

An overview of Scotland's criminal justice system



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- Scottish Water
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Summary



Scotland's criminal justice system consists of a complex set of processes involving many different bodies and individuals.



Background

1. The criminal justice system in Scotland consists of a complex set of legal processes based on principles of fairness, a respect for human rights and independent decision-making. It is adversarial in nature, which means the two sides involved in a criminal case oppose each other in court. The system must follow due process to ensure the protection of individuals accused by the State and the presumption of innocence until proven guilty.

2. There are many different public, private and voluntary bodies and individuals involved in delivering criminal justice in Scotland. The bodies have different roles and accountability arrangements to ensure that the power of the State is separated from the processes of maintaining and upholding the law, which is a fundamental principle in democratic societies.

3. For this audit, we defined the criminal justice system from when the police identify someone they consider has committed some criminal activity until that person leaves the criminal justice system. For example, when they are found not guilty by a court, pay a fine or complete a prison or community sentence. We only considered the adult criminal justice system.¹ The audit focused on criminal justice processes, activities and performance. Prosecutorial and sentencing decisions are independent of government and were not considered.

4. In 2009/10, an estimated £857 million was spent supporting Scotland's criminal justice system. Most police expenditure and activity is concerned with maintaining public safety and the prevention and detection of crime, which are outside

the scope of this audit. This figure therefore only includes an estimated proportion of police expenditure directly related to criminal justice activities.

5. The criminal justice system has an important role in achieving three of Scotland's national outcomes as set out in the National Performance Framework:

- We live our lives free from crime, disorder and danger.
- We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.
- Our public services are high quality, continually improving, efficient and responsive to local people's needs.

6. There are two national performance indicators to assess progress against these outcomes relating specifically to the criminal justice system:

- Increase the percentage of criminal cases dealt with within 26 weeks by three percentage points by 2011 (from 66 per cent in 2006/07).
- Reduce overall reconviction rates by two percentage points by 2011 (from 44 per cent for 2004/05 cohort).²

7. The aim of our audit was to provide an overview of how much public money is spent on Scotland's criminal justice system; to determine what that money delivers in terms of activity and performance; and to identify where there is potential to improve efficiency and effectiveness. We also intend to use the findings from this overview to identify areas where more detailed performance audit work would be of value.

8. Evidence for this overview is based on analysis of national and local data, reviews of existing research, and interviews with staff from across the criminal justice system. A description of our methodology is provided in Appendix 1 and details of our advisory group in Appendix 2.

9. This report is divided into four parts:

- Part 1. How Scotland's criminal justice system works.
- Part 2. The cost of criminal justice in Scotland.
- Part 3. Efficiency of the criminal justice system.
- Part 4. Effectiveness in reducing reoffending.

Summary of key messages

- There have been significant changes to the criminal justice system since devolution, which have delivered major reform but have also contributed to its complexity. It is difficult to manage criminal justice processes as a whole system because of the number of bodies involved and their different accountabilities. However, joint working has improved in recent years.
- The operation of Scotland's criminal justice system cost an estimated £857 million in 2009/10. The revenue budget for the six main criminal justice bodies (excluding police) reduced by seven per cent in real terms in 2011/12; and the capital budget by 64 per cent. The scale of the budget reductions, combined with increasing cost pressures in some areas and limited control over demand mean there are risks to the long-term sustainability of criminal justice services.

¹ We have not included offenders held in The State Hospital.

² This indicator measures the number of people who are reconvicted within two years of completing a sentence. The baseline was set in 2007, so was based on reconvictions of people first convicted in 2004/05.

- There are significant inefficiencies in the criminal justice system. Incompatible IT systems create inefficiencies and differences in performance information make it difficult to plan improvements across the system as a whole. The length of time taken to process summary cases through the courts has improved, but many cases still repeat stages in the court process. Inefficiencies in processing cases cost the criminal justice system at least £10 million in 2009/10. Repeated delays in processing cases can also have a negative effect on people's confidence in the system.
- Reoffending is a continuing problem in Scotland. There has been little progress towards the Scottish Government's national indicator to reduce reconviction rates, which have fallen by less than one per cent in the last three years. We estimate that in 2009/10, around £81 million was spent by criminal justice bodies (excluding police) directly on services to reduce reoffending. This is less than ten per cent of total criminal justice expenditure. The availability of services to support offenders varies across the country and information on the effectiveness of these services is limited and inconsistent.

Recommendations

This report is intended to provide an overview of the criminal justice system in Scotland. We did not look at any individual part of the system in sufficient depth to enable us to make specific evidence-based recommendations. However, there are a number of areas where there is clear potential to improve the efficiency and effectiveness of the criminal justice system. In particular, there needs to be significant improvement in:

- how well victims and witnesses are supported and kept informed about what is happening in their case
- the availability of cost and performance information to support the effective management of both individual organisations and the system as a whole. This would improve understanding of the reasons behind inefficiencies in the system and variation in performance across the country
- the efficiency with which summary cases are processed through court to reduce substantially the number of cases which repeat stages and the number of cases which are resolved later than necessary
- how services for offenders are funded and delivered across the country to ensure they meet demand and are focused on the most cost-effective approaches to reducing offending behaviour.

10. The Scottish Government and criminal justice bodies acknowledge the importance of these issues and are beginning to address them. We recommend that they build on the recent progress in joint working and, as a matter of urgency, collectively identify, agree and implement actions to deliver the necessary improvements. This joint approach should ensure that the work undertaken delivers benefits across the system as a whole and avoid the risk that changes designed to improve the process in one part of the system have a negative effect on a different part.

11. Delivering significant improvements to the efficiency and effectiveness of Scotland's criminal justice system requires continued strong leadership from all the criminal justice bodies. Agreeing measures for the system as a whole, which recognise cost and quality as well as time, and holding relevant bodies and individuals to account for their performance and contribution to these measures would support this process.

12. The Auditor General and Accounts Commission will consider the findings in this report and, in consultation with criminal justice bodies and other stakeholders, identify where more detailed performance audit work would add value. This is likely to be in one of the areas identified above where there is a clear potential to improve value for money.

Part 1. How Scotland's criminal justice system works



There have been significant changes to Scotland's criminal justice system since devolution.



Key messages

- Scotland's criminal justice system consists of a complex set of processes and many different bodies are involved. There have been significant changes to the criminal justice system since devolution, which have delivered major reform in some areas but have also contributed to its complexity.
- It is difficult for the criminal justice process to be managed as a whole system because of the number of bodies involved and their different accountabilities. Joint working among the main criminal justice bodies has improved in recent years. However, agreeing and implementing any changes depends on a shared commitment from all the criminal justice bodies at both national and local levels.

Scotland's criminal justice system is complex

13. Scotland's criminal justice system consists of a number of interdependent processes, based on a complex combination of common law, statute and guidance, which must be complied with at each stage of the system. Many different outcomes and interventions are possible at each stage depending on the actions or decisions of the bodies or individuals concerned.

14. The system is underpinned by a set of fundamental principles relating to fairness, a respect for human rights, independence of decision-making and separation of powers between the State and judicial processes. Decisions on whether a criminal case should go to court, whether an accused is guilty and, if so, what punishment he or she should receive are up to the individual procurators fiscal, members of the

judiciary (such as sheriffs), and juries concerned. It is an accused's right to plead innocent or guilty, and to change their plea at any time.

15. Exhibit 1 provides an overview of an offender's journey through the criminal justice system. This demonstrates the main processes involved and summarises the possible outcomes at different stages. What happens at each stage depends on decisions made by the accused (often on the advice of their solicitor), the various criminal justice bodies and individuals such as sheriffs. In reality, there are many variations in the route through the system and in what can happen at each stage; for example, the offender may appeal against their sentence. The Scottish Government has developed more detailed process maps covering the process from when police detect an offence to the conclusion of a trial. These maps identified 39 decision-making points and 20 possible outcomes.

16. There are three types of court in Scotland to deal with different levels of offending (High Court of Justiciary, Sheriff Court, and Justice of the Peace Court) and two types of system for hearing cases, solemn and summary.³ Solemn cases are concerned with the most serious offences, such as murder, rape or serious assault, and are decided by a jury in either the High Court or the Sheriff Court. Summary cases deal with other criminal activity, for example breach of the peace, and are heard in a Sheriff Court (by a sheriff) or a Justice of the Peace Court (by a justice of the peace) without a jury. The vast majority (over 90 per cent) of cases going through the criminal justice system are summary cases. For this reason, this report focuses on the summary justice system.

17. What happens in the different stages illustrated in Exhibit 1 is summarised below:

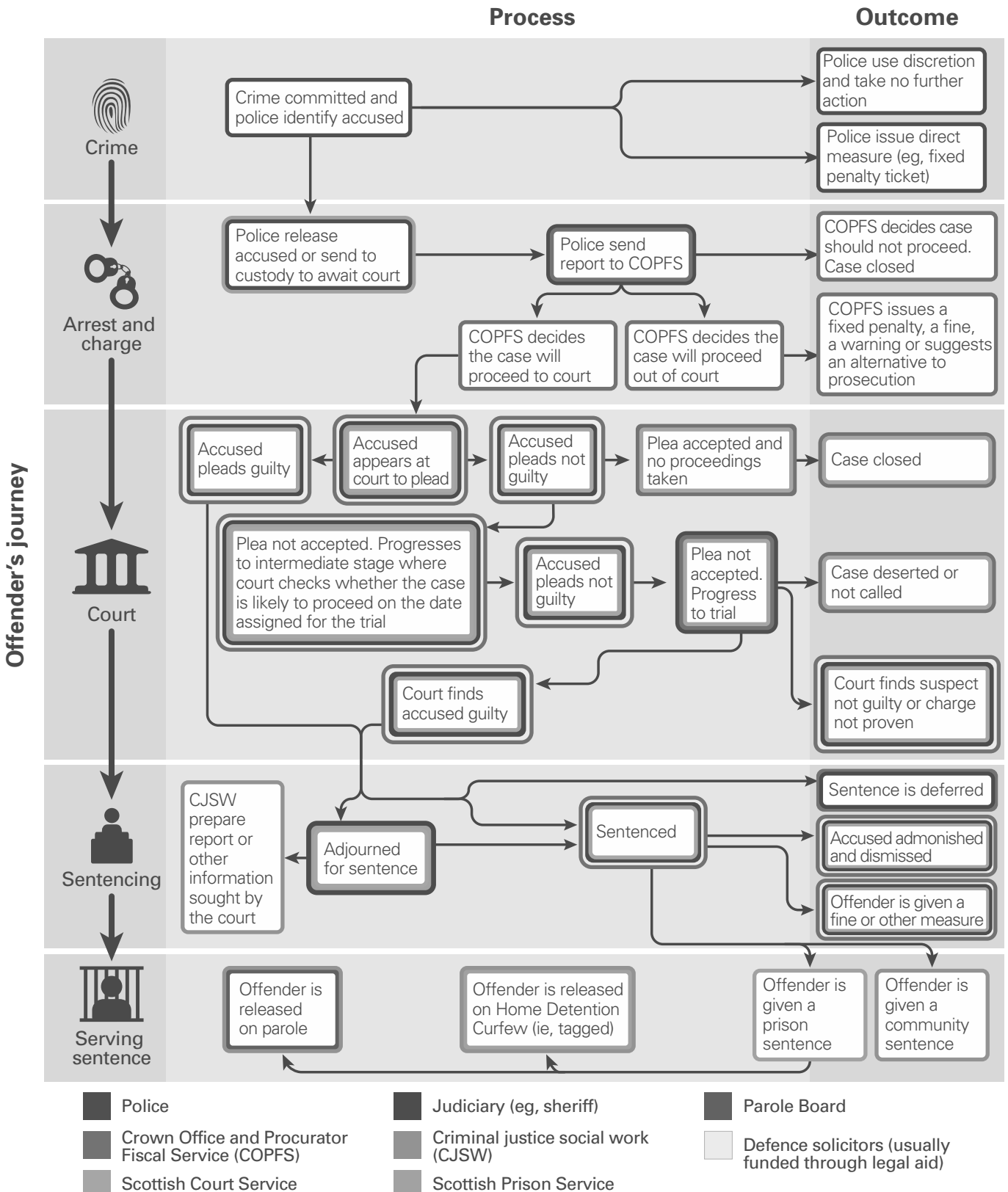
- When police identify a person or persons they think responsible for a crime or offence they can decide to take no further action, issue a warning, issue a fine or send a prosecution report to the Crown Office and Procurator Fiscal Service (COPFS) for a procurator fiscal to review (Exhibit 1: Crime; Arrest and charge stages).
- A procurator fiscal decides what should happen with each report submitted by the police or by other relevant bodies who have responsibilities for reporting alleged offences (eg, the Health and Safety Executive). This process is usually referred to as 'marking'. The procurator fiscal can decide to take no further action (if there is insufficient evidence or prosecuting is not in the public interest); issue a fiscal fine (or other direct measure) or begin court proceedings (Exhibit 1: Arrest and charge stage).
- Within the court system, there are different stages, or 'diets' each case must go through. These comprise the pleading diet (when a case is first called); intermediate diet (to check a case is fully ready for trial); trial diet (when the evidence is heard); and, if the accused is found guilty and the sheriff or justice of the peace wants background reports before sentencing, a separate sentencing diet. These diets have different names in solemn cases but the process is broadly the same (Exhibit 1: Court stage).
- If the court finds an individual guilty, the judiciary will pass a sentence. There are three main types of sentence: custody (when the individual is sent to prison),

