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Criminal Justice Committee
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Custodial v Community Sentences

This paper provides background information for the Committee's evidence session on the balance between custodial and community sentences with:

- Community Justice Scotland
- Social Work Scotland – the professional leadership body for the social work and social care professions.
- COSLA – a councillor-led, cross-party organisation that is "the voice of Local Government in Scotland"
- Scottish Sentencing Council – an independent statutory advisory body with responsibility for preparing sentencing guidelines for the Scottish courts.

Background on community justice in Scotland

Community justice covers a range of services, including the provision of community sentences (e.g. community payback orders), and both support for and supervision of people on release from prison.

Strengthening and expanding community justice services may play an important part in reducing the current use of custody (e.g. by increasing the use of community sentences as an alternative to custodial sentence and helping to reduce reoffending rates).

Community justice is defined by the Scottish Government in its National Strategy for Community Justice as being "principally about organisations working together to ensure that people who have offended address the underlying causes of their behaviour, and pay back to the community where appropriate".

The Scottish Government is required by the Community Justice (Scotland) Act 2016 (the 2016 Act) to produce a National Strategy and performance framework.[1] The current National Strategy sets out 4 aims:

- Aim 1: Optimise the use of diversion and intervention at the earliest opportunity

[1] Note that this Strategy is being reviewed, with a consultation to support this having closed on 20 August 2026 (more information on this consultation is set out later in the paper).

- Aim 2: Ensure that robust and high quality community interventions and public protection arrangements are consistently available across Scotland
- Aim 3: Ensure that services are accessible and available to address the needs of individuals accused or convicted of an offence
- Aim 4: Strengthen the leadership, engagement, and partnership working of local and national community justice partners.

The 2016 Act also placed a duty on community justice partners to work together in the planning and monitoring of community justice services in their local area. These partners are:

- local authorities
- health boards
- Police Scotland
- the Scottish Fire and Rescue Service
- Skills Development Scotland
- Health and Social Care Integration joint boards
- the Scottish Courts and Tribunals Service
- the Scottish Prison Service.

The 2016 Act set out requirements on community justice partners to publish and then review a plan in relation to community justice for their local authority area. They must report on the progress towards the national outcomes and any locally determined outcomes they include in their plan.

Community Justice Scotland monitors and reports on the performance of nationally and locally determined community justice outcomes. The Community Justice Outcome Activity Annual Report 2024-25 was published on 25 March 2026 (see further detail on this below).

In the 2026-27 Budget community justice was allocated £102.3 million and the grant to local authorities for Criminal Justice Social Work (a key element of community justice – see more below) was £86.5million.

Community Justice Scotland

Community Justice Scotland (CJS) was established by the 2016 Act and was launched in April 2017. CJS is the national leadership body for community justice in Scotland. It has statutory duties to:

- promote the National Strategy for Community Justice

- advise Scottish Ministers on the best use of community justice resources
- monitor the performance of local authorities in achieving their community justice outcomes.

It does not provide front-line community justice services and local community justice partners are not accountable to CJS (though they may be asked to provide information or assistance to CJS in fulfilling its functions).

The CJS website describes Scotland's justice system as "broken" and states:

> "Community justice is exactly what Scotland needs. We imprison people more often than any other country in Europe and, in the majority of cases, it's people from deprived backgrounds that we send there. It's this cycle of disadvantage and trauma that community justice breaks. By addressing the inequalities in society, we can achieve the best outcome for both victims and communities.
>
> Taking a people-centred approach tackles the root cause of behaviour. It's a sentencing option that teaches skills and increases self-worth, resulting in less crime being committed. It might mean treatment for underlying issues such as drug or alcohol addiction, unpaid work, fines and compensation or restrictions of liberty such as electronic tagging and curfews. By keeping people in the community and not isolated from society, they learn, they integrate, and they contribute."

It sets out its aims as:

- To promote good practice and support the leadership, engagement and partnership working of national and local partners
- To provide high quality and bespoke training to practitioners across Scotland
- To empower the voices of 'lived' experience and their families so they influence decision and policy-making
- To increase public understanding about what community justice is and build confidence in it as an effective sentencing option
- To make sure that restorative justice is available across Scotland
- To improve throughcare and mentoring for those released from prison
- To increase access to services that support desistance, at the earliest opportunity.

