



Criminal Justice Committee
Wednesday 9 September 2026
4th Meeting, 2026 (Session 7)

Criminal Courts

Today's evidence sessions provide an opportunity to question two panels of witnesses about the criminal courts:

- **panel 1** – Crown Office & Procurator Fiscal Service (COPFS), Faculty of Advocates, Law Society of Scotland, and Scottish Courts & Tribunals Service (SCTS)
- **panel 2** – Children First, Scottish Independent Advocacy Alliance, and Victim Support Scotland

This briefing provides background information to help inform the session. A [letter from the SCTS](#) (September 2026) provides further information.

More general information is provided in the SPICe [subject profile on the criminal courts](#) (July 2026).

Pressures on the courts and waiting times

Much of the parliamentary scrutiny of the courts during last session was shaped by the impact of the COVID-19 pandemic. Restrictions imposed to limit the spread of the virus reduced the capacity of the courts to deal with cases. There has been progress in tackling the resulting backlog of cases, but other pressures have meant that this varies significantly depending on the seriousness of cases. In May 2026, Audit Scotland published a [follow-up report on the criminal courts backlog](#). It noted that:

- the overall criminal courts backlog had reduced considerably to 13,268 outstanding scheduled trials at the end of 2025-26 (down from the peak of 43,606 in January 2022)
- outstanding scheduled trials in the two summary courts (justice of the peace and sheriff summary) are below pre-pandemic levels
- outstanding scheduled trials in courts dealing with the most serious cases remain high and continue to grow in the High Court

In relation to the last point, the report stated:

“Sheriff solemn outstanding scheduled trials rose to exceptional levels following the pandemic. There has been a positive downward trend until recently, and the

numbers remain high. At the end of 2025-26, the number was approximately double the pre-pandemic number (1,078 compared to 497 at the end of 2019-20)." (page 13)

"High Court outstanding scheduled trials have grown continuously since the pandemic and are at an unprecedented level. At the end of 2019-20, the number was 390. This increased to 687 by the end of 2022-23 (a rise of 76 per cent), and to 1,002 by the end of 2025-26 (a rise of 157 per cent from 2019/20)." (page 13)

The report highlighted the point that the High Court backlog is not simply a product of the disruption caused by the COVID-19 pandemic:

"The rising High Court backlog primarily results from the shift in the type and volume of cases coming into the criminal courts system. There has been a significant rise in serious, complex cases (e.g. historical sexual abuse, counter-terrorism and human trafficking), often involving multiple victims and accused individuals. This shift started before the pandemic. These serious, complex cases are less likely to be resolved early and more likely to involve late guilty pleas and lengthy trials." (page 14)

In August 2026, the SCTS published a paper on [Criminal Court Modelling](#), looking at projected criminal business in the courts over the coming years. It commented that:

"The modelling indicates that High Court scheduled trial numbers and waiting periods will continue to increase, reflecting the sustained upward trend in new business evident before the pandemic. Additional High Court trial capacity will therefore be required over the longer term to prevent further deterioration and maintain waiting periods at a more stable, although significantly elevated, level. Under the planned capacity scenario, scheduled trial numbers and waiting periods are projected to keep growing for the coming 18 months and then plateau from around March 2028, rather than reduce towards pre-pandemic levels.

Additional capacity alone will not therefore resolve the underlying pressure. Sustained improvement will require wider reform of the criminal case journey, including the work SCTS is seeking to progress with other justice organisations through the Joining Up Justice programme and related Criminal Case Management Reform. This will consider how changes to people, processes, technology and information sharing can improve case progression, make better use of available capacity and support shorter and more reliable case journeys.

