complex landscape”. It also found that the way that CJAs were set up significantly limited their effectiveness, that there were no nationally-agreed measures to assess their performance, and that stronger leadership was required if reoffending was to be significantly reduced. Specific concerns raised in the report included:
that the effectiveness of CJAs was being limited by a lack of operational responsibility for the delivery of community justice services and the fact that statutory partners are not accountable to CJAs,

that there were variable levels of engagement and understanding amongst CJA Board members, with some councillors finding it difficult to separate their responsibilities to CJAs and to their local authorities,

that there was variable attendance by statutory partners at CJA board meetings, with some indicating that attendance at meetings was not always considered a good use of time, and

that CJAs had limited capacity to undertake their full range of work (e.g. in monitoring how effectively funds are being used) as a result of small staff numbers (typically three or four per CJA).  

15. The Audit Scotland report concluded that the Scottish Government should undertake a review of the arrangements for managing offenders in the community.

Consultation on new arrangements

16. In response to these reports, the Scottish Government published a consultation paper in December 2012 setting out three options for redesigning arrangements for community justice: an enhanced CJA model; a local authority model; and a single service model. No clear favoured option emerged from the written responses and consultation events, leading the Scottish Government to conclude that “none of the models as described in the consultation paper would meet the requirements of a successful community justice system”. It went on to suggest that—

“There was however a clear preference for a model with local delivery, partnerships and collaboration at its heart while still incorporating some form of national arrangements to provide the profile, leadership and strategic direction felt to be missing from the present set-up”.

17. In April 2014, the Scottish Government consulted on a fourth option, combining various elements of the earlier options, involving:

- local planning and delivery of community justice services on a partnership basis under the existing 32 community planning partnerships (CPPs), and

- a new national body to provide: (a) independent professional assurance to Scottish Ministers on the collective achievement of community justice outcomes, and (b) a hub for community justice innovation, learning and development.

18. In its response to the consultation, the Scottish Government stated that “the majority of organisations who responded to the consultation were in favour of the proposed new model”. It highlighted that the new body was broadly welcomed and
that “there was widespread agreement that the planning and management of community justice services should rest with community planning partnerships.”

19. The Policy Memorandum on this Bill indicates that “in designing the future model for community justice in Scotland, the Scottish Government sought to address the issues raised in 2012 by the Commission on Women Offenders and Audit Scotland”. It goes on to say that “the approach to redesign has therefore centred around: improved leadership and collaboration; evidencing and delivering improved outcomes; increasing prevention; and learning and workforce development”.

Wider policy developments

20. A number of wider policy developments in relation to the treatment of offenders arose during the Committee’s scrutiny of this Bill. As these developments were referred to in evidence and are therefore discussed in the main body of this report, a brief outline of each is included in this introduction to the report.

Community Empowerment (Scotland) Act 2015

21. The Bill does not specifically refer to community planning partnerships (CPPs) and instead provides that community justice partners would be responsible for the local planning, delivery and monitoring of services. This appears to be a departure from the proposals in the 2014 consultation and subsequent Scottish Government documents which placed CPPs at the centre of local planning and delivery of community justice services. The Policy Memorandum states that “it is expected that there will be a relationship between the community justice partners and the wider community planning partners and partnerships (such as alcohol and drug partnerships), particularly as all are required to produce plans and reports on the achievement of local outcomes”. It adds that “the manner in which community justice planning partners will come together to plan largely follows the mechanisms set out in the Community Empowerment (Scotland) Bill for CPPs”.

22. The Community Empowerment (Scotland) Act 2015 places duties on a range of bodies (or persons) to carry out community planning within each local authority area. They are referred to as ‘community planning partners’ working in ‘community planning partnerships’. There is some overlap between the list of community justice partners referred to in this Bill and the community planning partners specified in the 2015 Act. In addition, community justice partners for an area must, when preparing their community justice outcomes improvement plan, have regard to the local outcomes improvement plan prepared by the CPP under the 2015 Act.

Community disposals

23. At the time of writing, the Scottish Government is consulting on whether the presumption against short periods of imprisonment should be extended beyond three months and whether a more radical review of the use of short-term imprisonment, including the use of remand, is required. Similarly, decisions
relating to the final configuration of women’s prison(s) arising from the Commission on Women Offender’s recommendations are awaited. Both policy developments could lead to increases in the number of community disposals.

24. The Committee, prior to making any recommendations on the Bill, was therefore keen to receive further details on how these two policy developments might interact with the measures in the Bill. More importantly, we were keen to seek reassurances that the model proposed was the most suitable model to support any such increase in community disposals and related funding arrangements arising from these two policies. We therefore sought a written response from the Minister on these issues in advance of taking further evidence from him on 3 November. In his response, the Minister stated—

> It is implicit within our proposals to strengthen 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 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.\(^{36}\)

25. He also said he was confident the new model for community justice set out in the Bill would be able to support any increase in the use of community disposals arising from the consultation on short periods of imprisonment and that it would complement and support the Scottish Government’s vision for dealing with female offenders.\(^{37}\) In evidence on 3 November, the Minister told the Committee that “the central message is that we believe that the model that has been developed is sufficiently flexible that it can be adjusted to take account of any policy direction that we take”. He went on to say that “if there are resource implications we will reflect on them”, adding that “the key issue, however, is that the structure is sufficiently robust to cope”.\(^{38}\)

26. More specifically, the Minister indicated that any increase in the use of community disposals arising from future policy developments would be taken into account in the national strategy, the national performance framework and funding model.\(^{39}\) The national strategy would promote the use of effective, evidence-based community disposals, and the national performance framework would provide “increased visibility” of the use of community disposals.\(^{40}\)
The Bill: overview of provisions and evidence received

Overview

Throughout its Stage 1 scrutiny, the Committee has been keen to establish whether legislative reform is needed and, if so, whether the proposals in the Bill would make the transformational change envisioned by the Commission on Women Offenders and Audit Scotland in their 2012 reports. The Committee notes that the current arrangements only came into effect in 2007. There are, therefore, grounds for questioning whether wholesale change is premature. However, the 2012 reports identified significant problems with current structures, the number of bodies involved, accountability, funding mechanisms and the complexity of the arrangements, which they argued were inhibiting the potential to reduce reoffending. The Committee therefore accepts that improvements to community justice structures and arrangements are needed.

With the exception of the CJA Conveners, who told us that they “are not convinced that the Bill as published will either build on the successes or ambitions of the CJAs to date, or adequately address the challenges we have faced”, the Committee heard little evidence supporting the retention of the current CJA-based model. Given the apparent lack of widespread support for the existing model, the Committee broadly accepts that the CJAs should be abolished and replaced with new arrangements, and that legislation is required to do this.

The Committee is of the view that any new model for community justice must achieve an appropriate balance between strong national leadership, to drive forward improvements in performance, and local flexibility in relation to the delivery of services. As such, the Committee sees merit in the general approach taken in the Bill. However, we have concerns that the detailed proposals in the Bill may not achieve the correct balance, and therefore recommend that the oversight functions of the national body are strengthened to provide the robust strategic leadership and accountability found to be lacking in the existing model.

The Committee has doubts as to whether the measures proposed in the Bill would simplify the institutional landscape. We consider that more clarity on the duties of the national and local bodies and the balance of responsibilities between the two, and on how the model is expected to work in practice, could help clear up ambiguity over the new arrangements. We also urge the Scottish Government to monitor closely the operation of the Bill, if passed, to ensure that any unnecessary complexity within the system does not persist.
Additional evidence provided by the Minister for Community Safety and Legal Affairs was helpful in setting out the Scottish Government’s broad vision for a shift in resource from prisons to community-based disposals. We acknowledge the Minister’s assurances that the model proposed in the Bill would be sufficiently flexible to respond to future policy developments, such as any increase in the use of community disposals arising from the Scottish Government’s consultation on short periods of imprisonment and its vision for female offenders.

