

Criminal Justice Committee
Wednesday 2 September 2026
3rd Meeting, 2026 (Session 7)

Prison Operations and Remand and Bail

Today's thematic evidence sessions cover two related topics:

- Prison operations (panel 2)
- Remand and bail (panel 3)

Background

The operation of prisons and the use of custody have been the subject of considerable debate and scrutiny. One of the key issues in recent years is the size of the prison population, reaching record levels, and the associated problem of prison overcrowding. The size of the remand population is one of the factors contributing to overcrowding. The subject matter of today's two panels is therefore interrelated.

Further background information is set out in the SPICe paper for the session with the Cabinet Secretary, under the heading "Prisons and the use of custody". This paper focusses specifically on prison operations and remand and bail whereas the paper for the Cabinet Secretary session takes a broader policy perspective.

Prison Operations

The latest [annual report](#) of HM Chief Inspector of Prisons for Scotland (HMCIPS) was published in March 2026. The [news release](#) accompanying the report highlights 4 key issues in Scottish prisons: overcrowding; deaths in custody; an increasingly complex prison population; and transport failures (contributing to cancelled healthcare).

Overcrowding

As already highlighted, overcrowding has been subject to a high degree of scrutiny. In September 2025, the Chief Inspector of Prisons for Scotland, wrote to the Scottish Government stating that overcrowding "is an invidious and all-pervading evil that affects every aspect of prison life". The HMCIPS annual report described the prison system as being under "intense and unsustainable pressure". The system was found to be operating at more than 400 above design capacity, with 10 prisons overcrowded. HMP Barlinnie was found to be operating at more than 30% over capacity. Examples were found of prisoners unable to shower daily or being required to sleep on mattresses on the floor. The report describes the "paralysing effect" of overcrowding which restricts access to education, work, healthcare, addiction

services and offender programmes. It also places significant strain on prison staff and increases the risk to prisoner safety and mental health.

During the last session of Parliament, the Scottish Government took various steps in response to prison overcrowding. These included:

- making use of emergency early release powers for sentenced prisoners,
- bringing forward legislation which reduced the length of time most short-term prisoners (those serving custodial sentences of less than four years) spend in custody before qualifying for automatic early release.

In spite of these measures, a [letter from the Cabinet Secretary on prison population and pressures](#) (received 24 August) stated that on the morning of 17 August 8,546 people were being held (in a system designed to accommodate 7,805). The [Cabinet Secretary's letter on session 7 priorities](#) (also received 24 August) outlined population projections:

“Across all scenarios, the prison population is expected to increase, with the average daily population in March 2027 projected to be between 8,100 and 9,150. Longer-term illustrative modelling suggests that, if arrivals to custody increase by 1% annually and departures fall by 1% annually, demand for prison places could reach 9,500 within the next decade.”

Deaths in custody

In relation to deaths in custody, the HMCIPS report “highlights 64 deaths in custody during 2024, the highest ever recorded in Scotland and a 60% increase on the previous year. This includes 17 suicides, also the highest yet recorded. The mortality rate in custody now stands at 790 deaths per 100,000 people in prison, among the highest in Europe.” The Scottish Government has published [statistics on deaths in prisons](#) and the Scottish Centre for Crime & Justice Research has been [monitoring deaths in custody more generally](#) (e.g. also including mental health detention).

A [letter the Committee received from the Scottish Prison Service on 14 August](#) provided some data on deaths in custody, including information on disproportionately represented groups. People over the age of 65 were disproportionately represented in overall deaths in custody. In relation to suicides in custody the letter stated:

“People on remand also account for around 26 per cent of our population, but 46 per cent of all suicides. People in their first 72 hours are also at a higher risk, accounting for 11 per cent of suicides. For this reason, we have put additional support in place for young people in their first 72 hours in custody.”