These pressures continue to be considered through the Criminal Justice Board and in discussions with the Faculty of Advocates and the Law Society of Scotland. This engagement considers the pressures on the legal profession alongside the wider operational and system changes required to improve case progression, court utilisation and capacity." (pages 4-5)

The Scottish Government publication [Journey Times in the Scottish Criminal Justice System 2024-25](#) (published June 2026) provides information on the time between an offence becoming known to the police and the date when the case is concluded (e.g. by a person accepting an alternative to prosecution or as the result of a criminal court verdict). It includes data for specific stages of the process, different courts, and particular offences. For example:

- [part 7](#) provides information broken down by court type on the time between an offence becoming known to the police and a court verdict
- [part 8](#) provides information further broken down by the amount of time a case spends in different stages of the criminal justice process (pre-court and court).

As indicated in some of the documents referred to above, there has been a change in the profile of cases being prosecuted in the courts, with an increase in the number of serious and complex cases. This is seen in the Scottish Government's statistical bulletin [Criminal Proceedings in Scotland: 2023-2024](#) (published December 2025). Whilst it highlights a substantial fall in the total number of people proceeded against during the period 2014-15 to 2023-24 (see [Chart 2](#)),¹ some of the [Excel tables](#) published along with the bulletin show how the picture differs depending on the court and offence (e.g. see tables 3 and 4a).

Criminal case management and reform

In a [statement](#) following publication of the above-mentioned paper on Criminal Court Modelling, the Chief Executive of the SCTS said:

"The criminal justice journey must be reformed from end to end so that national justice organisations can operate as a more coherent system.

Unless we consider significant reforms in how we manage our most serious cases, the continued rise in serious and complex criminal business is likely to result in longer delays in securing justice for victims, increased pressure on prisons and additional challenges across the wider justice system.

Simply adding more capacity or replacing individual technology systems will not provide a sustainable long-term solution, as there are implications for prosecutors, defence lawyers, victim support organisations, criminal justice social work and other justice partners.

End-to-end reform, supported by sustained investment, is needed to deliver shorter and more reliable case journeys, improve data and remove avoidable delay and duplication."

The Scottish Courts and Tribunals Service has developed proposals that would require an investment of around £62 million over five years to reform criminal case management, redesign court processes and introduce modern digital case management.

This would pave the way for wider reform, which is being explored by the criminal justice system through Joining Up Justice programme and supporting more effective and efficient working across the criminal case journey."

In its [Programme for Government 2026 – 2031](#) (September 2026), the Scottish Government stated that:

¹ The more pronounced decline in 2020-21, and subsequent bounce back, reflected the temporary impact of COVID-19 restrictions on the justice system.

“We will collaborate with SCTS and other justice partners to explore opportunities to ensure a whole system approach to redesign of the criminal justice process.” (p 46)

Relevant reforms that are already in place include:

- [Summary Case Management](#) – “Its core principles include early disclosure of evidential material to the defence, early and meaningful engagement between Crown and defence, and early judicial case management to ensure cases progress efficiently”
- [Digital Evidence Sharing Capability](#) – “DESC provides an improved and simpler system to share digital evidence to defence agents via the Defence Agent Service (DAS), removing the need to collect and move physical copies of CDs, DVDs or encrypted pen drives”.

Victims and witnesses

Another important strand of debate during the last parliamentary session concerned the treatment of victims and witness within the criminal justice system. In the context of the courts, relevant provisions of the [Victims, Witnesses, and Justice Reform \(Scotland\) Act 2025](#) include ones relating to:

- improving support for vulnerable victims and witnesses by embedding trauma-informed practice
- a specialist Sexual Offences Court to deal with serious sexual offences
- independent legal representation for complainers in sexual offence cases – where there is an application to use evidence relating to their sexual history or character.

Provisions of the Act in the above areas have not yet been commenced. However, provisions making the following changes, for trials commencing on or after 1 January 2026, were brought into force in the first phase of commencing the Act:

- the not proven verdict was abolished, leaving verdicts of guilty or not guilty
- in jury trials, the majority required for a guilty verdict was increased, effectively requiring a minimum of two-thirds support amongst the jurors for guilty.