In general, the evidence we received did not show any great enthusiasm for the exact model proposed in the Bill; however there was an acceptance that it would be difficult to achieve a model that all bodies involved in community justice would be wholly satisfied with. The Committee also recognises that this is enabling legislation, and that the detail of how the arrangements are to work in practice would be set out in the national strategy, national performance framework, and guidance. We consider it vital that stakeholders are fully involved in the development of this documentation to ensure the best working model can be achieved and that any potential practical difficulties can be addressed as early as possible. We also request early sight of the documents.

We make a number of recommendations aimed at improving the proposed community justice arrangements in the main body of this report.

### Meaning of ‘community justice’

**Definition in the Bill**

27. ‘Community justice’ is defined in section 1 of the Bill as:

(a) giving effect to community disposals and post-release control requirements,

(b) managing and supporting offenders in the community with a view to reducing reoffending by them,

(c) arranging general services in ways which facilitate offenders in the community accessing and using them,

(d) preparing offenders for release from imprisonment or detention in a penal institution.

28. This differs from the definition used in the Scottish Government’s 2014 consultation on a Future Model for Community Justice, as follows:

> "The collection of agencies and services in Scotland that individually and in partnership work to manage offenders, prevent offending and reduce re-offending and the harm that it causes, to promote social inclusion, citizenships and desistance" 42.
29. The wording in the Bill refers to what is provided rather than who provides it and, more significantly, no longer refers to prevention of offending (other than in the context of reoffending). Thus, it appears to restrict the Bill to those who have already offended. The Policy Memorandum on the Bill does not offer any reasons for this change in approach. COSLA, in its written submission, states that the definition in the Bill was not consulted upon and “appears to have come as a surprise to stakeholders and, importantly, the statutory partners”. It goes on to argue that the meaning of community justice should be developed and agreed with these partners “at the very least” to ensure it is consistent with working practices and definitions.43

30. The Minister said he accepted that the definition of community justice “requires further consideration” and would explore how it might be broadened at Stage 2.44

The Committee notes that the definition of ‘community justice’ used in the Bill differs from that contained in the Scottish Government’s consultation on which the Bill is based. We would welcome clarification as to why this decision was taken, given that no explanation for this change of approach is provided in the Policy Memorandum. The Committee welcomes the Minister’s acceptance that revisions to the definition are required and asks that he includes stakeholders in the discussions around developing any revised definition.

Broader definition of community justice

31. While a few witnesses, such as the Scottish Social Services Council,45 said they agreed with the definition set out in the Bill, a large number told the Committee that it should be broadened to reflect not just post-conviction community justice but also prevention and early intervention. For example, the Robertson Trust said that the new community justice system must recognise the role of services in preventing offending and, where possible, direct resources towards these services rather than waiting until people are already in the justice system.46 Amanda Coulthard of West Dunbartonshire CPP told the Committee that “a reflection of the requirement for a prevention and early intervention agenda – more than a criminal justice social work response – would allow us to deliver a significant improvement in outcomes for people who are affecting offending”47.

32. The Minister, however, argued that “there is no need to include the prevention of first-time offending in either the definition of community justice or the scope of the Bill”, adding that early intervention and prevention are being taken forward through a range of policies and strategies and that the new national strategy for community justice would link across those strategies.48 He went on to say “we are considering whether the definition should be expanded” and “it could include elements such as desistance, prevention and early intervention, and recognise community justice’s role in secondary and tertiary prevention”.49
33. The Minister later restated his position on this matter—

"The point is that the Bill deals with reducing reoffending. The Bill is not to be seen in isolation; [it] sits alongside a number of very well prepared and highly regarded strategies, which deliver preventative measures at an earlier stage in someone’s life. The Bill aims to reduce the risk that someone will reoffend, once they have already offended".  

34. The Minister added that “we are considering the definition of community justice and trying to reflect the Committee’s and wider stakeholders’ sentiments on prevention”.  

35. Although the definition in the Bill makes reference to managing and supporting offenders in the community, it does not specify the involvement of the wider community in this. Barnardo’s Scotland suggested that the definition should be widened to include the need to support children, families, victims, witnesses and the wider community, not just individuals with convictions, to better reflect the Policy Memorandum’s intent that the Bill will deliver better outcomes for victims, people who offend and their families, and local communities. Some witnesses, including Victim Support Scotland and Scottish Women’s Aid, argued strongly that the needs of victims in particular should be reflected in the definition and more generally throughout the Bill in relation to the planning and development of services.  

36. In evidence, the Minister confirmed that “local victims’ groups will not be specified [in the Bill] in the same way as the community justice partners are”. He added that “we can encourage the local partners at local authority level to work with victims groups … however, people have questioned whether there might be too much centralisation, so we are allowing flexibility”. He later added that “we can look at how we can reflect that in guidance on the Bill to address [this point] and give confidence that those groups will be consulted”. He confirmed that the guidance is being prepared in conjunction with stakeholders and that he would try to share a draft of this guidance with the Committee prior to Stage 3.  

37. The Minister later restated that “we can reflect further on how we represent the interests of victims as we take forward the Bill”, adding “I take that point in full”.  

The Committee is sympathetic to the views of some witnesses that prevention and early intervention should be reflected in the definition of ‘community justice’ and elsewhere in the Bill as appropriate to allow services to be aimed at averting offending behaviour as well as those dealing with reoffending. We note the Minister’s position that early intervention and the prevention of offending is being taken forward through other policies and initiatives, but we welcome his commitment to give further consideration to the definition of community justice, including to try to reflect the evidence heard on prevention and early intervention.
The Committee notes that some victims' groups were keen to see the interests of victims specifically reflected in the definition. We are encouraged by the Minister’s commitment to consider how the interests of victims can be represented as the Bill is taken forward and ask that he reports back to the Committee on his decisions regarding this matter prior to Stage 2 proceedings on the Bill.

Use of the term ‘offenders’

38. The definition of community justice at section 1 of the Bill refers to ‘offenders’ and defines them as “persons who have at any time been convicted of an offence”. There was a suggestion from Edinburgh Trust that the term ‘offender’ “could be viewed as a negative label which contributes to the stigma faced by those who have committed an offence”. It suggested that the phrase “those who have committed, or are at risk of committing offences” should be used instead. Pete White of Positive Prison? Positive Futures agreed that the term ‘offender’ should be removed from the Bill and suggested it be replaced with the wording “persons who have at any time been convicted of an offence”.

39. In evidence, the Minister told the Committee that he was aware of the sensitivities around this issue and that “if there are any sensible terms that can be used … we can look at them”. In addition, the Minister clarified that the Bill focuses on reducing reoffending, rather than prevention, and therefore, the suggestion from Edinburgh Trust would not be accurate as the Bill stands.

The Committee notes witnesses’ concerns regarding use of the term ‘offenders’ in the definition and that the Minister has committed to considering “sensible” alternative wording for those who have offended. Any revised definition requires to be both succinct and accurate. We consider that the national strategy on community justice proposed in this Bill may be a more appropriate place to tackle any negative perceptions associated with the term than in the Bill itself. We also note that the definition may require to be widened to encompass ‘those who may offend’ in addition to ‘offenders’ should the Scottish Government decide to include references to early intervention and prevention in the definition, as proposed by some witnesses.

Cluttered, complex landscape

Overview

40. Witnesses questioned whether the new model for community justice proposed in the Bill would address the cluttered, complex landscape described in the reports by the Commission on Women Offenders and Audit Scotland. Dame Elish Angiolini, Chair of the Commission, told the Committee that there was still the capacity for the cluttered landscape to persist, and Mark Roberts from Audit
Scotland highlighted the complexity of the community justice landscape and suggested that “although some of the proposals [in the Bill] will potentially improve those arrangements, complexities in the system might remain”. Families Outside argued that the Bill “actually increases the cluttered landscape”. However, Cleland Sneddon from the Society of Local Authority Chief Executives (SOLACE) Scotland suggested that “the structure is not that complicated, but we could make it simpler.”