Complex prison population

The HMCIPS annual report also highlighted an increasingly complex prison population including growing numbers of people with complex mental health needs, addictions and neurodivergence as well as more older prisoners (often in accommodation unsuitable for wheelchairs, hospital beds or mobility support) and more individuals requiring separation for safety (often being managed in mainstream

areas due to limited specialist accommodation). The report found that “These pressures, combined with staffing shortages and high sickness levels, have compromised access to time out of cell, purposeful activity and progression opportunities.”

As noted, one of the complexities of the population relates to addictions. The related issue of substance misuse in prisons remains of concern. In the Scottish Prison Service’s [Prisoner Survey 2024](#), 35% of respondents stated that they have used illegal drugs in prison (17% having done so in the last month), up from 29% in 2019. Of those, 49% believed that their drug use had decreased during their current period in custody, while 26% said their drug use has increased (or started) in prison. It also highlighted that rates of non-response for the section on drugs and alcohol were high: “presumably reflecting the fact that many prisoners felt unwilling to disclose information on this topic”.

The session 6 Criminal Justice Committee carried out an [inquiry into the harm caused by substance misuse in prisons](#) ([report](#) published January 2026). It found that substance misuse “remains a systemic challenge across the prison estate, affecting safety, health outcomes and rehabilitation prospects”. It stated that the Committee viewed the situation “not as a failure of individual prisons or practitioners, but as the predictable outcome of a system that lacks the capacity, workforce, and clinical infrastructure required to meet the needs of the population it serves”.

The Committee recently asked the Scottish Government for further information around the health, care and support needs of an aging population. The [Cabinet Secretary’s response](#) highlighted “innovative practice, developed at HMP Glenochil through its Frailty Project, including a Cognitive Impairment Pathway” and work that is underway on palliative and end-of-life care.

Transport failure and cancelled healthcare

The last of the key issues highlighted in the HMIPS annual report was transport failure and cancelled healthcare. HMIPS’s review [“Planned Failure” A Thematic Review of Prisoner Transport in Scotland](#) identified “widespread problems in prisoner transport” that contributed to cancellation of vital secondary care appointments, delays or disruptions to visits, barriers to accessing rehabilitative programmes and instances of prisoners being held in unsuitable locations or arriving late for legal processes. The Committee asked for information on the rearranging of healthcare appointments in its recent correspondence with the Cabinet Secretary, [his response](#) stated:

“Three key barriers to access have been identified and addressed. First, prison patients are primarily reliant on GeoAmey for secondary healthcare access which is a barrier when transport is not provided. Monitoring GEOAmey missed appointments figures has shown improved service delivery with fewer missed secondary healthcare appointments across the prison estate.

Second, to prevent prison patients from being penalised for non-attendance, NHS Health Board Chief Executives have been asked to ensure secondary care teams do not re-prioritise these patients on their waiting lists.

Third, NHS Chief Executives have also been asked to help ensure that prison patients on secondary care waiting lists who transfer between health boards, when moved across the SPS estate, have their waiting time with the previous board recognised to avoid them being disadvantaged.”

Throughcare

Another area to highlight is the development of national throughcare standards under the Bail and Release from Custody (Scotland) Act 2023. Throughcare refers to a range of support services provided to people in custody and on release to support reintegration into the community. The Cabinet Secretary updated on the development of these standards in his [letter of 24 August](#):

“national throughcare standards are being developed under the Bail and Release from Custody (Scotland) Act 2023 to provide consistent support before and after release from custody. Covering areas such as housing, health, social care and employability, the standards aim to improve reintegration and reduce reoffending. They are being developed with stakeholders, including people with lived experience, and will be published by February 2028”.

The session 6 Criminal Justice Committee’s [stage 1 report on the Bail and Release from Custody \(Scotland\) Bill](#) highlighted that “There was a generally shared view that a duty to engage in release planning and to set minimum standards of throughcare support will be helpful in encouraging a joined up and consistent approach to the support given to prisoners”. However, Keith Garder of Community Justice Scotland noted that “as with many of these things, it is not just about standards; it is about how they are implemented and monitored and the feedback for improvement”. A written submission from Justice Services for Young People and Adults, the City of Edinburgh Council stated that if standards for throughcare are to be enshrined in law, it is likely that additional resources would be required to support service improvements.

