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Justice Committee
Comataidh a' Cheartais

Stage 1 Report on the Management of Offenders (Scotland) Bill

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Justice Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice, and 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

1. The Management of Offenders (Scotland) Bill ("the Bill") was introduced in the Scottish Parliament on 22 February 2018. It is a Scottish Government Bill.

2. The Policy Memorandum accompanying the Bill states:

> The Management of Offenders (Scotland) Bill brings forward a number of reforms designed to deliver on the Scottish Government's commitment to continue to transform the way in which Scotland deals with offenders, ensuring that Scotland's justice retains its focus on prevention and rehabilitation, whilst enhancing support for victims. [1]

Overview of the Bill

3. The Bill is split into four parts, with the substantive provisions in the Bill set out in the first three parts. Part 1 of the Bill expands and streamlines the uses of electronic monitoring; Part 2 modernises and improves the Rehabilitation of Offenders Act 1974 ("the 1974 Act"); and Part 3 delivers some of the aims of the Parole Reform Programme to clarify the role of the Parole Board. Part 4 contains some standard ancillary and final matters.

4. In simple terms, the Bill permits the use of Global Positioning System (GPS) and other new technologies to be used in the monitoring of offenders' movements. It would also enable the enforcement of exclusion zones, for example, around victims' homes. The Bill also includes proposals to reduce the amount of time people will have to disclose certain convictions, currently set by the Rehabilitation of Offenders Act, to help them to gain employment; and simplifies and modernises processes for the Parole Board for Scotland.

5. The Policy Memorandum states that, in relation to Part 1, the expansion of electronic monitoring supports the broader community justice policies of preventing and reducing re-offending by increasing the options available to manage and monitor offenders in the community, and to further protect public safety. The Scottish Government argues that the introduction of new technologies, such as GPS technology, presents opportunities to improve the effectiveness of electronic monitoring, for example, through the use of exclusion or inclusion zones that will offer victims significant reassurance and respite.

6. In relation to Part 2 of the Bill, the Scottish Government is of the view that the reforms to the 1974 Act will reduce the length of time most people with convictions have to disclose their offending history, bring more people within the scope of the protections not to disclose, and make the regime more transparent and easier to understand.

7. Ministers argue that these reforms will help people move on more quickly from their offending behaviour to assist the economy, improve their life chances, and help reduce re-offending rates.

8. Finally, with respect to Part 3, the parole reforms aim to simplify and modernise processes, and support consistency of approach in relation to parole matters and the Parole Board for Scotland.

Justice Committee's consideration

9. The Justice Committee was designated as lead committee for Stage 1 consideration of the Bill. The Committee issued a call for evidence on 16 March 2018, with a closing date of 20 April 2018. The Committee received over 50 responses to its call for evidence. Responses are published on the Committee's webpage.

10. The Committee initially took formal evidence on the Bill at 5 meetings (see further Annex B):

- on 24 April 2018 from the Scottish Government's Bill Team, comprising of Neil Devlin, Bill Team Leader, Community Justice Division, Nigel Graham, Policy Adviser, Criminal Justice Division, and Craig McGuffie, Principal Legal Officer, Directorate for Legal Services, Scottish Government.

- on 8 May 2018 from Karyn McCluskey, Chief Executive, and James Blair, Policy Lead, Community Justice Scotland; James Maybee, Principal Officer, Criminal Justice Services, The Highland Council, representing Social Work Scotland; and then from Professor Nancy Loucks, Chief Executive, Families Outside; Pete White, Chief Executive, Positive Prison? Positive Futures; Dr Marsha Scott, Chief Executive, Scottish Women's Aid; Nicola Fraser, Local Operations Manager, Victim Support Scotland.

- on 15 May 2018 from the Liz Dougan, Partner, Brazenall and Orr Solicitors; Leanne McQuillan, President, Edinburgh Bar Association; Dr Louise Brangan, Policy and Public Affairs Manager, Howard League Scotland; Douglas Thomson, Criminal Law Committee, Law Society of Scotland; and Dr Hannah Graham, Lecturer in Criminology, Scottish Centre for Crime and Justice Research, University of Stirling.

- on 22 May from David Strang, (now former) HM Chief Inspector, HM Inspectorate of Prisons for Scotland; Chief Superintendent Garry McEwan, Divisional Commander, Criminal Justice Services Division, Police Scotland; Ruth Inglis, Director of Development and Innovation, Scottish Courts and Tribunals Service; and then from John Watt, Chair, and Colin Spivey, Chief Executive, Parole Board for Scotland.

- on 5 June from Rt Hon Lord Turnbull, Scottish Sentencing Council, and then from Michael Matheson, (now former) Cabinet Secretary for Justice, Scottish Government.

11. On 3 May 2018, James Wright was convicted of murdering Craig McClelland in Paisley. Prior to the offence, Mr Wright had been released from prison on a Home Detention Curfew. He breached this by removing his electronic monitoring device and was 'unlawfully at large' at the time of the murder.

12. Subsequently, the then Cabinet Secretary for Justice asked Her Majesty's Inspectorate of Constabulary in Scotland (HMICS) and Her Majesty's Inspectorate for Prisons in Scotland (HMIPS) to conduct independent reviews of the HDC regime in Scotland. Terms of reference were published on 28 June 2018 and both bodies published final reports on 25 October 2018. The newly appointed Cabinet Secretary for Justice, Humza Yousaf, made a Ministerial Statement in Parliament on the same day.

13. As a result of these developments, the Committee chose to re-open evidence taking on the issues raised by the death of Mr McClelland and the independent reviews, taking further views from the following:

- 20 November - Gill Imery, HM Chief Inspector of Constabulary in Scotland, HM Inspectorate of Constabulary in Scotland; Wendy Sinclair-Gieben, HM Chief Inspector, HM Inspectorate of Prisons for Scotland; Chief Superintendent Garry McEwan, Divisional Commander, Criminal Justice Services Division, Police Scotland; Colin McConnell, Chief Executive, Scottish Prison Service.

- 18 December - John Watt, Chair, Parole Board for Scotland; Yvonne Gailey, Chief Executive, Risk Management Authority; Dr Johanna Brown, Consultant Forensic Psychiatrist, Royal College of Psychiatrists in Scotland; and, James Maybee, Principal Officer (Criminal Justice)/Interim Chief Social Work Officer, Highland Council, representing Social Work Scotland.

- 15 January 2019 - Humza Yousaf, Cabinet Secretary for Justice, Scottish Government, and his officials.

14. The Committee is grateful to all those who provided evidence which helped to inform the Committee's additional scrutiny of the Bill.

15. In addition to formal evidence-taking, a delegation from the Committee visited The Wise Group in Glasgow to meet with people with prior convictions and also with G4S; the operators of the current contract for the use of electronic monitoring in Scotland (see Annex A). We are grateful to all those who gave their time to speak to the Committee.

Visit by a delegation of the Committee to the Wise Group and G4S, Glasgow, 29 May 2018

Source: Copyright: SPCB

Consideration by other committees

16. The Finance and Constitution Committee issued a call for evidence on the Financial Memorandum for the Bill, with a closing date of 20 April 2018. A total of 9 responses were received. The Justice Committee report sets out its views on the financial provisions later in this Report.

17. The Bill contains a number of delegated powers provisions. The Delegated Powers and Law Reform (DPLR) Committee published its report on the Delegated Powers Memorandum on the Bill on 22 May 2018. The findings of the Delegated Powers and Law Reform Committee are covered later in this Report.

Membership changes

18. During the Committee's consideration of this Bill at Stage 1 both the size of the Committee and its membership changed. George Adam MSP, Maurice Corry MSP, Mairi Gougeon MSP and Ben Macpherson MSP left the Committee and were replaced by Fulton MacGregor MSP and Shona Robison MSP, with the Committee size being reduced from 11 to 9 members.

Part 1 - Electronic monitoring

What is electronic monitoring?

19. The use of electronic monitoring within the Scottish criminal justice system was first piloted in 1998. Following this, in 2002, it became available nationally in the form of Restriction of Liberty Orders (RLOs) – a type of community sentence in which the movements of the individual are subject to restrictions (normally by means of a curfew).

20. In addition to RLOs, electronic monitoring is now used to monitor restrictions on movement imposed in connection with a number of other community sentences:

    - restrictions imposed as part of Drug Treatment and Testing Orders (DTTOs); and
    - restrictions imposed for breach of Community Payback Orders (CPOs).

    Electronic monitoring is also used to monitor compliance with restrictions on movement forming part of relevant conditions of release from custodial sentences:

    - where a prisoner serves part of a custodial sentence in the community under Home Detention Curfew (HDC) licence conditions; and
    - as a possible licence condition imposed by the Parole Board for Scotland where it grants early release from a custodial sentence.

21. Electronic monitoring involves the fitting of a tag device, usually worn around the ankle, which communicates with a home monitoring unit via a radio frequency (RF) signal. The information that the tag sends to the home monitoring unit provides information about a person's compliance with curfew times imposed at any address.

22. Electronic monitoring in Scotland is currently limited to the use of RF technology. This employs a base unit along with an electronic tag on the individual's ankle. It is normally used to monitor compliance with a curfew. The base unit is installed at the address where the individual must stay during the curfew (as detailed in the order). RF technology can also be used to monitor compliance with an order excluding a person from somewhere (e.g. from entering a particular address). The need to install base units covering the excluded area(s) imposes practical limits on wider exclusion zones.

23. The electronic monitoring service is currently provided by the private company G4S, under contract to the Scottish Government.

24. Most cases of electronic monitoring in Scotland have been accounted for by RLOs and HDCs. Statistics produced by G4S indicate that, during 2018, there were 3,422 new RLOs imposed (a 10% increase from 2017), including 11 exclusion requirements, and 1,094 new HDCs [2] (a 23% decrease in use compared to 2017 [3]). At the Justice Committee's meeting on 20 November 2018, the Scottish Prison Service advised that the recent restrictions on the granting of HDC had resulted in a further 75% reduction in the most recent numbers of the use of HDCs. This change,

including the circumstances leading to it, is considered later in the report. The Scottish prisons granting the highest numbers of HDCs in 2018 were HMPs Barlinnie, Low Moss, Edinburgh, Perth and Addiewell. [3]

25. Electronic monitoring can also be used in connection with disposals from the Children's Hearings System. Movement restriction conditions may be imposed which include arrangements for monitoring compliance. This area of use is not dealt with in the Bill. The above statistics produced by G4S indicate that, during 2017, 31 movement restriction conditions were made. [4]

What does the Scottish Government propose?

26. Consideration of the further development of electronic monitoring has been ongoing for a number of years. Following a Scottish Government consultation in 2013, an Electronic Monitoring Working Group (the "Working Group") was established. Its final report was published in 2016.

27. A further Scottish Government consultation in 2017 sought views on proposals for legislation. It noted that the proposals reflected the findings and recommendations of the Working Group.

28. The Scottish Government believes that electronic monitoring can have a greater role to play in supporting its vision for a safer, fairer and more inclusive nation in which those who have been victims of crime can feel safer and more reassured, and those with a history of offending can be supported to be active and responsible contributors to their communities. [1]

29. The Bill is also intended to provide one overarching set of principles for the imposition of electronic monitoring, drawing together existing legislation to provide a clearer and more comprehensive framework.

30. The specific detail of what the Scottish Government is proposing in the Bill is set out below.

Monitoring in criminal proceedings

31. Sections 1 to 4 of the Bill relate to the use of electronic monitoring by the courts in criminal proceedings. The Scottish Government's policy objective for these provisions is to set out the nature and purpose of electronic monitoring, and the circumstances under which a court may require a person to be subject to monitoring.

32. The Bill sets out the position that when a court requires an individual to be subject to electronic monitoring, that requirement is for the purpose of monitoring the individual's compliance with both an underlying order and with the obligations in relation to the monitoring itself.

33. Additionally, the Bill further defines the nature of any electronic requirement in relation to the underlying order so as to specify that the electronic monitoring requirement is to last for as long as the underlying order (other than in circumstances where it is varied or revoked) and requires the consent of the

offender where that consent is required for the underlying order. The intention of these provisions is to ensure as far as practical that the electronic monitoring requirement mirrors the order to which it is attached.

34. With regard to the use of electronic monitoring as part of an order made by a court, the Bill provides that it may be used in relation to the following disposals:

- Restriction of Liberty Orders (RLOs) – continuing current use of electronic monitoring;
- Drug Treatment and Testing Orders (DTTOs) – continuing current use of electronic monitoring;
- Community Payback Orders (CPOs) – expanding current use of electronic monitoring, which is limited to restrictions on movement imposed for breach of a CPO, to allow a court to include such a requirement with electronic monitoring as part of the original CPO;
- Sexual Offence Prevention Orders (SOPOs) and Sexual Harm Prevention Orders (SHPOs) – expanding current use of electronic monitoring to such orders.

35. The Bill states that electronic monitoring may relate to provisions of a disposal concerning the:

- location of an offender;
- taking of alcohol, drugs or other substances by an offender.

The latter reflects the possibility of future monitoring being expanded to use technology such as transdermal alcohol monitoring (see subsequent sections of this report).

36. **The Scottish Ministers would, by way of regulations, be able to alter the above list of disposals in relation to which electronic monitoring can be used. This could include expanding the list to other orders which may be imposed on an offender in criminal proceedings.**

Monitoring on release on licence

37. Sections 5 to 7 of the Bill relate to the use of electronic monitoring by the Scottish Ministers in connection with the release of an individual from imprisonment or detention on licence. The policy objective of these provisions is to set out the circumstances under which the Scottish Ministers may require a person to submit to monitoring.

38. In line with the provision relating to court proceedings, the Bill sets out that when the Scottish Ministers require an individual to be subject to electronic monitoring, that requirement is for the purpose of monitoring the individual's compliance with both an underlying order and with the obligations in relation to the monitoring itself.

39. The Bill further defines the nature of any electronic requirement in relation to the underlying licence conditions so as to specify that the electronic monitoring requirement is to last for as long as the underlying licence conditions (other than in circumstances where it is varied or revoked). As with the provisions for court disposals, the intention of these provisions is to ensure as far as practical that the electronic monitoring requirement mirrors the licence conditions to which it is attached.

40. At present, legislation permits the use of electronic monitoring in relation to the certain licence conditions such as a curfew. Section 7 of the Bill brings together these uses of electronic monitoring in one consolidated list. In addition, it enables the use of electronic monitoring in relation to conditions relating to temporary release in accordance with rules made under section 39 of the Prisons (Scotland) Act 1989.

41. Currently prisoners can be released from prison on temporary release under the following categories set out in rule 136 of the Prisons and Young Offenders Institutions (Scotland) Rules 2011: home leave; unescorted day leave; unescorted day release for compassionate reasons; temporary release for work; and unescorted release for health reasons. Home leave and unescorted release for health reasons can be granted for a period of seven days while the other forms of temporary release are only for one day.

42. It was the view of the Working Group that the temporary release of a prisoner under the Prison Rules could be reinforced by the use of electronic monitoring. The Working Group agreed that for those prisoners who are on the margins of acceptable risk, introducing the use of electronic monitoring for the purpose of temporary release might provide additional options for prison Governors to test those individuals while maintaining public safety.

43. The Working Group further suggested that for those in custody, electronic monitoring could be utilised on some occasions for work placement and home leave. This, it was argued, had the potential to increase the number of prisoners who progress to less secure conditions, providing them with the confidence to live successfully, supporting rehabilitation and the eventual re-integration into the community.

44. Section 7 of the Bill further provides that electronic monitoring can be used with regard to conditions relating to release from imprisonment or detention which arise on the basis prescribed in regulations made by the Scottish Ministers. The conditions listed in section 7(1) or prescribed by the Scottish Ministers under section 7(1)(e) are restricted to conditions concerning the individual's whereabouts or their consumption of alcohol, drugs or other substances.

Devices: uses and information

45. Sections 8 and 9 of the Bill deal with the specification of approved devices and the use of those devices and the information obtained through monitoring. The policy objective is to facilitate the use of new technologies for electronic monitoring (such as GPS technology or transdermal alcohol monitoring) and to regulate both how

devices used for electronic monitoring, and the information gathered by those devices, can be used.

46. Scotland currently only uses RF technology to monitor compliance. The Working Group considered the potential of two emerging electronic monitoring technologies - satellite tracking using GPS and transdermal alcohol monitoring - noting that they presented opportunities to use electronic monitoring in different ways and at different points in the criminal justice system.

47. **The Bill empowers the Scottish Ministers to approve, by regulation, the devices which are to be used for the purpose of either monitoring an individual's whereabouts or detecting whether they have consumed alcohol, drugs or other substances.** It is intended that this power will be used to specify the RF technology currently used on the basis that this has proven to be effective for the purpose of monitoring an individual's compliance with a curfew order. By providing this regulation making power, the intention is also to enable the future approval of other developing technologies.

48. **Section 9 of the Bill provides the Scottish Ministers with regulation making powers in relation to the use of approved devices in relation to the monitoring of either a court disposal or a licence condition, and the use of information obtained through the monitoring of an offender by means of such devices.**

Arrangements and designation

49. Sections 10 and 11 are concerned with the arrangements that need to be put in place for an electronic monitoring system to operate. The policy objective is to place a number of obligations on the Scottish Ministers and the courts respectively in relation to the operation of the proposed electronic monitoring regime.

50. The Scottish Ministers will be obliged to:

- make contractual or other arrangements for the monitoring of offenders under the relevant court disposals or licence conditions;
- notify the Scottish Courts and Tribunal Service of the identity of the person or persons who may be designated by the courts as being responsible for the electronic monitoring of individuals sentenced by the courts; and
- when requiring an individual to submit to electronic monitoring in connection with their release on licence, designate a person so notified as the person responsible for the electronic monitoring of the individual, and notify the designated person and the individual of the designation and of the details of the monitoring.

51. In turn, when requiring an individual to be subject to electronic monitoring, the courts will be obliged to:

- designate a person so notified as the person responsible for the electronic monitoring of the individual;

- notify the designated person and the individual of the designation and of the details of the monitoring.

Obligations and compliance

52. Sections 1 to 14 of the Bill outline the obligations which an individual is placed under and sets out a number of rules in relation to any breach of those obligations. The policy intention is to create a single set of stand-alone provisions covering compliance with the obligations associated with electronic monitoring. For example, any individual who is made subject to electronic monitoring will be obliged to wear an approved device (or, as appropriate use that device in some other way) in line with instructions given to them by the designated person. They are further obliged not to tamper with or intentionally damage the device.

53. Section 13 of the Bill provides that if an individual breaches the obligations placed on them specific to electronic monitoring, they will be deemed to have breached the underlying order or licence condition. The intention behind this provision is to enable enforcement action to be taken under the terms of the underlying order or licence condition without the need to have electronic monitoring specified as a bespoke requirement of that underlying order or licence condition.

54. It is important to note that a number of different enforcement procedures exist across the different underlying orders. Breach of sexual offence prevention orders and sexual harm prevention orders amounts to an offence. However, breach of a Community Payback Order, drug treatment and testing order or restriction of liberty order does not in itself amount to an offence. The fact that there may have been a breach of electronic monitoring does not in and of itself change the above. Whether or not it amounts to an offence depends on provisions relating to the underlying order. This is considered further below in relation to Home Detention Curfew.

Home Detention Curfews - new proposals

55. As indicated above, the murder of Craig McClelland of Paisley by James Wright, whilst the latter was unlawfully at large following his release on Home Detention Curfew (HDC), led to reviews of HDC arrangements by the inspectorates of police and prisons. Their review reports included a number of recommendations for improvement. In his statement to Parliament, the Cabinet Secretary indicated that the Scottish Prisons Service, Police Scotland and the Scottish Government accepted all of the inspectorates' recommendations. [5]

56. The Cabinet Secretary has now proposed that risk assessment process should be strengthened to make decision-making procedures regarding HDCs made more robust and the Scottish Prison Service has made changes in light of this. Specifically, the inspectorates recommended that there should be greater consideration of the potential risk that an individual may pose to the community, improved access to police intelligence to inform decisions, improved support and guidance for staff who undertake assessments and, now, a presumption of refusal of Home Detention Curfew where the individual's offence involves certain prior

behaviours (e.g. someone convicted of a sexual or violent offence, organised crime etc.).

57. The Cabinet Secretary stated that there will now be a presumption that individuals whose index offence involves violence or knife crime will not in normal circumstances receive Home Detention Curfew and that he would consider the option of placing this on a statutory basis. He also stated that the Scottish Government will also look at exclusions for individuals who have known links to serious and organised crime. [6]

58. In its report, HMICS examined the powers available to Police Scotland to apprehend individuals who remain unlawfully at large. Consequently, it recommended that the Scottish Government considers making remaining unlawfully at large a specific offence. HMICS also proposed associated powers of entry for the police. In his statement, the Cabinet Secretary indicated that he accepted this recommendation and would consult criminal justice partners on the best way forward. He indicated that this would be taken forward by way of an amendment to the Bill at stage 2. [7]

59. A series of other recommendations were proposed in the reviews and agreed to by the Cabinet Secretary relating to the processes of deciding upon and monitoring the release of offenders on HDC and on information-sharing between the different bodies involved in the scheme.

60. The additional evidence taken by the Committee on these matters during the period November 2018 to January 2019 as part of our extended Stage 1 scrutiny is included below.

Evidence taken on electronic monitoring

Risk assessment, monitoring, compliance and enforcement

61. As indicated above, the Scottish Government believes that electronic monitoring can have a greater role to play in supporting its vision for a safer, fairer and more inclusive nation in which those who have been victims of crime can feel safer and more reassured, and those with a history of offending can be supported to be active and responsible contributors to their communities. As such, provisions in the Bill seek to extend the scope for use of electronic monitoring as an alternative to custody or in a post-conviction environment.

62. The assessment of risk is central to the question of whether a person is appropriate for electronic monitoring. Connected issues include arrangements for monitoring compliance and dealing with breaches.

63. In relation to risk assessment within the court process, James Maybee, Highland Council and Social Work Scotland, explained that for electronic monitoring technologies in general—

> Social Work Scotland is clear that electronic monitoring is not a panacea and is not for everybody. We have to take cognisance of the potential net-widening effects of electronic monitoring, as and when it becomes available in more forms. The key is the risk and needs assessment that goes along with electronic monitoring, whether as part of bail, a Community Payback Order, a prison licence, a sexual offences prevention order or a risk of sexual harm order. It is critical that there is a professional needs and risk assessment as to the suitability of the particular individual for electronic monitoring as part of their sentence.
>
> Source: Justice Committee 08 May 2018 [Draft], James Maybee, contrib. 24[8]

64. He also stressed that an important component of the risk assessment process was a summary of the evidence that is narrated in court, noting that this is not always currently available. He said—

> On the information and evidence that criminal justice social work receives to inform our risk and needs assessment and the level of service/case management inventory tool, what is sorely lacking is the summaries of evidence that are narrated in court. More often than not, the social worker is entirely reliant on the information that the offender provides for the criminal justice social work report.
>
> This has been a bone of contention for a long time and has been raised on numerous occasions in every conceivable forum. It is a critical part of enabling the social worker to provide a much more evidence-based and objective report on risk and need. Without it, we are entirely reliant on the offender's version of events. There may be important information missing from that, particularly in relation to victims. We get such information on sex offenders and that is helpful and informative. My plea is for that to be considered for other offenders.
>
> Source: Justice Committee 08 May 2018 [Draft], James Maybee, contrib. 41[9]

65. In its submission, Social Work Scotland stressed that risk assessments needed to look at wider issues than just the person who would be fitted with the device. It noted that "careful risk assessment practice including home visits is essential in order to inform decision making in relation to electronic monitoring curfew arrangements and this should include consideration of the impact on the individual, family, household members and victims". [10] This point is discussed further below.