³ In Glasgow, there are also Stipendiary Courts and Stipendiary magistrates. Stipendiary magistrates sit in the Justice of the Peace Court but are legally qualified and have the same sentencing powers as a sheriff in summary cases. They are appointed by Scottish ministers. <http://www.scotland-judiciary.org.uk/39/0/Stipendiary-Magistrates>

Exhibit 1

Overview of an offender's journey through the criminal justice system

Scotland's criminal justice system comprises many processes and is delivered by a range of bodies and individuals, with different possible outcomes at each stage.



Note: Coloured borders round the boxes signify the different bodies generally involved at that stage of the process.
Source: Audit Scotland

community sentences or (most commonly) a fine. There are a number of different options for a community sentence, for example, Community Payback Orders or Drug Treatment and Testing Orders (Exhibit 1: Sentencing and Serving sentence stages).⁴

Many bodies are involved with different roles and accountabilities

18. Many public, private and voluntary bodies and individuals are involved in delivering Scotland's criminal justice system. They range from large, national bodies, such as the Scottish Prison Service and the Scottish Court Service, through to groups of professional individuals, such as the judiciary and private criminal defence solicitors, to individual members of the public who may contribute as members of a jury. Given the importance of independent decision-making and the need to ensure the powers of the State are separated from those for judicial processes, the bodies involved have different accountabilities. Exhibit 2 illustrates the main bodies involved, their role and to whom they are accountable.

19. In addition to the main bodies described in Exhibit 2, there are many other smaller organisations, which also play an important role in the criminal justice system. Some of these are public bodies such as the Parole Board for Scotland (an independent body, which decides if a prisoner is suitable for release), others are voluntary organisations, for example Victim Support Scotland. Individuals, such as victims, witnesses, jurors and the accused, also have a central role in the criminal justice system in Scotland.

The criminal justice system deals with a large number of cases and involves many different people

20. The criminal justice system deals with large numbers of cases. For example, in 2009/10:

- there were 902,000 recorded crimes and offences, of which over 690,000 (76 per cent) were cleared up by the police
- 276,000 prosecution reports were submitted to COPFS, of which 242,000 were submitted by the police and involved 278,000 people⁵
- 137,000 accused people were processed through the courts, of which 121,000 (88 per cent) received some kind of sentence, for example, prison (15,700), a community sentence (16,300) or, most commonly, a fine (72,400)
- there were 825,000 victims of criminal activity and 477,000 citations were issued calling witnesses to appear at court⁶
- over 8,400 people (excluding police officers and staff) were employed by criminal justice bodies to deal with this demand.⁷

21. People can experience different parts of the criminal justice system. They may be reporting a crime, be a victim of crime, have committed (or be suspected of committing) a crime, be called as a witness or serve on a jury. The most recent Scottish Crime and Criminal Justice Survey found that three-quarters of adults surveyed had contact with at least one criminal

justice body. Of these, most people (69 per cent) had contact with the police and around 20 per cent had been in contact with COPFS or the Scottish Court Service.⁸ However, the survey also found that over 80 per cent of people in Scotland either did not know very much or knew nothing at all about how Scotland's criminal justice system works.

The criminal justice system focuses on ensuring due process is followed, rather than meeting people's needs

22. The criminal justice system is primarily focused on ensuring that each case is dealt with in accordance with due process and that the fundamental principles of fairness and integrity are upheld. While the rights of the accused are guaranteed by law, there is less in the way of guaranteed rights for other people, in particular victims and witnesses. In Scotland, victims of crime have no formal role in the criminal justice system; procurators fiscal act on behalf of the State, in the public interest, not on behalf of victims.

23. There are a number of services to support victims and witnesses of crime.

- Victim Support Scotland receives around £4 million a year from the Scottish Government and supports victims of crime who contact them directly or whose details are passed on by the police. Victim Support Scotland also provides witness services, which support witnesses in the High Court and Sheriff Courts.

⁴ Community Payback Orders are new community sentences which require an offender both to make reparation, often in the form of unpaid work, and to address and change their offending behaviours. Drug Treatment and Testing Orders are court orders aimed at assisting offenders to reduce their drug use and related offending.

⁵ The police do not send prosecution reports for some offences, for example most traffic offences are dealt with directly by the police. Other organisations with responsibility for law enforcement also submit prosecution reports to COPFS.

⁶ The Crown Agent's presentation to the ACPOS conference, June 2011 (victim numbers), and analysis of Scottish Government's criminal justice management information system (witness numbers).

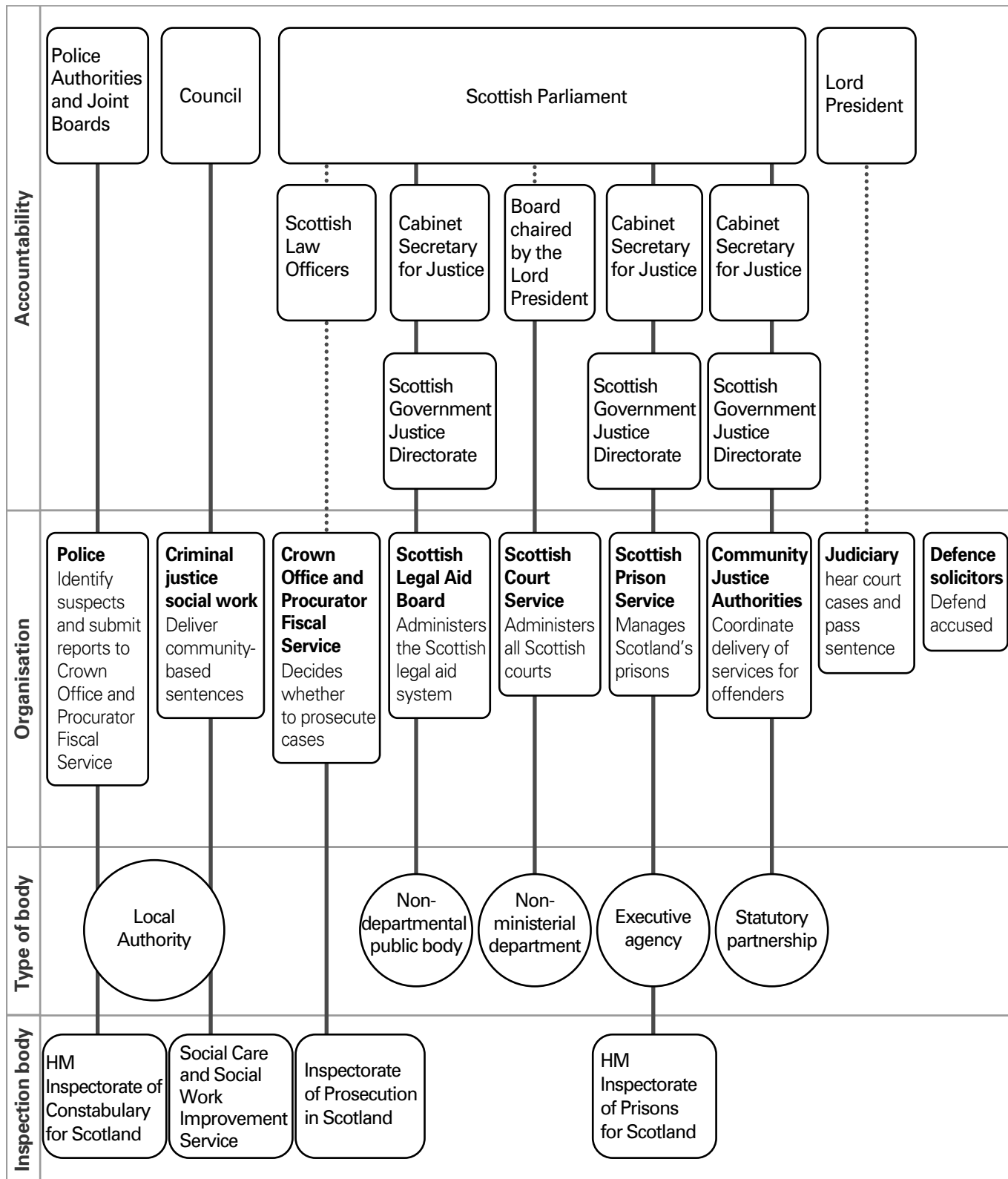
⁷ Staff numbers include COPFS, the Scottish Court Service, Scottish Prison Service, Scottish Legal Aid Board, Risk Management Authority, Scottish Legal Complaints Commission, Scottish Criminal Cases Review Commission and the Judiciary taken from annual accounts and reports.

⁸ *Scottish Crime and Criminal Justice Survey 2009/10*, Scottish Government, 2010.

Exhibit 2

The roles and accountabilities of the main criminal justice bodies

The separation of powers and independence of the decision-making mean that criminal justice bodies have different accountabilities.



..... Independence of decision-making

Source: Audit Scotland

- The COPFS's Victim Information and Advice service provides support to victims and witnesses where there are sensitive or vulnerable issues (eg, sexual or racially aggravated offences) reported to the procurator fiscal.
- The Scottish Prison Service provides victims of offenders sentenced to 18 months or more information about the offenders' progress in prison and their release date, if victims request this.
- The Scottish Government provides around £15 million a year for support services to women and children who are victims of, or have been effected by, domestic abuse. This includes funding for Scottish Women's Aid and support services for children affected by domestic abuse.

24. Victims may have a range of needs depending on factors such as their age, health or previous experience of crime. However, there is some evidence that these needs are not always routinely considered. A recent joint report by Her Majesty's Inspectorate of Constabulary for Scotland and the Inspectorate of Prosecution in Scotland found victims tended to be considered only in relation to court processes and their likely role as a witness, rather than as a victim in their own right.⁹ The report also found that victims had limited knowledge of what to expect at court, were often not told about what was happening in their particular case and were not always adequately supported. The COPFS reports that many of the recommendations in the report have now been implemented.

25. The Criminal Injuries Compensation Authority was established in 1996 to compensate victims injured as a result of violent crime in Scotland, England and Wales. In 2009/10, it awarded over £25 million to people in Scotland. However, the rules about who is eligible for compensation are strict. For example, compensation may be reduced if there is a delay in reporting the crimes and victims may not be entitled to compensation if they have previous convictions. This means that many applications are not successful. In 2009/10, 59 per cent of applications for compensation from across the UK were denied.

26. There have been some recent developments to improve support for victims and witnesses. In January 2011, the Scottish Government hosted a 'victim's summit' to discuss how victims could be better supported. It also recently completed a consultative review of how to improve the experience of witnesses. The Scottish Government intends to introduce a victims' rights bill in this session of Parliament to improve victims' rights to damages and compensation and give them a say in sentencing policy and parole decisions. The European Commission recently published a draft directive setting out minimum standards of support for victims, although the UK Government has yet to decide whether to sign this.¹⁰

Scotland's criminal justice system has changed significantly since devolution

27. All administrations since devolution have worked towards improving Scotland's criminal justice system. There have been a number of major reviews of different parts of the system, many of which resulted in new legislation.¹¹ Exhibit 3 lists the primary legislation passed since devolution directly concerned with how the criminal justice system works. In addition, there has been secondary legislation on various detailed aspects of the criminal justice system.