The [report of an independent Sentencing and Penal Policy Commission](#) (published February 2026) highlighted concerns about current throughcare provision, with individuals who had been in custody describing a lack of structured throughcare. The report stated:

“Transitional accommodation improved throughcare and stronger community links are crucial components of stable reintegration and long-term public safety. Sustained investment in throughcare is therefore both a public protection measure and a test of system effectiveness”.

Staff wellbeing

A further issue in terms of prison operations is the impact of system pressures on staff. In Autumn 2025 the Prison Officers’ Association, the union representing Scotland’s 4000 front line prison staff, published a report on the pressures facing prison officers, [Crisis Point Reached](#). It states that prison officers’ ability to carry out their duties “is being severely hampered by a prison system that is at breaking point”. It calls on the Scottish Government and Scottish Prison Service to take “urgent

action to address overcrowding, understaffing, failings of the recruitment process, the drugs crisis, retirement age, violence and a host of other issues”.

The report also states that 80% of Prison Officers’ Association members said their places of work do not have enough staff to cope with rising prisoner numbers and 86% said that overcrowding is contributing to increased sickness absence rates. Almost 70% thought that overcrowding was making recruitment more difficult.

Council of Europe’s Committee for the Prevention of Torture report

The Council of Europe’s Committee for the Prevention of Torture published a [report](#) on 2 July 2026 on findings from a visit to Scotland in June 2025. It raised concerns about the Scottish system, many of which reflect the issues identified above. In particular, it stated that “to address the root causes of overcrowding in prison establishments for men, a coherent strategy, covering both admission to and release from prison is required”. It identified this as a priority topic.

Another priority topic was the regime offered to prisoners in the Separation and Reintegration Units. It recommended “increased meaningful human contact to avoid persons being held in solitary confinement”. It identified long-term segregation as a chronic issue and recommended that strategies be developed “to break the cycle of “carousel” or “yo-yo” segregation for certain prisoners including the development of more step down facilities between the SRU and the mainstream environment”.

The Scottish Human Rights Commission has [written to the Cabinet Secretary](#) following the Council of Europe report highlighting that many of the issues raised also featured in their 2024 report, [Review, Recommend, Repeat](#). The letter to the Cabinet Secretary stated that: “The pace of change is simply too slow and must be addressed by the Scottish Government and Parliament as an urgent priority”.

The Scottish Government has published a detailed [response to the Council of Europe report](#) setting out how it is responding to each of the findings (see in particular pages 30-34 on overcrowding and 44-51 on segregation). The response states: “Whilst progress is being made in the realisation of the human rights covered by the CPT, there is still work to be done. The Scottish Government recognises the challenge and is committed to tackling this head on with transparency and accountability”.

Remand and Bail

The criminal courts may have to consider whether or not to grant a person bail at various points of a case. The issue can arise during the initial stages, in relation to pre-trial bail, and following conviction where sentencing is not immediate. Being remanded to custody pre-trial (as opposed to pre-sentencing) is the type of remand about which most concern has been raised.

Process for making bail decisions

The process for making bail decisions is governed by the [Criminal Procedure \(Scotland\) Act 1995](#):

- Section 23B provides a presumption in favour of bail, stating that “bail is to be granted to an accused person unless the court determines that there is good reason for refusing bail”.
- A court may only determine that there is a good reason to refuse bail if one of the grounds in section 23C applies and “having regard to the public interest, and having considered the imposition of bail conditions in accordance with subsection (2), it is necessary to refuse bail—
 - (a) in the interests of public safety, including the protection of the complainer from a risk of harm, or
 - (b) to prevent a significant risk of prejudice to the interests of justice.”
- Section 23C sets out various grounds which may lead to the refusal of bail. The stated grounds are, any substantial risk that the accused might if granted bail:
 - abscond or fail to appear at a court hearing when required to do so (but only if the accused has previously failed to appear at a relevant diet or proceedings relate to an offence under section 27(1)(a) (breach of bail) or 150(8) (failure to appear)),
 - commit further offences,
 - interfere with witnesses or otherwise obstruct the course of justice,