Regarding the planned Sexual Offences Court, the [letter from the SCTS](#) (September 2026) comments that:

“The specialist court cannot simply be added to arrangements already operating under significant pressure and be expected on its own to deliver the intended improvements. Trauma-informed justice requires more than a specialist court environment. It also requires serious cases to progress as predictably and efficiently as possible, reducing unnecessary delay, repeated attendance and uncertainty for victims, witnesses, accused people and their families. Its success will therefore depend on modern court processes, technology and more effective information sharing across the justice system. This requires commitment and investment to achieve.” (page 3)

Also, in relation to the Sexual Offences Court, a [letter from the COPFS](#) (August 2026) to the Committee commented that

“The challenge in implementation is one of funding, as to date no additional resource has been made available to operationalise the provisions of this Act with some such as the Sexual Offences Court being a sizeable commitment.” (page 3)

When questioned on this point at the Committee’s meeting on 2 September 2026, the Cabinet Secretary for Justice indicated that additional monies are not included in the funding for this financial year because costs involved in implementation work for the new court are not expected to arise until next financial year.

Other significant steps taken during the last session included the development of the Bairns’ Hoose. A Scottish Government [factsheet](#) notes that:

“The overall vision of Bairns’ Hoose is that all children in Scotland who have been victims or witnesses of abuse or violence which has caused, or is likely to cause, significant harm will have access to trauma-informed recovery, support and justice.”

The factsheet goes on to provide details of what the Bairns’ Hoose approach involves, and how there is a phased approach to its implementation.

Legal aid

Legal aid provides support towards the costs of advice and representation from a lawyer for those who would not otherwise be able to afford it. It is key to the functioning of the criminal justice system, including the criminal courts.

Concerns about the sustainability of the current legal aid system were highlighted during Session 6, with key issues including

- fee levels for legal aid solicitors
- a fee structure which is out of kilter with modern court practices
- difficulty recruiting and retaining criminal defence solicitors due to low rates of pay and demanding work schedules.

At the end of the Session 6, the Scottish Government laid regulations which would make significant changes to the current legal aid system. For criminal legal assistance, the key reforms are:

- increasing the role of Criminal Legal Aid as the main form of legal aid for people appearing in the criminal courts – Criminal Legal Aid has more generous financial eligibility criteria than Assistance by Way of Representation (ABWOR), the type of legal aid it is replacing
- changing the fee structure so that solicitors are paid the same for representing someone who pleads guilty to a solemn procedure charge (used in more serious cases) at earlier as well as later stages in the process

- simplifying the processes for accessing ‘special urgency’ payments and automatic Criminal Legal Aid – special urgency provisions allow legal aid to be paid before an application has been granted whilst automatic Criminal Legal Aid is available without any financial or other eligibility tests in certain circumstances
- increasing fees paid to solicitors for legal aid work by 13%.

The reforms are due to come into force in December 2026, apart from the fee increase which is scheduled to take place in September 2026.

The Scottish Government has also set up an Independent Fee Review Mechanism Group. The purpose of this body is to establish a methodology, agreed by the main stakeholders, which can be used to set and regularly review legal aid fees.

In addition, the Scottish Government published a [consultation on legal aid reform](#) in July 2026 (closes 13 October 2026). The intention is “to establish a legislative framework for a simpler, more flexible and effective legal aid system”. There are no specific proposals relating to criminal legal assistance. However, efforts to simplify the system and introduce a wider range of funding options are likely to impact on the current system. Potential outcomes include:

- a reduction in the types of legal assistance available, with harmonised financial eligibility criteria – this could include a new requirement for recipients to make financial contributions towards Criminal Legal Aid
- government contracting or commissioning for some criminal legal assistance work – in contrast to the current system, where solicitors in private practice are paid on a case-by-case basis.

The Scottish Government’s [Programme for Government 2026 – 2031](#) (September 2026) includes a commitment to introduce a Legal Aid (Scotland) Bill:

“The Bill will establish a modernised legal aid framework that simplifies the current legal aid structure by enabling consolidation of aid types and greater consistency in means and merits testing, supporting a broader range of funding and commissioning mechanisms and increased flexibility in the administration of legal aid through enhanced decision-making powers for Scottish Legal Aid Board.” (page 77)

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