41. Dr Graham Foster from the Forth Valley Health Board also highlighted the “crowded” landscape and the difficulties of engaging with the large number of bodies involved, adding “our call would be for Parliament to try to make arrangements as simple as possible”. This view was echoed by many third sector bodies, such as Scottish Women’s Aid, which suggested that, “if there are 32 CPPs and there are community justice partners, we are looking at an even more cluttered landscape with which we will have to engage”. On this point, Nicola Merrin of Victim Support Scotland argued that “the jump from eight CJAs to 32 community justice partnerships will make it impossible in terms of not only resources but staffing and time” and Professor Nancy Loucks of Families Outside said it would be “exceptionally difficult”, particularly for smaller third sector organisations, to engage with 32 bodies.

42. In responding to evidence received, the Minister said that, in those cases requiring a multi-agency approach, “it will be inevitable that the solution will involve a number of different partners trying to deliver a better outcome for the individual”. He later said “we need to find a way to make the relationships as clear as possible and help people to understand how that process should work effectively”, adding “we believe that the Bill does that”.

On the basis of the evidence received, the Committee has some doubts as to whether the Bill will de-clutter the complex community justice landscape described in the reports by the Commission on Women Offenders and Audit Scotland. While we accept that community justice involves a diverse range of services, we consider that more can be done to simplify the arrangements by setting out clear roles and responsibilities for those involved, thereby supporting relevant bodies to interact effectively. The Committee explores this in more detail later in the report.

The Committee draws the Minister’s attention to the concerns of the third sector, and in particular smaller voluntary bodies, regarding the logistical and financial barriers to engaging with 32 local authorities rather than eight CJAs, including the potential impact it may have on the delivery of community justice services (especially in more remote areas). The Committee accepts that this may, at least to some extent, be alleviated by local authorities working across geographical borders where it is appropriate to do so. The Committee returns to this issue later in the report.
Strategic leadership and accountability

Overview

43. As referred to above, the Commission on Women Offenders highlighted a lack of strategic leadership and accountability in the delivery of offender services in the community. In particular, it noted that there was a “leadership vacuum; no one organisation or individual has overall responsibility for the delivery of criminal justice services in the community” and that “there is also a lack of a shared vision or common goal directed at delivering the best outcomes”. In light of this, it recommended that a new national service be established to commission, provide and manage adult offender services in the community, with the objective to protect the public, reduce reoffending and promote rehabilitation. It would provide national leadership, take operational responsibility to drive forward significant performance improvements, and deliver outcomes that benefit the community and offenders. Similarly, Audit Scotland’s report also recommended clear accountability in arrangements for managing offending in the community, a mechanism to promote collective responsibility for reducing reoffending and clear and shared objectives to reduce reoffending.

44. The Policy Memorandum on the Bill states that the proposed model responds to these issues by providing leadership at both national and local level, clear lines of governance and accountability, a national strategy, and a national performance framework. It goes on to explain that Community Justice Scotland, the proposed new national body, would (a) provide national, professional and strategic leadership for community justice in Scotland, (b) provide assurance to Scottish Ministers and to COSLA leaders through oversight of national outcomes, a performance and improvement framework, and (c) promote and provide enhanced opportunity through establishing and running a national hub for innovation, learning and development.

Scottish Ministers

45. Scottish Ministers would be required to publish a national strategy providing the strategic vision for community justice in Scotland within a year of the section coming into force, consulting community justice partners and others as appropriate (section 13). The Policy Memorandum states that the requirement for a national strategy to be developed meets calls in the reports by the Commission on Women Offenders and Audit Scotland for Scottish Ministers to take a more strategic approach to planning, designing and delivering services to reduce reoffending.

46. The evidence received by the Committee on the proposed national strategy was supportive. For example, Sean McKendrick from Social Work Scotland said “a clear strategy would, I hope, draw partners together to work much more effectively in delivering community justice strategies” and Highland Council and the City of Edinburgh Council both welcomed the provision to produce a national strategy in their written submissions. South Lanarkshire Council did however suggest that
its publication should be much earlier than the timescale provided for in the Bill (the strategy could theoretically be published in 2018 while the aim is for the Bill to come into effect in April 2017).

47. Scottish Ministers would also be required to publish a national performance framework specifying outcomes and corresponding indicators which would be used to measure performance, consulting community justice partners and other relevant bodies before doing so. The Policy Memorandum highlights criticisms of the lack of measures in the current model for community justice to understand success and cost and argues that the new model “will be defined by a performance culture through the establishment of the national performance framework against which local partnerships can plan and report”. It goes on to argue that the framework “will provide opportunities to monitor progress, drive improvement, offer consistency and link decisions and actions to analysis of need and what works, leading to increased efficiency and effectiveness”.

48. Again, evidence received by the Committee supported this proposal. For example, Mr McKendrick from Social Work Scotland said that the framework would be “incredibly helpful for local government and other partners to be clear about what they want to provide and the outcomes that they want to produce”. Northern CJA argued that the requirement for a national performance framework would go some way to address the absence of any systematic measurement of outcomes/effectiveness of programmes identified in the 2012 reports, but also highlighted a risk that national outcomes may not be relevant to all CPP areas. In addition, COSLA said it had “significant concerns over the potential burden of the reporting requirements” arising from the framework.

49. The Minister, in correspondence to the Committee of 29 October, stated that the national strategy and the national performance framework were expected to be published during mid-2016, following Royal Assent and commencement of the relevant sections. He also said he would share drafts of the documents with partners as soon as possible.

50. There was a suggestion from some witnesses that performance outcomes in the framework should be framed more broadly than solely on reducing reoffending rates, which they suggested tends to be the current position. For example, Dr Foster of Forth Valley Health Board argued that “we should not just measure reoffending rates; we need to measure individuals going into employment or other positive destinations”. Christine Scullion from the Robertson Trust agreed, suggesting “we must move towards achieving the shorter-term outcome of getting somebody a house or a job or getting them connected back to their family, because those things are much more positive ways of measuring progress”.

14
The Committee welcomes the provisions in the Bill requiring Scottish Ministers to develop a national strategy which will provide the strategic vision for community justice, identified in the 2012 reports as being absent from current arrangements. We also welcome the provisions requiring a national performance framework to be developed by Scottish Ministers and consider that this will be key to the success of the new arrangements in driving forward improvements.

We note from the Minister’s most recent letter that the Scottish Government’s intention is for both the national strategy and the national performance framework to be published in mid-2016, after the relevant sections have been commenced. As referred to earlier, we consider it vital that stakeholders are fully involved in the development of this documentation to ensure the best working model can be achieved and that any potential difficulties can be addressed as early as possible. We request early sight of the documents.

We agree with witnesses that reoffending rates are not the only indicator of success and therefore ask the Scottish Government to reflect on the view that indicators of broader outcomes should be included in the national performance framework.

Community Justice Scotland

51. Specific functions of the CJS are explored later in this report. This section refers to the role of CJS in relation to accountability arrangements only.

52. The Policy Memorandum states that—

"Community Justice Scotland will provide independent assurance to Scottish Ministers on how community justice outcomes are being delivered across Scotland. They will do so by reviewing each community justice outcomes improvement plan and annual report. They will also benchmark activity and progress across all community justice partners with a view to identifying where improvement is required and sharing best practice. CJS will be required to publish an annual report on the achievement of community justice outcomes across Scotland."

53. CJS would be accountable to Scottish Ministers and required to publish a corporate plan on how it will deliver its functions, for approval by Scottish Ministers. The Policy Memorandum explains that community justice partners would not be accountable to CJS. However, the body will have the powers to direct community justice partners to publish CJS’s assessment of their performance, and to either notify CJS of the action they will take in light of an assessment to deliver improvement or confirm they will not be taking any action. Community justice partners would be obliged to comply with any reasonable request from CJS “to provide information, advice or assistance to it for the purposes of, or in any connection with, any of its functions”. CJS would
also be able to make recommendations to the Scottish Ministers on action to improve performance across Scotland or within particular local authority areas.  