28. Changes in legislation and Scottish Government policy developments have resulted in the creation of over 20 new criminal justice bodies and partnerships since devolution. These include eight Community Justice Authorities introduced to reduce reoffending; and national agencies such as the Risk Management Authority, introduced to monitor serious violent and sexual offenders. Other legislation has resulted in the creation of new offences, for example, the Antisocial Behaviour etc (Scotland) Act 2004 and the Domestic Abuse Act (Scotland) 2011.

29. This range of legislation has been designed to deliver improvements in how the criminal justice system works. It has simplified some processes and led to significant reform, for example, through increasing the range of alternatives to prosecution. The impact of some of these changes, in particular, those relating to summary justice reform, is being monitored by the Scottish Government. However, the range and volume of new

⁹ *Victims in the criminal justice system*, Her Majesty's Inspectorate of Constabulary for Scotland and Inspectorate of Prosecutions in Scotland, 2010. This report only focused on victims of summary crime that did not result in court proceedings.

¹⁰ *Proposal for a directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime*, European Commission, 2011.

¹¹ The major reviews since devolution are: *Review of the Practices and Procedures of the High Court of Justiciary*, Lord Bonyon, 2002; *Proposals for the Integration of Aims, Objectives and Targets in the Scottish Criminal Justice System*, Andrew Normand CB, 2003; *Report of the Summary Justice Review Committee*, Sheriff Principal McInnes QC, 2004; *Scotland's Choice - report of the Scottish Prisons Commission*, Henry McLeish, 2008; *Protecting Scotland's Communities*, Scottish Government, 2008; and *Review of Sheriff and Jury Procedure*, Sheriff Principal Bowen QC, 2010.

Exhibit 3**Primary legislation relating to Scotland's criminal justice system introduced since devolution**

Since devolution, 16 new acts relating to Scotland's criminal justice system have delivered reform to different parts of the system, but have also added to its complexity.

| Act | Primary purpose | Main changes introduced |
|---------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Bail, Judicial Appointments etc (Scotland) Act 2000 | The first act passed by the Scottish Parliament concerned with the criminal justice system. Introduced changes to bail, sheriff and justices of the peace appointments. Introduced changes to councils powers to bring prosecutions. | Changed the duties on sheriffs and judges about how they should consider bail. Introduced part-time sheriffs. |
| International Criminal Court (Scotland) Act 2001 | To ensure offences in Scotland align with jurisdiction of the International Criminal Court. | Allowed Scotland to ratify the Rome Statute of the International Criminal Court. |
| Criminal Procedure (Amendment) (Scotland) Act 2002 | Concerned with administration of warrants relating to trial procedures. | Technical change in how warrants for arrest of accused impact on court procedures. |
| Criminal Justice (Scotland) Act 2003 | To improve public protection including victims' rights and effective sentencing. | Introduced new rights for victims (eg, receiving information about release of prisoners). Introduced new ways to assess serious violent and sexual offenders. Established the Risk Management Authority. |
| Criminal Procedure (Amendment) (Scotland) Act 2004 | Reform of the High Court and moving away from a 'culture of adjournment'. | Introduced pre-trial meetings to reduce number of adjournments and therefore reduce distress and inconvenience faced by victims, witnesses and jurors. |
| Vulnerable Witnesses (Scotland) Act 2004 | To make provision for the use of special measures for the purpose of taking the evidence of children and other vulnerable witnesses. | Introduced new processes for taking evidence from vulnerable witnesses. |
| Management of Offenders (Scotland) Act 2005 | To improve the management of high-risk offenders. | Created provision for Community Justice Authorities. Established multi-agency public protection arrangements for the management of high-risk offenders. |
| Police, Public Order and Criminal Justice (Scotland) Act 2006 | To improve governance and delivery of centralised policing services and how complaints about the police are handled. | Established the Scottish Police Services Authority, the Scottish Crime and Drug Enforcement Agency and the Police Complaints Commissioner for Scotland. |
| Criminal Proceedings etc (Reform) (Scotland) Act 2007 | The legislation behind summary justice reform aimed at improving communication and administration within the summary justice system, taking less serious cases out of the process earlier and reducing the time it takes for cases to go through courts. | Increased sentencing powers for sheriff courts in summary cases. Expanded alternatives to prison such as community sentences. Expanded alternatives to prosecution such as procurators fiscal fines. Changed how fines are collected and enforced. Established justice of the peace courts in place of district courts and unified court administration. Introduced changes to the way cases can be processed through the courts, eg, outstanding charges can be dealt with together or 'rolled up'. |

Continued on page 12

| Act | Primary purpose | Main changes introduced |
|----------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Custodial Sentences and Weapons (Scotland) Act 2007 | To restate and amend the law relating to the confinement and release of prisoners; to make provision relating to the control of weapons. | Changed how prison sentences are calculated. |
| Legal Profession and Legal Aid (Scotland) Act 2007 | To improve administration of complaints about solicitors and how legal aid is funded. | Established the Scottish Legal Complaints Commission. Gave the Scottish Legal Aid Board (SLAB) the ability to provide grants and pay non-solicitors agencies for advice work. |
| Judiciary and Courts (Scotland) Act 2008 | To modernise and improve the court system through strengthening the role of Scotland's judiciary. | Introduced judicial governance of the Scottish Court Service, and provided a statutory basis for the Judicial Appointments Board. |
| Legal Services (Scotland) Act 2010 | Primarily aimed at widening the range of structures within which legal services can be delivered. Also concerned with how the Faculty of Advocates and SLAB operate. ¹ | New duties on SLAB to monitor availability of legal services in Scotland. New framework for creation and regulation of Alternative Business Structures, which means that law firms do not have to be owned by solicitors. New framework for regulation of the Faculty of Advocates. |
| Criminal Justice and Licensing (Scotland) Act 2010 | A wide-ranging act introducing changes in sentencing (eg, a presumption against short prison sentences and the introduction of Community Payback Orders) and in criminal procedures (eg, rules on the retention of DNA). | Introduced Community Payback Orders. Created provision for the Scottish Sentencing Council. ² Created new serious organised crime offences. Introduced a statutory basis for disclosure of evidence to defence solicitors. Introduced witness anonymity orders. |
| Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 | Emergency legislation introduced following the Cadder ruling. ³ To give suspects a right of access to legal advice. | New procedures for police and SLAB to ensure that those held in detention accused of an offence have access to legal advice. Extended police detention powers. |
| Double Jeopardy (Scotland) Act 2011 | To make provision as to the circumstances in which a person convicted or acquitted of an offence may be prosecuted anew. | Allows for a new trial (in limited circumstances) for people previously acquitted in court. |

Notes:

1. The Faculty of Advocates is an independent body of solicitors who have been admitted to practice in any court or tribunal in Scotland.

2. The provisions for establishing the Scottish Sentencing Council have not yet commenced.

3. http://www.supremecourt.gov.uk/decide-cases/docs/UKSC_2010_0022_Judgment.pdf

Source: Audit Scotland

legislation, both that concerned with the criminal justice system itself and the introduction of new offences, has also contributed to the complexity of the system.

Joint working among criminal justice bodies has improved in recent years

30. The need for a separation of powers, the complexity of the processes and the different roles and accountabilities of all the bodies involved mean that it is difficult to manage the criminal justice system as an integrated process. Delivering improvements requires all criminal justice bodies to work closely together.

31. In 2003, the Normand report on Scotland's criminal justice system found a 'persisting degree of fragmentation within the system'.¹² Normand commented that any references to cooperation and partnership working were vague and unspecific; that individual bodies were largely unaware of the actions of other bodies; and that the way in which individual bodies worked hindered the work of others. Normand concluded that a set of overarching aims and objectives for all criminal justice bodies was required to improve cooperation and coordination across the system. In response, the then Scottish Executive established the National Criminal Justice Board, which included senior representatives from most criminal justice bodies.¹³

32. Without a shared understanding of all the different processes involved in the criminal justice system among all the bodies, there are risks that decisions taken to improve one part of the system will have unintended and detrimental consequences on another part. This has happened in the past, for

example, when changes to the way bail was managed were introduced without the potential effect on the prison remand population having been fully considered.

33. Since 2003, there have been considerable improvements in how criminal justice bodies work together. In particular, as a result of the reform of the High Court in 2004/05 and the introduction of summary justice reform in 2006/07:

- The Criminal Procedure (Amendment) (Scotland) Act 2004 changed the way cases are processed through the High Court. An evaluation of the reforms found cases were processed quicker and that this had reduced the stress and inconvenience faced by victims, witnesses and jurors.¹⁴
- The Criminal Proceedings etc (Reform) (Scotland) Act 2007 provided the legal basis for many of the changes introduced to the summary justice system. These changes, collectively known as summary justice reform, were designed to take less serious cases out of the process earlier and to reduce the time taken for those cases that were proceeding to go through the courts. A series of evaluations to assess the impact of these changes are under way and due for completion by early 2012.

34. The Scottish Government is working to promote collective ownership of the system. This is being done at a national level through the Justice Outcomes Group.¹⁵ This group oversees four multi-agency programmes designed to improve the justice system and coordinates all current and potential reforms of the

system. The four programmes are *Reducing Reoffending*, *Making Justice Work*, *Reducing Crime* and *Reassuring the Public*. Much of this work is still at an early stage and has yet to deliver measurable improvements to the criminal justice system.

35. A major focus for summary justice reform was the need to improve partnership working among criminal justice bodies and a number of non-legislative changes were introduced to facilitate this. In particular, 11 multi-agency criminal justice boards were created in 2007 to oversee performance of the summary system at a local level and to improve efficiency by facilitating joint working.¹⁶ Each board is chaired by the Sheriff Principal for the area and has senior representation from the courts, the procurators fiscal and the police. In addition, the Scottish Government introduced a shared national performance indicator to improve the percentage of summary cases being processed through the courts in less than 26 weeks, as part of its National Performance Framework.

36. Recent legislation has also introduced duties to cooperate among some criminal justice bodies, for example in relation to establishing Community Justice Authorities. Criminal justice bodies consider that all of these initiatives have resulted in major improvements in partnership working across the criminal justice system. However, there is no overarching requirement on individual bodies to cooperate and there are limited sanctions if any particular body is slow in implementing agreed changes. Effective cooperation relies to a large extent on the commitment from criminal justice bodies and good professional relationships.

¹² *Proposals for the Integration of Aims, Objectives and Targets in the Scottish Criminal Justice System* by Andrew Normand CB, Scottish Executive, 2003.

¹³ Prior to devolution, the Scottish Administration was referred to as the Scottish Office when it became known as the Scottish Executive. Since 2007, it is generally referred to as the Scottish Government.

¹⁴ *An evaluation of the High Court Reforms Arising from the Criminal Procedure (Amendment) (Scotland) Act 2004*, Aberdeen University for the Scottish Government, 2007.

¹⁵ The Justice Outcomes Group replaced the National Criminal Justice Board and some other national structures including some concerned with civil justice.

¹⁶ Two pilot criminal justice boards were established in 2003.

37. The challenges involved in partnership working and what needs to be done to address these are well known and have been documented by Audit Scotland in previous reports.¹⁷ For example, effective partnerships demonstrate strong leadership across all partners, a shared vision and collective agreement on objectives and priorities.¹⁸ Building mutual trust among partners and a shared understanding of the whole system is time-consuming and resource-intensive. Although some of the early joint initiatives led to improvements across the criminal justice system, others focused on specific issues and sometimes suffered from a lack of shared commitment, competing priorities and changes in staff. For example, the Scottish Executive established a short-life working group to introduce visual recording of joint investigative interviews of vulnerable young people in 2006 but the roll-out of the relevant equipment is only due to start in 2011.