Justice Social Work

Justice social work is a service that sits within local authorities. It provides a range of services. Those that relate to community justice include:

- providing bail information and supervision services as an alternative to custodial remand
- providing support for diversion from prosecution (e.g. providing assessments and reports to assist decisions on sentencing and supervising people on social work orders or who are carrying out unpaid work as part of a court disposal)
- providing a throughcare service to all those who are subject to statutory supervision on release from prison, and also a voluntary service to those not subject to statutory supervision who request this service.

Throughcare services are a range of social work and associated services that are provided to prisoners both during and after their sentence to support them on their release. Statutory throughcare is for those subject to statutory supervision on release – this includes people serving sentences of four years or more, those subject to an extended sentence, or those on a supervised release order. Voluntary throughcare is available to those who are not subject to supervision on release from prison but who request these services while in custody or up to 12 months after release.

As well as voluntary throughcare being provided by justice social work, a national voluntary throughcare service, Upside, was launched on 1 April 2025. This service is delivered by a partnership of third sector organisations, led by Sacro and including Access to Industry, Action for Children, Apex Scotland, Barnardo's, Circle, Families Outside and Turning Point Scotland. Community Justice Scotland has oversight of the service.

The Scottish Government has produced a range of guidance for justice social work, including:

- National Throughcare Guidance for Justice Social Work Services
- Community Payback Order: practice guidance
- Drug Treatment and Testing Orders (DTTO): guidance for schemes
- Bail supervision: national guidance

Community Justice Scotland has produced National Guidelines on Diversion from Prosecution in Scotland.

Community disposals

There are a range of community-based disposals that can be given in criminal court cases.

Criminal Proceedings in Scotland: 2023-2024 sets out that 15,870 community sentences were issued in 2023-24 and of these:

- 12,132 were Community Payback Orders (76%)

- 3,468 were Restriction of Liberty Orders (22%)
- 264 were Drug Treatment and Testing Orders (2%).

Community Payback Orders (CPOs) are orders imposing one or more of the following requirements:

- an offender supervision requirement,
- a compensation requirement,
- an unpaid work or other activity requirement,
- a programme requirement,
- a residence requirement,
- a mental health treatment requirement,
- a drug treatment requirement,
- an alcohol treatment requirement,
- a conduct requirement.

They are governed by section 227A of the Criminal Procedure (Scotland) Act 1995 (the 1995 Act).

The Scottish Sentencing Council has produced information on CPOs which states that unpaid work is the most common requirement of a CPO (between 20 and 300 hours can be ordered). It provides examples of what this might involve:

- cleaning beaches, graffiti, litter
- redecorating scout halls, schools, day centres, care homes
- gardening in parks
- clearing snow and gritting pathways
- helping in a charity shop or community café
- furniture and shop delivery for vulnerable people such as the elderly.

Supervision is identified as the second most common requirement of a CPO. This requires the offender to attend regular appointments with a criminal justice social worker.

Restriction of Liberty Orders (RLOs) may require an offender:

- to be restricted to a specified place (generally their home) for a maximum period of 12 hours per day, or

- to be restricted from a specified place or places.

RLOs can be made for up to 12 months. They are governed by section 245A of the 1995 Act.

Drug Treatment and Testing Orders (DTTOs) require an offender to:

- submit to treatment with a view to the reduction or elimination of the offender's dependency on or propensity to misuse drugs, and
- be tested for drug use during the period of the order.

It assigns a supervising officer that the offender must keep in touch with and who reports to the court on progress. DTTOs can be made for between 6 months and 3 years. They are governed by section 234B of the 1995 Act.

Information on other forms of community sentence that are available are outlined on Community Justice Scotland's website. These include compensation orders, sexual harm prevention orders and electronic monitoring orders.

Re-conviction rates based on sentence type

Reconviction Rates in Scotland: 2022-23 Offender Cohort shows the following reconviction rates in 2022-23 for different types of disposal:

- Community Payback Orders – 28.6%
- Restriction of Liberty Orders – 33.0%
- Drug Treatment and Testing Orders – 56.8%
- Financial penalty – 19.4%
- All custodial sentences – 42.5%
    - Sentences of 1 year or less – 53.2%
    - Sentences of 1-2 years – 30.8%
    - Sentences of 2-4 years – 26.5%
    - Sentences of over 4 years – 10.0%

However, when it comes to comparing the effectiveness of different sentence types, the Scottish Government Reconviction Rates publication states:

> "It is important to understand that different disposals are more likely to be given for certain crimes. For example, custodial sentences, particularly extended ones, are more likely to be given for more serious crimes and monetary disposals are more likely to be given for less serious crimes. This

> makes it difficult to say whether a particular disposal is affecting the reconviction rate, or whether the crimes associated with that disposal are having a larger effect."