or any other substantial factor which appears to the court to justify keeping the person in custody.
- Section 23C(2) provides examples of points which may be relevant in assessing those grounds, including:
 - the nature of the alleged offences and probable sentence if convicted
 - whether an accused was already on bail at the time of the alleged offences
 - the nature of any previous convictions the accused has
 - the associations and community ties of the accused.

Bail reforms

Several reforms in this area were legislated for in the [Bail and Release from Custody \(Scotland\) Act 2023](#), Part 1 of which aimed to “[refocus] the way bail law operates so that those who do not pose a risk to public safety or the delivery of justice are managed safely in the community and are not remanded in custody” (see Scottish Government [Policy Memorandum](#)). All of Part 1 is now in force since sections 1 to 4 of the Act came into force on 14 May 2025. Victim Support Scotland released a

[statement](#) in response to the commencement of these sections expressing concerns about the provisions (in particular section 3, which repealed section 23D of the 1995 Act). Before its repeal, section 23D provided that bail is only to be granted in exceptional cases if the accused is being prosecuted under solemn procedure for either:

- a violent, sexual or domestic abuse offence and has a previous conviction under solemn procedure for any such offence
- a drug trafficking offence and has a previous conviction under solemn procedure for such an offence.

Further reforms to bail have also been proposed. The [report of an independent Sentencing and Penal Policy Commission](#) included consideration of bail and remand, recommending that: “the bail framework must explicitly exclude the possibility of remanding individuals in custody when there is no real prospect of a custodial sentence of more than 24 months if they are convicted of the offence of which they are accused”. In June 2026, the Scottish Government published a [consultation on the prison population and penal reform](#) seeking views on a set of proposed reforms, including this recommendation. The consultation closed 20 August 2026.

Bail conditions, including electronic monitoring

Any person released on bail is subject to standard bail conditions (e.g. to appear at court as required, not commit any offence and not interfere with witnesses). The court can also impose additional special conditions to help ensure that the standard conditions are complied with (e.g. conditions prohibiting an accused going to a particular address or approaching a specific person). A person may also be subject to electronic monitoring while on bail. This is provided for by [Part 1 of the Management of Offenders \(Scotland\) Act 2019](#). Its increased use has been called for by Community Justice Scotland in a January 2024 [press release](#):

“Where appropriate and only where further support is also to be provided, we are advocating for the increased use of electronic monitoring to support bail over remand. We need to reduce the unnecessary remand of those with multiple and complex needs which are best met in the community, while bringing down the numbers of those in prison awaiting trial.”

The [Cabinet Secretary’s letter of 24 August](#) highlighted other ongoing work in this area:

“work is underway to improve bail suitability assessments, strengthen consistency in the use of alternatives to remand, and update bail supervision guidance. The Government is also working with justice partners to improve electronically monitored (EM) bail by addressing operational issues, improving court processes and considering legislative changes where required.

Building on an initial GPS monitoring pilot, a pilot of GPS-enabled bail is proposed, giving courts more flexible monitoring options, including exclusion zones. This aims to increase confidence in EM bail while maintaining appropriate safeguards.

In addition, two bail-focused pilots will be launched: a voluntary third-sector Bail Support Service to help people comply with bail conditions and attend court, and a supported bail accommodation pilot for individuals whose housing instability and complex needs contribute to remand decisions.”

Crown office perspective

The [letter from the Crown Office and Procurator Fiscal Service](#) received on 27 August provided its perspective on bail and remand:

“While pressures on the prison population remain significant, remand continues to serve a number of important purposes, with risk management being a key consideration. Bail opposition decisions by prosecutors must take account of risks such as further offending, absconding, witness intimidation and obstruction of justice, which may arise regardless of the sentence ultimately imposed. This is particularly relevant in cases involving domestic abuse, sexual offending, stalking or other offending involving ongoing contact with victims, where the risk of further harm can be greatest at the point of reporting.