38. While some local initiatives include sheriffs and private defence solicitors, generally there has been limited involvement of these groups in partnership developments and no consistent involvement of service users.¹⁹ There are challenges in involving some of the key criminal justice partners, for example defence solicitors have a financial interest in the system. However, without deeper and more widespread participation of all those with a role in criminal justice, there is a risk that the reasons behind any agreed changes will not be fully understood and may therefore be more difficult to implement.

¹⁷ In particular, *Community Planning: an initial review*, Audit Scotland, 2006; *Review of Community Health Partnerships*, Audit Scotland, 2011.

¹⁸ http://www.audit-scotland.gov.uk/docs/health/2011/nr_110602_chp_poster.pdf

¹⁹ Defence solicitors have been heavily involved in some national developments such as the development of summary justice reform.

Part 2. The cost of criminal justice in Scotland



Scotland's criminal justice system cost an estimated £857 million in 2009/10 but there is limited information on the costs of different activities.



Key messages

- Scotland's criminal justice system cost an estimated £857 million in 2009/10. There is limited information on the costs of different activities but these can be substantial. New legislation and case law have cost implications and the increasing complexity of cases is adding to costs in some areas. The criminal justice system is demand led and there is no flexibility to manage demand in some parts of the system.
- The revenue budget for the six main criminal justice bodies (excluding the police) reduced by seven per cent in real terms in 2011/12; and the capital budget reduced by 64 per cent. This follows a sustained period of year-on-year increases in funding. Criminal justice bodies are developing plans to deal with reduced budgets but the longer-term implications of these are not yet known.
- The scale of the budget reductions; the time it will take for some planned changes to deliver savings; the increasing cost pressures in some areas; and the limited ability to manage demand, all increase the risk to the sustainability of criminal justice services in the long term.

The criminal justice system cost an estimated £857 million in 2009/10

39. For this audit, we defined the criminal justice system from when police identify a person accused of a criminal activity until he or she leaves the justice system. For example, until the accused is found not guilty by a court, leaves prison or finishes a community sentence. This means that most police activity and resources, for example community policing and the prevention and detection of crime, are not included in this audit. Police forces estimate that only around five per cent of their spend is directly

related to criminal justice activities, such as preparing reports for COPFS.²⁰ Using this definition of the criminal justice system and estimates of police criminal justice spend; the adult criminal justice system cost an estimated £857 million in 2009/10 (Exhibit 4). Almost a third of this was spent by the Scottish Prison Service.

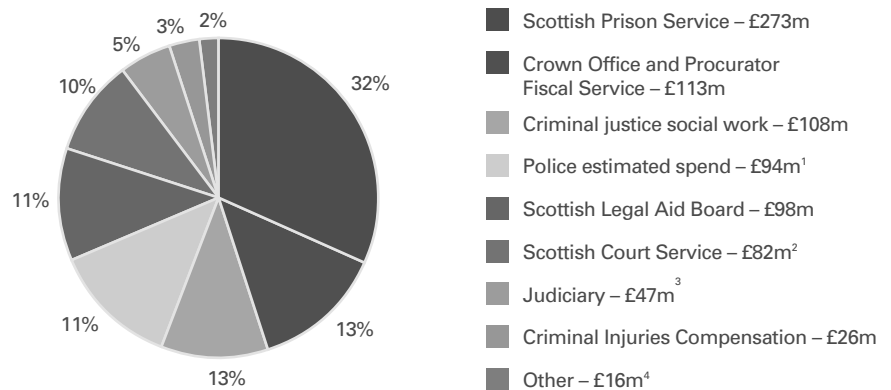
There is limited information on the costs of different processes and activities

40. The complex and multi-agency nature of the criminal justice system means it can be difficult to identify costs relating to specific activities.

Exhibit 4

Spend on the adult criminal justice system in 2009/10

Criminal justice bodies spent almost £857 million on operating activities in 2009/10.



Note:

1. Police spend is based on police force estimates of the amount spent on criminal justice activities in 2010/11 and relevant elements of Scottish Police Services Authority spend in 2009/10.
2. We have used Scottish Court Service net expenditure in 2009/10 as an estimate of spend on criminal justice. The Scottish Court Service aims to recover the costs of civil cases, although the exact figures are not available.
3. Funding is for judicial salaries, training, travel and some other court running costs for criminal and civil business.
4. Other spend is made up of Scottish Government support to Victim Support Scotland, Scottish Government Justice Analytical Services, Scottish Legal Complaints Commission, Scottish Law Commission, Parole Board for Scotland, Risk Management Authority, Scottish Criminal Cases Review Commission, inspectorates of constabulary and prisons and the Scottish Prison Complaints Commission.

Source: 2009/10 annual accounts of named bodies and information received from the Scottish Government

²⁰ Calculated from data supplied to Audit Scotland by ACPOS, originally prepared to inform the Sustainable Policing Project report to the Scottish Policing Board in March 2011: <http://www.scotland.gov.uk/Resource/Doc/254432/0115237.pdf>; <http://www.scotland.gov.uk/Resource/Doc/254432/0115238.pdf>

However, some criminal justice bodies publish information on unit costs. For example, in 2009/10:

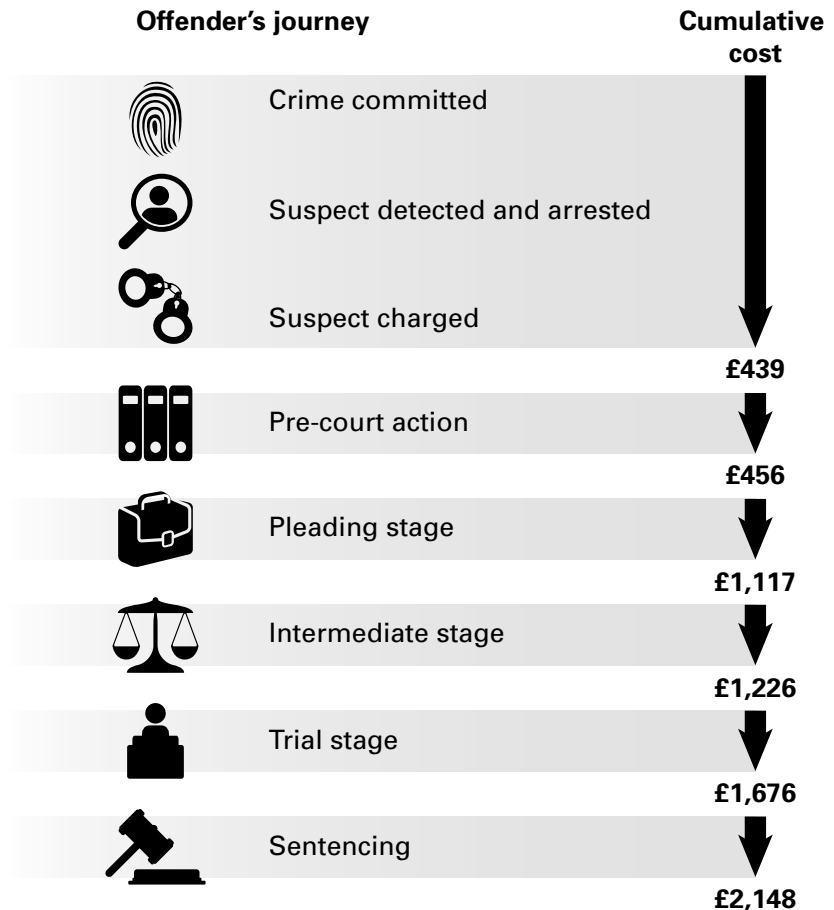
- The average cost of criminal legal aid was £642 for a summary case (ie, a lower level case) and £3,194 for more serious and complex solemn cases.²¹
- The average cost of a prisoner place for a year was £31,703.²² However, this figure is based on prison operating costs and does not include headquarter costs. If total Scottish Prison Service spend is included then the cost per prisoner place increases to £34,279 a year.
- The average costs of decisions made by the Parole Board for Scotland range from £115 for an interview to £1,000 to consider the most complex cases.²³

41. The unit costs involved in processing cases through the court system are not available and the complexities of the processes mean that calculating these is not straightforward. Within the court system, there are different stages, or 'diets' each case must go through. These comprise the pleading diet (when a case is first called); intermediate diet (to check a case is fully ready for trial); trial diet (when the evidence is heard); and a sentencing diet (if the accused is found guilty and the judiciary wants background reports before sentencing). For the purposes of this report, we estimated the unit costs of each stage of the court process. We did this by mapping out the staff from across the criminal justice system who would be involved at each of these stages and calculating their average salaries. We then calculated staff costs using information provided by the Scottish Court Service on the average time for each stage. We included the costs of legal aid; the costs of witnesses; and

Exhibit 5

The estimated cost of processing summary cases

The costs involved in processing a case through the courts increase at each stage.



Source: Audit Scotland

an estimate of court running costs. This results in an estimated cost of about £2,100 to process a case through the sheriff summary courts (Exhibit 5).

42. There will be significant variation in how much each case costs. Additional costs may be incurred, for example if forensics or expert witnesses are required. If the accused is held in custody until they appear at court, there will be additional costs for custody, transportation to the court room and guarding the accused while at court. Our estimated cost of

a case does not include any of these additional costs and is therefore likely to be an underestimate.

43. We also analysed 2009/10 Community Justice Authority annual accounts and Scottish Government criminal justice social work statistics and estimate that:

- the average cost of preparing a social enquiry report for court (which informs sentencing once someone is found guilty) is £359; ranging from £270 in Glasgow to £565 in Tayside

21 Annual Report 2009/10, Scottish Legal Aid Board, 2010.

22 Annual Report 2009/10, Scottish Prison Service, 2010.

23 Annual Report, 2009/10, The Parole Board for Scotland, 2010.

- the average cost of implementing a probation order (which requires the offender to address underlying reasons for offending) is £1,398; ranging from £1,013 in Lanarkshire to £1,790 in Lothian and Borders
- the average cost of implementing a community service order (which requires the offender to do unpaid work in the community) is £2,769; ranging from £1,838 in Fife and Forth Valley to £3,116 in North Strathclyde.^{24, 25}

New legislation and case law have cost implications

44. Since devolution, a number of new offences have been created, for example, in relation to antisocial behaviour and new offences under the Sexual Offences Act. The introduction of these new offences and some new judicial processes have cost implications for the criminal justice system. While some legislation may reduce costs for criminal justice bodies (eg, when cases are removed from the system earlier); in other instances, costs may increase (eg, when new offences are introduced). Criminal justice bodies must interpret and implement each new law, although many of the costs involved are not known. Understanding and predicting the cost implications of legislation is not straightforward. For example, it can be difficult to predict how many new offences will be detected by the police and prosecuted by COPFS. While each piece of Scottish legislation is accompanied by a financial memorandum, intended to provide the Scottish Parliament with an estimate of the costs of implementing the act, the full costs are not always understood or monitored. There is also little information on the costs involved in introducing non-legislative changes to Scotland's criminal justice system. UK and European legislation can also affect

what happens in the Scottish criminal justice system. This is difficult to predict and may have cost implications.

45. Some legislation and some of the Lord Advocate's instructions to procurators fiscal dictate that certain offences must be dealt with in certain ways and prosecuted at a certain level of court.²⁶ For example, since devolution, laws or instructions have been created which specify how certain cases such as domestic incidents or hate crime offences must be dealt with. This reduces the discretion of the police and procurators fiscal to deal with the offence outwith the court system. While this approach may support specific policy objectives,

interviewees told us during fieldwork that these types of instructions had significant cost implications for the criminal justice system, although the costs involved are not known.

46. Criminal justice bodies must also respond to case law, which is when courts interpret the law in a new way and thereby set a precedent for how future cases are handled. These rulings must be enacted immediately, making it difficult for criminal justice bodies to plan and manage the changes required. Changes in case law can significantly change the way the criminal justice system works and add to the costs involved (Case study 1).

Case study 1

Case law can have significant implications on the way the criminal justice system works

The full costs of the Cadder ruling are not known.

The Cadder ruling in October 2010 means that any suspect questioned by the police has to have access to legal advice.¹ This had an immediate effect on:

- how police question a suspect
- the involvement of defence solicitors
- the prosecutorial decisions of COPFS
- court time for managing appeals
- the workload of the Scottish Criminal Cases Review Commission, which investigates alleged miscarriages of justice.