54. The Policy Memorandum goes on to state that “central to the aim of having clarity in the new model is that existing accountability lines for individual community justice partners would remain” and reiterates that they would not be accountable to CJS for operational delivery.  

55. Witnesses expressed broad support for a community justice model involving a national organisation working with local bodies. For example, Police Scotland said it “considers that a single body, with strategic and operational responsibility enhances the likelihood of successful working and reduces opportunities for inter-agency tensions to affect service delivery.”  

56. There were however mixed views on the level of oversight that the national body should have and whether the proposals in the Bill were clear. For example, Cleland Sneddon of SOLACE explained that “our nervousness arises over whether CJS should spend its time duplicating the accountability arrangements that exist at local level against a national framework of outcomes or whether it should provide professional cultural leadership”, adding “we would get more value from the latter”. Similarly, Councillor Harry McGuigan from COSLA supported “a sensible and productive working relationship” between the national and local bodies where community justice partners could seek advice and support, but said “we would be very guarded about a situation where we were receiving instructions that were being manufactured at national level in respect of programmes and projects in the local area”.  

57. Argyll and Bute Criminal Justice Social Work also said that “there is a concern that a national body could assume a directive rather than supportive role and over time develop a centralising agenda”. However, Dame Elish argued that CJS must be able to measure performance and “direct to where there is poor performance”, as proposed in the Bill. Tom Halpin from Safeguarding Communities Reducing Offending (SACRO) suggested that the Bill provides an opportunity for local bodies to be more accountable to the national organisation, as suggested by the Commission on Women Offenders, but that this approach “seems to have been watered down in the Bill”. The Robertson Trust and the Criminal Justice Voluntary Sector Forum said they would welcome more clarity in the Bill on how local partners would be held accountable for ensuring that any areas for improvement are identified and adequately addressed. South West Scotland CJA added that “it is difficult to identify what true responsibility CJS would have and what it would be accountable for”.  

58. A number of witnesses, such as Inverclyde CPP, said that the CJS’ lack of oversight responsibilities over community justice partners had the potential to continue the inconsistent service provision that was a problem identified with the
current model, while Northern CJA said it was difficult to see how these proposals would specifically address this problem.\(^\text{104}\)

59. There was also some concern about a lack of clarity on how the functions are split between the national and local bodies and therefore that there was scope for confusion. South West Scotland CJA argued that “accountability arrangements are much more ambiguous in the proposals than within our current arrangements.”\(^\text{105}\) Mr McKendrick of Social Work Scotland agreed, expressing concern that “the relationships and accountability between Community Justice Scotland, local partners and CPPs are not particularly well articulated and could lead to significant misinterpretation.”\(^\text{106}\)

60. The Minister stated: “we believe that the Bill sets out the appropriate balance of responsibilities”. He outlined that “the model is first and foremost a local one” and said “we recognise that local areas are best placed to determine the priority outcomes in those areas and the activities that are required to achieve those outcomes”. He added “the local arrangements will be complemented by CJS, which will work with local partners to provide national leadership, promote innovation and learning, and provide quality assurance that outcomes are being delivered locally.”\(^\text{107}\)

61. The Minister later argued that “there would be some teeth to Community Justice Scotland”, explaining that further steps could be taken if the targeted support and improvement activities provided by CJS did not achieve the necessary improvements to performance of a community justice partnership. CJS would be able to make recommendations to Ministers, which could lead to a multi-agency inspection, followed by deployment of a rescue task group “to ensure services at a local level are brought up to the appropriate standard.”\(^\text{108}\)

The Committee notes the difference of views amongst witnesses regarding the level of oversight that the national body should have, with local authority bodies preferring a ‘light-touch’ approach, and others, including Dame Elish Angiolini, Chair of the former Commission on Women Offenders, and Safeguarding Communities Reducing Offending (SACRO), supportive of local bodies being more accountable to Community Justice Scotland.

The Committee considers that, if the national body does not have adequate powers of oversight to measure and drive forward improvements in performance, there is a danger that weaknesses in relation to accountability, strategic leadership and the ability to properly measure outcomes in the existing arrangements will persist.
Community Justice and Prison Delivery Board

62. The Commission on Women Offenders recommended that a national Community Justice and Prison Delivery Board be created to promote integration between community justice services and the Scottish Prison Service.\(^{109}\) The Bill does not provide for the establishment of such a board.

63. Dame Elish, Chair of the Commission, told the Committee that “the issues are so complex that a Board could be helpful”.\(^ {110}\) Alex McCallum of Dumfries and Galloway CJSW argued that there would be benefit in having such a Board if it would enable resources to be moved out of prisons and into the community as appropriate.\(^ {111}\) However, Mr McKendrick from Social Work Scotland said he had “some misgivings” and was “not certain that the mechanism for justice reinvestment should be a joint board of CJS and SPS”.\(^ {112}\) Councillor Peter McNamara representing CJA Conveners had similar concerns, stating: “I would be cautious about setting up yet another body to oversee matters”.\(^ {113}\)

64. In evidence to the Committee on 3 November, Andy Bruce, a Scottish Government official, stated that there was precedent for transferring funds from the Scottish Prison Service to community justice services in relation to women offenders and said that this was “a statement of intent”.\(^ {114}\) The Minister also explained that CJS would be represented, alongside other partners including the SPS, on the Scottish Government’s Justice Board which “provides a balanced way of looking at the issues and implications for community sentencing options and their resourcing”.\(^ {115}\)

65. More generally, Dumfries and Galloway CJSW said “the Bill could be bolder and more ambitious in the intention to reduce custodial options in favour of community alternatives”.\(^ {116}\)

66. In correspondence of 29 October 2015, the Minister stated that “it is implicit within our proposals to strengthen 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”. He added that this shift is already being seen with resources transferred from the SPS to community-based services and a change in the SPS’s role to help integrate individuals back into the community when they leave prison.\(^ {117}\)
The Bill does not propose the creation of a national Community Justice and Prison Delivery Board; therefore, the Committee did not fully pursue the issue. We recognise that there are benefits in the Scottish Prison Service and community justice services working more closely together to ensure that support and resources are targeted appropriately. Thus, we are encouraged that Community Justice Scotland will sit on the Scottish Government’s Justice Board with other partners, such as the Scottish Prison Service, where strategic thinking and reprioritisation of funding between agencies can be considered. We also welcome the Minister’s commitment to ensure that the national strategy would promote the use of effective, evidence-based community disposals, and that the national performance framework would provide increased visibility of use of these disposals.

Inspectorate

67. The Bill is silent on inspections in relation to community justice. However, in evidence, Dame Elish suggested that there may be merit in having an inspector report to Parliament on the effectiveness of community justice. Mr Sneddon of SOLACE preferred joint inspections (by existing inspectorates), arguing that “such a move would free up CJS’s capacity to do all the positive activity that we have mentioned”. Mr McCallum of Dumfries and Galloway CJSW suggested that “the inspectorate bodies that are in existence would be perfectly adequate to carry out an inspection” and “the remit of the inspectorates could be broadened to include the broader justice agenda without creating a separate inspectorate”.

68. Others were less convinced there was a need for either a new inspector or joint inspections by existing inspectorates. Ms Coulthard of West Dunbartonshire CPP suggested that “rather than add an additional burden of inspection, … Audit Scotland will be able to take a view on whether we are delivering appropriately at local and national level on the justice outcomes”, while John Wood from COSLA said “the case is still being made for a national body, so it would not make sense right now to put in place plans for checks and balances on such a body and its relationship with local partnerships”.