66. Monitoring compliance and dealing with breaches were key issues too from many of those we took evidence from. Victim Support Scotland was typical of the evidence we heard—

> For Electronic Monitoring to be effective there should be clear implications for infringement of a buffer zone. This is necessary to sustain compliance among offenders and crucially, to maintain the trust of victims and the community, who must be assured of the effectiveness of the technology, and in turn their faith in the justice system enhanced. We are encouraged that Section 17A (1) (a) of the 1993 Act enables Scottish Ministers to revoke the licence and recall the offender to prison where the offender has breached their licence conditions. We acknowledge that rehabilitation and community involvement reduces crime, leading to fewer victims in society. However, there must always be an avenue to recall those who breach their licence conditions as a measure to keep victims safe and also to enhance public confidence in varied use of Electronic Monitoring in the management of offenders. [11]

67. In her evidence before the Committee, Nicola Fraser of Victim Support Scotland elaborated on this point—

> ... communities have no faith in community sentencing. That is because—we have discussed this before—it takes too long for someone to be found to be in breach of their order. People have suggested that we look at zero tolerance for breaches. If a person has an Restriction of Liberty Order (RLO), they can have eight or nine breaches of 10 to 15 minutes each. How long do we wait until they are in breach of their conditions? How many times will somebody stand outside a victim's house before they are in breach?
>
> Source: Justice Committee 08 May 2018 [Draft], Nicola Fraser, contrib. 227[12]

68. Similarly, Karyn McCluskey of Community Justice Scotland explained—

> The response needs to be swift and visible. Non-compliance needs to be dealt with robustly, otherwise it will just increase. One of the recommendations in the electronic monitoring report was that we needed to look at how we address compliance robustly. At the moment, about 30 per cent of sheriffs will put a very robust programme in place and will ask criminal justice social work about every small breach; with others, that is less the case. As we go forward, in order to give the public confidence that we are dealing with people appropriately and that we will protect them, we will need to set up a very robust programme to manage people in the community.
>
> Source: Justice Committee 08 May 2018 [Draft], Karyn McCluskey, contrib. 73[13]

69. Other witnesses also argued for a "zero tolerance" approach to breaches, such as Pete White of Positive Prisons? Positive Future who said that, in the context of someone fitted with a tag whilst awaiting trial that[i]—

> When it comes to a breach of conditions, there should be a zero-tolerance approach, because individuals who are under some kind of electronic monitoring need to know what the limits are. I find myself surprised to hear myself say that. It is also important that people with a court case pending realise that it is a very serious matter and that, if they are to be released on some kind of monitoring, their conduct will, in effect, form part of the trial process.
>
> Source: Justice Committee 08 May 2018 [Draft], Pete White, contrib. 209[14]

70. In her evidence to the Committee, Professor Nancy Loucks of Families Outside noted—

> The Bill addresses different types of technology. If the sections on breaches are to be clear, they must acknowledge that there must be different responses to breaches based on the different types of technology that we are talking about. The response that is required when someone goes outside a boundary or breaks a curfew is different from the response that is required for someone who is using an alcohol bracelet. That should be addressed either in the guidance documents or in the nuances of the Bill itself.
>
> Source: Justice Committee 08 May 2018 [Draft], Professor Loucks, contrib. 281[15]

We return to this point in a later section of this report.

71. One interesting observation in this area that ran somewhat contrary to the rest of the evidence the Committee heard was that from the British Transport Police who stated that "One concern would be that, by allowing these individuals to be tagged and therefore remain in similar circumstances which may have brought their behaviours to the attention of the police in the first instance, this may prove to be more harmful in the long run (i.e. could increase re-offending)." [16] Overall, though, the BTP said that it had "no major concerns with this approach as an alternative, provided that due consideration is had before releasing prolific or serious offenders." [16]

72. In his written submission, David Strang, then HM Chief Inspector of Prisons for Scotland raised some concerns about the consistency of decision making in deciding whether electronic monitoring is appropriate, when the court is deciding what sentence to impose and when an offender serving a custodial sentence is released on license." [17] It is important to note, however, that the situation in relation to HDCs at least has now been revisited.

73. Finally, one critical point about the current process of the monitoring of compliance and the reporting of breaches is that this is not done in real time. Chief Superintendent Garry McEwan of Police Scotland explained that monitoring is not control and is retrospective. Additionally, the police do not have access to real-time monitoring information. He added—

> The question that concerns me is what the individual is doing during the time when he or she is breaching their curfew or other conditions. It is not real-time control; it is retrospective monitoring, unless there are technological advancements that will bring the information to the fore more quickly. Those would be really important.
>
> Source: Justice Committee 22 May 2018 [Draft], Chief Superintendent McEwan, contrib. 44[18]

He further commented—

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i NB. At present, the Bill does not extend the use of electronic monitoring as a condition of bail.

> The element that is missing currently is the power of arrest, which goes back to the need for a proactive response. The police do not have the power of arrest, should any individual breach their curfew. For example, if we come across an individual who has breached a curfew—and if we are aware that they have breached a curfew—we do not have the power to arrest that individual at 3 o'clock in the morning. A report needs to be submitted to the respective sheriff, who then issues a warrant, so the individual is left to go on their way. The power of arrest should be considered.
>
> Source: Justice Committee 22 May 2018 [Draft], Chief Superintendent McEwan, contrib. 100[19]

The issue of power of arrest is also relevant to the Committee's deliberations on Home Detention Curfews.

74. In evidence to the Committee on 5 June 2018, the former Cabinet Secretary explained that the Scottish Government was in the process of revising guidance that is issued to criminal justice social work services. This includes updated guidance on responding to breach. [20]

75. Commenting more generally on risk, he added in written evidence that—

> ... I am of the view that the management of risk in the system needs to ensure robust but also proportionate management of risk, across the long and short-term sentenced cohorts. Risk cannot be eliminated from the system completely, only managed, and almost all those in 6 custody will be released at some point. [21]

Is the extension of electronic monitoring punitive?

76. The Committee heard a number of views on whether an extension of use of electronic monitoring could ultimately result in more punitive community sentences being imposed, rather than being used as an alternative to custody.

77. For example, the Glasgow Bar Association said—

> Part 1 of the Bill makes provision for electronic monitoring to be part of a range of orders including Community Payback Orders and Drug Treatment and Testing Orders rather than a separate Restriction of Liberty Order also having to be imposed as is the current situation. The new legislation will allow a restricted movement requirement to be part of these orders. One concern may be that this will simply lead to Community Payback Orders and Drug Treatment and Testing Orders being effectively upgraded rather than more of them being imposed as alternatives to a custodial sentence. The extension of Electronic Monitoring would only be beneficial if it leads to an increase in these orders being made as alternatives to a custodial sentence rather than the same offences simply now attracting a CPO with additional electronic monitoring conditions.
>
> There may also be issues with the length of time an offender would be subject to electronic monitoring. A CPO can be imposed for over 3 years and if it has a requirement for electronic monitoring that marks a significant increase in the time an offender may be subject to intrusive monitoring or restrictions on his or her movements. Currently most Restriction of Liberty Orders imposed are for considerably shorter periods. The average length of these orders in 2017 was 3 to 4 months. [22]

78. Similarly, the Centre for Youth and Criminal Justice said—

> The proposed Bill appears to provide flexibility in the use of electronic monitoring (EM), and looks to the future, enabling the inclusion of new technologies as these become available. It also increases the parameters within which EM can be utilised to maximise its effective implementation across the justice system, from the point of conviction. The opportunity to reduce the number of separate community disposals imposed by the court through inclusion of EM as part of a Community Payback Order (CPO) is an extremely positive step. However, by enabling the extension of the period of EM beyond 12 months, there is a possibility that the current limit for a Restricted Liberty Order (RLO), when run in tandem with other CPO requirements to their completion, may become unsupportive of rehabilitation and take on a solely punitive element. This may occur where there are no changes to the number of days or the hours of restriction, and evidenced positive changes in attitudes and behaviours appear to go unrecognised. [23]

79. In its submission, Families Outside said—

> The concern we have is that Part I of the Bill focuses solely on surveillance and monitoring, with no reference to or provision for the support essential to make this work. Without structured supports in place, EM becomes a purely punitive measure that fails to address the reasons for the offending or to reduce the likelihood of breach due to pressures of unstable housing, substance misuse, poverty, chaotic environments, and damaging relationships. This risks increasing rather than reducing the prison population as people in need of support subsequently breach the terms of their EM order. [24]

80. Dr Louise Brangan of the Howard League Scotland also commented on this issue. She said—

> if it [increased use of electronic monitoring] is to do with increasing public protection from the risk of individuals and increasing surveillance in the community—if it is just used as a technological fix—we are concerned that the net widening and up-tariffing will result in an expansion in the number of people in the deeper end of the criminal justice system.
>
> Source: Justice Committee 15 May 2018 [Draft], Dr Louise Brangan (Howard League Scotland), contrib. 4[25]

81. Likewise, Dr Hannah Graham of the Scottish Centre for Crime and Justice Research said—

> If ... it is increasingly used in a risk-averse way, so that prisoners have temporary release that would not otherwise have had electronic monitoring added, there is the prospect of net widening and increased rates of recall at that end of the criminal justice system, and that might not be widely supported.
>
> Source: Justice Committee 15 May 2018 [Draft], Dr Hannah Graham (University of Stirling), contrib. 11[26]

82. In his evidence to the Committee, Lord Turnbull of the Scottish Sentencing Council noted that—

> The court principle—that is, that sentences must be fair and proportionate—incorporates the principle of parsimony, which is that sentences should be no more severe than is necessary to achieve the appropriate purpose of sentence in each given case. Therefore, the council hopes that a sentencing option that gives the sentencer more flexibility in applying that principle of parsimony will contribute to the individual sentencing purpose being achieved.
>
> Source: Justice Committee 05 June 2018 [Draft], Rt Hon Lord Turnbull (Scottish Sentencing Council), contrib. 7[27]

83. Whilst the former Cabinet Secretary for Justice noted that up-tariffing was a possibility as part of the provisions in the Bill. He said—

> Earlier on, I made three points. First, electronic monitoring could be used for someone who would currently receive a CPO that the sheriff feels that he requires further assurance on. Therefore, it would potentially be used as an up-tariff for those individuals.
>
> Secondly, electronic monitoring could be used for individuals who are in breach of a community-based order. If the matter is returned to the court, rather than deciding to issue a custodial sentence, the sentencer may decide to continue with the community-based order and add in electronic monitoring to give further assurance on that.
>
> Thirdly, electronic monitoring could be used for individuals who are being considered for a short-term prison sentence. The combination of a community-based order and electronic monitoring alongside an appropriate community-based programme that is thought to be robust enough for the individual might provide the required assurance. That option could be chosen rather than a short-term prison sentence.
>
> Therefore, there are various ways in which sentencers could use electronic monitoring. They could use it as a straight up-tariff element, which you mentioned, or it could be for a breach in respect of which the individual may otherwise get a custodial sentence. Closer monitoring of the individual might be seen as another option that could give further assurance. Electronic monitoring could also be used for individuals who are being considered for custodial sentences. The combination of a community-based order and electronic monitoring might give the assurance that is needed on what would be an appropriate sentence for the individual.
>
> Therefore, there are a number of different ways in which electronic monitoring could be used. It is not purely a matter of up-tariffing.
>
> Source: Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 77[28]

84. In a related session, the Committee also heard views that the use of electronic monitoring could be seen as discriminatory against those with lower incomes. James Maybee of Social Work Scotland said—

> Social Work Scotland is not convinced by the argument that EM should be used for offences such as fine defaults, for example. Our concern is that there is a risk that EM would become the default option and that because someone cannot afford to pay, they would get EM. There are lots of ethical issues around EM and proportionality. It is a restriction of somebody's liberty in a way that fining them is not. These things have to be taken into consideration when thinking about whether EM is a proportionate disposal or sentence for people who present a much lower risk. [29]

85. It should be noted that the Bill does **not** make provision for electronic monitoring (EM) to be used as an alternative to a fine in the way recommended by the EM Working Group and consulted upon by the Scottish Government.

Impact of electronic monitoring on families

86. The fitting of an electronic device clearly has an impact on the person who has to wear it. The ramifications though do not end there. A regime of electronic monitoring can have a wider impact on the family and friends of the individual in question.

87. Karyn McCluskey explained—

> I certainly think that home detention curfew is a big ask for lots of families. Having someone in the house from seven until seven might be quite difficult for families. We know that families can support people to comply with their order, but it takes a great toll on them.
>
> Source: Justice Committee 08 May 2018 [Draft], Karyn McCluskey, contrib. 48[30]

88. James Maybee also made a similar point to the Committee—

> The impact of electronic monitoring is certainly an issue for families, for obvious reasons. For example, there might be underlying tension between the partners in a household. Clearly, if somebody is confined, such tension can be exacerbated and the electronic monitoring might have unintended consequences. The research on the impact of electronic monitoring on families is fairly limited, so it would benefit from further study.
>
> Source: Justice Committee 08 May 2018 [Draft], James Maybee, contrib. 51[31]

89. He added—

> It is important that every member of the household is aware of what is happening, because children are very observant and will see that a box has been put in and that their father or mother is wearing an ankle bracelet, which will provoke the obvious questions. Making children aware of what is happening has to be an integral part of planning for electronic monitoring so that there are no surprises or shocks and that, depending on the age and stage of individual children, they have sufficient answers and information.
>
> Source: Justice Committee 08 May 2018 [Draft], James Maybee, contrib. 55[32]

90. Professor Loucks provided the Committee with an example of the types of challenges that tagging can bring for the wider circle of people affected—

> We had a call from a family that had taken their daughter home after her release on a tag. The house was surrounded by drug dealers because they knew that the daughter was there; they wanted to collect debts and to try to get her to resume her habit.
>
> Source: Justice Committee 08 May 2018 [Draft], Professor Loucks, contrib. 233[33]

91. Community justice body Sacro said in its written submission that "There is no mention of the impact of EM on the family or other residents in a household where there is an offender subject to statutory requirements including EM." [34] Sacro believes that this will have an effect on the potential for success of the Order, and any assessment of suitability for EM needs to take account of the views of everyone who may be affected by it.

92. In its evidence, Social Work Scotland warned—

> In some cases, imposing EM may reduce the risk to the public whilst simultaneously increasing the risk to someone else within the household. This may be the case where there is evidence of domestic abuse, for example. We welcome the proposal that decision makers clearly indicate their reason(s) for imposing EM, in individual cases, in order that EM continues to be used proportionately and its use is clearly linked to reported supervision goals and public protection. [10]

Resourcing issues and links to other support services

93. The Committee's findings on the financial aspects of this Bill, including the Financial Memorandum are set out in a subsequent section of this report. The Committee did, however, hear a number of views specifically on resource-related aspects of electronic monitoring and on the wider set of services that may be needed to ensure that the extension of electronic monitoring achieves the Scottish Government's policy intentions. The Committee consistently heard from witnesses that, in the vast majority of cases, electronic monitoring would only be effective if it was used alongside other support for the individual.

94. In his evidence to the Committee, James Maybee of the Highland Council and Social Work Scotland said that the Bill would be a "failed opportunity" if it ended up resulting in increased workloads for social workers whilst the main intent of the Bill in relation to the extended use of electronic monitoring "falls through the cracks because there is insufficient resourcing." [35]

95. He added that—

> The research evidence that the electronic monitoring working group considered clearly shows that electronic monitoring is most successful when support is available alongside it. A key point to make to the committee is that support is crucial, whether that is through criminal justice social work or the third sector. That has to be an integral part of electronic monitoring in the future if we are to maximise its potential success.
>
> Source: Justice Committee 08 May 2018 [Draft], James Maybee, contrib. 11[36]

96. Social Work Scotland said that electronic monitoring should be delivered using a partnership approach involving Police Scotland, criminal justice social work departments and the 3rd sector. Its view was that surveillance should not be applied without adequate provision of support, where appropriate, to facilitate desistance from offending and promote rehabilitation in line with the government's Justice Vision and Priorities. The body took that view that the implications for social work service provision will have to be considered and additional funding provided as necessary. [10]

97. Similar views were expressed by David Strang, (former) Chief Inspector of Prisons for Scotland, and by Chief Superintendent Garry McEwen of Police Scotland when they gave evidence to the Committee. Both stressed that such devices would not

work as a stand-alone sanction and that wraparound services were needed to support the individual. [37]

98. The Centre on Youth and Criminal Justice suggested in its written submission that training would need to be given to professionals to help develop their understanding of how electronic monitoring could be used—

> Alongside the legislative changes, a robust scaffolding to support learning and encourage developments of all professionals across the justice system in understanding the application of EM across a wider range of disposals wherever it could meaningfully be used to disrupt offending behaviour and support rehabilitation and as appropriate reintegration to the community. There is a risk that without the creative support to use knowledge from research, there will be little change. [23]

99. In his evidence, the former Cabinet Secretary for Justice agreed with the comments above on the need for additional measures to support the use of electronic monitoring. He said—

> From the findings of the electronic monitoring working group, it is clear that electronic monitoring on its own is not an effective mechanism for helping someone to address their offending behaviour. It needs to be seen as part of a package of measures and used alongside those other measures to address people's offending behaviour and promote desistance.
>
> The Bill will allow us to achieve that much more effectively by ensuring that electronic monitoring is seen as part of a package. We are extending the legislation to orders that people might receive that we do not currently have the scope to monitor electronically, so that people can see that there is a package of measures that are intended to address their offending behaviour, while monitoring them appropriately.
>
> Source: Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 50[38]

Extension of monitoring to those on bail

100. The Scottish Government's Working Group said that there is significant scope to extend the use of electronic monitoring at various points in the Scottish criminal justice system, both within a community setting and within the custodial estate, where risk is assessed as appropriate. The Working Group recommended at the time that the use of electronic monitoring should be extended to include electronic monitoring as a condition of bail, with the aim of reducing the use of remand. [39]

101. It should be noted, however, that an extension of electronic monitoring as an option for those people accused of an offence and released on bail is **not** currently in the Bill. Nevertheless, the Committee heard a number of calls in favour of such an extension.

102. The former HM Chief Inspector of Prisons for Scotland said that—

> ... remand should only be used in exceptional cases, where it is absolutely necessary to protect the public from serious harm or where there is clear evidence of a flight risk. Therefore, I would support a proposal to legislate to permit greater use of electronic monitoring or tagging to allow more alleged offenders to be granted bail whilst they await trial. [17]

103. Families Outside noted—

> Families Outside was under the impression that the Bill would introduce the use of EM as a condition of bail, both to increase protection of the public and to reduce the use of custodial remand. However, the Bill seems to make no note of the use of EM for Supervised Bail or Structured Deferred Sentences. With families (and children especially) feeling the impact of custodial remand often as much as a custodial sentence, this opportunity to reduce the use of custodial remand should be included explicitly in the legislation. [24]

104. In her evidence to the Committee, Karyn McCluskey went further, suggesting that the lack of extension of EM to cover bail and remand had "been missed" and said she would like to see it extended into these areas. [40] James Maybee shared this view, noting also some evidence of geographic variation when it came to bail. He said—

> There are pockets where courts are using bail supervision but—I speak from my experience in Highland—it is woefully underused, despite it being continually promoted in courts, with sheriffs and defence agents, and with the Crown Office.
>
> If electronic monitoring was available as part of remand as a bail condition, we might see an increase in the use of bail. It is important to recognise that the majority of cases need to sit alongside support, but if a bail supervision service is provided through criminal justice social work and the third sector, with a tagging element, it is reasonable to assume that courts might have more confidence in using it. That confidence would spread in a ripple effect throughout the public and with victims, which is a crucial consideration.
>
> Source: Justice Committee 08 May 2018 [Draft], James Maybee, contrib. 14[41]

105. In his evidence to the Committee, the Scottish Government's then Bill Team Leader explained the current absence of bail in relation to electronic monitoring—

> ... a number of the expert working group's recommendations are not in the Bill. In some cases, provision may be made for them in future legislation. The intention is that the Bill will provide an overarching framework that lays the groundwork for future use of electronic monitoring. One of the provisions in the Bill is to allow Scottish ministers to make regulations that will extend the ways in which electronic monitoring is used currently or as laid down in the Bill, which would allow us in the future to introduce alternative means for which no provision is currently made. That would allow measures that were suggested by the working group but are not in the Bill to be brought forward at a future time.
>
> Source: Justice Committee 24 April 2018 [Draft], Neil Devlin, contrib. 92[42]

106. In his evidence to the Committee, however, Douglas Thomson of the Law Society of Scotland questioned whether the Bill was the suitable vehicle for taking forward a proposal to extend the use of electronic monitoring to cover bail. He noted that the Bill currently before the Parliament related only to disposals post-conviction and that, as drafted, the Bill works on the assumption that the person has been convicted. [43] He added—

> I suspect that, given how the bill is framed and that it is the Management of Offenders (Scotland) Bill, the appropriate way forward would be to amend the Criminal Procedure (Scotland) Act 1995, rather than to have a short, one or two section, separate bill. Section 1 (1) begins:
>
> "When disposing of a case".
>
> Therefore, the Bill's starting point is the assumption that the case has been disposed of post-conviction. To include remand in the bill would require a fair bit of drafting skill. It might be more practical to have a separate short bill.
>
> Source: Justice Committee 15 May 2018 [Draft], Douglas Thomson, contrib. 62[44]

107. In his evidence to the Committee, the former Cabinet Secretary suggested that the Bill would give the Scottish Government "a mechanism" whereby it can pilot different approaches for electronic monitoring. He indicated that, in his view, the Bill has provisions which enable the government to introduce pilots to test the approach of having monitoring available to those on bail. However, he also indicated that a full roll out was "still some considerable distance away." [45]

108. He noted that an electronic monitoring scheme for bail had previously been piloted between 2005 and 2007. The evaluation of that scheme found that the pilots did not fulfil their aims of either increasing perceptions of public safety or reducing the custodial remand population in any significant way. That notwithstanding, the report suggested that electronic monitoring for bail had an intrinsic value as a means of imposing greater and more verifiable control over an accused person than ordinary bail. It further noted that electronic monitoring for bail - if the use of remand is reduced - allowed individuals pending trial to maintain social commitments and family contacts that they might not otherwise have done if remanded in custody. The former Cabinet Secretary therefore told the Committee that it would be important to test any use of electronic monitoring on bail properly.

109. The then Cabinet Secretary also elaborated as to why he considered the Bill could be used to provide for such pilots of electronic monitoring for bail. He stated that—

> There are provisions in the bill in relation to pre-conviction use of monitoring. Different disposals can be issued at different times while someone's case is being considered. Bail is an interim disposal that the court issues at a particular point, and our view is that that is perfectly within the scope of the Bill as it stands.
>
> Source: Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 101[46]

On the issue of the use of the word "offenders" in the short title of the Bill and whether this covers those on bail who have not yet been convicted of an offence, the previous Cabinet Secretary told the Committee—

> The bill is so titled because of the range of areas that it covers. It covers three different areas: electronic monitoring, reform of the Rehabilitation of Offenders Act 1974, and the Parole Board reforms. All those areas relate to offenders, but the bill does not specify that monitoring will be used post conviction. The bill allows us to use it for bail purposes as well, if that is appropriate.
>
> Source: Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 103[47]

Use of new technologies such as GPS and alcohol and drug monitoring

110. The Scottish Government's Bill contains provisions that allow the Scottish Ministers to provide for various issues by way of regulations. These include the:

- types of devices which may be used for electronic monitoring
- types of information which may be gathered
- use of information obtained through electronic monitoring

111. As noted earlier, electronic monitoring in Scotland is currently limited to the use of RF technology (employing a base unit along with an electronic tag on the individual). The Electronic Monitoring Working Group report also considered the potential of satellite tracking using the Global Positioning System (GPS) and of transdermal alcohol monitoring. It is these new forms of electronic monitoring that could be envisaged as being introduced in the future. As the Committee heard, both of these come with opportunities and challenges.

112. In relation to GPS, a number of bodies thought the new technology offered more possibilities in relation to monitoring, particularly the ability to track the location of an individual, but that this came with challenges. Social Work Scotland, for example, said—

> ... guidance for GPS monitoring should involve clearly defined boundaries for buffer and exclusion zones. It is imperative that boundaries are unambiguous and clearly outlined for those subject to restriction. Sanctions or responses to either type of infringement would have to be clear in addition to how alleged and actual apparatus failure would be responded to, including issues such as signal failure or disputed accuracy in pinpointing location, acknowledging that both the person's liberty and a victim's safety may be compromised.
>
> Buffer zones may require to be broader depending on the precision of the technology introduced to minimise the likelihood of legal challenge. These potential difficulties will be of particular relevance in many rural locations where network coverage is patchy and access to a signal is intermittent at best. [10]

113. The challenges of using a GPS system in certain parts of Scotland, particularly more remote and rural areas, was something highlighted by many who commented on the possibilities afforded by GPS. Particular concerns about the limitations of GPS technology in domestic abuse cases were highlighted by Scottish Women's Aid, as is discussed further below.

114. In addition to GPS, the Scottish Government has said that it is interested in the potential for electronic monitoring to also track a person's use of alcohol, through a technology known as transdermal alcohol monitoring. This can monitor and report on a person's alcohol intake through regular testing of levels contained in sweat.