The law around this ruling is still developing, so the total impact and costs are not yet known. At the time, the Scottish Government estimated it may cost the Scottish Legal Aid Board (SLAB) an additional £1–4 million a year. The Association of Chief Police Officers in Scotland (ACPOS) estimates that, in the first six months, the ruling cost the police around £323,000 on additional custody, specialist staff and training.² The Scottish Criminal Cases Review Commission also reports that the ruling has resulted in an additional 50 cases a year for it to investigate – creating a backlog that it estimates will not be cleared up until 2013.

Notes:

1. http://www.supremecourt.gov.uk/decide-cases/docs/UKSC_2010_0022_Judgment.pdf
 2. ACPOS submission to the Scottish Parliament's Justice Committee, 15 March 2011.
- Source: Audit Scotland

24 Probation orders and community service orders were replaced in February 2011 with Community Payback Orders which are designed to give the courts more flexibility in sentencing.

25 The majority of these costs are staff time and the same staff may be involved in a number of different activities and interventions. The recorded split of staff costs against specific activities may vary across the country.

26 The Lord Advocate is appointed by the Queen on the recommendation of the Scottish Parliament and is Scotland's most senior law officer.

The increasing complexity of cases is adding to costs in some areas

47. The Scottish Court Service cites the increasing complexity of cases as a reason for the increased amount of days courts were open for business in 2009/10, despite fewer cases going to court.²⁷ During our fieldwork, representatives from across the criminal justice system noted that advances in forensics and technology and the increased use of expert witnesses (for example, specialist psychologists) had all added to the complexity of cases. Information provided by COPFS shows that spend on interpreters, translators and expert witnesses increased by 62 per cent (in real terms) in the last eight years from around £533,000 in 2002/03 to £809,000 in 2009/10. It is likely that the costs of expert witnesses will continue to increase as approaches to crime and detection become more sophisticated. The adversarial nature of Scotland's criminal justice system also means that the public sector often pays twice for these services. For example, both the defence and prosecutor may call an expert witness or commission a specialist report but they do not use the same experts or reports.

48. New sentences and processes for managing serious offenders also have cost implications. The Risk Management Authority (RMA) was established in 2005 to promote best practice in the management of serious offenders and monitor prisoners on the newly created Orders for Lifelong Restriction.²⁸ The RMA has a budget of £1 million a year and accredits assessors to undertake risk assessments of serious violent and sexual offenders. All offenders assessed as high risk are placed on an Order of Lifelong Restriction. There are currently 66 prisoners on these orders, and the RMA expects

between 15 and 19 people to be added each year. The Scottish Prison Service must prepare a risk management plan for each of these offenders and the plans must be approved by the RMA.²⁹ The Scottish Prison Service must then update the RMA each year with progress against the plan. These plans are resource intensive, particularly for the Scottish Prison Service, but no costs are available.

The criminal justice system is demand led and managing demand is difficult for some bodies

49. The criminal justice system is demand led, but understanding the demand is not straightforward. The figures indicate that while the number of reports and cases going into the criminal justice system (such as police reports and court cases) are reducing, the numbers of prison and community sentences are increasing. In the five years 2005/06 to 2009/10:

- the number of recorded crimes and offences fell by 11 per cent from over one million to 902,000
- the number of crimes and offences cleared up by the police fell by eight per cent from around 750,000 to 690,000³⁰
- the number of cases reported to COPFS fell by 14 per cent from 320,000 to 276,000
- the number of cases registered for court fell by 26 per cent from 112,000 to 83,000³¹
- the number of community sentences increased by two per cent from almost 16,000 to 16,300

- the number of prison sentences increased by four per cent from 15,000 to 15,700.

50. Demand can also be unpredictable. For example, during fieldwork for this audit (March 2011), police and prosecutors in Lothian and Borders had to deal with eight murder investigations, an unprecedented level of major incidents at any one time. In due course, the work involved in dealing with these cases may need to be scheduled into the procurators fiscal workload and into the court programme. Such increases in demand can drive up costs across the system as extra court sitting days may be required to hear the cases and there may be significant legal aid fees to defend the accused.

51. In an effort to reduce demand, summary justice reform introduced direct measures (such as fines and formal warnings). These measures allow the police and procurators fiscal to take less serious cases out of the criminal justice system earlier in the process and avoid them going to court.

52. The type of offence for which police can use direct measures is governed by legislation, although how often they are used varies among forces. The overall number of Antisocial Behaviour Fixed Penalty Notices and formal police warnings is increasing (from 55,000 in 2008/09 to 69,000 in 2009/10). However, the extent to which this has contributed to a reduction in demand for the court system is not clear, as they may be used when no formal action would have been taken previously.

²⁷ *Annual Report and accounts 2009/10*, Scottish Court Service, 2010.

²⁸ Orders for Lifelong Restriction provide for the lifelong management of high-risk, violent and sexual offenders in prison and in the community.

²⁹ Risk-management plans should be proportionate to the risk posed and appropriate to individual offenders.

³⁰ This reflects improving performance by the police, as detection rates have reduced less than the level of recorded crime.

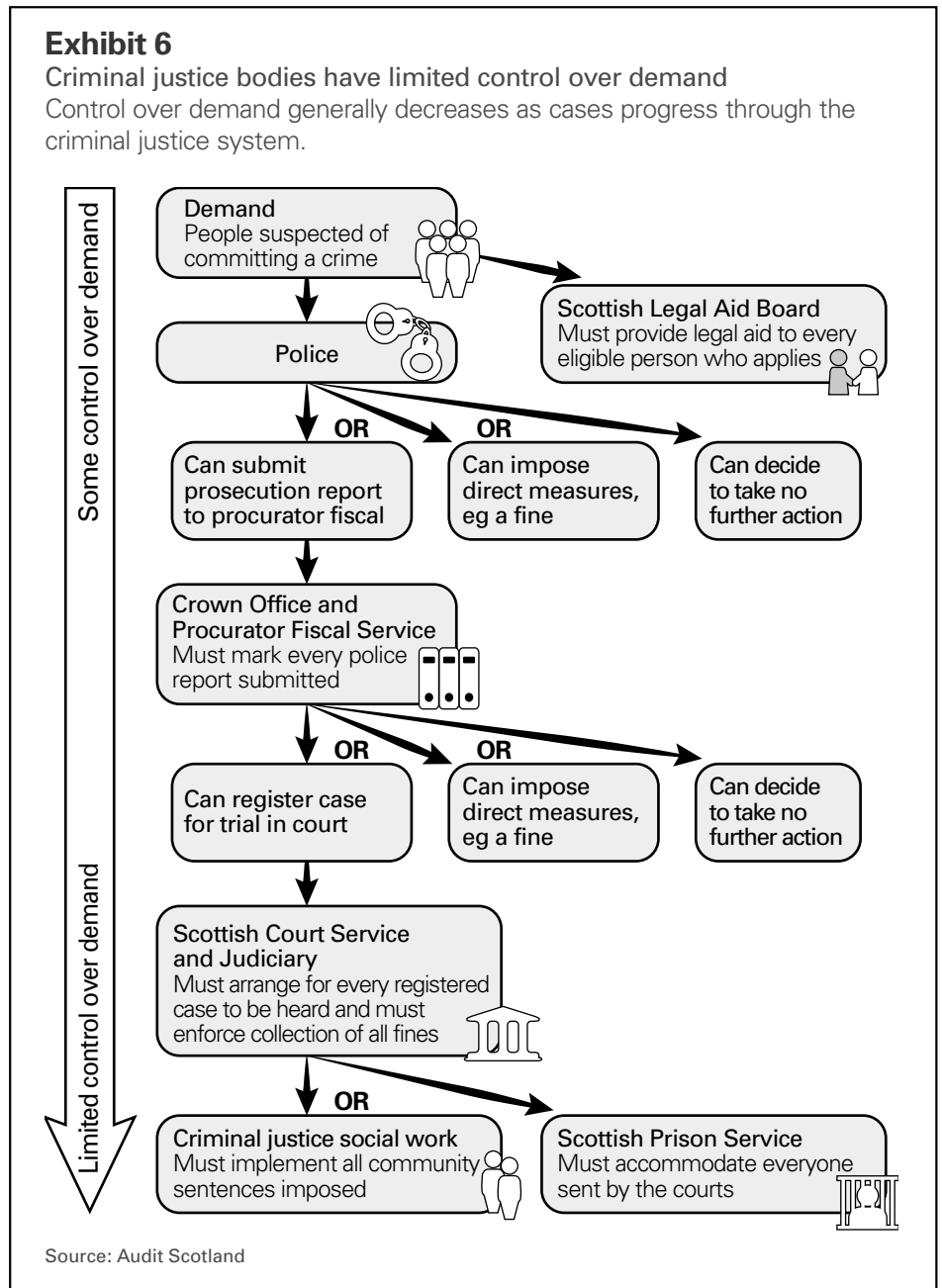
³¹ This includes the number of indictments registered at the High Court and the number of indictments and complaints registered at the Sheriff Court. Trend data are not available for Justice of the Peace Courts.

53. The Lord Advocate issues instructions for when procurators fiscal can use direct measures, such as fines. The numbers of procurator fiscal direct measures have been increasing but there is variation in the extent to which they are used across Scotland. For example, in 2009/10 there were just over 14,000 procurator fiscal direct measures issued in Lothian and Borders (150 per 10,000 population) and just over 30,000 issued in Glasgow (510 per 10,000 population). This variation may relate to the profile of offences reported by police or other factors. If an offender breaches either a police or procurator fiscal direct measure, for example does not pay their fine, they re-enter the criminal justice system.

54. While these measures provide some flexibility to manage demand at the beginning of the criminal justice process, this flexibility generally reduces as cases progress through the system. So, by the end of the process there is limited control over demand. Prisons have to accommodate every person sent by the courts, either to await trial or serve their sentence, and criminal justice social work has to implement all community sentences handed down from the court. Exhibit 6 summarises the levers of control each criminal justice body has over demand.

Budgets of the main criminal justice bodies have reduced in 2011/12

55. In 2011/12, the revenue budget for the six main criminal justice bodies (excluding the police) fell by seven per cent in real terms to £771 million and the capital budget by 64 per cent in real terms to £59 million (Exhibit 7). Most other criminal justice bodies also had their budgets cut.



56. The Scottish Prison Service has experienced the biggest overall reduction in funding as its capital budget has reduced by 66 per cent and its revenue budget has reduced by four per cent. Funding for criminal justice social work services and the judiciary experienced the smallest reductions.³² These budget reductions follow a sustained period of year-on-year increases in funding across the public sector.³³

Criminal justice bodies have adopted different approaches to deal with less revenue funding

57. Criminal justice bodies have responded to the 2011/12 reductions in revenue funding in different ways:

- Most criminal justice bodies reduced staff numbers. For example, in 2010/11 the Scottish Court Service offered an early release scheme for

³² Funding for the judiciary is for judicial salaries, training, travel, expenses and some other court running costs.

³³ *Scotland's public finances*, Audit Scotland, 2009.

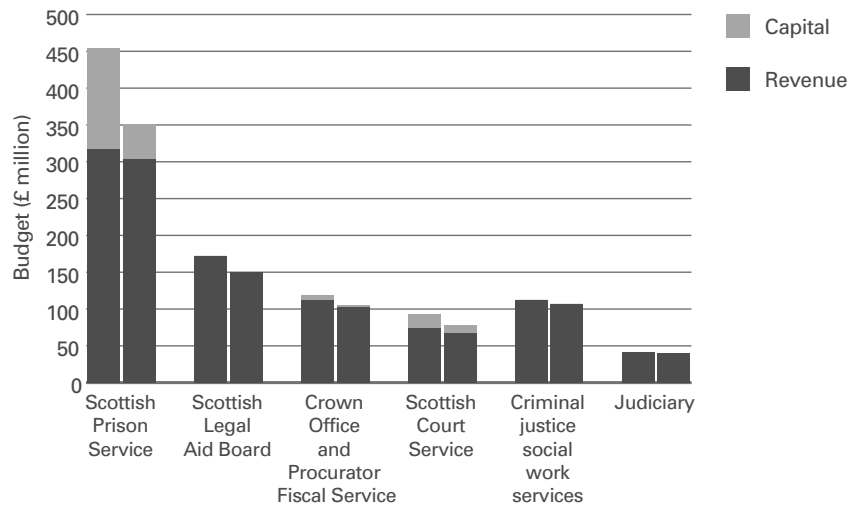
employees and around 120 staff (approximately eight per cent of its workforce) left the organisation; COPFS also offered an early release scheme and around three per cent of staff left the organisation.