The Committee notes that some witnesses supported the suggestion of an inspector reporting on the effectiveness of community justice or joint inspections by existing inspectorates, while others did not consider this was necessary. On balance, we consider that other bodies, including the new national body and Audit Scotland, have a role in reporting on community justice, and that the new arrangements should have time to become established before there is consideration of whether an inspector or joint inspections are needed.
Local elected members

69. The Policy Memorandum confirms that elected members would continue to have a key role in accountability arrangements in the new model. It states that “established lines of accountability with local authorities will provide elected members [with] an on-going opportunity to scrutinise outcomes” and “in addition, CJS will provide advice, as required, to elected members on collective performance against delivery of the national performance framework, giving further opportunities to improve outcomes”. It goes on to state that “local authority services would be accountable through their locally established structures, to their Council which is comprised of elected members who are in turn accountable to their electorate”. 124

70. However, a number of witnesses sought clarification on the role of local elected members in the new model both locally and nationally. Councillor McNamara highlighted that “the Bill says that one of the partners is the local authority, but it does not define the role of the local councillor, who I would have thought is a reflection of the local community”. 125

71. Councillor McNamara saw a need for local elected members to sit on CJS, arguing: “it seems to me a missed opportunity if we have a national body that will give support, encouragement and direction to the local bodies without having any local authority representation on it”. 126 Mr Halpin of SACRO supported this view, suggesting “we cannot deliver community justice without involving communities, so local elected representatives must be there” (on CJS) 127 and Aberdeenshire CJSW said “a noticeable omission is lack of clarity around the role, if any, of elected members and local political accountability”. 128 However, Alan Staff from Apex Scotland disagreed, saying that it would be difficult to find a local elected member “who would be representative of all”. 129

72. The Minister was asked whether there was any intention to include local elected member on CJS. He responded: “I am not aware of a post in CJS that we have specified should be filled by a representative of local government”. 130 On local issues, he said “with community justice being delivered by community planning partners, we will have a pathway to local accountability through local government”, adding “that is an important issue for residents in each local authority area; the usual democratic accountability will apply, with local government being accountable for its performance at a local level”. 131

While the Committee heard evidence that local elected members should sit on the Community Justice Scotland Board to ensure local political accountability, it also heard that it would be impossible to find a local elected member who could represent all areas. The Committee considers that Board members should be selected to reflect the range of skills and experience needed to fulfil the role and, while local elected members may be chosen on this basis, a specific requirement to do so should not be included in the Bill.
Community Justice Scotland: functions

Overview

73. The Bill sets out the main functions of CJS including: promoting the national strategy, overseeing and keeping the Scottish Ministers informed of performance on the provision of community justice, promoting and supporting improvements and the effective use of available resources, and promoting the benefits of sentencing offenders to community disposals. It would also be required to publish a national strategy for innovation, learning and development and to create a national hub for innovation, learning and development.

74. There was broad support amongst respondents for the creation of a national organisation to sit alongside local community justice bodies, with only a few exceptions: North Ayrshire CPP said it was not yet convinced of the need for such a body and North Ayrshire Health and Social Care Partnership said it would prefer the Scottish Government to carry out the national functions envisaged for CJS rather than creating the national body “at significant cost but with no guarantee of delivering improvements”. Questions were also raised about the lack of clarity on how the CJS’s functions would sit with those of the Risk Management Authority and Care Inspectorate and whether any overlap would need to be addressed.

75. Of particular concern to a number of witnesses were the provisions in the Bill to enable Scottish Ministers, by regulations, to confer additional functions relating to community justice on CJS (section 3(4)) and to give CJS general powers to “do anything which appears to it (a) to be necessary or expedient for the purposes of, or in connection with, the exercise of its functions, and (b) to be otherwise conducive to the exercise of its functions (section 4). COSLA warned that these provisions “lay the foundation for CJS to take on limitless functions” and Social Work Scotland said it had “concerns regarding the potential for the national body to assume additional powers and responsibilities from local authorities”.

76. In its report on the delegated powers in the Bill, the Delegated Powers and Law Reform Committee accepted in principle the powers under section 3(4). It also drew the attention of this Committee to the general power at section 4 to change CJS’s functions and to the Scottish Government’s explanation that this general power is necessary to enable the functions to remain up-to-date and fit-for-purpose.
Notwithstanding our recommendations aimed at strengthening the oversight functions of Community Justice Scotland earlier in this report, the Committee is broadly content with its functions as set out in the Bill. However, we warn against a ‘one-size-fits-all’ approach: community justice arrangements must be flexible enough to allow decisions to be taken at local level, based on local need.

The Committee notes the concerns of a number of witnesses that the power to confer additional functions on Community Justice Scotland, by regulations (section 3(4)), along with the general power for the body to do anything that appears to be necessary in the exercise of its functions (section 4), could lead to an erosion of local authority functions and responsibilities relating to community justice. The Committee endorses the Delegated Powers and Law Reform Committee’s report in which it accepted in principle the powers under section 3(4). We also note that the DPLR Committee drew this Committee’s attention to the general power and the Scottish Government’s explanation as to why this is necessary.

On balance, the Committee considers that the general power is sensible in allowing the body to exercise its functions effectively, but we ask the Scottish Government to monitor how this works in practice to ensure that CJS does not intrude into areas best dealt with at local level. Clarification of roles and responsibilities, as recommended earlier in this report, would also assist in this regard.

Community Justice Scotland: developing and arranging services

77. Section 26 of the Bill enables CJS to develop and arrange services. The Explanatory Notes on the Bill state that “CJS may identify the need for a service; design a suitable model for delivering the service; and make arrangements for the provision of the service”, but makes clear that CJS will not itself provide such services. The services may be developed or arranged for delivery at national or local level, but CJS must consider the suitability of those services for the local area and whether it would be appropriate to collaborate with others. It must also consult community justice partners.

78. There were mixed views amongst witnesses about CJS having this function. Mr Sneddon of SOLACE agreed that “there is a role for national level commissioning, but it should be there to bridge gaps that cannot be filled locally or when there is a particular benefit in getting a national or regional contract in place”, while COSLA said that CJS’ commissioning role “should be limited and prevented from undermining local prioritisation and use of discretion”. Others were less concerned about the provision, with Ms Scullion of the Robertson Trust arguing for it to remain in the Bill “so that there is the opportunity to commission at a national level rather than always having to go through the 32 local authorities.”
Dore of Shelter Scotland also told the Committee that “there is something useful about the national body having the function to commission nationally, in as much as the current lack of national funding is sometimes problematic”.  

79. Some respondents also sought clarity around the impact of new commissioning arrangements on the third sector. For example, the Criminal Justice Voluntary Sector Forum stated in its written evidence that “the current uncertainty over future commissioning structures is creating challenges for third sector providers in relation to future planning and the sustainability of their services and we are keen to see this resolved as soon as possible”.

80. The Minister told the Committee “we do not want to duplicate unnecessarily; if there are good platforms that are already used to procure activities, they can continue to be used” but said “opportunities might arise to do something at a national level, which would be impossible either for the eight current CJAs or the 32 local community planning partnerships to do”. He added that “we can work with local partners and CJS to ask whether it is sensible to do something at a national level and, if so, to do it”.

The Committee considers that CJS has an important role in commissioning services where there is a national or strategic need. However, we note the position of some witnesses that CJS should, in developing and arranging services, avoid undermining local needs.

Community justice partners

Overview

81. Under the Bill, community justice partners would be responsible for the local planning, delivery and monitoring of community justice services. The Bill lists the following bodies as community justice partners: local authorities, health boards, Police Scotland, Scottish Fire and Rescue Service, Skills Development Scotland, health and social care integration joint boards, Scottish Courts and Tribunals Service, and the Scottish Ministers (in practice, the Scottish Prison Service).

List of community justice partners

82. A number of witnesses argued that the list of community justice partners should be expanded to cover a wider range of services and interests. For example, Mr Sneddon of SOLACE said “it is really important to have wider representation in the local partnerships”, including service users and the third sector. However, Dame Elish warned against expanding the list. She said: “I do not think that the answer is to expand who is included, which would then become almost like a town hall event”, adding “we are looking for something that has a slick ability to move forward, change and address any difficulties that exist”.
83. Some witnesses expressed concerns that the requirement on statutory partners to only consult with ‘community bodies’ lessens the third sector’s influence in the planning process. Laura Mulcahy from the Criminal Justice Voluntary Sector Forum, for example, argued that “if the legislation is to contribute to a more collaborative way of working, this will require a much higher level of engagement than consultation”. Councillor McNamara suggested that, “if [the third sector] is to be given a place at the table, it should be treated respectfully and not just as an add-on”, adding that this “is the one thing that is missing and should be introduced into the Bill”.  