115. Whilst a number of witnesses were positive about the potential benefits of this technology - especially given the statistics on crimes where alcohol is cited as a factor - others raised issues worthy of consideration, particularly around compliance. For example, James Maybee noted that—

> In our submission, we noted that how people change their behaviour is not a linear process; people go through a cycle of change, sometimes several times. Relapse is not always the case but, more often than not, it is part of the cycle. I am sure that we can all think of examples from dieting or trying to stop smoking of how often people go back to their previous behaviour and start the cycle again. With alcohol monitoring, there is a risk that things can be seen too much in black and white. If we are going to have legislation on that—which I support—we will have to have the right guidance so that there is a recognition that there is a high likelihood that someone who is required not to use alcohol will breach that requirement at some point, and that, therefore, on-going management of that individual will have to be part of the sentence. That is a critically important point to make. Parole licence conditions often say that someone must not drink, but that creates a problem in cases in which there is a dependency, because it is asking something that is just not possible. We have to be mindful of that when we are creating the legislation and the landscape around remote alcohol monitoring.
>
> Source: Justice Committee 08 May 2018 [Draft], James Maybee, contrib. 41[9]

116. Likewise, the Edinburgh Bar Association wrote that—

> Offenders with alcohol and drug addictions might have complex needs and Drug Treatment and Testing Orders and alcohol programmes tailor treatment to those needs. Complete abstinence from the outset is not expected and indeed can be dangerous. An offender on a DTTO undergoes a titration process until they are stable on prescribed medication. Some element of drug use at the start of an order is expected. The aim of the order is to eliminate drug use and assist the offender with other aspects of their lives. This is a lengthy progress and varies from case to case. However, often an offender on such a programme finds it difficult to accurately monitor and declare drug/alcohol use and if the technology existed to assist with that it might have some benefit in giving the supervisors accurate information on which to base any treatment plan. [48]

117. Whilst Dr Marsha Scott of Scottish Women's Aid warned—

> I know that there is a plan to do some pilots including alcohol bracelets to find out how they work. I am concerned about there being a punitive response in relation to them, but I am also concerned because people misunderstand the relationship between domestic abuse and alcohol and think that, if they keep an offender from drinking, that will keep them from offending. That is a really dangerous assumption.
>
> Source: Justice Committee 08 May 2018 [Draft], Dr Scott, contrib. 275[49]

118. In his evidence to the Committee, Chief Superintendent Garry McEwen was supportive of transdermal alcohol monitoring. He said—

> Alcohol and drugs are a significant causal factor in much of the crime that happens in the communities of Scotland. Alcohol and drug monitoring is an alternative and an additional wraparound for monitoring individuals who have a propensity to commit crime, or who have committed crime, under the influence of alcohol or drugs. It could well be advantageous in addressing their needs and protecting the public retrospectively. As an alternative to people serving short-term sentences in prison, monitoring is certainly a viable option.
>
> Source: Justice Committee 22 May 2018 [Draft], Chief Superintendent McEwan, contrib. 40[50]

119. In his evidence, the former Cabinet Secretary for Justice indicated that he recognised some of the challenges with compliance in relation to alcohol monitoring—

> We have to recognise that, for anyone who has an addiction and is trying to rehabilitate themselves, the risk of relapse is high. Relapse does not mean that the individual should not continue to try to address their addiction problem, but they must be assessed to see whether they are prepared to continue to do so. Transdermal monitoring is an electronic means of supporting programmes in that regard, but it cannot be done on its own. It needs to be part of a programme that promotes desistance and helps people to change their addictive behaviour.
>
> Source: Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 89[51]

Monitoring in cases of domestic abuse

120. One particular area covered by the Committee in relation to electronic monitoring was its suitability in cases of domestic abuse and what challenges might arise.

121. Scottish Women's Aid noted that GPS does not deliver all aspects of safety, nor monitoring of a perpetrator's behaviour, that are necessary to achieve a positive, protective outcome for women and children. GPS does not, for example, detect contacts attempted via other means, such as telephone, email, social media, text messages, or "chance" encounters outside monitored areas. Additionally, Scottish Women's Aid noted that some victims may be made anxious by seeing the abuser moving freely about in settings outside the exclusion zone(s), and cited studies which have indicated that some victims were concerned that abusers would be able to manipulate the technology or subvert its capacities and undermine programme rules and restrictions. [52]

122. On the other hand, in her evidence to the Committee, Leanne McQuillan of the Edinburgh Bar Association said that there was a "good potential" for the use of electronic monitoring in domestic abuse cases. She believed that the use of GPS technologies in particular had benefits in that it can widen the scope of monitoring to provide exclusion areas or addresses. [53]

123. The evidence from Glasgow City Health and Social Care Partnership set out some of the challenges of using electronic monitoring in domestic abuse cases. It noted—

> Currently in Scotland there is the option of setting up an exclusion zone for victims of domestic abuse where they will keep an EM device in their homes and an alarm will trigger if the perpetrator with the tag, either intentionally or accidentally, enters a specified area. Some victims have reported over time being re-traumatised by the presence of the box in their homes; so this provision very much requires the cooperation of victims.
>
> With more routine EM involving a curfew there is potential for example that the victim goes to home of the perpetrator as they are confined to that address – again potentially increasing risk or that the perpetrator takes potential victims into their home.
>
> We would highlight that EM can be used as an effective tool within domestic abuse, however it can have unintended risks. Therefore it is crucial that it does not become the default but is fundamentally assessment led.

124. Finally, Dr Brangan indicated that whilst the Howard League Scotland was not opposed to the use of exclusion zones in cases of domestic violence, it was important that the zones were not too large and suggested that a specific maximum spatial size or distance be set and a maximum number of areas that can become zones in these and other types of case when monitoring becomes more common for particular crimes. [54]

125. The then Cabinet Secretary indicated that the Scottish Government was already working with Scottish Women's Aid to develop a pilot for electronic monitoring in cases of domestic abuse. He said he wanted to test this technology first to see if it met their concerns, adding—

> There are a couple of things that we need to consider, such as how use of the technology would differ in urban areas and rural areas: for example, are there benefits that could be greater in rural areas than they would be in urban areas? I want to test those aspects before we consider use of the technology in this area, in order to address some of the concerns that Jenny Gilruth has highlighted, and which Scottish Women's Aid has expressed. Hopefully, through working with Scottish Women's Aid on the matter, we can understand the issues more fully and develop a system that is reflective of the concerns and anxieties that we have heard.
>
> Source: Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 60[55]

Electronic monitoring and gender issues

126. In its submission to the Committee, Engender noted that, whilst the level has decreased, Scotland still imprisons approximately 3,000 women, giving it one of the highest levels in northern Europe [56] . Engender cites research from the Prison Reform Trust that classifies around two-thirds of these detainees as "presumptively innocent". [57] The Prison Reform Trust also estimates that approximately 65% of women in prison are mothers and around 32% (perceived to be an under-estimate) identify themselves as single parents.

127. Interestingly, Engender's submission raises a number of concerns about a greater use of electronic monitoring.

128. Engender believes that electronic monitoring "brings with it a number of problems which negatively impact on mother-child relations". These concern the challenges that a mother will face if confined to a home for long periods of time (difficulties with childcare, challenges of employment, not being able to participate in outdoor play, reinforcing traditional gender roles etc.).

129. Engender were also critical of the Scottish Government's Equalities Impact Assessment (EQIA), describing it as not "robust" and adding that—

> Studies have shown that EM curfew hours are set in "routine and unimaginative ways" and that "sentencers are slow to grasp that they can and should take account of individuals' circumstances when deciding the length of community orders". The EQIA does not explore these known limitations with the use of EM.

Use of electronic monitoring for children under 18

130. In the children's hearings system (CHS) the current use of electronic monitoring in the form of a Movement Restriction Condition (MRC) will remain a disposal for a children's hearing if the criteria set out in statute are met (see sections 83, 84 and 86 of the Children's Hearings (Scotland) Act 2011).

131. In its evidence to the Committee, the Scottish Children's Reporter Administration (SCRA) said that it supported community based disposal options but that an explicit statement should be made indicating that the new types of electronic monitoring can only be made under this Bill would be helpful, and would clarify the situation for the children"s hearing. [58]

132. SCRA described the Bill as a "missed opportunity", stating—

> The new electronic monitoring provisions as proposed by the Bill could have a future application in respect of young people, which is not reflected in the current Bill – or in extant legislation. For example, the use of GPS technology and the potential for "exclusion zones" and the use of devices for monitoring alcohol or substance use could have a relevant application in the CHS.

133. In his written evidence to the Committee, David Anderson said that electronic monitoring "should be considered as the norm if an under 18 is being considered for bail or remand". He added that it would be necessary to ensure that individualised support is in place to give the best chance for a successful transition from bail to trial or sentence date. In his view, "everything should be done to keep a young adult from experiencing a prison environment" and that "EM is a potentially valuable option only if accompanied by the appropriate support". [59]

Use of private contractors and data protection issues

134. A further aspect of electronic monitoring considered by the Committee was the suitability of private contractors (as opposed to public bodies) to manage the system, and certain issues around data protection. Section 9 of the Bill provides that the Scottish Ministers may by regulation make provision about, amongst other matters, the use or sharing of information obtained through monitoring.

135. In her evidence to the Committee, Leanne McQuillan of the Edinburgh Bar Association said that it would be "very concerning" if a private company were to hold details of a person's alcohol and drug use were such new technologies to be rolled out as part of a programme of electronic monitoring. [60]

136. More widely, Dr Hannah Graham from the Scottish Centre for Crime and Justice Research agreed with Ms McQuillan, adding—

> That touches on a broader discussion that is worth having about whether we want the privatised model that is currently in place in Scotland and has been in place in England and Wales or whether to look at other approaches. That is a much bigger question than that of considering the Bill. Electronic monitoring has been done with moderate success and proportionality in places such as the Netherlands, Norway, Sweden and Denmark with a public service-led approach. My understanding is that the only involvement of the private sector might be in procuring the product but, after that, the approach is almost fully public service led—it is led by the probation service, which is the equivalent of our criminal justice social work. There are some really good questions to be asked in that regard.
>
> Source: Justice Committee 15 May 2018 [Draft], Dr Graham, contrib. 98[61]

137. In its evidence to the Committee, the Centre for Youth and Criminal Justice said—

> In relation to GPS technology, compliance with data protection and subsequent general data protection regulations, it would be useful to make clearer:
>
> - what information will be used for the purposes of monitoring,
>
> - who will have access to the information,
>
> - the period of time for which it will be held, and
>
> - the point at which it will be destroyed.
>
> Clarification regarding access to the more detailed information available through GPS monitoring, by the range of agencies who may be supervising or involved in supervising individuals such as social work, police, Multi Agency Public Protection Arrangements (MAPPA) and health, would be helpful. This is particularly relevant as the preference for GPS may be more likely to be used in situations where there is concern regarding imminence, severity and likelihood of further offending, and where more restrictive risk management procedures are sought.

138. They clarified that, for example, there is some information that could be provided by the use of GPS as opposed to RF electronic monitoring. GPS in certain

circumstances could offer an opportunity to identify earlier any patterns of behaviour that may suggest an individual's compliance is superficial by complying with avoidance of any restricted zones or sticking to specific curfews but they may be accessing other geographical areas that would raise concern in relation to possible victim contact which RF monitoring is not sophisticated enough to do. In the Centre's view, GPS monitoring could provide real-time mapping of an individual's movements which identify when they are actually seeking to circumvent such restrictions. They further stated that the appearance of compliance with existing conditions may mask more subversive and deviant patterns, which those supervising the individual (such as justice social work or Police Scotland) may be able to discern due to local knowledge if they are permitted access to the wider data, and not just compliance or breach information.

139. The Information Commissioner's Office in Scotland also commented on this matter. It said that the further use of information obtained through monitoring must only be processed for another law enforcement purpose as authorised by law (including regulations under section 9 of the Bill), and that the processing is necessary and proportionate to that purpose.

140. The Information Commissioner's Office in Scotland said that it welcomed the examples given in section 9, which include whether monitoring should be restricted to particular times or circumstances. In its view, "continuous monitoring may not be appropriate and proportionate in every case and so would not always be justified." The Office said that—

> The Bill could be clarified to ensure that when an individual is monitored only in certain times or circumstances, any personal information obtained through the monitoring device outside those times or circumstances is not to be further used without a clear and lawful reason for doing so. The Scottish Ministers could also consider much shorter retention and destruction periods for information which does not relate to the primary purpose of the monitoring. [62]

141. The Information Commissioner's Office in Scotland also made a number of other suggestions for improvements to the Bill or to guidance.

142. In its submission, the Glasgow Bar Association noted—

> The possibility of GPS technology or technology that monitors alcohol or drug ingestion raises significant issues. The ability to track an offender's whereabouts 24 hours a day and exclude them from or confine them to particular areas or is a marked increase in power from the ability to enforce a curfew through electronic monitoring. This raises questions about a person's Article 8 rights and how the information obtained from the constant tracking of an individual is used and ultimately disposed of. [22]

143. This view was supported by David Strang, then HM Chief Inspector of Prisons for Scotland who noted that—

> It is sensible to have the ability to introduce procedures and protocols for data sharing, storage and so on. As we know, the electronic world is changing very rapidly, and I do not think that you would want Parliament to have to legislate every time there was some new app or way of sharing information. The provisions are sufficient, but you are right that there is an issue about what happens to the data. The companies that are responsible for electronic monitoring, particularly with GPS and the alcohol monitoring bracelets, will capture a huge amount of data. It is really important that there is sufficient oversight and scrutiny of what happens to that data.
>
> Source: Justice Committee 22 May 2018 [Draft], David Strang, contrib. 49[63]

144. In follow-up evidence provided to the Committee, the Scottish Courts and Tribunals Service (SCTS) outlined their approach to data protection and electronic monitoring in light of GDPR. It confirmed that a "law enforcement" purpose is not regulated by the GDPR, and that—

> Where the court currently makes an order for electronic monitoring (in the prescribed form), a statutory duty is placed upon the clerk of court to send a copy of that order to the person responsible for monitoring the offender's compliance with the order (for example section 245A of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act"). This information is "shared" with the current contractor by the Criminal Justice Secure email service for the purposes of setting up the necessary equipment and monitoring compliance with the order. We anticipate that this process will not alter once the provisions of the Bill come into force. It is our understanding that this would fall within "law enforcement" purposes under the 2018 Act [Data Protection Act 2018], as processing required for the administration of justice.
>
> As is the case currently and in the context of the provisions of the Bill, the SCTS understands that any information which would be “shared” would be the information necessary to report any alleged breach to the court as set out in clause 14 of the Bill. That information would be provided to the courts in terms of the breach provisions of the over-arching disposal under the provisions of the 1995 Act, in terms of clause 13 of the Bill. To facilitate an early response to alleged breaches, agreement was reached in 2013 whereby the current contractor could intimate a breach report to the court via the secure email service. Again, we do not anticipate that there will be any change to this process.

145. The previous Cabinet Secretary said he was also aware of the need to meet new data protection rules. He told the Committee that—

> I am always conscious that the introduction of any new technology means that there is a need to ensure that the public in general have confidence with regard to the data protection measures that are associated with it. The intention in section 9 is to ensure that the data protection rights of individuals who are subject to monitoring will be respected and that appropriate regulations will be introduced to ensure that Scottish Ministers have a system in place that complies with all the data protection regulations and legislation that we have to comply with, including the recent changes around GDPR.
>
> The data will be collected and stored in accordance with data protection measures, and it will be discarded at the appropriate times. All of that will be set out in regulations, and the ultimate parties who are responsible for that are Scottish Ministers, because we are the data controllers in relation to these matters, even though the contract is being delivered through a third party.
>
> Source: Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 64[64]

146. In subsequent written evidence, the Scottish Government has said that it was "satisfied that the current arrangements for the processing of data for the purposes of electronic monitoring comply with data protection law". The Scottish Government also argued that the creation of a power in section 9 of the Bill to enable the Scottish Ministers to make provision via subordinate legislation for the collection and use of personal data obtained via electronic monitoring will strengthen this position further. [21]

147. Commenting though on some specific concerns that had been raised with the Committee in relation to the interaction between the NHS Scotland and Police Scotland, the Scottish Government clarified that in the case of someone on a monitoring regime who had been taken to hospital and who may have then breached the terms of their order—

> In general terms, a third sector service provider would not be entitled to data about monitored individuals using the prevention or detection of crime exemptions. Equally, details about an individual's health details would be sensitive personal data and colleagues in the NHS will have their own requirements to safeguard patients‟ information. Again in general terms, where a monitored individual is in the care of health professionals, that information is passed, with the individual‟s consent, back to G4S to verify, in order that it can be provided to the monitoring authority (SPS or Courts) so that they can consider any breach reports in that context. [21]

Electronic monitoring and Justice of the Peace courts

148. In its written evidence to the Committee, the Law Society for Scotland wrote—

> We would question if electronic monitoring is to extend beyond the sheriff court to include the JP courts. JPs do already have power to impose CPOs although the range of requirements that may be imposed by them is more restricted. [65]

149. Douglas Thomson of the Law Society explained further when he appeared before the Committee. He said that he did not see much scope for electronic monitoring to be extended into JP courts as these courts tend not to deal with high-tariff offences and that it was "relatively rare these days for cases that are prosecuted in JP courts to be on matters that would attract a custodial sentence, and electronic monitoring is generally an alternative to that." [66]

Home Detention Curfew

150. Since the tragic murder of Craig McClelland of Paisley, the Scottish Government has accepted inspectorate recommendations which included a tightening of the regime for Home Detention Curfews (HDCs) in Scotland. In his evidence to the Committee, Colin McConnell, chief executive of the Scottish Prison Service (SPS), told the Committee that the numbers released on HDCs had fallen by almost 75% from around 20-30 per week to "somewhere around seven". [67] He indicated that SPS had shifted from a presumption in favour of release on HDC to a presumption against. [68]

151. Newly issued guidance from SPS to prison governors now states that they should take a "cautious" approach to HDCs and take a "broad look" at a prisoner's offending history beyond just the index offence. Mr McConnell said that he now advised governors that if there is any indication that a prisoner had used a weapon or an implement against another person or any indication of meaningful or serious violence, no matter how far back that was, to be cautious in the decision-making. [69]

152. The Cabinet Secretary was questioned by the Committee on the issue of why the numbers being released now on HDC had fallen dramatically in recent months and whether the consequence is now an increase in prison numbers within an already over-crowded system. He said—

> I will drill down into the figures in more detail, but my understanding is that the 75 per cent reduction is not necessarily all down to the presumption. I believe that there is an element of risk aversion. The governors are working on further guidance and we may see the numbers creep back up. However, Liam McArthur is right that, now that we have accepted the inspectorates' recommendations and put a presumption in place, it is difficult to see the numbers rising dramatically to the point that they were at previously. I accept that point fully. Therefore, HDC will be part of how we collectively agree to lower prison numbers, but we will have to look at other options that we will address later in parliamentary proceedings.
>
> Source: Justice Committee 15 January 2019 [Draft], Humza Yousaf, contrib. 12[70]

153. Mr McConnell also outlined a number of other reforms that had been brought about by the reviews by HMICS and HMIPS. Now, any decision to release a prison on HDC is taking by the governor in change or, in his or her absence, the deputy governor. Previously such decisions could be taken at a "middle management" level. [71] Additionally, such decisions are informed by a "quantum leap" in the data held on each individual that is being considered. [72] Chief Superintendent Garry

McEwan of Police Scotland said that the risk assessment and communications between SPS and the police are "far better than they were previously." [72]

154. In his evidence to the Committee, the Cabinet Secretary defended the move towards decisions being taken by prison governors on HDCs rather than by a multi-disciplinary risk management teams which often is the case for other forms of electronic monitoring. He said—

> ... there is a difference between short-term and long-term prisoners, and for someone on a six-month sentence, who might serve only half of that and then go on to an HDC, it might not be appropriate to put together the kind of multidisciplinary team that would assess someone going into the open estate, given the resource and time that would be required. However, on John Finnie's general point, the working group is looking at whether the risk assessment can be done better, can involve more partners and can be improved. It is certainly one of the recommendations that is being taken forward.
>
> Source: Justice Committee 15 January 2019 [Draft], Humza Yousaf, contrib. 4[73]

155. Whilst noting the tightening of the regime and the consequential fall in the number of prisoners being released on HDC, Mr McConnell expressed a view that HDCs had been put in place to "test" people released into the community who had previously "made mistakes and fallen by the wayside". [68] HDCs therefore had a role to play in rehabilitation. The Cabinet Secretary agreed with this point, indicating that "HDC is a very useful integration tool." [74]

156. In her evidence, Wendy Sinclair-Gieben, HM Chief Inspector of Prisons in Scotland, outlined her concerns about the possible unintended consequences of the tightening of the HDC regime, namely an increase in the current prison population and whether a more risk adverse decision-making process would be taken forward in other areas such as the use of parole and in the open prison estate. She warned that the "pressure on prisons - some of which are already struggling - would become huge". She also warned of resultant pressure in prison staff and an increase in the levels of self-harm amongst prisoners and in violence. [75] The Chief Inspector called for an official, independent evaluation of the whole HDC regime which would collect reconviction statistics and evaluate whether HDC works for reintegration.

157. Both chief inspectors - of constabulary and of prisons - commented in the need to reform communications between the different bodies involved in the management of HDCs. Gill Imery of HMICS said that communication was absolutely a feature of her review and that HMICS intended to review progress of its recommendations in the spring of 2019 to assess whether the creation of a single point of contact within the police has made a difference to the two-way communication between Police Scotland and the SPS. [76]

158. Wendy Sinclair-Gieben also stressed the importance of improved communication between different bodies, supporting also a call for the NHS to be included as people on tags can find themselves in hospital which can cause breaches of their tagging conditions. [76]

159. In supplementary written evidence [21] , the Scottish Government provided further detail on how it expected risk management issues to be dealt with within the context of HDCs. The Government also set out further detail on what immediate actions had been taken since the inspectorates' reports, namely:

- Police Scotland strengthened the governance of activity to apprehend individuals who are unlawfully at large. These individuals are now discussed at each Local Area Commander's daily tactical briefings, ensuring clear tasking and supervision arrangements are in place.

- Police Scotland and SPS undertook urgent work to improve information sharing. In June, a Working Group was established to review and improve information sharing and communication processes in relation to HDC. As a result, a process is now in place so that information on individuals released on HDC - and those subject to recall to custody - is shared and acted on in real time. This means that efforts can be focused on identifying and apprehending individuals who are unlawfully at large.

- Actions were taken to strengthen cross-border arrangements where individuals are released to addresses in England and Wales, particularly in relation to notification of release and revocation of HDC licences. Police Scotland and SPS established single points of contact in all 43 police forces in England and Wales and have developed clear processes to alert those forces and HM Prisons and Probation Service to release on HDC to a curfew address in their area and any revocation of those licences. As a further safeguard, Police Scotland are also informed and confirm that the relevant information is logged on the Police National Computer.

160. In terms of risk assessment for HDCs, the Government agreed with the inspectorates and the recommendation that the guidance document (which describes in detail the HDC service) required extensive review in order to provide those charged with undertaking the assessment to release prisoners on HDC with more assistance in relation to the potential weight and importance that should be placed on previous offences, addictions issues and behaviour whilst in custody, etc.

161. In addition to the presumption against release described above, more information through police intelligence is now, according to the Scottish Government, being shared with SPS to inform decisions about HDC release.

162. In terms of the medium/longer term work that will take place, the Scottish Government has said that the multi-partner HDC guidance and governance group will, prior to the Inspectorate returning in May 2019, examine whether any of the presumptions should become statutory exclusions. They will also determine what if any criteria can be develop assist the judgements about how best to weight the additional information that is now available as part of the assessment process.

163. Finally, the Committee also heard concerns about the monitoring and evaluation of a person on HDC after the initial risk assessment has been carried out and a decision to place someone on HDC has been made.

164. HMIPS's report into HDCs in October 2018 noted that, where an individual's release on HDC was made subject to additional conditions (i.e. not just an electronically

monitored curfew) there appeared to be no monitoring of compliance. HMIPS stated that—

> Given that additional HDC licence conditions were not monitored, it is doubtful that they serve any purpose. If it is decided that additional conditions are required to address a specific concern or identified risk, it is essential that these additional conditions are accompanied by monitoring arrangements; agreed and arranged in advance and clearly annotated on the licence. If this is not possible, then serious consideration should be given to not granting HDC.

165. Additionally, during the evidence on 20 November, HM Chief Inspector of Prisons for Scotland noted that the position on monitoring additional conditions had changed. She said—

> Previously, licence conditions would be attached with no guarantee that criminal justice social work would be able to monitor or support those conditions. Now, there has to be a written acceptance and agreement in place before HDC can be granted. [77]

Proposed creation of a new offence of unlawfully-at-large

166. In addition to concerns over the processes applying when the original decision to release James Wright on HDC was made, the other main area covered by the independent reviews was that of the efforts by Police Scotland to apprehend him after he chose to remove his tag and remain unlawfully at large - during which he committed the murder of Craig McClelland.