In relation to the high reconviction rate for DTTOs the Scottish Government highlights the small numbers given such an order. The 2020-21 Reconviction Rates publication also states of DTTOs: "The high reconviction rates are associated with the substance misuse that led to the disposal and should not be interpreted as a particular lack of effectiveness of DTTOs compared to other disposals."

Direct comparisons between disposal types can therefore be difficult given differences in offence type and offender profile. Some studies have sought to control for pre-existing differences. The Sentencing Academy review The Effectiveness of Sentencing Options summarises several of these studies (see pages 13 to 16). These suggested that, when controlling for other factors, community sentences still had lower re-conviction rates than short-term custodial sentences.

Balance between custody and community sentences

The Scottish Government refreshed their Vision for Justice in Scotland in February 2022. One of their priority actions is "shifting the balance between use of custody and justice in the community". It states that: "the role of custody will be reserved only when no alternative is appropriate, instead seeing a greater availability of justice options within our communities."

Criminal Proceedings in Scotland: 2023-2024 sets out that in 2023-24:

- 10,094 custodial sentences were given (16% of disposals),
- 15,870 community sentences were given (25% of disposals),
- 25,082 financial disposals were given (40% of disposals), and
- 12,440 "other" disposals[2] (19% of disposals).

The Scottish Government's National Strategy for Community Justice: review consultation (closed 20 August 2026) highlighted "encouraging signs of progress in the provision of community justice" such as:

- "The number of diversion from prosecution cases commenced rose by seven per cent between 2023-24 and 2024-25 from 3,400 to 3,600. This was the highest level in the last ten years."

- "The number of bail supervision cases rose by 17 per cent between 2023-24 and 2024-25 to 1,500. This was the highest in the last ten years."

- "The successful completion rate for CPOs finished in 2024-25 was 71 per cent, similar to the rates prior to the pandemic".

[2] Most of these were admonishments - where an accused person found guilty of a crime is warned not to offend again. It is recorded as a conviction and appears on their criminal record. No other penalty is given. (See Scottish Sentencing Council Jargon Buster)

The review consultation identified the following themes to be "some of the most vital in the effective provision of community justice" over the next 3 to 5 years:

- "Early intervention, diversion from prosecution and other preventative measures that serve to address offending behaviour before further interaction with the justice system becomes necessary.
- Use of electronic monitoring technology to enable the safe management of individuals in a community setting.
- Effective provision and use of bail support and supervision, where courts consider appropriate.
- Efficient and joined-up delivery of services throughout an individual's pathway through the justice system, including active utilisation of digital technologies.
- A joined-up approach across key public services—including health, housing and skills development—to support preventing individuals entering the justice system and to reduce reoffending."

Challenges in the provision of community justice

Audit Scotland's 2021 report, Community Justice: Sustainable alternatives to custody, highlighted Scotland's use of custodial sentences being one of the highest in Europe and stated: "There is little evidence of a shift towards the use of community based sentences, or of improved outcomes". It identified a number of issues that the Scottish Government "will need to consider and understand in taking forward any revised approach to community justice":

- "Whether all stakeholders involved in the planning and delivery of community justice have a shared understanding of lines of accountability and areas of responsibility.
- The reasons for geographical variation in use, cost, and success, of community sentences, as well as an understanding of variation in costs between different community justice interventions.
- The factors that influence sentencing pathways and decisions and what has contributed towards any progress made in increasing the use of community sentences, as well as the slow progress overall in shifting the balance from custody to community sentencing.
- The basis on which funding allocations to community justice partnerships are determined, and the extent to which this does or should reflect potential increases in demand that might come from a move towards more community sentences and the recovery from Covid-19.
- Whether the intended outcomes of community sentences, beyond reducing reoffending, have been clearly defined.

- Whether the data being collected to assess outcomes is appropriate, including whether the data needed is both available and allows comparison between areas."

Community Justice Scotland made four recommendations in its Community Justice Outcome Activity Annual Report 2023/24 in order to address issues it had identified:

- Resource - The Scottish Government, CJS and all partners should continue to work together to ensure that community justice across the public and third sectors is resourced in a way that matches the policy ambition of the Vision for Justice in Scotland and the National Strategy for Community Justice. A dedicated group with a clear action plan should be established by the Scottish Government to address the resourcing of community justice.

- Data - The Scottish Government, CJS and national partners should ensure that relevant national data and information are made available to local areas, disaggregated to local level, on a regular and ongoing basis to enable local targeted improvement. CJS, working with national statutory justice partners on the justice board, will work to improve sharing of data with local community justice partners as part of further development of actions under the delivery plan.