84. In response to these concerns, the Minister said “we think we have the right list, but if the Committee has a strong view on the matter we will listen to it, of course”. He also noted that the list could be revised by regulation if additional statutory community justice partners were identified when the system is operating. He also acknowledged that “the third sector has said that it is not as visible in the Bill as it would have liked to have been”, adding “we are listening to the sector’s concerns and, with officials and third sector organisations, we are exploring how we might amend the provisions to provide for a stronger participatory role for the sector”. 

The Committee considers that the list of community justice partners should not be extended too widely, in order to ensure effective decision-making. We welcome the Minister’s commitment to listen to the third sector’s concerns regarding participation in the new arrangements, but ask the Scottish Government to reflect on whether the requirement in the Bill for statutory partners to only ‘consult’ with community bodies is strong enough to ensure effective collaboration and engagement with the third sector.

Clarification of duties and lead partners

85. The Bill does not specify that a lead partner within the community justice partnership should be appointed. Mr Sneddon of SOLACE argued that each local authority area should have a lead community justice partner with responsibility for ensuring that certain key tasks are achieved. Police Scotland also suggested that the Bill should specify who leads the preparation of community justice outcomes improvement plans and of annual reports. Some witnesses also argued that the duties and expectations of community justice partners should be clearer. Again, Mr Sneddon suggested that “it would strengthen the Bill if there was clarity about the duties on all partners, because there is often a default to local authorities”. 

86. In response, the Minister told the Committee that “having a lead agency would open up the potential for other partners to avoid their responsibilities and to defer to one partner to do everything”, adding “we want to promote collaborative working, hence we have not specified a lead partner”. However, he added that “it is possible that [community justice partners] may choose to appoint the local
authority to a lead role and they have the discretion to do that, if that is what they wish”.\textsuperscript{155}

The Committee notes the views of some witnesses that the Bill should specify a lead partner within each community justice partnership, with responsibility for ensuring that certain tasks are completed. While we consider that there may be merit in appointing a lead partner to ensure a focus to discussions, we would be wary, as suggested by the Minister, of this leading to other partners avoiding their responsibilities. The Committee therefore does not support a specific requirement in the Bill that a lead partner be appointed. Instead, we recommend that partnerships have the flexibility to appoint a lead partner where they consider it would be appropriate to do so and that good practice in this area is shared through guidance. We also consider that clarification of the duties of community justice partners would be helpful in ensuring that each partner fulfils its responsibilities.

Role of community planning partnerships

87. The Bill does not make any reference to community planning partnerships. However, the Policy Memorandum states “it is expected that there will be a relationship between the community justice partners and the wider community planning partners and partnerships (such as alcohol and drug partnerships), particularly as all are required to produce plans and reports on the achievement of local outcomes”.\textsuperscript{156}

88. However, some witnesses suggested that more clarity is required on how CPPs will be involved in community justice planning and delivery. For example, Dr Foster of Forth Valley Health Board argued “it is very important that delivery should be through community planning partnerships, because they are the vehicle that we are currently working with; they are our local partners in tackling many issues”.\textsuperscript{157} Mr McKendrick of Social Work Scotland said “I have expressed our professional surprise and disappointment that the proposals are not integrated into the responsibilities of community planning partnerships”, which he described as “a major error”.\textsuperscript{158} He explained that “restricting the responsibility for community justice planning to nominated community justice partners, as the Bill does, will not create the synergies that are developed through community planning partners” to deal appropriately with “the complexities of individuals and the circumstances in which they offend”.\textsuperscript{159} Inverclyde CPP however suggested “there is a fundamental issue asking CPPs to be responsible for everything”, adding “if they have everything to cover then nothing is a focus”.\textsuperscript{160}

89. In evidence, the Minister said he did not wish to duplicate effort and expected community justice to be planned within the wider community planning structures.\textsuperscript{161}
The Committee remains unclear why the Bill does not specify that planning of community justice is a responsibility of community planning partnerships, as expected following the Scottish Government’s 2014 consultation and subsequent material on the new arrangements. We do not see merit in creating a new grouping of community justice partnerships and therefore recommend that the Bill clearly specifies that CPPs have responsibility for community justice planning with a view to making the new arrangements as clear and as simple as possible.

Co-operation amongst local authorities

90. The Bill does not make any reference to joint working by local authorities. It was highlighted during evidence that much positive work was currently being undertaken across local authority borders where it makes sense geographically and there was concern that this might be lost under the proposed arrangements. The Minister responded to this view, stating “it has been suggested that one of the aspects that local authorities find attractive in the current model is that they have been able to work together at local level” and said there is nothing to prevent that from happening under the model proposed in the Bill.

The Committee welcomes the clarification provided by the Minister that local authorities would still be able to work across geographical borders where appropriate and recommends that good practice in this area be promoted in guidance.

Short-term funding

91. The Commission on Women Offenders reported that the third sector was concerned about the short-term and fragmented nature of funding for interventions, which it suggested had resulted in what was viewed as unnecessary competitiveness between third sector providers. The Bill does not set out the funding arrangements for the delivery of services.

92. Witnesses and respondents to the Committee’s call for views spoke of their frustration regarding the short-term nature of funding and the impact this has on the sustainability of third sector projects. SACRO argued that this was acting “as a barrier to effective partnership working and impacts directly on staff turnover, morale, a lack of confidence amongst service users and other partners, including sentencers”. Michael Stewart from Outer Hebrides CJSW agreed that “the short-termism of funding makes it difficult for third sector organisations to survive and not to have to morph and change in order to chase pots of money”.

The Committee is disappointed that the same concerns about the funding and sustainability of third sector community justice projects have persisted over many years. We do, however, welcome the Scottish Government’s current review of the funding mechanism for community justice social work services which is due to report shortly, and we would welcome early sight of this report to help inform our consideration of the provisions in this Bill and related issues.

Implementation

Funding and transitional arrangements

94. The Financial Memorandum states that the set-up costs for CJS would be £615,000 (one-off costs for 2016/17) and that its annual running costs would be £2.2 million. The Scottish Government has also made available a transition fund of £1.6 million annually for three years (from 2015/16 to 2017/18) to be split equally between the 32 local authorities. The FM argues that “three years of transition funding should provide planning partners with sufficient time to take on their community justice role as well as make arrangements with key partners to share capacity and resources for this work going forward”. The Scottish Government is providing £50,000 per annum to the Criminal Justice Voluntary Sector Forum to help third sector bodies build capability and capacity and engage with the partnership arrangements across Scotland. Again, this is expected to be available for three years, ending in 2017/18.

95. In its report on the FM, the Finance Committee states that the Scottish Government has confirmed it would remain open minded on the option of providing additional funding at the end of the three-year transition period. It went on to welcome the Scottish Government’s “commitment to working with COSLA throughout the transition period to identify any emerging issues and to review the position on funding at the end of the three-year period”.

96. During evidence to this Committee, concerns were raised regarding a perceived imbalance of funding for the new arrangements. Mr Sneddon of SOLACE told the Committee “we are a bit puzzled by the allocation of £2.2 million to CJS”, adding “there is a role for CJS but I see no additional resource for local authorities or any of their community justice partners to invest in preventative work”.