167. The independent reviews made a series of recommendations in this area. One of the most notable is the proposed creation of a new offence of remaining "unlawfully at large", bringing with it clear powers for Police Scotland to enter and search premises when looking for a person.

168. Chief Superintendent Garry McEwan stated that, at present, the current guidance in responding to a breach was "very restrictive" and that the police had no power to enter and search premises. Furthermore, if in the course or routine inquiries they came across someone who was thought to be unlawfully at large, but for whom formal notification of this had not yet been received from a prison governor, then they had no powers to take that person into custody; describing this situation as a "real vulnerability". Mr McEwan supported calls for reforms on both of these issues in line with the recommendation in the review by HMICS. [78]

169. Police Scotland subsequently provided additional written evidence to the Committee setting out their views in more detail on the proposed new offence as well as proposals for extending police powers. This notes that between 18 June 2018 and 30 November 2018, there were a total of 51 persons who had their HDC Licence revoked and recalled to prison. According to Police Scotland, this causes officers time diverted from other tasks to trace and return the subject to prison. [79]

170. In its written submission, Police Scotland confirmed the view of Chief Superintendent Garry McEwan and argued that the primary shortfall in existing Scottish legislation is the lack of power of search and entry when tracing an individual who is unlawfully at large. The police stated that the powers of arrest contained within section 40 of the Prisons (Scotland) Act 1989 would benefit from

being extended to allow constables powers of search and entry similar to those provided to constables in England and Wales. In the police's view, there is an additional identified shortfall in the current legislation where a subject is clearly breaching the conditions of their licence and is discovered by police. In these circumstances, there are no powers given to officers to detain that person until the Prison makes a decision as to whether or not to revoke the licence. The police called for consideration to giving powers to police similar to those under s28 of the Criminal Procedure (Scotland) Act 1995 (Bail Reviews) who assist in closing that gap. All of this may, in their view, act as a deterrent to those subject to release on licence from prison and assist in re-integration into the community. [79]

171. The Law Society of Scotland, however, takes a different view. Its additional written submission argues that the principal issue in the McClelland case arose from a systemic failure of communication across the criminal justice sector. The Society states that there is no suggestion that the creation of any new offences would have prevented an offender who “remains unlawfully at large” from committing a further offence. The only outcome, in its view, from any new offence would be that they would remain in prison for longer as inevitably a conviction would result in the imposition of a sentence that would include a further term of custody. [80]

172. Furthermore, the Law Society raise a number of practical concerns about the way that the notification procedures would operate in respect of any such offence. In its view, before any offender could be convicted of any offence, they must be aware that they are in breach and that the breach would need to be established by corroborated evidence. Exactly how that notification would be achieved in practice would be highly problematic. [80] This would be due to the challenges of setting up an effective communication system with a person who may move address, change contact number etc.

173. The Law Society agrees that there are problems within the existing police powers to force entry looking for a prisoner and the inability to monitor those outwith their immediate enforcement zone. It suggests that a greater use of GPS tracking in EM devices may provide a better method of identifying and locating those who fail to comply with a recall notice. [80]

174. Speaking personally, James Maybee of Social Work Scotland said there would be merits in considering a new offence. He explained—

> There is a cause and effect and there is an issue of personal responsibility in adhering to that. Breaches of, for example, Community Payback Orders or prison licences, have clear consequences in that an individual is held to account for a breach of such an order. It does not necessarily follow that a sanction is imposed—for breaching a CPO, for instance—but the person has to go back, state their case and be held responsible for the fact that they have not complied with the conditions of the order. It is right to consider making it an offence, but I would not argue that it necessarily follows that there would be a sanction in every case, although that may be a consideration. [81]

175. In supplementary written evidence to the Committee, the Cabinet Secretary for Justice indicated his support for the proposed new offence. He said that the decision to create a new offence was—

> ... not being taken in isolation but it is just one of a number of actions that the Scottish Government, Police Scotland and the Scottish Prison Service have made in response to the 37 recommendations made by the Inspectorates. [82]

He further noted that—

> All 37 recommendations were accepted in full. The creation of a new offence was one of those recommendations and I do believe the creation this offence will strengthen the powers that the Police have to apprehend those who are unlawfully at large. It will also open up the option of an additional criminal penalty being imposed where an offender is unlawfully at large. [82]

176. Commenting on the concerns raised by the Law Society, the Cabinet Secretary indicated that he was "mindful of ensuring that the new offence will flow from an offender being aware of the notice of recall and failing to comply with that notice." [21] He also stated that he had noted the concerns with police powers to enter premises to effect an arrest of a person who is unlawfully at large. He intended to address this concern via a Stage 2 amendment in the Bill which will clarify the existing warrant procedure in section 40A of the Prisons (Scotland) Act 1989. He explained that Section 40A enables a warrant to be applied for to arrest a person who is unlawfully at large, indicating that he intended to clarify that the warrant is to be sought by the police and that the warrant may also authorise entry to, and search of, premises.

Conclusions on electronic monitoring

177. The Committee recognises that - where electronic monitoring is being used as an alternative to custody - a careful balance needs to be struck between the potential benefits of releasing someone on such a regime and public protection. In the Committee's view, electronic monitoring has an important role to play in the criminal justice system and we note the views expressed to the Committee that the use of Home Detention Curfews (HDCs) in particular can contribute to both rehabilitation and public safety by providing a more controlled process under which a prisoner is returned to society, if appropriately resourced as is discussed later. However, this requires robust regimes for risk assessment, monitoring and evaluation, and the enforcement of breaches, to be in place and adhered to. The public has the right to be protected as far as possible against the risk that someone will re-offend whilst on such as regime and to see substantive[ii] breaches of such orders swiftly investigated and appropriate action taken.

178. The Committee recognises that the weight given to considerations such as public protection, punishment and rehabilitation may vary in different situations where electronic monitoring might be used e.g. as part of a community sentence, release on HDC, or release on parole. The Committee is also aware that different procedures apply to such situations.

[ii] i.e. it not due to a technical fault or a more minor transgression.

179. Figures provided to the Committee by the Scottish Prisons Service showed that 14 new warrants for offences committed were issued for those on Home Detention Curfews (HDCs) in 2018. One of these crimes, tragically, was for the murder of Craig McClelland by James Wright in Paisley. This case and the subsequent independent reviews by HMICS and HMIPS led the Committee to review its initial findings on electronic monitoring generally and on the use of HDCs in particular.

180. On balance, the Committee remains broadly supportive of the Scottish Government's plans for electronic monitoring and the relevant provisions in this Bill. In our view, electronic monitoring should only be used after a comprehensive assessment of risk, particularly for those individuals who would otherwise be incarcerated.

181. In relation to HDCs, the Committee welcomes the recommendations made by HMICS and HMIPS and the agreement by the Scottish Government that these will be implemented in full. We note the sharp fall in the use of HDCs since the reviews (a 75% reduction), which will contribute to an increase in the prison population and potentially impact on efforts to rehabilitate prisoners. **The Committee supports an early assessment of the revised guidance issued to prison governors. More generally, the Committee seeks a reassurance from the Scottish Government that any wider lessons of the two inspectorate reports on HDCs will be applied to other areas where electronic monitoring may be used.**

Risk assessment, monitoring and evaluation

182. Robust risk assessment procedures are critical to the effective use of HDCs and other forms of electronic monitoring. The Committee agrees with the calls made in the evidence taken about the importance of ensuring that decisions on electronic monitoring are informed by proper and appropriate assessments. Such assessments need to consider the impact of electronic monitoring on the individual, their family and the wider community. **The Committee notes the ongoing work on risk assessment, such as the development of a new Risk Assessment Tool and would welcome more information prior to Stage 3 on this issue. Furthermore, the Committee calls on the Scottish Government to explore with the Scottish Courts and Tribunals Service how to more routinely supply criminal justice social workers with summaries of evidence from court cases, to inform the preparation of any risk assessments.** Such summaries would help for both pre-sentence reports and reports issued prior to release from a custodial sentence.

183. The Committee recognises that it is not appropriate to put too much detail on risk assessment and guidance on the face of the Bill. The Committee notes that there is a provision in the Bill for Scottish Ministers to make requirements in relation to monitoring of people on an electronic monitor, but no similar provisions apply to risk assessment. **The Committee calls on the Scottish Government to consider whether key principles and the weight that should be given to public protection and risk assessment drawing on the input from a wide range of agencies should be given greater prominence. The Committee also**

asks the Scottish Government to assess whether similar provisions on risk assessment as monitoring should be contained within the Bill.

184. Monitoring and evaluation are also important issues. The Committee notes the findings of the HMIPS report (October 2018) which noted that, where an individual's release on HDC was made subject to additional conditions (i.e. not just an electronically monitored curfew) there appeared to be no monitoring of compliance. **The Committee does not consider this to be acceptable and agrees with HMIPS that additional conditions need to be accompanied by monitoring arrangements, and that they are agreed and arranged in advance and clearly annotated on the licence. If this is not possible, then serious consideration should be given to not granting HDC.**

185. **Noting the significant number of recommendations made by both HMIPS and HMICS, the Committee notes in particular recommendation 9 from HMICS calling on the Government to develop statutory guidance with regard to these issues. The Committee calls on the Scottish Government to consider making provision for this in the Bill, requiring the Government to consult on, publish and maintain guidance setting out the roles and responsibilities of relevant agencies with regard to risk assessment and monitoring of conditions relating to the use of electronic tagging and monitoring.**

Tackling breaches

186. Equally important to the management of risk are the provisions and plans relating to tackling breaches. The Committee wishes to see breaches investigated and, where the breach is substantive (i.e. it not due to a technical fault or a more minor transgression), responded to swiftly and effectively. This will be especially important in terms of responding to breaches involving cases of sexual offences or domestic abuse offences where we note the strong evidence from Scottish Women's Aid and others expressing concerns over the use of GPS and exclusion zones. These bodies want to see Police Scotland respond quickly to breaches for offences of this nature. **The Committee notes that the Scottish Government is currently revising guidance for criminal justice social workers responding to breaches and asks the Scottish Government to share a draft of that guidance prior to Stage 3 consideration of the Bill. Effective inter-agency communications and protocols for these will be important areas for development.**

187. The Committee agrees that appropriate compliance regimes must take into account the more likely event of breaches when dealing with people with alcohol or drug addiction should the Scottish Government decide to use these types of monitoring in the future.

New offence and police powers - HDCs

188. In the case of HDCs, we note the Scottish Government's plans for the creation of a new offence of unlawfully at large where someone breaches such an order. The Committee further notes the divergence of views between Police Scotland and the Law Society of Scotland on the merits of creating this offence, as well as

wider police powers for entry and search and the ability to take someone into custody without notification that a person is in breach of their HDC order.

189. It is unfortunate that the details of how the Scottish Government intends this offence to work are not available to us prior to Stage 1 being completed. The Committee understands that the Scottish Government proposes to make changes to the Bill via amendments at Stage 2. **The Committee supports in principle the introduction of this new offence, however it will consider the detail of the offence and wider police powers if the Bill proceeds to Stage 2**. This would not preclude taking further evidence at Stage 2 if needs be.

Electronic monitoring more generally & resourcing

190. As stated above, the Committee recognises that electronic monitoring more generally can be used as part of community sentences as well as arrangements for the release of a person from a custodial sentence. We need to ensure that the Scottish Government's desire to see greater use of electronic monitoring as part of a community sentence is appropriate. **In this respect, the Committee seeks assurances from the Scottish Government that the extension of electronic monitoring will not result overall in more punitive sentencing, particularly for those for whom a financial penalty is deemed inappropriate simply on the basis of ability to pay.**

191. As was consistently reiterated to the Committee in the evidence it heard, in the vast majority of cases, electronic monitoring has to be provided along with other support measures designed to ensure that the Scottish Government's policy objectives of improving community safety and reducing re-offending are met. Moreover, as is discussed later in this Report in relation to financial matters, the Committee emphasises that an increased use of electronic monitoring will only be successful if adequate budgets are put in place for criminal social work and the wider services that support people subject to such monitoring. These include help with housing, employment, medical care etc. A failure to make available sufficient resources will hinder the effective use of electronic monitoring, failing the individuals involved and potentially increasing risks to the wider society. Additional resources may also be required to keep any use of electronic monitoring compliant with new data protection rules.

192. At this point in time, and taking into account the comments from the Scottish Courts and Tribunals Service, Police Scotland, Social Work Scotland and third sector bodies, it is not immediately obvious where the extra resources will come from. The Scottish Government estimated at the time of introduction that this Bill will result in a 10 per cent increase in the use of electronic monitoring, which also sits alongside its other plans for a presumption against shorter sentences in prisons[iii]. The increase in demand for services from increased monitoring, particularly if also extended to GPS and alcohol monitoring, may be considerable.

[iii] It is understood that Scottish Government plans for further developments in relation to a presumption against short sentences are expected shortly.

193. The Committee notes that whilst some bodies, such as the Risk Management Authority, have had their budgets increased, the current draft budget for 2019/20 has no increases set aside compared to 2018/19 for key budget lines such as funding of electronic monitoring[iv], or for section 10 funds[v] for third sector bodies whose programmes are vital to support people subject to an electronic monitoring regime. Furthermore, no change in budget is proposed in terms of grants to local authorities for Criminal Justice Social Work[vi].

194. The Committee accepts the view of the former Cabinet Secretary that it will not be straightforward simply to transfer any potential savings from the prison service into electronic monitoring. **Therefore, the Committee calls on the Scottish Government to make it clear to the Committee before the finalisation of the draft 2019/20 budget [vii] what additional resource has been set aside for the above-mentioned groups and others, and on what basis, to properly implement this Bill, and to set out when, subject to satisfactory assessment of non-custodial alternatives, we can expect to see a transfer, over the longer-term, from resources provided incarceration towards the use of electronic monitoring and other forms of community-based justice.**

Use of private contractors and data protection issues

195. The Committee notes that, in addition to the roles for the Scottish Prison Service and Police Scotland, at present, a private company holds the contract to manage the monitoring system and it was they who provided much of the information regarding the numbers involved in being monitored.

196. The Committee notes the view of the Edinburgh Bar Association that it would be “very concerning” if a private company were to hold details of a person's alcohol and drug use; notes the increased volume of sensitive new information that the proposed arrangements can provide, along with related issues of data access, sharing and retention and asks the Scottish Government to detail how those concerns will be addressed.

197. The Committee also noted the comments from the Cabinet Secretary that the provisions of this Bill are compliant with GDPR and data protection. Nevertheless, we heard anecdotal evidence that some people have being found in breach of an order during a period of hospitalisation because the NHS has refused to pass on personal details to Police Scotland. This issue chimes with the more general

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iv Scottish Government draft budget for 2019-20, Level 4 figures. Provided by SPICe.

v Provides funding to support the head office functions of Voluntary Organisations which support the delivery of community-based criminal justice services all of which offer specialist services for offenders and their families; includes organisations such as Apex, Families Outside, Sacro and others - funding is subject to grant allocation process.

vi Scottish Government, Draft Budget 2019-20. Table 9.14: Central Government Grants to Local Authorities Spending Plans.

vii Stage 3 of the Budget bill is currently scheduled for week commencing 18 February 2019.

concern about communications between all the different agencies and organisations involved in electronic monitoring. **The Committee encourages the Scottish Government to liaise with NHS Scotland on this matter and assure itself that the necessary guidance is in place to allow for the sharing of information where appropriate.**

Electronic monitoring as a condition of bail

198. Finally, the Committee notes that the Bill, as currently drafted, does not cover the extension of the use of electronic monitoring to some people as part of bail conditions. The Committee notes the Scottish Government's plans to carry out pilots under this Bill to this effect.

199. The Committee also notes, however, the views of the representative of the Law Society of Scotland who indicated that any such amendments necessary to extend the provisions in Part 1 to cover pre-conviction bail would not be within the scope of this Bill, given that it focuses on offenders and that the Bill provides for the use of electronic monitoring when “disposing” of a case. Additionally, the Committee notes the debate to be had on whether the regulation-making powers as currently set out in section 4 of the Bill would allow the Scottish Government to provide for electronic monitoring as a condition of bail.

200. In respect to the first of these issues, decisions on scope of the Bill are a matter for the Convener at Stage 2. It is not appropriate to make any further comments on scope in this Report as the detail of any possible amendments are not available. The Committee heard support from many witnesses for the use of electronic monitoring on bail. The Committee is broadly supportive of the Scottish Government's intention to pilot such an approach but, as with electronic monitoring more generally, any use of electronic monitoring for those on bail should be informed by proper risk assessment and coupled with relevant support. The Committee considers that it is a missed opportunity that the Bill has not been drafted in a way that makes it explicitly clear that electronic monitoring can be extended to cover bail.

Part 2 - Disclosure of convictions

Background

201. The Rehabilitation of Offenders Act 1974 ("the 1974 Act") provides that, following specified periods of time based on the sentence imposed (not the offence), convictions may become spent for certain purposes. Convictions resulting in lengthier custodial sentences (sometimes referred to as excluded sentences) do not become spent. The 1974 Act applies to England and Wales as well as Scotland. However, its subject matter is for the purposes of Scots law devolved to the Scottish Parliament.

202. The general rule is that people do not have to reveal spent convictions and cannot be prejudiced by them. For example, they do not have to declare spent convictions when applying for work in most areas. Certain types of work (both voluntary and paid) are exempted from these provisions, so that certain spent convictions must be declared when applying for relevant jobs (e.g. where working with vulnerable groups such as children). These exemptions are intended to strike an appropriate balance between supporting the rehabilitation of people with convictions and public protection.

203. In addition to self-disclosure of previous convictions, processes exist which seek to ensure that information about previous offending behaviour is, where appropriate, made available to potential employers and others. This is done by way of disclosure checks and the Protecting Vulnerable Groups Scheme, managed by Disclosure Scotland. Such disclosure can include information on spent convictions.

204. The aim of balancing rehabilitation with public protection is also reflected in rules relating to whether a person with a conviction is allowed to do certain types of work. The general legal position is that: (a) the existence of a spent conviction (where a potential employer is aware of it) should not be relied upon as a reason for refusing employment; and (b) the existence of an un-spent conviction is something which a potential employer may wish to have regard to but does not prohibit employment. However, previous convictions (whether spent or not) can create a legal barrier to a person carrying out certain types of work.

205. Until relatively recently, the rules for England and Wales on when a conviction becomes spent were the same as those currently applying in Scotland. However, in relation to England and Wales, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 made various changes. It provided for reductions in the time taken for convictions to become spent (for those sentences which could already become spent) and extended the range of sentences covered. The changes came into force in March 2014.

What does the Scottish Government propose?

206. It should be noted that, outwith this Bill, the Scottish Government is carrying out a separate consultation on the protection of vulnerable groups and the disclosure of criminal information. The consultation is covering changes to Disclosure Scotland

and to the PVG scheme, sets out policy proposals and ideas for how the barring service in Scotland should evolve and change and sets out proposals for a reduction in the disclosure periods for offences from 15 and 7.5 years, in line with the changing policy on rehabilitation of offenders. This would be achieved through the introduction of schedule 8B in the Police Act 1997. Proposals are also being suggested in relation to provisions for 12-17 year old children and the disclosure of convictions accrued in childhood.

Disclosure periods

207. As already noted, the Bill seeks to reduce the length of time most people with convictions have to disclose them. It also extends the range of custodial sentences covered by the provisions of the 1974 Act.

208. The 1974 Act refers to the time taken for a conviction to become spent as the rehabilitation period. In relation to Scotland, the Bill provides for a change of terminology, instead referring to the disclosure period. The policy memorandum highlights concerns that current references in the 1974 Act to rehabilitation periods and rehabilitated persons can give the impression that a person with unspent convictions should not be considered for any employment. It notes that—

> The 1974 Act is not intended to provide or suggest that a person is only suitable for employment once their conviction becomes spent. It is not the operation of the 1974 Act which makes a person rehabilitated; it is the actions of the individual themselves to become rehabilitated. By making certain changes to the terminology used in this Bill, it is hoped that where a potential employee discloses a conviction in future to an employer, that can be the start of a dialogue between the potential employee and employer about the suitability of the potential employee rather than an employer automatically rejecting an application. [1]

209. Table 1 below sets out, for a selection of sentences, the current rehabilitation periods applying in Scotland and in England and Wales. It also sets out the disclosure periods as proposed in the Bill for Scotland. The stated periods relate to people who were 18 or older at the time of conviction.

210. As can be seen from the table, the proposals for Scotland seek to:

- increase the maximum custodial sentence in relation to which a conviction may become spent from two and a half years to four years (mirroring existing reforms in England and Wales);
- reduce the time required for a conviction to become spent (in some cases below that provided by existing reforms in England and Wales);
- link the disclosure period for custodial sentences more closely to the length of the particular sentence by including it in the calculation (mirroring existing reforms in England and Wales);
- change some of the sentencing bands used for calculating the disclosure period for custodial sentences.

Table 1: Rehabilitation and Disclosure Periods (aged 18 and over at date of conviction)

	Scotland: current	England & Wales: current	Scotland: proposed
Custodial			
more than 4 years	always disclose (excluded sentence)	always disclose (excluded sentence)	always disclose (excluded sentence)
more than 2½ years up to 4 years	always disclose (excluded sentence)	sentence plus 7 years	sentence plus 6 years
more than 1 year up to 2½ years			sentence plus 4 years
more than 6 months up to 2½ years	10 years from conviction	sentence plus 4 years	
1 year or less			sentence plus 2 years
6 months or less	7 years from conviction	sentence plus 2 years	
Non-Custodial			
community order	5 years from conviction	length of order plus 1 year	1 year from conviction or length of order *
fine	5 years from conviction	1 year from conviction	1 year from conviction

* The longer of the two

211. References in the above table to custodial sentences of up to a certain period include that period (e.g. up to four years includes a sentence of four years).[ii] Some examples, of the impact the proposals in the Bill would have on the time taken for a conviction resulting in a custodial sentence to become spent in Scotland, are set out below:

- sentence of four years – proposed disclosure period of ten years (not covered by current rehabilitation provisions in Scotland);
- sentence of three years – proposed disclosure period of nine years (not covered by current rehabilitation provisions in Scotland);
- sentence of two years – rehabilitation period of ten years replaced by disclosure period of six years;
- sentence of one year – rehabilitation period of ten years replaced by disclosure period of three years;
- sentence of six months – rehabilitation period of seven years replaced by disclosure period of two and a half years.

212. Table 2 deals with those under the age of 18, setting out information on rehabilitation/disclosure periods for a selection of court sentences and, in relation to Scotland, disposals from the children's hearings system.

Table 2: Rehabilitation and Disclosure Periods (aged under 18 at date of conviction)

	Scotland: current	England & Wales: current	Scotland: proposed
Custodial			
more than 4 years	always disclose (excluded sentence)	always disclose (excluded sentence)	always disclose (excluded sentence)
more than 2½ years up to 4 years	always disclose (excluded sentence)	sentence plus 3½ years	sentence plus 3 years
more than 1 year up to 2½ years			sentence plus 2 years
more than 6 months up to 2½ years	5 years from conviction	sentence plus 2 years	
1 year or less			sentence plus 1 year
6 months or less	3½ years from conviction	sentence plus 1½ years	
Non-Custodial			
community order	2½ years from conviction	length of order plus 6 months	6 months from conviction or length of order *
fine	2½ years from conviction	6 months from conviction	6 months from conviction
Children's Hearings			
discharge	6 months from disposal		zero (spent immediately)
compulsory supervision order	1 year from disposal or length of order *		zero (spent immediately)

* The longer of the two

213. The effects of the proposed changes to disclosure periods would not be restricted to sentences (and other disposals) imposed after relevant provisions of the Bill become law. They would also apply to ones imposed prior to commencement, with the proviso that reductions in disclosure periods would not lead to a conviction becoming spent before commencement. Thus, where this would otherwise be the effect, a sentence only becomes spent on the day relevant provisions of the Bill become law.

214. The provisions in the 1974 Act also cover a wide range of other sentences and disposals. These include:

- situations where a person receives an absolute discharge or is admonished by the court;
- mental health orders imposed by a court on conviction (e.g. compulsion orders);
- sentences under legislation relating to the armed services;
- alternatives to prosecution.

215. The Bill provides for changes to disclosure periods in relation to some of these (e.g. cases where a person is admonished or the court imposes a mental health order) but not others (e.g. sentences under legislation relating to the armed services and alternatives to prosecution).

216. The Scottish Government has stated that changing the disclosure periods for sentences under legislation relating to the armed services would be outwith the legislative competence of the Scottish Parliament. It is also of the view that the disclosure period relating to endorsements for road traffic offences is a reserved matter.