- Shared services are being considered in some areas. For example COPFS and the Scottish Court Service are looking to share facilities to print citations for people called to attend court. However, criminal justice bodies acknowledge that the level of savings needed cannot be delivered through improved sharing of services alone.
- COPFS recently re-organised itself around three 'federations', rather than the 11 separate areas it previously had, to achieve better value for money. This involves sharing specialist skills and moving staff around the organisation to respond to peaks in demand and shortages in staff.
- The Scottish Legal Aid Board's (SLAB) main area of expenditure is legal aid fees paid to private solicitors. SLAB reduced these costs by 15 per cent in five years, from £104 million in 2005/06 to £98.5 million in 2009/10 (in real terms). These savings were made by improving quality control of applications and investigating potential abuse and fraud.
- The Scottish Court Service reduced its funding for part-time sheriffs. In 2009/10, there were 76 part-time sheriffs providing cover for holidays, sick leave and busy times at court, costing £4.6 million. In 2011/12, funding for part-time sheriffs and other temporary judicial cover fell to £3.6 million.

Exhibit 7

Revenue and capital budgets for the main criminal justice bodies, 2010/11 and 2011/12 (in real terms)

Criminal justice budgets have reduced, with capital budgets being significantly affected.



Note: The budget for the Scottish Legal Aid Board (SLAB), the Scottish Court Service and the judiciary is for both civil and criminal justice. SLAB's budget is not cash limited.

Source: Scottish Government 2011/12 budget

58. It is not clear what impact staffing reductions will have either within individual bodies or across the criminal justice system as a whole. For example, the loss of staff from the Scottish Court Service could result in courts having to operate different hours because of a shortage of court staff or lack of sheriffs. In *Scotland's public finances: addressing the challenges*, Audit Scotland highlighted the risks that relying on natural turnover and voluntary release schemes to reduce staff numbers could result in bodies losing essential skills or corporate knowledge and in reductions in the quality of priority services.³⁴

Capital budgets have significantly reduced

59. The capital budgets for criminal justice bodies have reduced by 64 per cent to £59 million in 2011/12:

- The COPFS capital budget has reduced from £6.4 million in 2010/11 to £2.7 million in 2011/12. As a result, COPFS has cancelled its new Phoenix caseload management IT system, which was intended to improve the efficiency of case management processes. The £2.3 million capital spend to date is being written off and the potential for the system to deliver efficiencies will not now be realised.
- The Scottish Court Service capital budget has been halved to £10 million in 2011/12. Around £8 million is already committed to the ongoing refurbishment of Parliament House. This means that only £2 million is available for the upkeep of the court estate which includes 60 court buildings (many of which are old and listed),

IT developments and the ongoing renewal of IT. The Scottish Court Service needs parliamentary approval to close some court buildings depending on their location, so there is a risk that the upkeep of the estate may suffer.

- The Scottish Prison Service capital budget has fallen by 66 per cent from £137 million to £46 million. It is expected that funding for the planned new prisons in Bishopbriggs and Grampian will be protected but this means there will be significantly less money available to maintain and develop the existing estate. As we reported in our 2008 audit *Managing prisoner numbers in Scotland*, the lifespan of some of the temporary accommodation currently in use is limited and plans for the prison estate may not be sufficient to accommodate the projected number of new prisoners.³⁵ In 2011, HM Chief Inspector of Prisons reported that the accommodation for female prisoners was insufficient and, in the main, no longer fit for purpose.³⁶

61. It is too early to tell what impact reduced budgets will have on the level of service provided. However, taken together, the scale of the cuts; the length of time it will take for some planned changes to deliver savings; increasing cost pressures in some areas; and the limited ability of some criminal justice bodies to manage demand, all increase the risk to the long-term sustainability of criminal justice services.

There are risks to the long-term sustainability of services

60. Many criminal justice services are provided by voluntary sector organisations, including some support services for victims and witnesses and some services to reduce offending. Voluntary organisations consider that the reduced public sector budgets pose a risk to the sustainability of their services.

³⁵ *Managing prisoner numbers in Scotland*, Audit Scotland, 2008.

³⁶ *HMP and YOI Cornton Vale: follow-up inspection*, Her Majesty's Inspectorate of Prisons, 2011.

Part 3. Efficiency of the criminal justice system



Inefficiencies cost the criminal justice system at least £10 million a year.

Key messages

- Criminal justice bodies recognise that efficiency in the criminal justice system could be improved. Incompatible IT systems and limited sharing of information lead to inefficiencies and different types of performance information make it difficult to plan improvements across the whole system.
- The length of time taken to process summary cases through the courts has improved. However, it is still common for cases to repeat stages in the court process, most commonly because witnesses or the accused are not present or professionals are not fully prepared. We estimate that such inefficiencies cost the criminal justice system around £10 million in 2009/10. Many other cases are subject to late decisions not to proceed, we estimate this costs an additional £30 million.
- Repeated delays in the processing of cases can have a negative effect on public perception and confidence in the system. Reducing the time taken for cases to go through the system would improve the services people receive and could deliver cash savings.

The efficiency of the criminal justice system could be improved

62. The complexity of the processes, the need for a separation of powers and the different roles and accountabilities of the bodies involved mean that the criminal justice system has not always been managed as an integrated process. However, the need for a fair and just justice system does not mean that the criminal justice system cannot operate efficiently. While specific reforms have improved processes in some parts of the system, significant inefficiencies remain.

63. All criminal justice bodies acknowledge that there are inefficiencies in the system. The Scottish Government's *Making Justice Work* programme is intended to build on previous reforms to address this problem. The programme involves a range of criminal justice bodies and has identified a number of areas where efficiency could be improved, including:

- improving IT systems
- improving the way cases go through the court system
- ensuring cases are heard at the correct level of court.

64. The *Making Justice Work* programme began in July 2010. However, building a shared understanding of how the whole system works and getting agreement on how to best improve it has taken time and much of the work is still at the planning stage.

Incompatible IT systems and limited sharing of information lead to inefficiencies

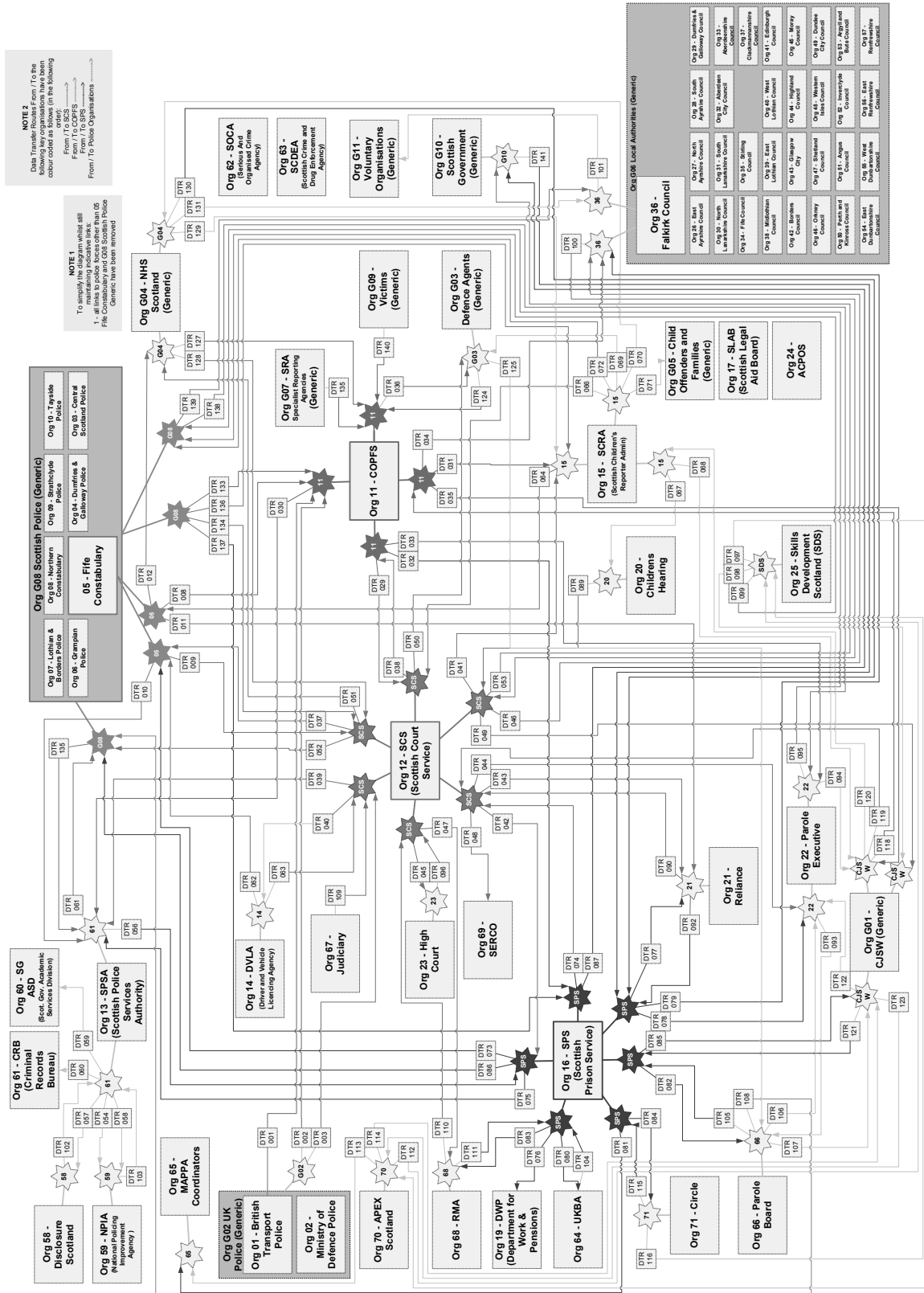
65. All of the main criminal justice bodies have developed their own IT systems over time, designed to suit their operational requirements. These systems were often incompatible and used different standards and definitions, which limited the electronic exchange of information. A joined-up approach to information within the criminal justice system could improve efficiency. This has been recognised for a number of years and some progress has been made.

66. In 1994, the Scottish Office established the Integration of Scottish Criminal Justice Information Systems (ISCJIS) programme to develop agreed standards and automate information sharing and exchange among the main criminal justice bodies. This has resulted in improvements in the electronic sharing of information, and criminal justice bodies report that, in their view, Scotland has a more integrated approach to criminal justice information than many other jurisdictions. However, achieving change has been slow. Individual bodies have often prioritised IT developments towards meeting their own needs and there have been limited incentives to invest in developments, which could deliver benefits to the system as a whole.

67. The Scottish Government has now incorporated ISCJIS into the *Making Justice Work* programme, as part of the strand of work aimed at improving IT systems. As part of this work, the Government mapped out a high-level model of the information exchanges that occur in the criminal justice system (Exhibit 8). This found

Exhibit 8

Information exchanges across the criminal justice system
Processes for transferring information are complex.



Source: Scottish Government

that only 25 per cent of the routes information is shared between organisations are fully electronic, although it is not known what volume of information exchanges this represents.³⁷

68. The limited compatibility of IT systems across the criminal justice system means that some areas still rely heavily on paper-based transactions. This results in more costly processes and duplication of effort as files are photocopied and couriered around the country. When combined with poor sharing of information, this incompatibility creates further inefficiencies. For example, a pilot in Glasgow found that almost a third of the accused scheduled to appear at the sheriff court were already in prison for a separate offence. However, COPFS, which is responsible for calling the accused to court, did not know they were in prison and the Scottish Prison Service did not know they were due in court. The Scottish Government is piloting a data hub to cross-reference COPFS, court and prison information in Glasgow. It estimates that this will cost around £150,000 to develop but could produce a net return on investment to the criminal justice system as a whole after only five weeks.