Highland
Council said “for a ‘light-touch’ agency, with limited power and authority, CJS is significantly resourced”.\textsuperscript{174} Ms Coulthard from West Dunbartonshire CPP highlighted that CPPs “have had a significant lack of investment in the infrastructure of community planning [and] the additional burden in the Bill in relation to planning is taking our ability to respond to the tipping point”.\textsuperscript{175} Chief Superintendent Grant Manders also had concerns: “there is no doubt that the staff in CJAs have built up expertise and knowledge that perhaps is not translated into the broader community planning government arrangements”, adding “if that resource is not transferred, that will present some threats”.\textsuperscript{176}

97. Arlene Stuart, a Scottish Government official, told the Committee that the Scottish Government had funded a post in COSLA to lead on the transitional work and that some local authorities were using their transitional funding to appoint a coordinator to begin action planning. She also confirmed that currently around 20 staff were employed by CJAs and that there were potential opportunities for them through posts funded by transitional funding, and recruitment to CJS.\textsuperscript{177}

The Committee notes the apparent imbalance in funding for the new arrangements, with Community Justice Scotland being allocated £615,000 in set-up costs and £2.2 million annual running costs, and the 32 local authorities being given a share of £1.6 million transitional funding for each of the next three years. We consider that, if the new arrangements are to work effectively, the local partnerships must be properly resourced to exercise their increased duties. We also have concerns that some successful projects may be at risk due to the lack of sustainable funding. However, we welcome the commitment given by the Scottish Government to the Finance Committee that it will work with COSLA throughout the transition period to identify any emerging issues and to review its position on funding at the end of the three-year period.

Timetable

98. The Policy Memorandum explains that “a phased approach will be taken to start-up”, with the chair being appointed while the Bill is progressing through Parliament, following Stage 1, and members appointed once the parliamentary process is complete. CJS is expected to take on its full functions in April 2017.\textsuperscript{178}

99. The Committee’s call for views at the start of its Stage 1 scrutiny specifically asked about the timescale for implementation. Respondents broadly agreed that the timescale proposed was realistic on the basis that local authorities were already working towards the new model. Lanarkshire CJA said, “given that the process has already taken three years to date and given that there will be little change, in that the same workers in the same locations will be delivering the same services, the question is 'why so long?'”\textsuperscript{179} However, the Scottish Working Group on Women Offenders disagreed, arguing that “the Bill requires significant amendment which will take time”.\textsuperscript{180}
The Committee notes that the majority of evidence received agreed that the timescale for implementation was realistic as local authorities were already working towards the new model. We agree: the continued period of uncertainty during the prolonged period of consultation has been unsettling for those involved in community justice arrangements and it is therefore imperative that further delay is avoided.

Policy and Financial Memorandums

100. The lead committee is required under Rule 9.6.3 of Standing Orders to report on the Policy Memorandum which accompanies the Bill.

The Committee considers that the detail provided in the Policy Memorandum on the policy intention behind the provisions in the Bill and why alternative approaches were not favoured was useful in assisting the Committee in its scrutiny of the Bill. However, the confusion of witnesses, and indeed the Committee, as to the duties of the proposed bodies and how they interact might have been avoided if further explanation had been provided in the Policy Memorandum. The Committee is also disappointed that no explanation for the change in approach to the definition of ‘community justice’ was provided and, again, suggests that the widespread concern amongst witnesses at the omission of prevention and early intervention from the definition could have been lessened if an explanation had been given.

101. The same rule requires the lead committee to report on the Financial Memorandum (FM).

The Committee is content with the level of detail provided in the Financial Memorandum. We have reflected the issues raised by the Finance Committee in its report on the FM under the relevant sections in this report.
General principles

102. Under Rule 9.6.1 of Standing Orders, the lead committee is required to report to the Parliament on the general principles of the Bill.

The Committee broadly supports the general principles of the Bill. We see merit in the general approach taken in the Bill, but we have made a number of recommendations aimed, in particular, at strengthening strategic leadership and accountability and demystifying the complex landscape identified as particular weaknesses in the current model by the Commission on Women Offenders and Audit Scotland in their 2012 reports. The Committee also has some doubts as to whether the Bill will de-clutter the complex community justice landscape described in these reports.

1 Community Justice (Scotland) Bill.
2 Written submissions received in response to Justice Committee’s call for evidence on the Bill.
3 Official Reports of the evidence sessions on the Bill.
4 Written submissions to the Finance Committee’s call for evidence on the Financial Memorandum.
5 Finance Committee’s report on the Financial Memorandum on the Bill.
6 Delegated Powers and Law Reform Committee’s report on the delegated powers in the Bill.
8 Summary of responses to Scottish Government consultation on reducing reoffending in Scotland (2004)
9 Other than Glasgow, CJAs all cover more than one local authority.
10 SPICe briefing on the Community Justice (Scotland) Bill (15-46), page 5.
11 The Commission on Women Offenders was established in 2011 by the then Cabinet Secretary for Justice following reports by HM Inspectorate of Prisons highlighting, amongst other things, serious overcrowding in HMP Cornton Vale Prison and Young Offenders Institute.
12 Commission on Women Offenders final report (2012)
13 Commission on Women Offenders final report (2012), paragraph 80.
14 Commission on Women Offenders final report (2012), page 82.
15 Commission on Women Offenders final report (2012), page 82.
16 Commission on Women Offenders final report (2012), page 87.
17 Commission on Women Offenders final report (2012), page 88.
20 SPICe briefing (15-46), pages 5-6.
22 Redesigning the Community Justice System: a consultation on proposals (2012).
25 SPICe briefing (15-46), page 7.
28 Paragraph 22, Policy Memorandum.
29 Paragraph 22, Policy Memorandum.
30 SPICe briefing (15-46), page 10.
Policy Memorandum, paragraph 27.
Policy Memorandum, paragraphs 74-75.
Consultation on Proposals to Strengthen the Presumption against Short Periods of Imprisonment (2015)
Cabinet Secretary for Justice’s announcement on women in custody (2015).
Correspondence from the Minister for Community Safety and Legal Affairs, 29 October 2015.
Correspondence from Minister for Community Safety and Legal Affairs, 29 October 2015, page 3.
Correspondence from Minister for Community Safety and Legal Affairs, 29 October 2015, page 3.
Correspondence from Minister for Community Safety and Legal Affairs, 29 October 2015, page 6.
Correspondence from Minister for Community Safety and Legal Affairs, 29 October 2015, page 6.
COSLA, written submission.
Scottish Social Services Council, written submission.
The Robertson Trust, written submission.
Barnardo’s Scotland, written submission.
Edinburgh Trust, written submission.
Families Outside, written submission.
Commission on Women Offenders final report (2012), page 85.
Commission on Women Offenders final report (2012), page 85.
Policy Memorandum, paragraph 46.
Policy Memorandum, paragraph 61.
Highland Council, written submission.
City of Edinburgh Council, written submission.
South Lanarkshire Council, written submission.
Policy Memorandum, paragraph 29.
Policy Memorandum, paragraph 29.
Northern Community Justice Authority, written submission.
COSLA, written submission.
The Robertson Trust, written submission.

Correspondence from Minister for Community Safety and Legal Affairs, page 6.

In its final report (2012), the Commission on Women Offenders recommended that a Community Justice and Prison Delivery Board be established to promote integration between community justice services and the Scottish Prison Service.

North Ayrshire Community Planning Partnership, written submission.

North Ayrshire Health and Social Care Partnership, written submission.

Risk Management Authority and Care Inspectorate, written submissions.

Scottish Ministers may also, by Regulations, make changes to, transfer and remove functions of CJS.

COSLA, written submission.

Social Work Scotland, written submission.