217. The police and/or prosecution may offer various alternatives to prosecution in the courts. For the purposes of the 1974 Act, they fall into two categories:

- current rehabilitation period is zero (spent immediately) – warnings given by a constable or procurator fiscal and fixed penalty notices given under the Antisocial Behaviour etc. (Scotland) Act 2004;

- current rehabilitation period is three months from the date on which the alternative is given – include fiscal fines, fiscal compensation orders and fiscal work orders.

218. The Bill would retain these as the disclosure periods for alternatives to prosecution. The policy memorandum notes that the current rehabilitation periods for alternatives were only included in the 1974 Act as a result of amendments made by the Criminal Justice and Licensing (Scotland) Act 2010. As such, the Scottish Government does not consider that they are in need of reform.

Impact of subsequent convictions on disclosure

219. One of the aims of the Bill is to make the rules in the 1974 Act easier to understand. The policy memorandum notes that some of the complexity of the current provisions—

> has led to people over-disclosing on occasion and employers not understanding the rules with the result that the protections the 1974 Act affords to individuals with previous convictions not benefiting people in the way they should.
>
> Consequently this Bill proposes a numbers of changes to the structure and operation of the rules to help improve the accessibility of the legislation to help maximise the benefits the 1974 Act is intended to bring to people with previous convictions. [1]

220. An area of the current rules which adds to their complexity is the impact of subsequent convictions on the need to disclose earlier convictions (and vice versa). The Bill seeks to make some changes in this area.

221. Under the current provisions of the 1974 Act, a conviction which can become spent but has not already become so at the time of a subsequent conviction (i.e. the rehabilitation period is still running), may have the period during which it must be disclosed extended. The rules currently applying to Scotland generally mean that:

- where the subsequent conviction can become spent and was imposed under solemn procedure – the remaining period during which the original conviction must be disclosed is, if it is shorter, extended to match that of the subsequent conviction;

- where the subsequent conviction cannot become spent (because it resulted in an excluded sentence) – both convictions must be disclosed for life.

222. Taking the situation of an adult who is fined and, six months later, is given a custodial sentence following conviction under solemn procedure; if the above rules were applied using the proposed disclosure periods set out in the Bill:

- **example 1** (subsequent sentence of two years) – the one year disclosure period for the original offence is generally extended to match that of the subsequent conviction (i.e. six years from the subsequent conviction);

- **example 2** (subsequent sentence of five years) – both convictions must be disclosed for life.

223. In addition, where a subsequent conviction under solemn procedure can become spent, and has a shorter rehabilitation period than that remaining in relation to the original conviction, the rehabilitation period of the subsequent conviction is generally extended to match that of the original conviction:

- **example 3** – taking the situation of an adult who is given a custodial sentence of two years and, three years later, is given a fine under solemn procedure; the usual one year disclosure period for the subsequent conviction is extended to match that of the original conviction (i.e. six years from the original conviction).

224. The Bill seeks to abolish the rule illustrated by example 2 above. The policy memorandum (see paras 253-262) refers to this as the excluded sentence rule.

225. The Bill generally retains the rule illustrated by examples 1 and 3 above (subject to some changes to the exceptions).

Public protection: disclosure of spent convictions and prohibited work

226. The general rule for a person applying for work (paid or voluntary) is that:

- the person does not have to reveal any spent conviction;

- the existence of any spent conviction, where a potential employer is aware of it, should not be held against the applicant;

- the existence of any un-spent conviction is something which a potential employer can have regard to when considering suitability for employment, but is not a legal barrier to appointing the person.

227. There are, however, exceptions aimed at striking an appropriate balance between supporting the rehabilitation of people with convictions and public protection. In

such cases, spent convictions may be disclosed. In addition, convictions (whether spent or not) can sometimes create a legal barrier to a person carrying out certain types of work (paid or voluntary).

228. A formal process of disclosure is managed by Disclosure Scotland (an executive agency of the Scottish Government). It provides the following types of check for employers:

- basic disclosures;
- standard disclosures;
- enhanced disclosures;
- the Protecting Vulnerable Groups (PVG) scheme.

229. A basic disclosure provides information on any unspent convictions only. The other forms of check (sometime referred to as higher level disclosures) may also include information on spent convictions.[i] Guidance on what is disclosed is set out on the Scottish Government's website under the heading of Convictions and Higher Level Disclosures

230. Which type of check is appropriate depends on the work/role the person will be involved in. For example, the PVG scheme seeks to ensure that people whose behaviour makes them unsuitable to work with children or protected adults, cannot do regulated work with these groups.

231. The PVG scheme differs from the other forms of check in that, once a person is a PVG scheme member, Disclosure Scotland keeps an ongoing check on their suitability to continue working with children or protected adults. It will, if it discovers new information indicating that the person is now unsuitable for such work, tell the employer.

232. As noted in the policy memorandum (paras 101-103), the Bill does not seek to make any changes to arrangements under which spent convictions (or relevant non-conviction information) are disclosed.

233. However, the possibility of reforming the system of higher level disclosures is under consideration. For example, in February 2017 the Scottish Government published Protecting Vulnerable Groups Scheme Review: Terms of Reference. It noted that there were over a million members of the PVG scheme. And also, that over 3,000 people were on lists barring them from doing regulated work with children and/or vulnerable adults. Since publication of the terms of reference, there has been engagement with stakeholders. A formal consultation paper is expected by summer 2018.

Evidence taken on disclosure of convictions

What is the purpose of disclosure and has an appropriate balance been struck in the Bill?

234. The Scottish Government's policy intention for this Bill is clear. It wants to reduce the length of time most people with convictions have to disclose them. The reasons for this include the reintegration into society of those people who have previously committed an offence and to support efforts to help them gain employment.

235. The Scottish Government does not propose a total abolition of disclosure of all convictions, suggesting that there is still an overall purpose for disclosure. It considers that an appropriate balance needs to be struck between that purpose and reintegration of people who have previously offended given the stigma that is often attached to people who have committed a crime.

236. During its evidence-taking on the Bill, the Committee explored views of witnesses on the purpose of disclosure. In her evidence to the Committee, Dr Hannah Graham of the Scottish Centre for Crime and Justice Research said—

> There are multiple purposes to disclosure and having a period in which a conviction has to be disclosed, which I think the Government has referred to as a buffer period of time after the sentence has finished. One reason for it is that it minimises the risk of liability and loss. [...] there are concerns surrounding public protection when the nature of employment involves working with particular groups. It could have something to do with assessments of moral character, in terms of honesty or trustworthiness, and the need to comply with statutory occupational requirements. Those are some of the reasons for the regulations on disclosure periods. There are also provisions to guide or limit practices of disclosure in order to reduce unnecessary barriers to people with convictions accessing employment.
>
> Disclosure periods exist for multiple purposes. The question of which purpose is the most important depends on whose perspective we look at the issue from—that of the person with convictions, the employer's perspective, the Government's perspective or those of others. I imagine that you would get some nuanced responses to that question.
>
> Source: Justice Committee 15 May 2018 [Draft], Dr Graham, contrib. 132[83]

237. Whilst James Blair of Community Justice Scotland noted—

> The basis of the 1974 Act was that people were not actively disclosing and there was confusion. Disclosure was originally partly about public protection. I cannot see that the Bill has an answer to the question about the reason for disclosure. The Bill is just about time periods; it is not about reasons for disclosure.
>
> Source: Justice Committee 08 May 2018 [Draft], James Blair, contrib. 128[84]

238. Taken as a whole, the bulk of the evidence the Committee heard, in general, supported the overall goal of the Scottish Government in relation to disclosure, i.e. to help people move on from their conviction and rejoin society and the workplace.

Employment issues are covered in more detail in a subsequent section of this report. Most organisations were also supportive of the fact that the Bill does not plan to make substantive changes to high-level disclosures, also covered later.

239. One organisation to raised concerns was PETAL (People Experiencing Trauma and Loss) Support. It its written submission it indicated that that it supported parts of the Bill's proposals for low level criminals who commit low level crimes. However, it said that using a broad-brush approach for time of punishment (48 months), rather than the seriousness of the crime is wrong, and will absolutely no doubt in PETAL's opinion incur a negative impact on public protection and the ex-offender‟s opportunity and ability to possibly re-offend

240. When the former Cabinet Secretary for Justice gave evidence to the Committee, he was asked for his views on the approach taken in the Bill in relation to disclosure. He said—

> We have sought to take an approach that is based on the sentence that a person receives, rather than the offence that they committed. I understand Mr Kerr's point. We have taken a sentence-based approach because, when a court considers the sentence, it considers all the factors that relate to that offence: the nature of the offence and the impact on the victims and the local community. For example, if someone is done for breach of the peace, that could cover a range of things, which would not be apparent on the face of it, but which the court at the time of sentencing would have known about and which would be reflected in the sentence that the court imposed.
>
> We think that taking a sentence-based approach is better in reflecting on the disclosure time-frame than an offence-based approach, because that might not reflect the full extent or true circumstances of the case. It could put employers in a difficult position if they are trying to determine the nature of what went on in relation to an offence, rather than considering the sentence that was imposed.
>
> We have tied our time-frame to the sentence because the court has considered all the matters relating to the case and has imposed a sentence. In our view, that is a much more transparent process and the timescale is linked to the court making a determination on all the facts, rather than our trying to second-guess what the court was considering.
>
> Source: Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 111[85]

Terminology

241. One area where the Bill did come in for some criticism is its use of the word "offender" both in the short and long titles of the Bill and in certain sections.

242. James Blair's criticism was reflective of others. He said that Community Justice Scotland believed that the language and terminology of the Bill should change. He noted that the Parliament had previously passed the Community Justice (Scotland) Act 206 which changed the way that we talk about those who have offended. In his view—

> There are whole parts of the Management of Offenders (Scotland) Bill and the policy memorandum in which the language and the terminology do not meet the standard that the Parliament set in 2016, which is of concern to us. We are guardians of the national Community Justice Scotland strategy, so we adopt that language, and all services, including the police, use it when we refer to those who have convictions or offending behaviours. The use of language and terminology in the Bill is therefore disappointing. We have had discussions with the Scottish Government about why that has happened. There has been a bit of hesitation, because the Bill refers back to the Rehabilitation of Offenders Act 1974, which is an act of the Westminster Parliament. The terminology there is from 1974, and this Parliament has said that it was not appropriate. We have asked the Scottish Government to reconsider the use of the language in the Bill. The policy memorandum asks whether something supports individuals in moving on—which is the terminology that the Scottish Government uses—but I would say that the language, terminology and title of the Bill are not appropriate.
>
> Source: Justice Committee 08 May 2018 [Draft], James Blair, contrib. 76[86]

He added—

> The use of the terms "offender" and "ex-offender" is not helpful. We should talk about people who have had convictions and people with offending behaviour, as that empowers people rather than demeaning them, which is quite important. In our view, calling somebody who has a spent conviction an ex-offender, even though they have been through rehabilitation, is not supportive. From the discussions that were had in committee and in the chamber in 2016, I do not think that such an approach is supportive of the direction that the Parliament wanted to take.
>
> I think that the 1974 Act is the culprit here. The question is how appropriate it is to replicate the language that was used in the 1974 Act in the bill or the policy memorandum. Confusion will be created for those who are involved in sentencing, the police and people in statutory services or the third sector about what to call individuals. It is confusing that we seem to be moving back from the idea that we had in 2016, and we are not happy with that.
>
> Source: Justice Committee 08 May 2018 [Draft], James Blair, contrib. 78[87]

243. Pete White of Positive Prison? Positive Futures said—

> On 1 May 2015, the Scottish Government agreed never to use the terms "ex-offender" or "ex-prisoner" again in cabinet secretaries' and ministers' speeches and publications, and that decision has been honoured by cabinet secretaries, ministers and other politicians and civil servants. When somebody has been found guilty of an offence, they are no longer an offender. They are either a prisoner or someone who is serving a community-based sentence. The term "offender" holds people back when they are already in the justice system.
>
> When people in prison were surveyed some years ago to find out what term they would be comfortable with, they said, "If I'm not going to be a person, I'm going to be a prisoner", because they realised that they were people who were being held inside a prison. The way forward is the one that has been put very well by Community Justice Scotland. To label somebody as an "ex-prisoner" or an "offender" when they are already being processed away from the offence back to the situation where they might rejoin society is not helpful.
>
> Source: Justice Committee 08 May 2018 [Draft], Pete White, contrib. 304[88]

244. In her evidence, however, Dr Marsha Scott introduced a note of caution. She said—

> ... in the context of domestic abuse, in which re-victimisation and re-offending is so much more likely than in many other crimes, we suffer from a failure to share information about the background of convicted abusers—that is the phrase that we use—and we need to be very careful that the balance does not underplay the risk that many of them continue to pose to their families and, indeed, to future partners.
>
> Source: Justice Committee 08 May 2018 [Draft], Dr Scott, contrib. 306[89]

245. In its evidence to the Committee, NACRO - a national social justice charity - observed that whilst it welcomed the move away from the term 'rehabilitation' to 'disclosure', it seemed a little contradictory to fall under a piece of legislation that is called the 'Management of Offenders' Bill. [90]

246. Recruit with Conviction said, in a similar vein, that it supported the proposed amendment to the periods of disclosure of convictions and in particular the change of language from "Rehabilitation" periods to "Disclosure". [91]

247. In terminology, the former Cabinet Secretary said that the government had taken steps in the past when it introduced the Community Justice (Scotland) Act 2016 and changed the language that was used in this area. He noted that—

> We were criticised by some people for doing so, but that act was much more focused on trying to deal with people with convictions rather than referring to them as offenders and it moved much more to promoting desistance. If I recall correctly, the Criminal Justice (Scotland) Act 2016 enshrines some of that in our legislation.
>
> We are conscious of the matter and we recognise that terminology and language, not only disclosure periods, can have a drag effect against individuals being able to move on in their lives. If someone who has committed an offence is willing and able and we provide them with the right assistance, it is in all our interests that they be able to move on to a life away from committing offences because that promotes community safety. Therefore, if there are practical measures that we can take that help to support and address that, the Government is keen to do that. Language can play its part in helping to support that.
>
> Source: Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 125[92]

Employment-related matters

248. The Scottish Government note that over one-third of the adult male population and one-tenth of the adult female population in Scotland are likely to have at least one criminal conviction. [93]

249. The 1974 Act provides certain rules governing whether people with convictions are required to tell others about those convictions. The consequences of having to self-disclose previous offending behaviour for long periods of time and for such information to be included on a basic disclosure certificate can have an on-going impact on people's ability to gain employment, attend university or college, volunteer, secure an apprenticeship or get insurance or a bank account, etc.

250. According to the Scottish Government, the provisions of this Bill will reform the 1974 Act so that it achieves an appropriate balance between the rights of people not to disclose their previous offending behaviour and to move on with their lives and ensuring the rights of the public to be protected are effectively maintained. The provisions are also intended to increase clarity and make the legislation more accessible to those required to understand it. [94]

251. In its written submission, NACRO said that—

> Criminal record disclosure is one of the main barriers that people with criminal records face when trying to secure employment. Our experience indicates that this is largely due to employer perceptions and misunderstandings, often based on false assumptions around perceived risk to an organisation's security and harm prevention, as well as a belief that people with criminal records lack personal attributes such as honesty and reliability. In contrast, research which surveyed 2 employers' attitudes indicated that employers who have knowingly employed people with criminal records have reported a positive experience characterised by hard work if not harder, than those with no criminal record.
>
> We cautiously welcome these proposals which will bring the Scottish legislation more closely in line with the amendments that were implemented in England and Wales in 2014. However, despite these changes, we believe that the law does not go far enough to assist people with criminal records to draw a line under their past. At a time when employers report experiencing chronic skills shortages, we encourage Government to do everything possible to strike a balance between removing the barriers that people with criminal records face in accessing employment with the need to safeguard those at risk of harm. [90]

252. NACRO's views were shared by others, such as Recruit with Conviction, which said that the need to disclose convictions for excessive lengths of time creates stereotyped bias against people with convictions from employers and the wider public coupled with conviction disclosure anxiety which stops people applying for employment, promotions, education and voluntary work if they are required to disclose. [91]

253. On particular concern raised by NACRO, Positive Prison? Positive Future and others such as Families Outside is that of the use of a 'tick box' by employers at the early stages (i.e. prior to interview) of an application form. Families Outside wrote that the Bill—

> does not however address common practice in employment to have a 'tick box' at the initial application stage to ask whether someone has ever had a criminal conviction. Anecdotally we understand that this box is used to eliminate applications with criminal convictions at the outset, without hearing the details or circumstances of the offence of consideration of whether it prevents them from carrying out the job in question.
>
> In our own organisation, we do not ask this question but state that successful applicants will be subject to an appropriate level of criminal records check. This system works very well for us. Convictions should not in themselves rule people out of employment, and people should have a fair assessment of their appropriateness for a role without being disbarred automatically at the first stage. This Bill provides an opportunity for the Scottish Government to take a lead in improving employment practice and therefore resettlement for people with criminal convictions. [24]

254. In her evidence, Dr Brangan of the Howard League Scotland was critical of the disclosure periods for sentences of 48 months or more and the potential impact that this may have on a person seeking employment or applying for university. She described the proposed lifelong disclosure as "unnecessarily punitive". [95]

255. Similarly, Dr Hannah Graham of the Scottish Centre for Crime and Justice Research said—

> We could consider why the provision of a disclosure period, which gives the chance of something becoming a spent conviction, is not being extended to those who serve long-term sentences. Such an approach is not widespread in European research and practices; it is more unique to the United Kingdom. Elsewhere, employers do not routinely do criminal record and background checks as the norm.
>
> Source: Justice Committee 15 May 2018 [Draft], Dr Graham, contrib. 136[96]

256. In his evidence, David Strang, then HM Chief Inspector of Prisons for Scotland was also supportive of the plans. He said—

> There are lots of judgmental attitudes and there is stigma. That is why it is so difficult for people to get out of a life of crime, particularly if they have had short sentences and have gone round the system. It is really hard for such people to get a job unless someone can give them a leg up into employment. That is the experience of a lot of people in prison.
>
> Source: Justice Committee 22 May 2018 [Draft], David Strang, contrib. 125[97]

Clarity on the need to disclose convictions

257. Many of the submissions we received that commented on this matter said that the current law and guidance on the disclosure of convictions was unclear and complicated. The question for the Committee was whether this Bill improved the current situation.

258. On the more positive side, Pete White of Positive Prisons? Positive Futures described the proposed changes as —

> ... a step in the right direction. The idea is that people will be able to work out what their disclosure period might or will be, which will make the system a lot clearer. That will help people to realise that they are on a journey back to being a contributing member of society much more than the current arrangements do, as they are highly complex and difficult to negotiate, especially for somebody who has not had the best education or chances in life. That is a big step forward.
>
> Source: Justice Committee 08 May 2018 [Draft], Pete White (Positive Prison? Positive Futures), contrib. 173[98]

259. Similarly, Leanne McQuillan of the Edinburgh Bar Association said—

> The bill is a huge improvement, because I understand it, whereas I do not understand the 1974 act. Clients often ask when their conviction will become spent, although dealing with that is not part of our day-to-day job. We cannot give them an easy answer; we have to look up the position. Therefore, the clarity is very welcome.
>
> Source: Justice Committee 15 May 2018 [Draft], Leanne McQuillan, contrib. 113[99]

260. The submission from the Faculty of Advocates was more nuanced. It said that—

> The changes to terminology to improve the Act's drafting are welcome. Nevertheless, there is still perhaps some way to go before the law on disclosure of previous convictions can be said to be sufficiently intelligible, clear and coherent. We note that the Law Commission of England and Wales recently concluded that there is a “compelling case” for a review of the disclosure system as a whole (https://www.lawcom.gov.uk/project/criminal-records-disclosure/). In this respect, the interplay between the Management of Offenders legislation, including orders made under it, and the Police Act 1997 may be a suitable area for review.

261. West Lothian Council's written submission was more critical. It said that—

> The council does not agree that the reforms will make the law on disclosure of convictions more intelligible, clear and coherent. The council is of the view that the 1974 Act has been amended so many times that even licensing solicitors experienced in understanding legislative provisions find it extremely difficult to interpret. In addition, the law on when non-convictions including fixed penalties, warnings and alternatives to prosecution (AtPs) become spent is also complex. [100]

262. Similarly, the Scottish Children's Reporter Association said that in order for changes to disclosure provisions to be meaningful they also need to be understood – by everyone, but particularly by people with an offending history. SCRA's view is that "part 2 of the Bill does not simplify the situation and that an approach which repealed the relevant aspects of the 1974 Act and replaced them in their entirety with new would be clearer." [101]

263. Some evidence also questioned the approach taken in the Bill to particular types of disposals. For example, Leanne McQuillan of the Edinburgh Bar Association told the Committee that her—

> ... only concern was about admonition and absolute discharge. My concern is not about the terminology but about the proposal to have no disclosure period for absolute discharge and admonition. People are routinely admonished for what the public would think are quite serious offences, such as assaults that involve injury. That usually happens after a period of good behaviour or if a sheriff has become aware of particular circumstances—I am sure that admonitions are all given for good reasons.
>
> In road traffic cases, people are never admonished for speeding or for driving without insurance—they always get a financial penalty. Some employers might be less concerned about someone who drove once without insurance than about someone who was admonished for assaulting a person in a bar or being involved in an offence of dishonesty. The disclosure certificate could show that someone was fined an amount of money but make it clear that that was for a road traffic conviction. However, I am not convinced that an admonition should automatically be put in the same category as an absolute discharge, which is exceptional. I totally agree with the proposal to have no disclosure period for an absolute discharge, but I am not so sure about an admonition. [99]

Impact on families

264. Many of the submissions we received on disclosure focused on the impact on the individual who had committed the offence. However, a number also noted that the regime can have implications for the wider family of the individual.

265. For example, Professor Loucks of Families Outside noted—

> We have concerns about common practices such as publishing the addresses of people with convictions, as that impacts on the whole family. I do not have an answer to it, but we definitely need some sort of response.
>
> Source: Justice Committee 08 May 2018 [Draft], Professor Loucks, contrib. 182[102]

266. She added—

> I can respond on the impact of convictions. As I am sure you are aware, their impact extends well beyond the person who has been convicted. Indeed, the stigma and publicity surrounding convictions can affect the entire family. It can affect their housing status. For instance, if someone has been selling drugs from a particular premises, the entire family can be evicted, even if they had nothing to do with the actual offence. That has implications for where someone can return after imprisonment, and it affects the wider family, even though they have not themselves been convicted of anything. That is a frustration, so we must flag up the need to involve families in discussions about what happens next.
>
> Source: Justice Committee 08 May 2018 [Draft], Professor Nancy Loucks (Families Outside), contrib. 180[103]

Disclosure and the under 18s

267. The Scottish Government's Policy Memorandum Bill sets out its proposals for new disclosure periods and compares these with the current rehabilitation periods for certain sentences. [94] The Bill makes a distinction between periods for those aged 18 and over and those under 18 years of age. For under 18s, the relevant disclosure period is halved (following the current approach contained in the 1974 Act and no change to this existing policy is being made in this Bill).

268. The Scottish Government note that in respect of under 18s receiving a custodial sentence, it is only the "buffer period" that is halved for under 18s in order to determine the appropriate disclosure period. That is because the disclosure periods for custodial sentences will be based on the length of sentence plus an additional "buffer period" with the halving policy operating on the "buffer period". For example, the disclosure period for a two-year custodial sentence will be two years plus a "buffer period" of four years which will give an overall disclosure period of six years. If the person was under 18 at the date of conviction then the "buffer period" is halved. Therefore, the disclosure period for a two-year custodial sentence will be two years plus a "buffer period" of two years which will give an overall disclosure period of four years.

269. The Centre on Youth and Criminal Justice (CYCJ) said in its written submission that the wide ranging and particularly destructive effect of childhood criminal records has been well established and therefore efforts to reduce the need to disclose and time-frames for doing so are welcomed. The Centre said that it particularly welcomed the continuing provision to at least half disclosure periods for those aged under 18 at the date of their conviction The CYCJ believed this approach is supported by the evidence; in keeping with GIRFEC (Getting it Right for Every Child) and the UN Convention on the Rights of the Child (UNCRC); and recognises that young people should be treated differently to adults, in light of their different developmental needs. [23]

270. The CYCJ did make a series of suggestions for improvements, including:

- disclosure periods should be halved for those who were aged under 18 at the time of the offence, rather than at the time of conviction
- a potential anomaly in the legislation regarding community-based disposals and custodial sentences up to 12 months for young people aged under 18, meaning a custodial sentence could be considered spent more quickly than a community order (the CYCJ suggests both have zero disclosure periods)
- concerns about the potential effect of custodial sentences being treated as a single term, meaning sentences that individually are not excluded sentences, when taken together could amount to an excluded sentence

271. Clan Childlaw also had a number of concerns about the current Bill and part 2. or example it said:

- The onus is on the applicant to seek removal of the conviction information by a sheriff. We have concerns that an applicant's Article 8 privacy rights could be at risk during the appeal process, for example if a delay or inclusion on court lists leads to an employer or training provider finding out about a conviction before the process is complete.
- The schemes as amended do not sufficiently reflect the approach taken in the children's hearings system that children who are charged with offending behaviour are considered having regard to their welfare and not on a punitive basis.