69. Individual criminal justice bodies are increasingly expanding their use of IT to improve efficiency. For example, solicitors' applications for legal aid must now be completed online. SLAB reports that this has reduced paperwork for solicitors and, as a direct result of this investment, it now processes cases faster and reduced

its staff numbers. COPFS has also developed a new secure website to share evidence with defence solicitors, which should reduce the need for paper transactions.

70. In June 2011, John McClelland completed a review of the management of IT investment in the Scottish public sector on behalf of the Scottish Government.³⁸ The review highlighted the opportunities for improving the quality and efficiency of services through better use of IT. It concluded that a fundamental shift was required in planning IT developments and that the public sector should move away from the current single agency approach.

Performance information is of limited use when planning improvements across the whole system

71. Criminal justice bodies collect a lot of data on activity and performance. However, the information criminal justice bodies collect relates to their own operations, so there is variation in what is measured and how it is defined. For example, some bodies count cases, some count crimes and some count people (some cases involve more than one person and one person may be involved in several cases). Information may also be categorised differently, for example a person given two prison sentences for separate charges on the same day is counted as two sentences in court statistics but only one in prison statistics.

72. Criminal justice bodies have many targets and performance measures. These measures are mostly concerned with processes and it is sometimes not clear what difference achieving the targets makes. For example, the Scottish Prison Service has a target to ensure that at least 85 per cent of integrated case management conferences are attended by both prison and social work staff. This is achieved each year, but there is no evidence that it has resulted in a reduction in reoffending or contributed to other improved outcomes for prisoners on release.

73. Targets and performance measures may also have unintended consequences on other parts of the criminal justice system. For example, police forces have to report their detection rates through the Scottish Policing Performance Framework. One of the ways this is measured is by the number of prosecution reports police submit to COPFS. Experienced police officers may know that procurators fiscal are unlikely to proceed with some cases. However, officers may be encouraged to submit reports to COPFS which are subsequently marked for no proceedings in order to improve performance in detection rates. This creates unnecessary and additional work for both the police and COPFS. In 2009/10, almost nine per cent of the cases reported by police to COPFS did not proceed any further.³⁹

74. The criminal justice management information system, developed by the Scottish Government to assess the progress of summary justice reform,

³⁷ *Information Sharing and Information Exchange System Interface Documentation Project – Final Report*, Scottish Government, 2010.

³⁸ *Review of ICT infrastructure in the public sector in Scotland*, Scottish Government, 2011.

³⁹ *Criminal Proceedings in Scotland, 2009/10*, Scottish Government, 2011.

represents a significant improvement in joining up criminal justice data. The management information system monitors a joint target for the length of time it takes to process summary cases through the court system and the wider impact of summary justice reform. The database brings together information submitted by the police, COPFS and the Scottish Court Service and enables performance to be analysed at both local and national levels. The database has been welcomed by all parties, particularly local criminal justice boards, which use the information as a starting point to understand what is happening in their local area.

75. Despite these improvements, there are still limitations to the performance information currently available. For example, there is no mechanism to track people through the system, whether they are offenders, victims or witnesses and there are limited assessments of quality or cost. This makes it difficult to evaluate the cost effectiveness of different activities or to plan improvements across the whole system. The *Making Justice Work* programme is developing plans to address some of these issues.

The length of time taken to process cases has improved but the process is still inefficient

76. Processing cases through summary courts involves several different stages. There are many different, often independent, bodies and people involved, some of whom need to prepare for each stage and many of whom need to be present

at court. Evidence may need to be shared, eligibility for legal aid may need to be checked and witnesses need to be present. Given the complexities involved, many cases end up repeating stages in the process until all the necessary elements are in place.

77. The Scottish Government's national indicator is to 'Increase the percentage of (summary) criminal cases dealt with within 26 weeks by three percentage points by 2011'. In 2010/11, 74 per cent of cases were dealt with within the six-month target, an eight per cent increase since 2006/07.⁴⁰

78. In March 2010, the Summary Justice Reform National Working Group, reported that good progress had been made 'at the front end' of the system.⁴¹ Police are submitting reports quicker (89 per cent of police reports were submitted to COPFS within the 28-day target in 2009/10, a four per cent improvement on 2008/09); and COPFS is marking cases quicker (85 per cent of cases were marked within the 28-day target in 2009/10, a three per cent improvement on 2008/09).^{42,43} However, the Group found that many cases still have to repeat stages at court several times before they can progress to the next stage. These delays are commonly referred to as the 'churn' in the system.

79. The number of cases going round the system in this way has been a well-recognised problem for a number of years. In September 2010, the Lord President, Scotland's most senior judge, stated in his opening speech for the legal year that:

"We must also make full and efficient use of the resources that are available to us. We have... to find ways of reducing what is known in the system as 'churn'... what it really is: an unacceptable waste of taxpayers' money which adds little to the administration of criminal justice but rather hinders its swift application... The judiciary, the professions, the Crown, the Police and all other criminal justice agencies have an obligation, in my view, to do all in their power to avoid this waste. I expect all of them to address it and I encourage my judicial colleagues to question robustly requests for adjournments that do not appear to be explicable other than by an inability to prepare in time, or to have witnesses ready to give their testimony."

Inefficiencies in processing cases through court cost the criminal justice system at least £10 million in 2009/10

80. Information on what happens to individual cases as they progress through the court system is difficult to extract from existing systems. However, the criminal justice management information system collates information on what happens to summary cases each time they appear at court. We analysed these data for 2009/10 to calculate the total number of times cases progressed through the summary courts as planned and the number of times they did not. We then applied our indicative costs (from Exhibit 5, page 17) to estimate how much it cost when cases do not progress as planned. Exhibit 9 (overleaf) shows what happened at each stage and the estimated costs involved.

40 Scotland performs – <http://www.scotland.gov.uk/About/scotPerforms>

41 *Measurement exercise: Recorded reasons for court diet continuations and adjournments*, Summary Justice Reform National Working Group, 2010.

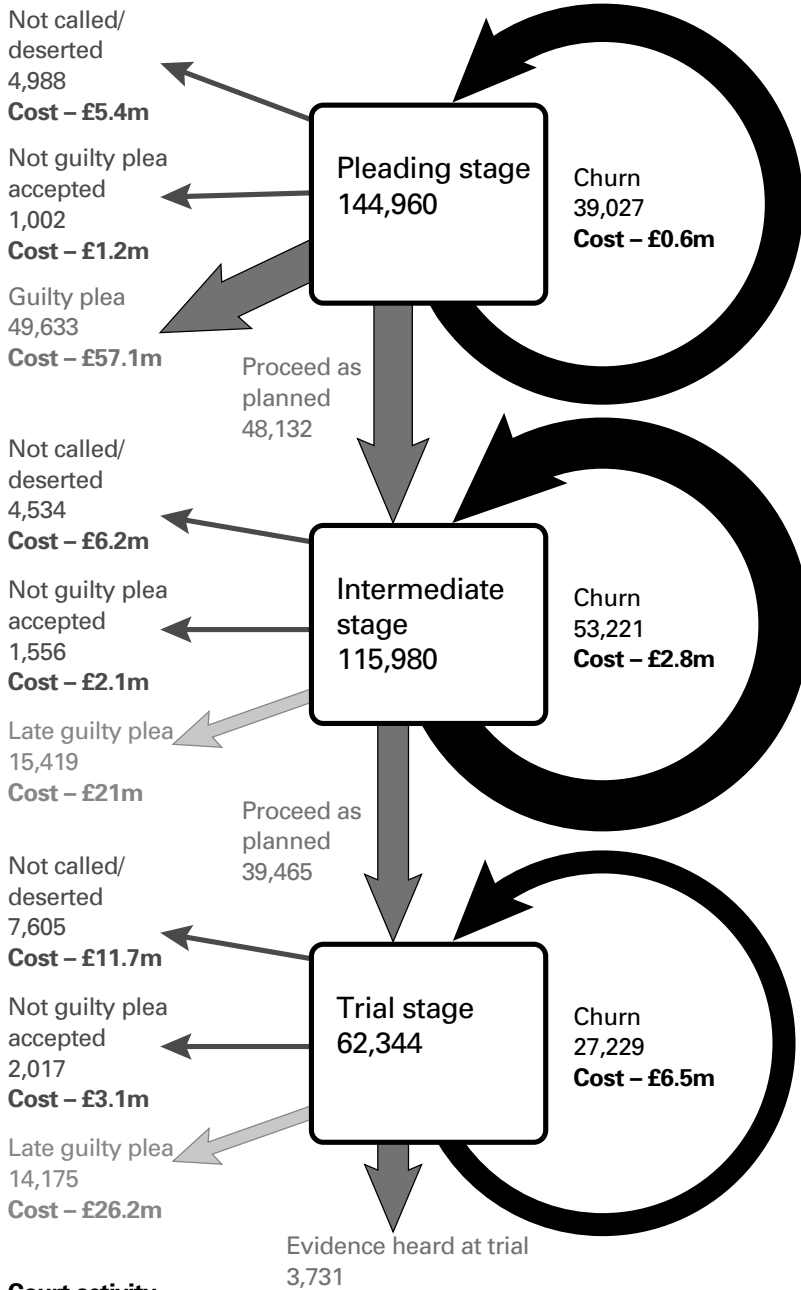
42 *Scottish Police Performance Framework Annual Report 2009/10*, ACPOS, 2010.

43 Crown Office Procurator Fiscal Service Annual Reports 2008/09 and 2009/10.

Exhibit 9

The extent and estimated cost of delays in processing summary cases through court in 2009/10

Using the estimated costs in Exhibit 5, repeating stages at court cost the criminal justice system around £10 million in 2009/10 and late decisions not to proceed cost an additional £30 million.



Court activity

- Proceed as planned
- Late decisions not to proceed
- Late guilty plea
- Churn

Note: The remaining five per cent of times cases were at court, 'other' outcomes were recorded.
Source: Audit Scotland

81. Taking all three court stages together, our analysis shows that of the 323,284 times cases were at summary courts in 2009/10:

- 42 per cent (137,230 appearances at court) progressed as planned – that is moved on to the next stage in the process or the accused pled guilty at the pleading stage

- 37 per cent (119,477 appearances at court) resulted in the case having to repeat a stage in the process. This usually happens because the accused or witness did not turn up, the procurator fiscal or defence agent were not fully prepared or because evidence had not been shared.⁴⁴ This is commonly referred to as court 'churn'. We estimate this cost around £10 million

- nine per cent (29,594 appearances at court) resulted in the accused changing their plea to guilty at the intermediate or trial stage.⁴⁵ It is a fundamental principle of Scots law that the accused can plead guilty at any time. We estimate that these late guilty pleas cost around £47 million

- seven per cent (21,702 appearances at court) resulted in the case leaving the system as it was either not called, deserted or a not guilty plea was accepted by the procurator fiscal. This means that the individual procurator fiscal decided not to proceed with the case after it had been 'marked' for court (that is, after a procurator fiscal decided the case should be heard in court). We estimate this these late decisions not to proceed cost around £30 million.

Note: the coloured boxes match the colours in the exhibit.

44 Measurement exercise: Recorded reasons for court diet continuations and adjournments, Summary Justice Reform National Working Group, 2010.
45 This includes 'no evidence led, adjourned to sentence' at the trial stage.

82. Many cases are therefore resolved later in the court process than necessary. For example, a procurator fiscal can decide not to continue with the prosecution at any point as the case progresses through the summary court (usually referred to as 'not calling' or 'deserting' the case). The procurator fiscal may decide to do this because a witness has repeatedly not attended, there is a lack of suitable evidence or a lack of clarity about the crime committed. The procurator fiscal may also decide at any point to accept that the accused is not guilty. These decisions are up to the individual procurators fiscal concerned and are wholly independent of government.

83. However, as demonstrated in Exhibit 5 (page 17), the later in the process that cases are resolved, the greater the cost to the public purse. In 2009/10, over 9,600 cases were not called, deserted or a not guilty plea accepted once the case had reached the trial stage; this cost approximately £15 million. Of the 62,000 times that cases reached the trial stage in 2009/10, evidence was heard in only six per cent (3,700 times).