- Training - While current public spending constraints continue to impact spending on training, CJS and local partners should continue to engage to ensure training needs are identified and that delivery of training is progressed in the most effective and efficient manner within operational constraints.

- Electronic monitoring (EM) - The Scottish Government working with CJS, national community justice partners and local areas should address the barriers that have already been identified and implement solutions to maximise the opportunities presented by EM.

The Community Justice Outcome Activity Annual Report 2024-25 updates on progress against these recommendations (see page 16). It identifies some progress in all areas but highlights remaining challenges such as workforce and operational pressures and inconsistencies in access to data and in judicial use of electronic monitoring.

The COSLA and Social Work Scotland Response to Criminal Justice Committee Pre-Budget Scrutiny call for views 2026-27 emphasised workload pressures in justice social work. Some of the particular issues highlighted were:

- Impact of legislative changes – legislation such as the Bail and Release from Custody Act 2023 and legislation on release of short-term prisoners has increased demand for services.

- High demand – "JSW services continue to face high levels of demand. A look at 2023-24 JSW statistics shows a growing use of diversion, deferred structured deferred sentence, and bail supervision—all reaching decade highs. While the number of new CPOs remains below pre COVID levels, the

average unpaid work hours have increased, suggesting heavier or more demanding orders. It is also important to note that the unpaid work service, not only supervises completion of work in local communities but also supports individuals with addiction, mental health and trauma issues, to get through their order successfully."

- Increased complexity of work – "Many local authorities are also reporting an increase in cases involving neurodiversity, sexual offending and domestic abuse. This in turn increases the level of responsibility on the service to provide risk assessment, risk management and public protection. Drug related deaths remain stubbornly high, with JSW working with many of the individuals and their families."

- High prison population – this impacts on justice social work in a number of ways:
    - "Statutory throughcare for long-term prisoners and prisoners leaving prison on licence
    - Increased demand for Justice Social Work Reports
    - Increased demand for parole reports, risk assessments, release supervision and in turn less capacity for preventative, early intervention and rehabilitative work
    - Individuals may have more complex needs after serving their sentence in an overcrowded prison with limited opportunities for rehabilitative work
    - The need for support and tailored programmes on release to help prevent reoffending."

The Scottish Sentencing and Penal Policy Commission report, Justice that Works, published in February 2026 considered community-based actions that offer alternatives to court proceedings and the balance between community and custodial sentences where cases do proceed to court (see chapters 3 and 5).

In relation to alternatives to court proceedings the report states: "Many people who offend could be better supported through direct measures and early intervention pathways instead of formal prosecution, which often escalates problems, increases stigma and limits opportunities for change". It makes a number of recommendations in this area, such as:

- Recommendation 3.3: Consider introducing higher tiers of Antisocial Behaviour Fixed Penalty Notices to allow the police to offer these proportionate to an individual's ability to pay.

- Recommendation 3.5: Consider widening the actions available to the Police to include the ability to divert an individual to Justice Social Work or third sector services.

- Recommendation 3.7: COPFS should have the ability to issue "behaviour orders" to the accused.

On the use of community sentences the report states:

> "High-quality community sentences remain underused despite strong evidence that they reduce reoffending more effectively than short prison terms. While community sentences and community justice may attract less public attention than prisons and policing, they form a substantial part of the justice system and are central to its effectiveness. Rigid systems, inconsistent availability of programmes and limited discretion for justice social workers hinder effective delivery".

And that:

> "Fragmentation across the community justice landscape contributes to uneven supervision, support and outcomes. While local delivery enables close links with housing, health and community services, national leadership, coordination and accountability remain weak. Without clearer national direction, variation risks becoming inconsistency, weakening confidence among sentencers, practitioners and the public."

Its recommendations in this area include:

- Recommendation 5.2: Extend the presumption against short sentences (PASS) to 24 months. When passing a sentence of fewer than 24 months, members of the judiciary should provide a written note of all the available alternatives considered and why, bearing in mind the particular facts and circumstances of the case, no other method of dealing with the person was appropriate. Data on the reasons provided should be gathered in a format that is amenable to systematic collation and analysis.

- Recommendation 5.6: Make data and information regarding current sentencing practice publicly available to be used in awareness raising and education to help address misconceptions and improve public understanding.

The Scottish Government recently consulted on the prison population and penal reform (closed 20 August) building on the recommendations of the Scottish Sentencing and Penal Policy Commission report.

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