Clan Childlaw concluded that "the right balance is not struck between protecting the public and vulnerable groups and the right of individuals to put adverse childhood experiences behind them." [104]

272. The Scottish Children's Reporter Association (SCRA) comment at some length on this issue in its written submission. SCRA says that it "unequivocally supports" the principle that changes needed to be made to disclosure. It also says that it supports section 29 of the Bill which specifies the sentences to which no disclosure period applies to. SCRA says, however, that it is "disappointed that the legislation as proposed continues to refer to these disposals as "sentences" and would, once again, state that offence grounds to a children's hearing should be viewed as just that – grounds for referral to a children's hearing". If this is not agreed, then section 187 of the Children's Hearings (Scotland) Act 2011 - where a children's hearings

disposal is defined as an "alternative to prosecution" – is a more accurate description of children's hearings disposals than a sentence [101]

273. SCRA suggests that "For young people it would be much clearer if the Government were to take a "clean slate" approach and draft full legislation in relation to moving on from offending and the requirements on individuals to disclose aspects of their history in certain circumstances." [101]

274. This view was shared by NACRO who said that the Scottish Government should consider a distinct system of disclosure for all young people prosecuted under the youth justice system.

High-level disclosure

275. The disclosure system described above relates to what is called the system of basic disclosure. There is also a system of higher level disclosure to which this Bill makes no direct changes. According to the Scottish Government, this higher level disclosure system exists to reflect the fact that there are some categories of employment and proceedings which require greater scrutiny of an individual‘s background.

276. The absence of any proposed changes to the higher level disclosure system was welcomed by a number of witnesses, for example, Dr Marsha Scott of Scottish Women's Aid. [105] She added, however, that there were some concerns around possible extensions of or changes to the time of disclosure, which needed to be carefully risk assessed in the context of domestic abuse.

Disclosure and domestic abuse

277. In its written evidence to the Committee, [52] Scottish Women's Aid said that it is important that those convicted of offences involving domestic abuse, stalking, and sexual offences are restricted in their ability to access vulnerable women and children and that women, children and young people are protected from harm. Its view is that "there must be a balance between the resettlement of offenders and the protection of the public."

278. Its submission argues that changes set out in the Bill could have an indirect impact on higher level disclosure of information about spent convictions—

> ... the proposals under the Bill to reduce the time periods before an offence is regarded as spent could be an issue in relation to disclosable offences under Schedule 8B [of the Police Act 1997]. If, under the Bill, offences become spent after a much shorter period, it would allow perpetrators of offences relevant to domestic abuse, stalking and forced marriage to apply at a much earlier stage to the sheriff to have offences listed under Schedule "protected" and thus, not disclosable. Clarification of this issue is needed
>
> Offences affected would be breach of the peace; Communication Act 2003 offences; non harassment order under the 1995 Act and breach of a non-harassment order under the 1997 Act; breach of a domestic abuse interdict with a power of arrest granted under the Domestic Abuse (Scotland) Act 2011 and breach of a forced marriage protection order under the 2011 Act. [52]

Role of the internet

279. During our inquiry, a number of witnesses highlighted one of the challenges that any system of disclosure will face in relation to spent convictions, namely that details of their case, offence etc. will often be searchable on the internet via media coverage at the time. This means that anyone's circumstances are likely still to be public available even after a disclosure period has passed.

280. As Families Outside explained—

> The internet has considerably increased public access to information, and deletion of such data is difficult at best. The concern is that, even if someone is not legally required to disclose previous convictions, a basic search of the internet is likely to reveal press coverage and comment about the original offence. In our experience, this has resulted in loss of employment as well as failure to hire, both for the person in question and for their family through "stigma by association". We would therefore welcome consideration in the Bill of how this type of information can become "spent" in the same way as requirements for disclosure. [106]

281. Similarly, Dr Brangan of the Howard League Scotland said—

> We can legislate for the Google effect, but it would be incredibly difficult to try to wrangle what goes on in those areas that are beyond legislation—social media is a bit like bandit country. However, the point about raising awareness and thinking about it more broadly is important because that is the longer game. I agree with Dr Graham [University of Stirling] that it is not something that can just be tackled with legislation; we need to have a robust conversation.
>
> Source: Justice Committee 15 May 2018 [Draft], Dr Brangan, contrib. 149[107]

282. The previous Cabinet Secretary echoed these views when he gave evidence to the Committee. He said that this was an issue of "genuine concern". He said that some mechanisms existed to request the removal of information on the internet from companies such as Google but that, beyond those, he did "not have an answer on how we resolve the issue." He concluded—

> There is no simple answer to the question. There might be scope to consider with internet providers whether they could improve the way in which their removal system operates. However, they will always say that there is a legitimate amount of information that they should be able to have on the internet for people to access if they consider it to be appropriate.
>
> Source: Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 127[108]

Potential impact on the insurance market

283. The final issue covered in this section is that of the potential impact of the changes to disclosure from the perspective of insurance companies. Whilst most other bodies were broadly supportive of Part 2 of the Bill, insurers were not.

284. In its submission to the Committee, the Association of British Insurers (ABI) said that—

> Setting customers' premiums on the basis of risk is the fairest way to set insurance premiums. Data on convictions for offences including theft, arson and fraud is used by insurers, alongside a number of other factors, when assessing the risk presented by a customer, where there is evidence of a link between such data and risk. Reducing the legal need for disclosure would limit the ability of insurers to use this data to assess risk. While the degree to which this data is used to price insurance will vary between product lines and insurers, losing the ability to take it into account could have an inflationary effect on some insurance premiums. [109]

285. ABI argues that if the Scottish Parliament chooses to reduce the period for which previous convictions must be disclosed, insurers may have to adjust their underwriting methodologies to respond to this reform of the law. It says that not being able to use certain risk factors when determining the price of insurance would mean that insurers have to spread the risk across all their policyholders in that market. This would mean, in its view, that the vast majority of policyholders in Scotland without criminal convictions have to subsidise the premiums of those who do and whose convictions must no longer be taken into account. [109]

Conclusions on the disclosure of convictions

286. The Committee is broadly supportive of the direction of travel in relation to changes to the regime for the disclosure of convictions. The Committee agrees that an appropriate balance has to be struck between society or an employer's right to know about a person's prior convictions in some circumstances and the ability of a person with prior convictions to move on with their life without the stigma associated with a criminal conviction.

287. The Committee notes the fact that this Bill only covers the basic disclosure regime and does not affect higher-level disclosures. The Committee welcomes the Scottish Government's consultation on the protection of vulnerable groups and the disclosure of criminal information, and its plans for a Disclosure Bill.

288. In relation to this Bill, the Committee notes that the higher-level disclosure system exists to reflect the fact that there are some categories of employment and proceedings which require greater scrutiny of an individual's background. The Committee highlights the comments from Scottish Women's Aid that clarity is needed about the impact of the changes in the Bill on higher-level disclosure for some categories of offences involving domestic abuse. **The Committee calls on the Scottish Government to respond to this point in the Stage 1 debate.**

289. The Committee recognises the very real challenges faced by people with prior convictions - which were brought into stark reality by those we met during the Committee's visit to the Wise Group - in finding employment after being convicted. People with prior convictions can be stigmatised and discriminated against when it comes to finding employment. The Committee notes with concern the comments from Families Outside and others that this the use of a 'tick box' in application forms is "used to eliminate applications with criminal convictions at the outset, without hearing the details or circumstances of the offence of consideration of whether it prevents them from carrying out the job in question". [24]

290. **In this respect, the Committee recognises initiatives such as Release Scotland[viii] and other employer-led schemes.** The Committee would support any efforts to move these beyond larger companies into the SME community. The Committee believes such programmes and the changes to the disclosure regime are especially important for young people who have committed an offence. The Committee asks the Scottish Government to respond to the concerns in our evidence from the Centre on Youth and Criminal Justice (paragraph 270, second bullet point) and by the Scottish Children's Reporters Association (paragraph 272).

291. The Committee welcomes the changes that are being made to the currently complicated regime for disclosure but questions if these make the new regime fully accessible and clear to all. Even the new regime will be complex and can be difficult for a person to understand and for an employer too. More public awareness campaigns will be necessary to explain what is being done, including the development of simple-to-use tools and information products that explain when a person is required to disclose.

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viii **https://www.releasescotland.com/**

Part 3 - The Parole Board

Background

292. Parole is a system that enables prisoners to be released on licence in the community under the supervision of a community based social worker. If a prisoner is released on parole, they are subject to be recalled to prison at any time if they breach the terms of their licence. Parole is only granted where the Parole Board for Scotland ('the Parole Board') is satisfied that the risk presented by the prisoner can be managed in the community.

293. The Parole Board for Scotland is an independent tribunal. Its primary role relates to the possible release of a prisoner once that part of the sentence which relates to punishment and deterrence has been served in custody. The Parole Board is tasked with assessing whether the level and nature of any risk a prisoner still presents at that point can be safely managed in the community. It also considers the conditions under which a prisoner may be released.

294. In the main, its role is limited to prisoners serving long-term (a fixed period of four years or more) and indeterminate custodial sentences.

295. The Parole Board currently has 30 members. It sits with a minimum of two members when dealing with casework meetings and a minimum of three for oral hearings and tribunals. The latter can be reduced to two in certain circumstances.

296. The Prisoners and Criminal Proceedings (Scotland) Act 1993 currently provides that overall membership of the Parole Board must include a:

- High Court judge
- psychiatrist
- person with knowledge and experience of the supervision or aftercare of discharged prisoners
- person who has studied the causes of delinquency or the treatment of offenders.

297. The Parole Board considers prisoners for parole at, tribunals, oral hearings and casework meetings. For tribunal and oral hearings, Parole Board members normally sit as a panel of three, with the chairman of the panel required to be legally qualified for tribunals and oral hearings.

298. At casework meetings the prisoner will not be present and the Parole Board will consider the case on the basis of the dossier of papers supplied to them by Scottish Ministers. Tribunals and oral hearings are held with the prisoner present, or through live link (such as a video link) enabling a prisoner or witness to attend from a remote location.

299. Tribunals are held for the first and subsequent considerations of life prisoners, prisoners subject to an order for lifelong restriction and prisoners with an extended sentence, who have been recalled to prison in the extended part of their sentence.

300. All other cases are considered at casework meetings, although in certain cases the Parole Board may, if it considers that is in the interests of justice, deal with the case by way of an oral hearing.

What does the Scottish Government propose?

301. The Bill seeks to remove the requirement for the Parole Board to include a High Court judge and a psychiatrist. The policy memorandum argues that—

> As the number of members has grown to meet demand and the skills, knowledge and experience of members has widened, there is less need for members of this type to be a statutory requirement. There are 30 members of the Parole Board including one medical and one judicial member. The judicial member rarely sits and their role can be fulfilled by the legal members of the Board. There are also sufficient members with experience in forensic psychiatry to provide medical expertise to the Board. [1]

302. The Bill also provides for changes to the duration and renewal of appointment of Parole Board members – moving to a five-year term with the potential for automatic reappointment. The policy memorandum states that this will bring the terms of office into line with other tribunals and help to maintain the level of expertise within the Parole Board.

303. In relation to the work of the Parole Board, the Bill includes provisions on:

- review of decision not to release or to revoke a release licence – putting into statute current practice by providing that determinate sentence prisoners (with a number of exceptions) are entitled to have the Parole Board review its decision within 12 months;

- long-term prisoners subject to deportation – bringing the treatment of such prisoners into line with most other long-term prisoners by providing that it is the Parole Board, rather than the Scottish Ministers, which makes the final decision on whether they should be released on parole.

304. The Bill expressly states that the Parole Board will continue to act as an independent tribunal. It would also allow the Scottish Ministers, by way of regulations, to authorise the chairperson of the Parole Board to make administrative arrangements for the Parole Board (e.g. in relation to the use of committees).

305. Outwith the Bill, the Scottish Government announced on 19 December 2018 that it planned to consult on the openness and transparency of the Parole Board in Scotland and the involvement of victims of crime in its work. The Scottish Government has said it wants to "give victims a stronger voice in the parole process" and look at how it can better support the Parole Board's decision-making and how to make the Parole Board as open and transparent as possible. [110]

Evidence taken on the Parole Board

Independence and governance

306. In their evidence to the Committee, John Watt and Colin Spivey of the Parole Board for Scotland noted that, at present, the Parole Board operates under the Prisoners and Criminal Proceedings (Scotland) Act 1993. John Watt said that this Act lacked detail about what the board ought to do, how it should do it and what some of the tests should be. In addition, in his view, the Act says nothing about governance, so we have had to pretty much invent a governance system, which is not ideal.

307. Mr Watt stated that—

> We hope that the new legislation will reinforce our independence. The Worboys case went into this in some detail, as previous cases have done. The board is a court, and it needs that independence, which—in my view—needs to be reinforced.
>
> Source: Justice Committee 22 May 2018 [Draft], John Watt, contrib. 147[111]

308. Mr Watt concluded—

> If we accept that the board is a court, it must be able to demonstrate its independence. The issue is not so much that it is independent—I do not think that anybody thinks that it is not—as the appearance of its independence. From what they see and know, the public must have confidence that the board is independent and, if they do not see, read or know what provisions are in place for that independence, there is at least a risk that the board will not have the appearance of independence.
>
> Source: Justice Committee 22 May 2018 [Draft], John Watt, contrib. 162[112]

309. In his evidence to the Committee, Douglas Thomson of the Law Society of Scotland described the Parole Board tribunal system as "a very odd part of the Scottish legal system". He noted that it is called a tribunal, but it does not form part of the Scottish Courts and Tribunals Service, and there is no automatic appellate process for its decisions. In his view, it sits in a rather ad hoc position. He said—

> There is no piece of legislation that sets out what the Parole Board does. Its rules are in the form of a statutory instrument, but, with the exception of the 2001 act and the current bill, there is nothing that sets out what it does. The tribunal system has effectively developed in increments and as a result of court decisions. There would be some merit in placing the board on a formal statutory footing, as the board itself says, and in considering whether to put the Parole Board tribunal system on a statutory footing, so that it becomes part of the SCTS and perhaps has some form of appellate process. At present, if someone is aggrieved by a decision of the Parole Board, they have to go from the criminal system to the civil system by way of judicial review, which creates certain difficulties.
>
> Source: Justice Committee 15 May 2018 [Draft], Douglas Thomson, contrib. 169[113]

310. In their evidence, the Sheriff's Association noted that the Bill does not propose to re-constitute the Parole Board for Scotland as a statutory Tribunal within the ambit of the Scottish Courts and Tribunal Service. The Association said that—

> At an earlier stage in consultation the Senators of the College of Justice submitted a full response to the Scottish Government setting out detailed reasons for re-constituting the Board in this way. The Association agrees with the views expressed by the Senators. Recent events in England where the head of the English Board has been required to resign have tended to reinforce concerns about the need to safeguard and strengthen the independence of the Scottish Board by re-constituting it as a statutory tribunal. [114]

311. Speaking at the point of introduction of the Bill, Neil Devlin of the Scottish Government indicated that—

> The Scottish Government's position is that the bill is designed to reinforce the independence of the Parole Board. We feel that the provisions as drafted are sufficiently strong in that regard. If, during the course of evidence, it becomes apparent that that is not necessarily the case, we would not dismiss that suggestion out of hand. However, our position is that the independence of the board is enshrined in the bill as drafted.
>
> Source: Justice Committee 24 April 2018 [Draft], Neil Devlin, contrib. 161[115]

312. The former Cabinet Secretary said that whilst he understood some of the questions raised by the Parole Board, he was of the view that the Bill goes "far enough in restating the independence of the Parole Board in its decision making", adding—

> I know that the board draws comparisons with the situation of the Scottish Courts and Tribunals Service and with the Judiciary and Courts (Scotland) Act 2008. However, the board operates somewhat differently from those bodies, so putting something about that in the bill would have no value whatsoever. The board operates as an independent body, and I think that the bill goes sufficiently far in reinforcing that. I do not think that we could add anything to the bill that would enhance or materially change any of that.
>
> Source: Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 139[116]

313. In its recently announced consultation [110] , the Scottish Government has said that it recognises the independence of the Parole Board, but is considering an option of transferring the Board to the Scottish Tribunals structure. The Scottish Government argues that this would provide clearer lines of accountability and that Parole Board staff would benefit from being part of a wider team of officials within the Scottish Courts and Tribunals Service.

314. One consequence of the above proposal would be that the Board as established by the 1993 Act could become part of an existing Chamber of alternatively a new dedicated Chamber within the Scottish Tribunals led by a Chamber President. The Scottish Government is proposing that, as a replacement to the current Chair/Board member structure, the Lord President of the Court of Session (Lord Carloway) would now have a role to "bring a breadth of experience to the leadership of the parole jurisdiction and to its members." Furthermore, a wider pool of judiciary would "provide support" to Board members.

Risk assessment, common tests and transparency

315. In terms of the decisions to be made by the Parole Board there are currently two tests which must be met before releasing or re-releasing certain categories of prisoners.

316. One of these tests is in relation to the release of life and order for lifelong restriction (OLR) prisoners and provides that a direction to release cannot be made unless the Parole Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined. The second test is concerned with the re-release of extended sentence prisoners and provides that that a direction to re-release cannot be made unless the Parole Board is satisfied that it is no longer necessary for the protection of the public from serious harm that the prisoner should be confined.

317. There are no specific tests concerning decisions to be made by the Parole Board for the release, re-release or recall of other types of prisoners.

318. Some witnesses argued that there should be a single test for decisions on the release of prisoners. This was considered by the Scottish Government, with the consultation paper stating "We propose to introduce a common test to be applied in all release, re-release and recall cases considered by the Parole Board".

319. On this point, Douglas Thomson said—

> One issue that has proved controversial and is perhaps worthy of comment is the difference between the test for re-release of a determinant-sentenced prisoner—a life prisoner—and the test for an extended sentence prisoner. That difference is based on the decisions of the European Court of Human Rights and English appellate case law. When someone is serving a life sentence, the test is whether that is necessary for the protection of the public, and when someone is serving an extended sentence, the test is whether that is necessary for the protection of the public from risk of serious harm. It is perhaps a little anomalous that the two tests are slightly different, and I do not think that it would be likely to create injustice if there was a uniform test for when a person is fit to be released from custody when it is felt that the public would be adequately protected. Although there is a logic behind the serious harm test, I suspect that, in practical terms, the board continues to apply everyday common sense to cases, as it did when I was a member. If there is a concern that somebody is not yet at a position at which they can safely be released into society, the terminology is not really key and it is not necessarily helpful.
>
> Source: Justice Committee 15 May 2018 [Draft], Douglas Thomson, contrib. 161[117]

320. Inverclyde Council was also supportive of a common test. It said—

> Inverclyde Council would have welcomed introduction of a common test being applied in all release, re-release and recall cases considered by the Parole Board. This would have assisted in improving clarity, accountability and equity in this critical area of decision making. [118]

321. John Watt of the Parole Board for Scotland stated that the views of his organisation had "varied over time" and that they had found it difficult to formulate a single test. He stated that every release should be subject to a statutory test which was not the case at present and he would prefer to see a single test as this would be "best and most useful". Failing that, in his view, "there should be a test for each release". [119]

322. A second point that was raised about the process by which the Parole Board for Scotland made its decisions was that of their transparency. John Watt said that the Board was already making progress in this area because, in his view, "the public ought to understand that more widely, and the media certainly should". He said that the Board planned to publish publish the factors that are taken into account when making decisions on parole and was working on being able to publish redacted decision minutes.

323. In its evidence, Social Work Scotland said that—

> We would also suggest that more could be done to improve the transparency around both processes and decision making. For example, we do not believe that the rationale behind parole decision making it is always clear for those who use services or that the process is experienced by them as consistent. Timescales around notification of outcomes could be clarified and this should address all parties to the decision making process. Our experience indicates that there are occasions when community based social work services are notified at a very late stage which has implications for realisation of risk management plans. [120]

324. The former Cabinet Secretary was also supportive of efforts to improve the transparency of the Parole Board's work. He said—

> On greater transparency, there is currently provision for the chair of the Parole Board to provide information about a case in exceptional circumstances, where that is appropriate, although I understand that the board has not made much use of the provision.
>
> The Worboys case raised issues that the Parole Board and the Scottish Government have been considering in the context of Parole Board rule 9, which provides that disclosure of information is not allowed. We are keen to ensure that the board operates in as open and transparent a manner as possible, notwithstanding some of the confidentiality issues that exist, and consideration is currently being given to addressing the issues that arose in the Worboys case to ascertain whether we can improve and enhance transparency in the decision-making process.
>
> A significant amount of work is also being done in England and Wales as a result of the judgment. We have been in touch with the Ministry of Justice to explore its direction of travel in the work that it has been carrying out, so that we can properly understand how we might improve how we do things in Scotland. There is more work to be done in the area to ensure that the system operates in a more transparent manner, notwithstanding the issues to do with confidentiality, which are extremely important.
>
> Source: Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 143[121]

325. In its recently announced consultation, the Scottish Government has said that it will look at ways of improving the transparency of the Parole Board and of its decision-making. It is consulting on options which include better information provision to victims and their families about parole decisions and the possibility of extending the option to attend a parole board hearing to the media or general public. [110]

326. The Government has also said that it will look at whether the role of the Parole Board and other organisations involved in compiling information for the parole dossier could be widened to include the NHS, the police and the Crown. [110]

Role of a High Court judge and psychiatrist

327. At present, there is a requirement for the Parole Board membership to include a Lord Commissioner of Justiciary and a registered medical practitioner who is a psychiatrist. In its Policy Memorandum, the Scottish Government set out the reason for the proposed removal of this requirement. It said that as the number of members has grown to meet demand and the skills, knowledge and experience of members has widened, there is less need for members of this type to be a statutory requirement. The Scottish Government notes that there are 30 members of the Parole Board including one medical and one judicial member. Its view is that the judicial member rarely sits and their role can be fulfilled by the legal members of the Board. In its opinion, there are also sufficient members with experience in forensic psychiatry to provide medical expertise to the Board.