Delegated Powers and Law Reform Committee Report on delegated powers in the Community Justice Bill

Explanatory Notes, paragraph 44.
Justice Committee.
Stage 1 Report on the Community Justice (Scotland) Bill, 18th Report, 2015 (Session 4)

141 COSLA, written submission.
144 Criminal Justice Voluntary Sector Forum, written submission.
149 Justice Committee. Official Report, 15 September 2015, Col 35
152 Police Scotland, written submission.
156 Policy Memorandum, paragraph 27.
160 Inverclyde Community Planning Partnership, written submission.
164 Commission on Women Offenders final report (2012), page 83.
165 SACRO, written submission.
169 Financial Memorandum, Table B on page 21 and paragraph 39.
170 Financial Memorandum, paragraph 78.
171 Financial Memorandum, paragraph 77.
172 Finance Committee report on the Financial Memorandum on the Community Justice (Scotland) Bill, paragraph 19
174 Highland Council, written submission.
178 Policy Memorandum, paragraph 32.
179 Lanarkshire Community Justice Authority, written submission.
180 Scottish Working Group on Women Offenders, written submission.
Annexe A

Extracts from the minutes of the Justice Committee and associated written evidence

16th Meeting, 2015 (Session 4) Tuesday 19 May 2015

Community Justice (Scotland) Bill (in private): The Committee agreed its call for written evidence on the Bill at Stage 1.

19th Meeting, 2015 (Session 4) Tuesday 2 June 2015

Community Justice (Scotland) Bill (in private): The Committee agreed (a) the timetable for its consideration of the Bill at Stage 1; (b) witnesses; and (c) to delegate to the Convener authority to approve the final composition of witness panels.

24th Meeting, 2015 (Session 4) Tuesday 1 September 2015

Community Justice (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
Rt Hon Dame Elish Angiolini, former Chair, Commission on Women Offenders;
Mark Roberts, Senior Manager, Audit Scotland;
Cleland Sneddon, Executive Director, Community Services, Argyll and Bute Council, representing the Society of Local Authority Chief Executives and Senior Managers (SOLACE) Scotland.

Community Justice (Scotland) Bill (in private): The Committee agreed to invite a number of additional witnesses to give evidence on the Bill at Stage 1.

Written evidence
- Audit Scotland

25th Meeting, 2015 (Session 4) Tuesday 15 September 2015

Community Justice (Scotland) Bill: The Committee took evidence, in round-table format, on the Bill at Stage 1 from—
Councillor Harry McGuigan, Spokesperson for Community Well-being, and John Wood, Policy Officer, Convention of Scottish Local Authorities;
Alex McCallum, Service Manager, Dumfries and Galloway Criminal Justice Social Work Service;
Councillor Peter McNamara, Chair, National Community Justice Convenors Group;
Michael Stewart, Service Manager, Outer Hebrides Criminal Justice Social Work Service;
Amanda Coulthard, West Dunbartonshire Community Planning Partnership;
Lorraine Gillies, West Lothian Community Planning Partnership;
Dr Graham Foster, Director of Public Health, Forth Valley Health Board;
John Watt, Chair, Parole Board for Scotland;
Chief Superintendent Grant Manders, Police Scotland;
Mark McSherry, Head of Development, Risk Management Authority Scotland;
Teresa Medhurst, Director, Strategy and Innovation, Scottish Prison Service;
Sean McKendrick, Vice Chair, Criminal Justice Standing Committee, Social Work Scotland.

Margaret McDougall declared an interest as a former Vice-Chair of South West Scotland Community Justice Authority.

Written evidence

- COSLA
- Dumfries and Galloway Council Criminal Justice Social Work Service
- Convenors of Scotland's Community Justice Authorities
- Outer Hebrides Community Planning Partnership
- Parole Board for Scotland
- Police Scotland
- Risk Management Authority
- Social Work Scotland
- South West Scotland Community Justice Authority

Supplementary written evidence

- Convenors of Scotland's Community Justice Authorities

26th Meeting, 2015 (Session 4) Tuesday 22 September 2015

Community Justice (Scotland) Bill: The Committee took evidence, in round-table format, on the Bill at Stage 1 from—
Alan Staff, Chief Executive, Apex Scotland;
Laura Mulcahy, Development Co-ordinator, Criminal Justice Voluntary Sector Forum;
Professor Nancy Loucks, Chief Executive, Families Outside;
Pete White, National Co-ordinator, Positive Prison? Positive Futures;
Tom Halpin, Chief Executive, Safeguarding Communities - Reducing Offending (Sacro);
Louise Johnson, Legal Issues Worker, Scottish Women's Aid; Emma Dore, Senior Policy Officer, Shelter Scotland; Christine Scullion, Head of Development, The Robertson Trust; Nicola Merrin, Policy Officer, Victim Support Scotland.

Written evidence
- Criminal Justice Voluntary Sector Forum
- Families Outside
- Positive Prison? Positive Futures
- Sacro
- Scottish Women's Aid
- Shelter Scotland
- The Robertson Trust
- Victim Support Scotland

28th Meeting, 2015 (Session 4) Tuesday 6 October 2015

Community Justice (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
Paul Wheelhouse, Minister for Community Safety and Legal Affairs, Andy Bruce, Deputy Director, Community Justice Division, Arlene Stuart, Head of Community Justice Operational Unit, Elaine Hamilton, Community Justice Bill Team Leader, and Craig French, Directorate for Legal Services, Scottish Government.

29th Meeting, 2015 (Session 4) Tuesday 27 October 2015

Community Justice (Scotland) Bill (in private): The Committee considered the themes emerging from the evidence received in order to inform the drafting of its Stage 1 report. The Committee agreed to write to the Scottish Government seeking further information on a number of issues raised and to invite the Minister for Community Safety and Legal Affairs to give further evidence at a future meeting.

30th Meeting, 2015 (Session 4) Tuesday 3 November 2015

Community Justice (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
Paul Wheelhouse, Minister for Community Safety and Legal Affairs, Andy Bruce, Deputy Director, Community Justice Division, and Arlene Stuart, Head of Community Justice Operational Unit, Scottish Government.
Community Justice (Scotland) Bill (in private): The Committee considered a draft Stage 1 report and agreed to consider a revised draft at its next meeting.

31st Meeting, 2015 (Session 4) Tuesday 10 November 2015

Community Justice (Scotland) Bill (in private): The Committee considered a revised draft Stage 1 report. Various changes were agreed to and the Committee agreed its report to the Parliament.
Annexe B

List of other written evidence

- Aberdeen City Council
- Aberdeenshire Council Criminal Justice Social Work Service
- Aberdeenshire Council Criminal Justice Social Work Service (supplementary submission) (172KB pdf)
- Argyll, Bute and Dunbartonshire Criminal Justice Social Work Partnership
- Barnardo's Scotland
- Care Inspectorate
- City of Edinburgh Council
- Dundee City Council
- East Ayrshire Community Planning Partnership
- East Dunbartonshire Health and Social Care Partnership
- East Lothian Council
- Edinburgh Cyrenian Trust
- Equality and Human Rights Commission
- Falkirk Council Criminal Justice Service
- Fife and Forth Valley Community Justice Authority
- Fife Council and Fife Partnership
- Glasgow Community Justice Authority
- Glasgow Community Planning Partnership
- Glasgow Health and Community Care Partnership
- Highland Council
- HM Chief Inspector of Prisons for Scotland
- Homeless Action Scotland
- Howard League Scotland
- Inverclyde Community Planning Partnership
- Joint Faith Board on Community Justice
- Lanarkshire Community Justice Authority
- Law Society of Scotland
- Lothian and Borders Community Justice Authority
- Midlothian Community Safety Partnership
- NHS Health Scotland
- North Ayrshire Community Planning Partnership
- North Ayrshire Health and Social Care Partnership
- Northern Community Justice Authority
- NSPCC Scotland
- Officers of West Lothian Council
- Orkney Islands Council
- Perth and Kinross Council
- Prison Reform Trust
Renfrewshire Council
Restorative Justice Forum
Royal College of Speech and Language Therapists
Scottish Borders Community Justice Partnership
Scottish Courts and Tribunals Service
Scottish Directors of Public Health
Scottish Social Services Council
Scottish Working Group on Women Offenders
Shetland Islands Council
Soroptimist International Crieff
South Ayrshire Community Planning Partnership
South Lanarkshire Community Justice Authority
Turning Point Scotland
Unison Scotland
Voluntary Action Scotland