Bail opposition may therefore remain necessary where there are significant risks to victims or witnesses, repeated offending while on bail, persistent non-compliance with court orders, or a substantial risk of absconding. In domestic abuse cases especially, victims' willingness to disclose the full extent of offending and engage with the justice process can depend on whether they feel safe following the initial custody or undertaking decision.”

Remand population

The remand population is a product of both the number of people being remanded and the length of time they are held on remand. The average remand population was 2,210 in 2024-25. This compares with 1,417 in 2009-10, showing a significant increase. However, the number of people arriving to prison on remand in 2024-25 was 6,636, compared with 10,544 in 2009-10. The rise in the remand population in recent years would therefore seem to be driven largely by the length of time held on remand rather than increases in the numbers being remanded. See page 30 of the SPICe [briefing on prisons](#) for further detail on changes to the remand population.

The [Cabinet Secretary's letter on prison population and pressures](#) provided some data on length of time spent on remand:

“In 2017-18, 90% of remand departures had occurred within 63 days. In 2022-23, they took 145 days, before falling to 86 days in 2024-25. In 2017-18, 90% of transitions from remand to sentenced population occurred within 123 days. This rose to 289 in 2022-23, before falling slightly to 275 days in 2024-25.”

The impact of the COVID-19 pandemic is frequently cited as a reason for the increasing time spent on remand due to restrictions on court business limiting the number of trials which could be held. Delays in concluding cases made it more difficult to keep periods of pre-trial remand within normal statutory time limits, leading to the temporary extension of those limits under COVID-19 legislation.

However, the average number of prisoners held on remand was starting to increase before the COVID-19 pandemic (from a low of less than 1,300 in 2017-18) and continued to increase during the pandemic. Other factors may include delays caused by pressures on available resources and changes in the offence profile of people being remanded (e.g. if there is a higher proportion of serious and/or complex cases). The [Cabinet Secretary's letter on prison population and pressures](#) states:

“Since 2014-15, the growth in the average daily remand population has been driven by increases in those accused of violent and sexual offences. Most cases in remand population relate to Solemn or High Court procedures. There have been large volume increases in those accused of ‘serious assault and attempted murder’ (+71% from 225 in 2014-15 to 386 in 2024-25), as well as increases in those accused of ‘rape and attempted rape’, ‘drugs – supply’, ‘Domestic Abuse (Scotland) Act offences’, and ‘sexual assault’.”

The HMIPS published a [report on the experience of remand prisoners](#) in December 2025. It stated:

“Currently the remand population is too high, the length of time spent on remand is too long, and Scottish remand prisoners are not given adequate protection under Scottish legislation. Taking stronger measures to reduce the remand population and decrease time spent on remand is needed to relieve the pressure on the prison system, leaving the SPS [Scottish Prison Service] better able to provide fair and humane treatment to all those in their care”.

The session 5 Justice Committee carried out an [inquiry into the use of remand](#) (report published June 2018). The session 6 Criminal Justice Committee also highlighted this as a priority issue in its report [Judged on progress: The need for urgent delivery on Scottish justice sector reforms](#) (published January 2022). It stated that:

“A priority issue this parliamentary session for organisations in the justice sector must be addressing the high numbers of prisoners on remand and improving the experience of those prisoners who must be held on remand. Our predecessor committee reviewed the situation back in 2018 and, over three years on, there is no discernible sign of substantive progress on the numbers being held despite the concern of many. That cannot continue.”

This was also highlighted as an issue for further scrutiny in the session 6 Committee's [legacy report](#).

Mhairi Gavin, Criminal Justice Researcher, SPICe

Date: 27/08/2026

Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.

The Scottish Parliament, Edinburgh, EH99 1SP www.parliament.scot