328. These views were shared by the representatives of the Parole Board for Scotland when they appeared at the Committee. John Watt said—

> We do not necessarily see a benefit in having a psychiatrist on the board, and supplementary written information underlined some reasons for that. We did a recruitment round in 2016 that included psychiatrist recruitment and had two applicants, so not many psychiatrists out there seem to be interested. We appointed one. They give us their availability, which the scheduler tries to match with cases in secure hospitals. However, the psychiatrist is not always available when a case needs to be dealt with.
>
> My view, and I think that of the board, is that board members are perfectly capable of examining medical witnesses—with cross-examination, if need be—to extract the relevant information and request more if necessary. The presence of a psychiatrist is not always helpful to extracting evidence.
>
> Source: Justice Committee 22 May 2018 [Draft], John Watt, contrib. 221[122]

329. This view was endorsed by Social Work Scotland who said that, given the varied qualifications and experience of members, particularly in the field of mental health, they did not regard specific representation by a psychiatrist or a member of the judiciary as necessary. [120]

330. Douglas Thomson of the Law Society for Scotland took a different view. He said—

> A number of life-sentence prisoners, and some determinate-sentence prisoners, will be in hospital when they come before a Parole Board tribunal to be considered for parole so, in that respect, there is a benefit in having a psychiatrist present. During my time on the board, I chaired a few tribunals at the state hospital. It was always helpful to have somebody there who had a psychiatric background, because they would be the best person to question the doctor in charge of the prisoner about the management of certain issues. In that situation, we were concerned with somebody who would be potentially going from hospital back to prison or into the community. Issues would arise in cases in which the prisoner was also subject to the Mental Health (Care and Treatment) (Scotland) Act 2003. Although that involves a minority of cases, there is, in my view, merit in including on the board somebody who can give psychiatric input when a case has a psychiatric element.
>
> Source: Justice Committee 15 May 2018 [Draft], Douglas Thomson, contrib. 179[123]

331. In her evidence to the Committee on behalf of the Royal College of Psychiatrists in Scotland, Dr Johanna Brown of the NHS, disagreed with the proposal of the Scottish Government as set out in the Bill. She said—

> ... we think that the presence of a psychiatrist is of benefit to the panel and that they should remain. Our written evidence outlines the reasons for that and the expertise that a psychiatrist would bring to the panel. Part of that is what we have heard about our involvement in risk assessment and part of it is our understanding of and experience in treating mental illnesses and the management of individuals within a prison setting and in the community. [124]

332. The previous Cabinet Secretary for Justice was quite clear on this matter when he gave evidence to the Committee. He said that there was no longer a requirement to specify the need for a High Court judge and a forensic psychiatrist on the board because there was now a wider range of expertise available. He said

> It is worth saying that the High Court judge who sat on the Parole Board was present only infrequently, largely because the presence of a High Court judge was no longer really required. The change simply updates the rules to reflect the fact that the responsibility for ensuring that the right expertise is represented on the board is a matter for the chair. The Parole Board has the option of bringing in external expertise as and when it is required, so a person with a particular type of expertise relating to forensic psychiatry, for instance, could be brought in if that was deemed to be necessary by the chair of the board when considering a case.
>
> Source: Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 137[125]

333. In his evidence, the newly appointed Cabinet Secretary for Justice, set out his thinking on this matter. He said—

> I agree that the evidence from the Royal College of Psychiatrists in Scotland was compelling and strong. However, there are a couple of things to say about the potential removal of the statutory requirement for a psychiatrist, the evidence on which from the Parole Board also made a lot of sense and had a lot of logic to it. For example, it made the point, first, that it considers 2,500 cases and that one psychiatrist cannot possibly look at every single one of those cases; and, secondly, that a number of Parole Board members have experience in the field of psychiatry and so the statutory requirement is not needed. From my recollection of the evidence session, I think that it was you, convener, who pressed the Parole Board on why, although that might be the case, we would not have a statutory provision rather than leave it to chance.
>
> I can see the argument on both sides. I will await the committee's report on that particular provision, and I have a very open mind on looking at it again.
>
> Source: Justice Committee 15 January 2019 [Draft], Humza Yousaf, contrib. 62[126]

Appointments and duration of membership

334. The Scottish Government proposes to amend the term of office for Parole Board members to bring them in line with other tribunals. The intention is to change the initial period of office to a five-year term with the potential for automatic reappointment every five years thereafter. This aims to maintain the expertise of members and build on the experience they will have gained over the years. Members will be automatically reappointed unless the member declines reappointment; or the Scottish Minsters accept the recommendation of the chairperson of the Parole Board that it should not occur. The grounds for the chairperson of the Parole Board to make such a recommendation would be that the person has failed to comply with any of their terms and conditions of appointment; or that the Parole Board no longer requires the same number of members to carry out its functions.

335. The Scottish Government also intends that a member should be allowed to apply for a subsequent appointment to the Board if they have resigned their position previously, provided they have not reached the age of 75; or that they have not been removed from office by virtue of a tribunal constituted under paragraph 3 of schedule 2 of the 1993 Act. It is envisaged that this may occur where a members personal circumstances change e.g. they need to take time out to care for someone. The Scottish Government does not think this should bar someone from being appointed in the future provided they have never been dismissed from their appointment or have reached the age of 75. There is always a certain amount of churn in any organisation and it is expected membership will be refreshed in that way.

336. In its evidence to the Committee, Social Work Scotland said that it appear that the current provisions governing appointment and reappointment will be improved by the measures proposed. In its view—

> A five year term with consideration for re-appointment alongside other candidates would provide an opportunity to select the best candidate for the role. This allows due consideration to be given to new applicants who may bring a fresh perspective to proceedings whilst enabling the retention of experienced members. Given the varied qualifications and experience of members, particularly in the field of mental health, Social Work Scotland does not regard specific representation by a psychiatrist or a member of the judiciary as necessary. Social Work Scotland view removal of the upper age restriction as positive given our position on workplace discrimination including ageism. [120]

Role for victims

337. In its evidence to the Committee, PETAL Support argued that one particular group should be represented on the Parole Board, namely victims. It said—

> PETAL's strong opinion is that we would like to propose that victims of crime should have a place on each Parole Board and hearing. Only then it could be said that a true "balanced" view and opinion in the conduction of parole hearing would take place, and it may be that the general public would agree with this suggestion also. [127]

338. In its recently announced consultation, the Scottish Government has said that it wants to look at the role of victims in the process. The Cabinet Secretary has said that he wants "the needs of victims to be at the centre of the criminal justice system" and he wants to strengthen the voice of the victim in the parole process. He has said that he thinks that victims and their families should be able to make representations to the Parole Board and that their safety concerns are taken into account in decisions, including in licence conditions. [110]

Conclusions on the Parole Board

339. The Committee is broadly supportive of the limited reforms to the Parole Board as set out in this Bill. It is unfortunate, however, that this Bill is being considered at a time when a much more detailed consideration of the Parole Board is underway. It would have been helpful if the limited reforms that this Bill covers in Part 3 had been considered in the round as part of the wider consultation that is now underway.

340. The Committee notes the view of the Scottish Government that, at this stage, no changes are needed via this Bill. The Committee agrees with the Parole Board that its independence must be assured and that it has appropriate management and governance structures to be effective.

341. Furthermore, the Committee welcomes the efforts alluded to by representatives of the Parole Board to increase awareness of, and transparency in, the activities of the Board. This is especially important in light of developments in England in relation to the Worboys case. **The Committee asks the Parole Board to consider the wider impact of their decisions, particularly on victims, and**

how victims can be given a voice in the process. We note this will be a key part of the Scottish Government's consultation.

342. In this respect, we welcome the recently announced consultation by the Scottish Government. Its aims of increasing the transparency of the work of the Board and also of the role for victims and their families in the parole process are ones we share.

343. As indicated above, we have not yet had the opportunity to consider at length what the Scottish Government is proposing, much of which significantly develops the way in which parole functions in Scotland and we question why this could not have been included in this Bill. The Committee will give its views on the proposed reforms once the Scottish Government has concluded its consultation. We do not, therefore, take a view at this stage on whether the independence of the Parole Board is improved by a transfer to the Scottish Tribunals structure, with greater role for the judiciary in the functioning of the parole system.

344. We note at this stage, however, that the Scottish Government has asked in its consultation for "views on whether the role of the Parole Board and other organisations involved in compiling information for the parole dossier could be widened". The Scottish Government has said that "this might, for example, entail investigating and collating information from other bodies such as the NHS, the Crown or the police". [128] The Scottish Government proposes that this could be achieved by establishing a function for the Parole Board to investigate and collate information from other bodies. **We welcome this and would suggest that the Scottish Government should look to expand the role played by psychiatrists and other mental health professionals in the assessments made of the suitability of prisoners for parole.**

345. **Finally, the Committee recommends that further work is done to consider the issues raised in the evidence provided to this Committee on the tests that are used by the Parole Board when releasing a prisoner**.

Other issues

Disclosure of income forms

346. One other issue raised by the Committee was that of Declaration of Income (DoI) forms. At present, Fines Enforcement Officers (FEOs) are employed by the Scottish Courts and Tribunals Service (SCTS) to recover unpaid fines issued to offenders including court fines, fiscal fines and police anti-social behaviour fines. They are also responsible for recovering compensation owed to victims by offenders. FEOs have a range of sanctions they can impose on offenders who do not pay their fines or compensation. For instance, they can deduct money from their bank accounts, earnings or benefits.

347. In order to utilise these powers, FEOs need information on offenders' income details (employment, benefits), bank details and outgoings (household, travel, bills). To this end, FEOs will encourage offenders to complete a Declaration of Income (DoI) form, which is an important source of such information. The form also collects information on personal details (name, date of birth, address, telephone numbers); vehicle ownership and registration number; accommodation and living circumstances (dependents and partner income); and any other relevant circumstances.

348. Offenders who receive fines or agree to pay compensation are under no legal obligation to complete the form. Because it is not mandatory for any fine type (court fines, fiscal fines and police anti-social behaviour fines), offenders often choose not to complete it, making it harder for FEOs to recover unpaid fines or compensation. The DoI form is mandatory in both England and Wales.

349. In his submission to the Committee, Lewis Macdonald MSP argued that completion of a DoI form by an offender after conviction should be mandatory and that the Bill should be amended accordingly. He argues that—

> When FEOs hold little information on the financial means of offenders, there is often no alternative but to cite them to court. Often they will fail to turn up when cited, so an arrest warrant is issued. Some offenders can be cited and arrested on warrant numerous occasions. As a result, a considerable amount of court and police time is taken up chasing these offenders. [129]

350. The Committee did not take any further oral evidence on this point nor have the opportunity to question the former Cabinet Secretary on this matter. **The Committee brings this issue to the attention of the Cabinet Secretary**

Financial Memorandum

351. The Financial Memorandum accompanying the Bill is required to set out the "best estimates" of the costs associated with the measures introduced by the Bill.[ix]

Background

352. The Scottish Government has stated that it is anticipated that the provisions of the Bill will lead to an increase in the overall cost associated with electronic monitoring. These expected costs fall broadly into two categories: those associated with new or amended uses of monitoring; and those associated with the introduction of new monitoring technology.

353. The Scottish Government currently contracts with an external service provider (G4S) for the delivery of the electronic monitoring service, the cost of which is met out of its central budgets. This contract is based on a fixed fee for the installation (and de-installation) of the equipment alongside a daily charge for each 'tagging day'. The current contract started in 2013/14 and since then the average daily cost has been approximately £8 per monitored individual. [130]

354. The Scottish Government's Financial Memorandum accompanying the Bill provides and explanation and summary of the expected costs that may occur from a greater roll out of electronic monitoring on itself, the Scottish Courts and Tribunals Service and on local authorities. These are broken down according to the use of such technology for Community Protection Orders (CPO), Sexual Offences Prevention Order (SOPO), home leave and the use of GPS (see below).

ix Standing Orders of the Scottish Parliament, rule 9.3.2.

Estimated costs of Part 1 of the Bill (paragraph references refer to the Financial Memorandum)

COSTS FALLING ON THE SCOTTISH GOVERNMENT		
Provision	**Anticipated costs**	**Potential further cost if use increases**
CPO (paragraphs 10-16)	**Minimal** (offset by reduction in costs of RLOs)	**£291,000** (per 100 additional individuals made subject to a 15½ month order)
SOPO (paragraphs 17-19)	**£16,170** (per 7 individuals monitored per year)	**£16,170** (per additional 7 individuals monitored per year)
Home Leave (paragraphs 23-26)	**£48,600** (per 50 prisoners monitor for six periods of 7 days leave)	**£48,600** (per additional 50 prisoners monitor for six periods of 7 days leave)
GPS Technology (Paragraphs 28-33)	**£188,750** (based on a demonstration project monitoring 50 individuals for a total of 6 months)	**£338,000** (per additional 100 individuals made subject to a 15½ month order and assuming replication of RF level of use) **£637,500** (per additional 100 individuals made subject to a 15½ month order and assuming RF offset)

COSTS FALLING ON LOCAL AUTHORITIES		
Provision	**Anticipated costs**	**Potential further cost if use increases**
CPO (paragraphs 42-44)	**Minimal** (no absolute increase in numbers anticipated)	**£266,500** (per additional 100 individuals who would not otherwise have been made subject to a community sentence)

COSTS FALLING ON THE SCOTTISH COURTS AND TRIBUNAL SERVICE		
CPO (paragraphs 37-38)		**£160,000** (Sheriff Courts per year based on a 10% increase in the number of relevant orders imposed) **£1,900** (Justice of the Peace Courts per year based on a 10% increase in the number of relevant orders imposed)
Notification of multiple orders (paragraphs 39-40)		**£46,400** (per year based on a 10% increase in the number of relevant orders imposed)
IT costs (paragraph 41)	**£30,000**	

355. Part 2 of the Bill makes a number of changes to the system of disclosure of previous convictions. These changes also incur costs, as estimated by the Scottish Government (see below).

Estimated costs of Part 2 of the Bill (paragraph references refer to the Financial Memorandum)

Part 2 of the Bill – disclosure of convictions – estimated costs			
	Mental Health Tribunal for Scotland	**Disclosure Scotland**	**Scottish legal aid fund**
Non-recurring costs incurred prior to implementation	£20,000 (paragraph 61 - training and IT requirements)	£100,000 (paragraphs 51-52 - updating IT system)	None
Estimated non-recurring costs	**£120,000**		
Year 1	£33,600 (paragraphs 53-59 - fees for panel members)	None	£21,280 (paragraphs 62-63 - for representation in Tribunal review hearings)
Year 2	£33,600 (paragraphs 53-59 - fees for panel members)	None	£21,280 (paragraphs 62-63 - for representation in Tribunal review hearings)
Total costs	**Non-recurring - £120,000** **Recurring - £54,880 per year**		

356. Finally, there are three main elements to the Parole Board changes. These are as follows:

- Changes to the composition, appointment and reappointment terms of Parole Board members;
- Changes to functions and requirements of the Parole Board in relation to prisoners; and
- Independence and administrative arrangements of the Parole Board.

357. The estimated costs are set out below.

Summary of estimated costs falling on the Scottish Administration from Part 3 of the Bill

Management Committee/Sub-Committee(s)

Paragraph 76	Number of Members	Time Commitment per annum	Estimated cost per day	Estimated Recruitment costs	Total cost
Management Committee	2	10 days	£300	£1000	**£7,000**
Sub-Committee(s)	3	12 days	£205*	nil	**£7,380**
Total					**£14,380**

*estimated at cost of general member daily fee

Evidence on the Financial Memorandum

358. In their evidence to the Committee, the Scottish Government's Bill Team indicated that exact costs for the roll out of more electronic monitoring were not known. They stated that costs will be determined by how much sentencers and other decision makers use the new provisions. [131] The cost estimates in the Financial Memorandum were based on a 10 per cent increase across all forms of monitoring which was described as a "realistic first estimate". The Government's Bill Team stated that the bulk of the costs will be covered by the Scottish Government's contract with the service provider.

359. Government officials also added that—

> It is intended that the extension of electronic monitoring will allow savings to be made throughout the justice system, but those savings will not necessarily be realised in the same places in which the outlay is made.
>
> Source: Justice Committee 24 April 2018, Neil Devlin, contrib. 106[132]

360. In his evidence to the Committee, James Maybee of the Highland Council and Social Work Scotland stressed the importance of resources if Part 1 of the Bill - on electronic monitoring - is to work in practice. He said that whilst it is not always about money, additional resources to make the system work were always to be welcomed. [133] He also added that, in relation to GPS—

> GPS is a bit of a step into the unknown. GPS can be either active or passive. With active GPS, where somebody is being monitored in real time, information is constantly fed back to the electronic monitoring provider, and we would expect a much greater need for liaison and communication between the EM provider and criminal justice social workers. That could be quite resource intensive—that needs to be considered and not forgotten. Passive GPS is perhaps less risky because, obviously, the data is aggregated over a particular period of time and then considered.

Source: Justice Committee 08 May 2018 [Draft], James Maybee, contrib. 91[134]

361. Ruth Inglis of the Scottish Courts and Tribunals Service made a number of comments relating to financial matters. She indicated that the Service had been involved in estimated the cost impact to the courts and that—

> We assumed a 50 per cent increase in the number of relevant orders, with an associated increase in breaches and miscellaneous applications. The cost of that increase is estimated to be in the region of £800,000 per annum for the sheriff court and in the region of £9,500 for justice of the peace courts. Very few relevant orders are made in the High Court. The financial memorandum is structured around the bill's current provisions, and it sets out a fair estimate of the costs.

Source: Justice Committee 22 May 2018 [Draft], Ruth Inglis, contrib. 13[135]

She added that there was an—

> ... additional new intimation duty that schedule 1 to the bill places on the clerk of court, which will also have resource implications for the SCTS. We indicated in the financial memorandum that, taking into account the anticipated increase in the number of community disposals that will be made in consequence of the bill, and estimating that 20 per cent of relevant community disposals relate to persons who are already subject to an existing order, there will be additional staff-time costs for the SCTS of around £232,000 per annum.
>
> On your question about whether the bill has been sufficiently costed, from our perspective, the disposals that are listed in section 3 have been sufficiently costed. However, if the list of disposals is extended by way of the regulation-making powers, those new measures will need to be costed by the SCTS as well. If the list of disposals is extended to include things such as electronic monitoring as an alternative to remand or fines, those measures will have significant resource implications for the SCTS, and we will need time to cost them and ensure that funding is available. That may well come further down the line when and if ministers exercise the regulation-making powers.

Source: Justice Committee 22 May 2018 [Draft], Ruth Inglis, contrib. 65[136]

362. In terms of the impact on Police Scotland of Part 1 of the Bill, Chief Superintendent McEwan indicated that some additional back-office support would be needed to update various IT systems but that the "numbers would not be significant". He described the additional needs as "penny numbers of staff", i.e. one or two extra.[137]

363. In his evidence to the Committee, the former Cabinet Secretary for Justice concurred with the cost estimates and the approach taken to set out the expected costs for the provisions in the Bill. He also stressed that a simple transfer of any costs that can be saved from the costs or running prisons through a greater use of monitoring in the community was not likely to straightforward. He said—

> The convener mentioned the transfer of resources from the prison side to the community-based side. We have had that discussion at committee on previous occasions for a couple of years now. One of the real challenges regarding shifting resource to the community-based side is that there is still demand on the prison side. At the moment, if we take resources away from the prison side and move them into the community, we will potentially leave a gap in funding for the prison service. If we did that, it would not be the first time that members of this committee would ask me about ensuring that we had proper prison-based services, including courses to deal with offenders' behaviour.
>
> It is not straightforward to move money from the prison side into the community. We cannot simply say that because more people are being electronically monitored we can move resource across. That can only be achieved if demand reduces on the prison side. In the past couple of years, we have moved some resource from the prison side into community-based sentencing where there has been financial capacity to do that. However, I am not in a position to say that if it costs, say, £40,000 a head each year to keep someone in prison and we reduce the prison population by 10 we can transfer all that resource into the community.
>
> There will still be demand on the prison service side, no matter what. The prison service has to take whoever is referred to it by the courts. I recognise that there is a need to rebalance the resourcing, but in the present financial climate we would create unintended problems on the prison side if we were to cut its budget and push that money into the community-based setting.
>
> Source: Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 72[138]

Conclusions on the costs and the Financial Memorandum

364. The Committee welcomes the Scottish Government's efforts to provide cost estimates for the different provisions in the Bill in its Financial Memorandum. The Committee accepts that actual costs will not be known until the various parts of the Bill - particularly more electronic monitoring - are rolled out as take-up will depend on the views of sentencers and other decision makers. Nevertheless, the Committee considers that the Financial Memorandum contains a reasonable summary of expected costs.

365. The Committee does, however, strongly suggest that the success of the plans for electronic monitoring will only be realised if they come with adequate budgets for what have been described as wrap-around support services for those people who use electronic monitors when they may otherwise have been incarcerated.

366. The Committee considers that there is a danger that the good intentions of the Scottish Government in relation to increased electronic monitoring will not succeed if those wearing the devices are not fully supported and adequately monitored, including rapid and effective responses to breaches. Insufficient resource provision may result in a failure for the individual wearing the device but also could represent increased risk to the community.

367. The Committee also noted the comments from the Scottish Courts and Tribunals Service that, whilst they have been involved in the development of the estimated costs, to some extent the actual costs are unknown. The Scottish Courts and Tribunals Service, and other organisations such as criminal justice social work, after-care service providers in the prison service, third sector support groups will need to be adequately resourced to meet the needs that may arise from a growth in the use of electronic monitors and an increased effort to rehabilitate former prisoners back into society and employment through the changes in the disclosure (of convictions) regime.

Delegated powers provisions

368. The Bill contains a number of provisions for the Scottish Ministers to make changes through the use of regulation-making powers. As such, the Bill has been scrutinised by the Delegated Powers and Law Reform (DPLR) Committee. This Committee published its Report on 22 May 2018. Its Report was agreed by all members of the Committee.

369. The Delegated Powers and Law Reform Committee made a number of specific recommendations in in its Report. Firstly, the Committee recommended that the powers set out in section 4 of the Bill (relating to the ability to modify the list of disposals where electronic monitoring can be used) should be made by the affirmative rather than negative procedure

370. Furthermore, the DPLR Committee drew the lead Committee's attention to the possibility of an electronic monitoring requirement being imposed by the court that concerns an offender's consumption of “other substances”. In his evidence, the former Cabinet Secretary explained that this referred to new psychoactive substances.

371. Secondly, in a similar fashion, the Delegated Powers and Law Reform Committee also recommend that the powers in section 7 of the Bill (power to prescribe types of conditions to which electronic monitoring may apply) should also be subject to the affirmative procedure.

372. Furthermore, the Committee drew the lead Committee's attention to the possibility of an electronic monitoring requirement being imposed by the Parole Board and (in some scenarios) the Scottish Ministers that concerns an offender's consumption of “other substances”.

373. Thirdly, the Delegated Powers and Law Reform Committee also recommend that section 9 of the Bill (power to make provision about the use of approved devices and information obtained via electronic monitoring) should be subject to the affirmative not negative procedure.

374. The Justice Committee agrees with the views of the Delegated Powers and Law Reform Committee in relation to the type of statutory instrument procedure that should be used for sections 4, 7 and 9 of the Bill. **The Committee calls upon the Scottish Government to make the appropriate amendments during stage 2 of the Bill.** These provisions provide wide powers for Scottish Ministers to, amongst other things, extend the types of electronic monitoring devices that can be used and in what circumstances. It is appropriate, therefore, that Ministers appear before relevant committees to explain any decisions they take to use such powers, and address any concerns about data sharing and inter-agency responsibilities and coordination.

General principles of the Bill

375. **The Committee recommends that the general principles of the Bill be agreed to at Stage 1.**

376. Furthermore, the Committee requests that the Scottish Government considers and responds to the other conclusions and recommendations that the Committee makes in this Report in its written response at Stage 1.

Annex A - Visit by members of the Justice Committee to The Wise Group and G4S, Glasgow, Tuesday 29 May, 2018

1. The Wise Group

The Convener introduced the Members of the Committee and parliamentary staff and outlined the purpose of the visit. Sean Duffy, Chief Executive of the Wise Group introduced his staff and clients, and briefly presented the work of the organisation. He offered to come through to the Parliament if there was a need for further discussions.

One of the initial points stressed about the Prison to Payslips programme and the mentoring scheme run by the Wise Group is that policy makers can place too much emphasis too early on achieving employment results. Often, a number of the clients need help and support to build stability in their lives before any consideration can be given to aiming to find employment.

Part of this is achieved through the early focus during mentoring on building trust between the mentor and the client. Then, both can move onto some of the initial challenges, such as tackling potential homeless status, registration at a GP (often being turned away as they are considered an expensive and challenging patient), sorting out welfare and benefits etc. The initial benefit of mentoring is that, immediately on release from incarceration, the client has someone just to talk to, who may be the only person that the ex-prisoner has contact with since family contact has often broken down and access to children may have been denied. It was felt that mentors were much better than prison staff for this role as the latter don't have the time or skills.

Members of the Committee visiting the Wise Group

One observation made by the mentors and clients was the constantly revolving door of people coming into prison repeatedly to serve short-term sentences. This makes for a

chaotic lifestyle which can have serious ramifications for the person, such as loss of employment, home, breakdown in relationships etc. It was considered vital to build the base first on these issues so that the person can then begin to think about actually hold down a job, talking properly to an employer, turning up from work on time etc.

Many of the mentors and clients we met stressed the view that it did not really matter what conviction a person has, as many employers just did not want to employ a former prisoner. So in a sense, one mistake was stopping them moving on for the rest of their lives. A common view was that the disclosure system is very confusing and stigmatises for the rest of your life.

We heard views that as soon as any employer gets notice of a person's conviction then they are out. So, the system is entirely binary – a conviction becomes effectively a red flag to gaining employment. Also, social mobility is reduced for those who were fortunate to find employment as any application for a new job will cause a red flag around disclosure and the person won't be employed.

Of particular concern is the often used ‘tick box’ asking for disclosure of convictions at the time of application, which, we heard, leads to rejection at that point before even any consideration of suitability for the job. We heard a strong call for a ‘ban of the box’ and the chance to at least explain the background to a person's conviction in order to have “at least a fair chance of a job after having completed the prison sentence and punishment”. We heard views that many employers were more interested in a person's past than their qualifications to do the job in question.

In the view of those we met, from an employer's perspective, some of the reasons why they don't employ people with prior convictions are to do with fears about reputational damage and the financial risk of investing in a person who might just leave. It was felt that larger companies have the heft and can absorb the risk, but SMEs don't have the surety of size, can't manage the risk so they just don't bother. This causes people to try to be self-employed or move to the cash/black economy, which increases risk of re-offending. We also heard that statutory bodies such as councils, the NHS, social work had a poor attitude to employing people with previous convictions.

We also heard that getting insurance for a car or house was also problematic because disclosures cause large increases in the cost of these policies and, for many ex-prisoners, money is very tight already as employment is hard to find.

Another major challenge is that the Department for Work and Pensions (DWP) were very slow at setting up benefits, causing stress and anxiety in the person around the welfare of his/her family and children. Other challenges include the fact that many ex-prisoners will not have proof of identity on release and this then prevents a person finding secure accommodation. We also heard that DWP staff had little appreciation of the added challenges that ex-prisoners face in finding a job with constant rejections upon disclosure, which can lead to dejection and refusal to engage with job-hunting, which then can lead to benefits sanctions which in turn can lead to stress and possible re-offending. We also heard views that the pressure in the DWP to get people onto universal credit was causing problems.

In relation to electronic monitoring, we heard strong opinions that you need more than just a tag to help someone. You also need a much wider holistic support service from voluntary bodies, counsellors etc. It was noted that it costs the state £42k to incarcerate a person,

but the public sector only provides a few thousand pounds to bodies such as the Wise Group. So, there is no parity of funding to help prevent re-offending.

We also heard views that monitoring regimes can be too harsh and cause stress to the person who is tagged and to their wider family who can feel confined to home. Also, there seemed to be a lack of consistency on who gets fitted with a device and that this was dependent on which prison you were in and who you asked. It was also dependent on being able to provide proof or address and so discriminated against those without place to live. It was felt that more could be done to link agreement to monitoring with a person's agreement to attend rehabilitation-related courses prior to release. However, a strongly held view is that such courses will only work when you also address a person's “internal problems” such as previous trauma, sexual abuse etc.

We also discussed the record of SPS in helping people with learning difficulties. Some prisons such as HMYOI Polmont were thought to have a good record and others much less so. A lack of resources generally in prisons was discussed. One client reported s/he had had to wait up to 5 weeks to see a mental health nurse at their lowest point. It was also stressed that the prison/judicial system can be very poor at letting a person's family know when they are being transferred, which causes stress and anxiety (one person told us that it took 11hrs for them to be allowed to make a phone call to tell family s/he was moving).

Finally, Wise Group staff and mentors offered MSPs the chance to join in on a mentoring session and also asked that the Committee suggest to the Government that it lets a research contract to provide empirical evidence of the success of its programmes.

G4S

Following introductions, we learnt more about the work of G4S and its contract for electronic monitoring – see associated PowerPoint presentation slides and statistical bulletins.

G4S is now on the third iteration of the contract, where usage has risen from around 500 devices to 1,300 tags now. Most of these are court-ordered.

Members of the Committee meeting G4S staff to discuss electronic monitors

G4S staff outlined the work they do with the judiciary and criminal justice social work to increase awareness about electronic monitoring, how compliances and breaches were reported and how it is possible to set up a tailored service to suit each ex-offender and the views of what a Sheriff was looking for in terms of a monitoring regime.

G4S reported occasions when they noted a substantial take-up in the use of such devices following such events for the judiciary.

Criminal social work departments have been offered a chance to put forward staff to become electronic monitoring champions and advocate in their offices for greater uptake.

G4S staff then demonstrated the capabilities and functioning of the tags and the personal monitoring units (PMU) or 'home boxes'. They covered issues of how devices are fitted, anti-tampering capabilities, electricity usage, battery life (around 12months for RF and 24-26hrs for GPS) etc. They also demonstrated the newer GPS versions of the devices and box. It was said that these devices will work less well in built up areas but that fall-back systems are in place which still allow for monitoring via phone masts. GPS systems were much better designed to keep people away from places rather than keep people confined to places.

It was noted that G4S did not see much take up in devices for DTTOs. This was perhaps because people with drug addiction led too chaotic lives for the tags to be effective.

One of the issues they stressed is the challenge (and financial loss) of being unable to gain access to the premises where a device was used to retrieve the box and tag. G4S noted that each PMU cost around about £450. They said they lost quite a few of these units as they cannot always retrieve the box and they cannot get access to the premises. For example, if a person has gone back to prison, G4S cannot access their property. Service providers cannot visit a person to collect our equipment. The asked if the Bill could be changed to help recover equipment. They also reported that they lost a lot of tags which are cut off and discarded. They found this problematic particularly in cases involving Children's Hearings where lot of leniency is shown when this happens and it's not often reported as a breach because of the vulnerability of many of the young people.

The G4S staff also talked members through the compliance system and the reporting of breaches. They noted that they were contractually required to report to the Sheriff within a 24hrs period and this was something sheriffs appreciated. They also talked around why access to wider support services was vital to make the monitoring a success. G4S felt that such devices can help a person have more time with their families to rebuild relationships and in the end it is better than prison. However, they noted that this did require people to be more organised with their lives if they were subject e.g. to a Home Detention Curfew (you can't just pop out to the shops whenever you wanted or walk the dog).

Members and G4S staff discussed the reported lack of consistency mentioned in the meeting with the Wise Group and inconsistencies between SPS institutions in people getting the go ahead to fit devices and/or also in in decisions on whether to issue a recall notice. We heard calls for more consistency in decision making and quicker turnaround times for the assessment reports.

Finally, G4S stressed that it had concerns about GDPR and some early signs that that hospitals and Police Scotland had said that they could not comply with requests for information on possible breaches because of consent issues and that they might stop sharing information on the whereabouts of a device user, which could lead to more recalls and breaches.

Annex B - Extracts from the minutes

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

9th Meeting, 2018 (Session 5) Tuesday 13 March 2018

Management of Offenders (Scotland) Bill (in private): The Committee considered its approach to the scrutiny of the Bill at Stage 1 and agreed to (a) issue a call for written evidence on the Bill; (b) invite the Scottish Government's Bill Team to give evidence on the Bill at a future meeting; and (c) further consider its approach to the scrutiny of the Bill at a future meeting.

12th Meeting, 2018 (Session 5) Tuesday 24 April 2018

Management of Offenders (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

> Neil Devlin, Bill Team Leader, Community Justice Division, Nigel Graham, Policy Adviser, Criminal Justice Division, and Craig McGuffie, Principal Legal Officer, Directorate for Legal Services, Scottish Government.

Management of Offenders (Scotland) Bill (in private): The Committee agreed witnesses for its evidence session, on 8 May 2018, on the Bill at Stage 1.

13th Meeting, 2018 (Session 5) Tuesday 1 May 2018

Work programme (in private): The Committee considered its work programme and agreed (a) in relation to its scrutiny of the Management of Offenders (Scotland) Bill at Stage 1 (i) witnesses for future evidence sessions, and (ii) to undertake a fact-finding visit to inform its scrutiny of the Bill; [. . .]

14th Meeting, 2018 (Session 5) Tuesday 8 May 2018

Management of Offenders (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

> Karyn McCluskey, Chief Executive, and James Blair, Policy Lead, Community Justice Scotland;
>
> James Maybee, Principal Officer, Criminal Justice Services, The Highland Council, representing Social Work Scotland;
>
> Professor Nancy Loucks, Chief Executive, Families Outside;
>
> Pete White, Chief Executive, Positive Prison? Positive Futures;
>
> Dr Marsha Scott, Chief Executive, Scottish Women's Aid;
>
> Nicola Fraser, Local Operations Manager, Victim Support Scotland.

Written evidence

- Community Justice Scotland
- Families Outside
- Positive Prison? Positive Futures
- Scottish Women's Aid
- Social Work Scotland
- Victim Support Scotland

15th Meeting, 2018 (Session 5) Tuesday 15 May 2018

Management of Offenders (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Liz Dougan, Partner, Brazenall and Orr Solicitors;

Leanne McQuillan, President, Edinburgh Bar Association;

Dr Louise Brangan, Policy and Public Affairs Manager, Howard League Scotland;

Douglas Thomson, Criminal Law Committee, Law Society of Scotland;

Dr Hannah Graham, Lecturer in Criminology, Scottish Centre for Crime and Justice Research, University of Stirling.

Written evidence

- Edinburgh Bar Association
- Howard League Scotland
- Law Society of Scotland
- Scottish Centre for Crime and Justice Research

16th Meeting, 2018 (Session 5) Tuesday 22 May 2018

Management of Offenders (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

David Strang, HM Chief Inspector, HM Inspectorate of Prisons for Scotland;

Chief Superintendent Garry McEwan, Divisional Commander, Criminal Justice Services Division, Police Scotland;

Ruth Inglis, Director of Development and Innovation, and Roddy Flinn, Legal Secretary to the Lord President, Scottish Courts and Tribunals Service;

John Watt, Chair, and Colin Spivey, Chief Executive, Parole Board for Scotland.

Written evidence

- HM Inspectorate of Prisons for Scotland

- Police Scotland
- Scottish Courts and Tribunals Service
- Parole Board for Scotland

Supplementary written evidence

- Scottish Courts and Tribunals Service

17th Meeting, 2018 (Session 5) Tuesday 5 June 2018

Management of Offenders (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Rt Hon Lord Turnbull, Scottish Sentencing Council;

Michael Matheson, Cabinet Secretary for Justice, Scottish Government.

Written evidence

- Scottish Government
- Scottish Sentencing Council

Supplementary written evidence

- Scottish Government

19th Meeting, 2018 (Session 5) Tuesday 19 June 2018

Management of Offenders (Scotland) Bill (in private): The Committee considered a draft Stage 1 report. Various changes were agreed to and the Committee agreed to continue consideration at its next meeting.

20th Meeting, 2018 (Session 5) Tuesday 26 June 2018

Management of Offenders (Scotland) Bill (in private): The Committee further considered a draft Stage 1 report and agreed to task the Convener with meeting the Minister for Parliamentary Business with a view to seeking approval from the Parliament to extend the deadline for completion of its Stage 1 consideration of the Bill.

28th Meeting, 2018 (Session 5) Tuesday 6 November 2018

Management of Offenders (Scotland) Bill: The Committee considered reports from HM Inspectorate of Constabulary in Scotland and HM Inspector of Prisons for Scotland on Home Detention Curfews and agreed to take the contents of the reports into account in relation to further scrutiny of the Bill at Stage 1.

Management of Offenders (Scotland) Bill (in private): The Committee considered its approach to the scrutiny of the Bill at Stage 1 and agreed to take further evidence from a number of organisations including HM Inspectorate of Constabulary in Scotland, HM Inspector of Prisons for Scotland, Police Scotland, the Law Society of Scotland, the Faculty of Advocates and the Royal College of Psychiatrists in Scotland. The Committee asked the Convener and the clerk to make the necessary arrangements and also to

discuss the deadline for the completion of Stage 1 with the Minister for Parliamentary Business and Veterans.

30th Meeting, 2018 (Session 5) Tuesday 20 November 2018

Management of Offenders (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Gill Imery, HM Chief Inspector of Constabulary in Scotland, HM Inspectorate of Constabulary in Scotland;

Wendy Sinclair-Gieben, HM Chief Inspector, HM Inspectorate of Prisons for Scotland;

Chief Superintendent Garry McEwan, Divisional Commander, Criminal Justice Services Division, Police Scotland;

Colin McConnell, Chief Executive, Scottish Prison Service.

Supplementary written evidence

- Police Scotland
- Scottish Prison Service

33rd Meeting, 2018 (Session 5) Tuesday 18 December 2018

Management of Offenders (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

John Watt, Chair, Parole Board for Scotland;

Yvonne Gailey, Chief Executive, Risk Management Authority;

Dr Johanna Brown, Consultant Forensic Psychiatrist, Royal College of Psychiatrists in Scotland;

James Maybee, Principal Officer (Criminal Justice)/Interim Chief Social Work Officer, Highland Council, representing Social Work Scotland.

Written evidence

- Royal College of Psychiatrists in Scotland

1st Meeting, 2019 (Session 5) Tuesday 8 January 2019

Management of Offenders (Scotland) Bill (in private): The Committee reviewed the evidence received on the Bill in order to inform the drafting of its Stage 1 report.

2nd Meeting, 2019 (Session 5) Tuesday 15 January 2019

Management of Offenders (Scotland) Bill (in private): The Committee reviewed the evidence received on the Bill in order to inform the drafting of its Stage 1 report.

3rd Meeting, 2019 (Session 5) Tuesday 22 January 2019

Management of Offenders (Scotland) Bill (in private): The Committee considered a draft Stage 1 report. Various changes were agreed to and the Committee agreed to continue consideration of the draft report at its next meeting.

4th Meeting, 2019 (Session 5) Tuesday 29 January 2019

Apologies were received from Liam McArthur.

Management of Offenders (Scotland) Bill (in private): The Committee continued its consideration of a draft Stage 1 report. Various changes were agreed to and the Committee agreed its report to the Parliament.

Annex C - Written evidence

All written evidence received in relation to the Committee's consideration of the Management of Offenders (Scotland) Bill at Stage 1 can be accessed at:

http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/108068.aspx

[1] Scottish Parliament. (2018, February 22). Management of Offenders (Scotland) Bill: Policy Memorandum Session 5 (2018) SP Bill 27-PM. Retrieved from http://www.parliament.scot/Management%20of%20Offenders%20(Scotland)%20Bill/SPBill27PMS052018.pdf

[2] G4S. (2019). Electronic Monitoring to the Criminal and Youth Justice systems in Scotland: Statistical Bulletin for 2018.

[3] G4S. (2019). Statistical Bulletin for 2018.

[4] SPICe Briefing. (2018, May 3). Management of Offenders Bill. Retrieved from https://digitalpublications.parliament.scot/ResearchBriefings/Report/2018/5/3/Management-of-Offenders--Scotland--Bill#Background

[5] Scottish Parliament. (2018, October 25). Official Report, col 57.

[6] Scottish Parliament. (2018, October 25). Official Report, cols 57-58.

[7] Scottish Parliament. (2018, October 25). Official Report, col 59.

[8] Justice Committee 08 May 2018 [Draft], James Maybee, contrib. 24, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11515&c=2089911

[9] Justice Committee 08 May 2018 [Draft], James Maybee, contrib. 41, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11515&c=2089928

[10] Social Work Scotland. (2018). Written submission.

[11] Victim Support Scotland. (2018). Written submission.

[12] Justice Committee 08 May 2018 [Draft], Nicola Fraser, contrib. 227, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11515&c=2090114

[13] Justice Committee 08 May 2018 [Draft], Karyn McCluskey, contrib. 73, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11515&c=2089960

[14] Justice Committee 08 May 2018 [Draft], Pete White, contrib. 209, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11515&c=2090096

[15] Justice Committee 08 May 2018 [Draft], Professor Loucks, contrib. 281, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11515&c=2090168

[16] British Transport Police. (2018). Written submission.

[17] HM Chief Inspector of Prisons for Scotland. (2018). Written submission.

[18] Justice Committee 22 May 2018 [Draft], Chief Superintendent McEwan, contrib. 44, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11551&c=2094882

[19] Justice Committee 22 May 2018 [Draft], Chief Superintendent McEwan, contrib. 100, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11551&c=2094938

[20] Justice Committee. (2018, June 5). Official Report, col 15.

[21] Scottish Government. (2019). Supplementary written evidence to the Committee.

[22] Glasgow Bar Association. (2018). Written submission.

[23] Centre on Youth and Criminal Justice. (2018). Written submission.

[24] Families Outside. (2018). Written submission.

[25] Justice Committee 15 May 2018 [Draft], Dr Louise Brangan (Howard League Scotland), contrib. 4, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11535&c=2093063

[26] Justice Committee 15 May 2018 [Draft], Dr Hannah Graham (University of Stirling), contrib. 11, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11535&c=2093070

[27] Justice Committee 05 June 2018 [Draft], Rt Hon Lord Turnbull (Scottish Sentencing Council), contrib. 7, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11582&c=2099117

[28] Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 77, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11582&c=2099187

[29] Scottish Parliament. (2018, December 18). Official Report, Justice Committee, col 29.

[30] Justice Committee 08 May 2018 [Draft], Karyn McCluskey, contrib. 48, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11515&c=2089935

[31] Justice Committee 08 May 2018 [Draft], James Maybee, contrib. 51, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11515&c=2089938

[32] Justice Committee 08 May 2018 [Draft], James Maybee, contrib. 55, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11515&c=2089942

[33] Justice Committee 08 May 2018 [Draft], Professor Loucks, contrib. 233, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11515&c=2090120

[34] SACRO. (2018). Written submission.

[35] Justice Committee. (2018, May 8). Official Report, col 4.

[36] Justice Committee 08 May 2018 [Draft], James Maybee, contrib. 11, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11515&c=2089898

[37] Justice Committee. (2018, May 22). Official Report, cols 2-3.

[38] Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 50, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11582&c=2099160

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[40] Justice Committee. (2018, May 8). Official Report, col2.

[41] Justice Committee 08 May 2018 [Draft], James Maybee, contrib. 14, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11515&c=2089901

[42] Justice Committee 24 April 2018 [Draft], Neil Devlin, contrib. 92, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11485&c=2085529

[43] Justice Committee. (2018, May 15). Official Report, col 9.

[44] Justice Committee 15 May 2018 [Draft], Douglas Thomson, contrib. 62, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11535&c=2093121

[45] Justice Committee. (2018, June 5). Official Report, col 28.

[46] Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 101, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11582&c=2099211

[47] Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 103, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11582&c=2099213

[48] Edinburgh Bar Association. (2018). Written submission.

[49] Justice Committee 08 May 2018 [Draft], Dr Scott, contrib. 275, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11515&c=2090162

[50] Justice Committee 22 May 2018 [Draft], Chief Superintendent McEwan, contrib. 40, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11551&c=2094878

[51] Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 89, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11582&c=2099199

[52] Scottish Women's Aid. (2018). Written submission.

[53] Justice Committee. (2018, May 15). Official Report, col 6.

[54] Justice Committee. (2018, May 15). Official Report, col 18.

[55] Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 60, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11582&c=2099170

[56] Engender. (2018). Written submission.

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[58] Scottish Children's Reporter Administration. (2018). Written evidence.

[59] David Anderson. (2018). Written submission.

[60] Justice Committee. (2018, May 15). Official Report, col 24.

[61] Justice Committee 15 May 2018 [Draft], Dr Graham, contrib. 98, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11535&c=2093157

[62] Information Commissioner's Office in Scotland. (2018). Written submission.

[63] Justice Committee 22 May 2018 [Draft], David Strang, contrib. 49, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11551&c=2094887

[64] Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 64, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11582&c=2099174

[65] Law Society for Scotland. (2018). Written submission.

[66] Justice Committee. (2018, May 15). Official Report, col 14.

[67] Scottish Parliament. (2018, November 20). Official Report, Justice Committee, cols 23 and 34.

[68] Scottish Parliament. (2018, November 20). Official Report, Justice Committee, col 27.

[69] Scottish Parliament. (2018, November 20). Official Report, Justice Committee, col 34.

[70] Justice Committee 15 January 2019 [Draft], Humza Yousaf, contrib. 12, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11890&c=2144767

[71] Scottish Parliament. (2018, November 20). Official Report, Justice Committee, col 25.

[72] Scottish Parliament. (2018, November 20). Official Report, Justice Committee, col 26.

[73] Justice Committee 15 January 2019 [Draft], Humza Yousaf, contrib. 4, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11890&c=2144759

[74] Justice Committee. (2019, January 15). Official Report, col 3.

[75] Scottish Parliament. (2018, November 20). Official Report, Justice Committee, col 28.

[76] Scottish Parliament. (2018, November 20). Official Report, Justice Committee, col 41.

[77] Official Report. (2018, November 20). Justice Committee, col 33.

[78] Scottish Parliament. (2018, November 20). Official Report, Justice Committee, cols 37-38.

[79] Police Scotland. (2018). Additional written submission of evidence.

[80] Law Society of Scotland. (2018). Additional written submission of evidence.

[81] Scottish Parliament. (2018, December 18). Official Report, Justice Committee, col 33.

[82] Scottish Government. (2019). Further supplementary written evidence to the Committee.

[83] Justice Committee 15 May 2018 [Draft], Dr Graham, contrib. 132, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11535&c=2093191

[84] Justice Committee 08 May 2018 [Draft], James Blair, contrib. 128, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11515&c=2090015

[85] Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 111, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11582&c=2099221

[86] Justice Committee 08 May 2018 [Draft], James Blair, contrib. 76, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11515&c=2089963

[87] Justice Committee 08 May 2018 [Draft], James Blair, contrib. 78, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11515&c=2089965

[88] Justice Committee 08 May 2018 [Draft], Pete White, contrib. 304, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11515&c=2090191

[89] Justice Committee 08 May 2018 [Draft], Dr Scott, contrib. 306, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11515&c=2090193

[90] NACRO. (2018). Written submission.

[91] Recruit with Conviction. (2018). Written submission.

[92] Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 125, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11582&c=2099235

[93] Scottish Government. (, February 2018). Management of Offenders (Scotland) Bill, Policy Memorandum, paragraph 94.

[94] Scottish Government. (, February 2018). Management of Offenders (Scotland) Bill, Policy Memorandum, paragraph 114.

[95] Justice Committee. (2018, May 15). Official Report, col 30.

[96] Justice Committee 15 May 2018 [Draft], Dr Graham, contrib. 136, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11535&c=2093195

[97] Justice Committee 22 May 2018 [Draft], David Strang, contrib. 125, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11551&c=2094963

[98] Justice Committee 08 May 2018 [Draft], Pete White (Positive Prison? Positive Futures), contrib. 173, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11515&c=2090060

[99] Justice Committee 15 May 2018 [Draft], Leanne McQuillan, contrib. 113, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11535&c=2093172

[100] West Lothian Council. (2018). Written submission.

[101] Scottish Children's Reporter Association. (2018). Written submission.

[102] Justice Committee 08 May 2018 [Draft], Professor Loucks, contrib. 182, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11515&c=2090069

[103] Justice Committee 08 May 2018 [Draft], Professor Nancy Loucks (Families Outside), contrib. 180, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11515&c=2090067

[104] Clan Childlaw. (2018). Written submission.

[105] Justice Committee. (2018, May 8). Official Report, col 31.

[106] Families Outside. (2018). Writtem submission.

[107] Justice Committee 15 May 2018 [Draft], Dr Brangan, contrib. 149, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11535&c=2093208

[108] Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 127, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11582&c=2099237

[109] Association of British Insurers. (2018). Written submission.

[110] Scottish Government. (2018, December 19). Consultation – Transforming Parole in Scotland.

[111] Justice Committee 22 May 2018 [Draft], John Watt, contrib. 147, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11551&c=2094985

[112] Justice Committee 22 May 2018 [Draft], John Watt, contrib. 162, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11551&c=2095000

[113] Justice Committee 15 May 2018 [Draft], Douglas Thomson, contrib. 169, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11535&c=2093228

[114] Sheriff's Association. (2018). Written submission.

[115] Justice Committee 24 April 2018 [Draft], Neil Devlin, contrib. 161, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11485&c=2085598

[116] Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 139, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11582&c=2099249

[117] Justice Committee 15 May 2018 [Draft], Douglas Thomson, contrib. 161, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11535&c=2093220

[118] Inverclyde Council. (2018). Written submission.

[119] Justice Committee. (2018, May 22). Official Report, col 27.

[120] Social Work Scotland. (2018). Written submissions.

[121] Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 143, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11582&c=2099253

[122] Justice Committee 22 May 2018 [Draft], John Watt, contrib. 221, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11551&c=2095059

[123] Justice Committee 15 May 2018 [Draft], Douglas Thomson, contrib. 179, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11535&c=2093238

[124] Scottish Governmment. (2018, December 18). Official Report, Justice Committee, col 35.

[125] Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 137, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11582&c=2099247

[126] Justice Committee 15 January 2019 [Draft], Humza Yousaf, contrib. 62, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11890&c=2144817

[127] PETAL. (2018). Written submission.

[128] Scottish Government. (2018, December). Consultation – Transforming Parole in Scotland, para 4.14.

[129] Lewis Macdonald MSP. (2018). Written submission of evidence.

[130] Scottish Government. (2018). Financial Memorandum, Management of Offenders Bill.

[131] Justice Committee. (2018, April 24). Official Report, col 33.

[132] Justice Committee 24 April 2018, Neil Devlin, contrib. 106, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11485&c=2085543

[133] Justice Committee. (2018, May 8). Official Report, col 7.

[134] Justice Committee 08 May 2018 [Draft], James Maybee, contrib. 91, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11515&c=2089978

[135] Justice Committee 22 May 2018 [Draft], Ruth Inglis, contrib. 13, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11551&c=2094851

[136] Justice Committee 22 May 2018 [Draft], Ruth Inglis, contrib. 65, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11551&c=2094903

[137] Justice Committee. (2018, May 22). Official Report, col 4.

[138] Justice Committee 05 June 2018 [Draft], Michael Matheson, contrib. 72, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11582&c=2099182