84. In the interests of ensuring fair justice, there will always be occasions when a case will be resolved late. For example, some cases are complex and it will take some time for the procurator fiscal or defence solicitor to make a judgement on the strength of the evidence. However, many of the delays that happen are avoidable. For example, repeating stages at court due to a lack of preparation by the procurators fiscal or the defence, or problems with the disclosure of evidence. The number and cost of late decisions not to proceed could also be reduced with better preparation and initial marking of cases. If procurators fiscal are well prepared, knowledgeable about their case and negotiate with the defence then the number of cases delayed or resolved later than necessary should

fall. Delays caused by the accused or witness not turning up for court may be harder to avoid, although there are a range of initiatives underway to address this problem.

Inefficiencies in processing cases have wider implications

85. When cases repeat stages in the court process, both the volume of cases going through the courts and the workload of all the bodies concerned increases. For example, when a case repeats a stage in the court process, the procurators fiscal have to pick up the case again; a different procurator fiscal is usually assigned to the case who will need to repeat some of the previous preparatory work done by their colleague. The case will then need to be rescheduled into court time and the defence agents, the accused and any witnesses may need to return to court.

86. Delays in processing some cases and the late resolution of others also have wider cost implications in terms of lost working days for witnesses, victims and the accused. This is a particular problem for the police, as police officers are often called to give evidence (Case study 2).

87. Systems have been introduced in some courts to allow police officers to be on stand-by. This means that they do not have to attend court but, if called to give evidence, must be able to get to court quickly. While this helps reduce the cost implications for the police, it can lead to added costs for the Scottish Court Service and COPFS as the court must wait for police to attend.

88. The Scottish Court Service cannot predict which cases will go ahead as planned. This makes it difficult to plan court time. To manage this unpredictability and to guard against court rooms sitting empty, the courts do not allocate specific times to individual cases and generally plan for more cases each day than could be heard if they all went ahead. While this is efficient in terms of maximising court time, it can add to the inconvenience for the people concerned who must attend court and then wait to hear if their case is called. As many people's only experience of the criminal justice system is being called as a juror or witness, this may affect their perceptions and confidence in the efficiency of the system. The 2009/10 Scottish Crime and Justice Survey found that only 38 per cent of adults were confident that the criminal justice system dealt with cases promptly and efficiently.⁴⁶

Case study 2

Police waiting time at court has significant cost implications

Police estimate waiting time at court costs almost £16 million a year.

The Association of Chief Police Officers calculated that on 21 April 2010, 528 police officers across Scotland were called to court to give evidence but only 55 officers (around 10 per cent) actually gave evidence. The proportions of officers from all forces giving evidence at courts across the country ranged from 0 to 38 per cent.

ACPOS estimated that the total cost over a year of police officers attending court and not giving evidence was nearly £16 million. The costs include replacement cover, paid overtime, annual leave and expenses for officers getting to court.

Source: *Delivering efficiencies in policing*, ACPOS, 2010

Improving the efficiency of the court system could deliver savings

89. There may be scope to use existing legislation more effectively to reduce inefficiency and speed up the time it takes for cases to go through the system. For example, ensuring defence solicitors and prosecutors have discussed a case before it goes to court to identify areas of agreement. The Lord President has recently called on members of the judiciary to challenge any requests for adjournment due to the defence or the procurators fiscal not being prepared.⁴⁷ However, there remain few incentives or sanctions in the system to support improvements in efficiency. If the accused or witness does not attend court then a warrant can be issued for their arrest. However, there is little that can be done if the procurator fiscal or defence agent is unprepared, if the necessary evidence hasn't been disclosed or isn't ready or if legal aid hasn't been granted.

90. One of the strands of the Scottish Government's *Making Justice Work* programme is to improve how cases are processed through the court. There are seven workstreams within this strand, looking at a range of issues including improving witness attendance at court and encouraging the early resolution of cases. The estimated financial savings and timescales of this work have still to be defined.

91. In the meantime, there have been a number of local initiatives designed to improve how the court system operates, in particular in Aberdeen, West Lothian and Edinburgh. All these initiatives have involved police officers, procurators fiscal, court clerks and, in some cases, sheriffs, working closely together, often in shared locations. They all improved in the time taken for cases to be processed

through the system and reduced the number of times that stages had to be repeated at court. For example, in West Lothian, the percentage of pleading diets that went ahead as planned increased from 44 to 85 per cent. Interviews with participants identified a number of reasons for the improvements in performance (Case study 3).

92. None of these initiatives has been more widely rolled out, despite improvements in performance. Changes to key personnel and resource constraints are cited as the most common reason for this. One

of the challenges within the criminal justice system is that investment by one body may not necessarily result in any direct benefit to it, but may deliver improvements to another part of the system. The greater use of cost and performance measures for the system as a whole could provide incentives to improve efficiency.

93. Reducing the number of cases that are delayed or resolved late will improve the level of service for all court users and could also produce cash savings. A Scottish Government evaluation of the High Court of Justiciary reforms found that 6,000

Case study 3

Lessons from local initiatives which have improved performance in processing cases through the court system

Participants in local initiatives to improve efficiency of the court system identified a number of reasons for their success:

- The importance of developing a collective and complete understanding of how all the processes in the court system work, from the start to the end of the process. This leads to a shared understanding of why problems occur and agreement on possible solutions to address them. For example, in West Lothian, it was discovered that police statements for court were not filed in time for court dates.
- Creation of a shared understanding locally of the impact that decisions made by one person have on the workload of another person in the process. For example, summary court clerks understand how scheduling court time affects police officer shifts.
- A shared commitment to 'getting it right first time' and a shared understanding of what 'right first time' looks like. For example, police officers improved their understanding about what is needed for a good prosecution report. Well-prepared reports save time spent marking by the procurator fiscal.
- Team-based and close working relationships at a local level among people involved in different parts of the criminal justice system. This promotes understanding that while criminal justice bodies have to be independent in terms of decision-making, they are interdependent in terms of processes. Co-location can facilitate close team working, although this may not always be practical. Different criminal justice bodies occupy the same building in Livingston which has helped to sustain improved performance in West Lothian.

Source: Audit Scotland

fewer police officers had to attend court in the first three months of the reforms being introduced; COPFS saved £155,000 by calling fewer witnesses; and SLAB saved £1.1 million from the legal aid budget within a year.⁴⁸

94. Good management of the process can improve efficiency. For example, the Serious Fraud Office (which has UK-wide responsibility) has significantly reduced the time it took to conclude cases, which delivered savings within two years (Case study 4).

Case study 4

The Serious Fraud Office has significantly improved its processes and saved money

A case management approach delivered improvements at the Serious Fraud Office.

The Serious Fraud Office gave management responsibility to its professionals who had previously only been responsible for investigating and prosecuting cases of serious fraud. So, for example, individual staff were responsible for managing the budgets of cases, for developing project plans and managing staff allocated to cases. Through regular and rigorous case reviews with senior staff, the SFO also worked to ensure that individual cases maintained focus and direction and were only investigated until there was sufficient evidence to get a satisfactory outcome.

Within three years, the time taken to finish a case fell from an average of eight and a half years to less than four years. This allowed SFO to manage its business more effectively, despite a 28 per cent reduction in its budget over the same period (from £54 million to £39 million).

Source: Audit Scotland

⁴⁸ *An Evaluation of the High Court Reforms Arising from the Criminal Procedure (Amendment) (Scotland) Act 2004*, Aberdeen University for the Scottish Government, 2007.

Part 4. Effectiveness in reducing reoffending



Reoffending is a continuing problem.



Key messages

- Reoffending is a continuing problem in Scotland. There has been little progress towards the Scottish Government's national indicator to reduce reconviction rates. Rates have fallen by less than one per cent in three years, despite this having been a policy priority for a number of years.
- The activity and money of most criminal justice bodies is on processing cases and implementing sentences, rather than reducing reoffending. We estimate that in 2009/10, around £81 million was spent by criminal justice bodies (excluding police) directly on services to reduce reoffending, which is less than ten per cent of criminal justice expenditure. This is an underestimate of the total amount of public money spent supporting offenders, as expenditure by the wider public sector to meet offenders' needs is not known.
- Offenders have a wide range of needs. However, services to address these needs vary across the country and are delivered by many different bodies. There is limited information about what services are available and there is a lack of good, consistent performance information. Funding arrangements are complex and do not always provide a financial incentive to reduce reoffending.

Reoffending is a common and costly problem

95. Most people who are convicted in court have offended before. In 2009/10, most of the 9,372 people who received a prison sentence had been convicted in the previous six years:

- fifty-one per cent (4,750 people) had between five and 20 previous convictions
- eleven per cent (1,014 people) had between 21 and 30 previous convictions
- seven per cent (679 people) had more than 30 previous convictions.

96. The Prisons Commission reported on Scotland's high rate of imprisonment and found that, in 2006/07:

- almost half of those receiving prison sentences had been in prison more than three times before, and between 15 and 22 per cent had been in prison more than ten times before
- 7,000 prisoners had 47,000 spells in prison
- those released from short-term prison sentences (less than four years) were re-imprisoned more quickly and in greater number than those served longer sentences.⁴⁹

97. Reducing reoffending could bring significant benefits to the criminal justice system, as well as to local communities. There would be fewer cases for procurators fiscal to consider, fewer cases going to court and fewer recipients of legal aid. It should also reduce the costs to the police and the courts in providing evidence and supporting the court system. This should, in turn, have

a positive impact on the number of delays and late resolution of cases as procurators fiscal and defence agents would have fewer cases to prepare.

98. In 2002, the UK government estimated that the cost to the criminal justice system of each prisoner who reoffended on release was £65,000 (around £80,000 at today's prices).⁵⁰ In 2006/07, 6,890 people in Scotland were released from custody and more than 4,200 had reoffended within two years. The costs to the Scottish criminal justice system resulting from this level of reoffending have not been estimated but they are likely to be similarly high.

99. Work commissioned by the Wise Group, which helps unemployed people move into employment, found that supporting one reoffending prisoner into employment saved Scotland's wider public purse around £940,000 over a five-year period. This includes costs to the criminal justice system, benefit payments and employment benefits to the individual concerned.⁵¹

There has been little progress on the Scottish Government's national indicator to reduce the reconviction rate

100. Reducing reoffending has been a policy priority for the Scottish Government for a number of years, and various policy and legislative changes have been introduced to address this. In particular:

- The Management of Offenders (Scotland) Act 2005 created provision for eight Community Justice Authorities (CJAs) across Scotland.⁵² CJAs are intended to provide a more coordinated approach to the local delivery of offender services, target services to reduce reoffending and ensure

⁴⁹ *Scotland's choice: Report of the Scottish Prisons Commission*, Scottish Government, 2008.

⁵⁰ *Reducing reoffending by ex-prisoners*, Social Inclusion Unit, 2002.

⁵¹ *Breaking the cycle: the real cost of promoting ex-prisoner employability*, Eddy Adams Consultants Ltd, 2007.

⁵² The eight CJAs (Fife and Forth Valley, Glasgow, Lanarkshire, Lothian and Borders, North Strathclyde, Northern, Southwest Scotland and Tayside) began operating in 2007.

close cooperation between community-based services and prison services to aid the rehabilitation of offenders.

- The Scottish Government established the *Reducing Reoffending* programme in 2008. This is a wide-ranging policy initiative looking across the whole criminal justice system. The programme involves many different criminal justice bodies and is aimed at both preventing offending happening in the first place and at improving support to offenders.
- Most recently, the Criminal Justice and Licensing (Scotland) Act 2010 introduced Community Payback Orders (CPOs) as an alternative to short-term prison sentences. The 2008 Prisons Commission report found that short-term prison sentences were ineffective in reducing reoffending, and the Act introduced a presumption against these being used. CPOs are designed to deliver both effective justice and to reduce reoffending rates. It is too early to comment on their success.

101. In 2007, the Scottish Government set a national indicator to reduce the reconviction rate as part of its national performance framework. Reconviction rate was selected as a proxy to measure the effectiveness of policy and legislative changes designed to reduce reoffending. The Government set a target of reducing the overall reconviction rate by two per cent to 42 per cent by 2011. To date this has not been achieved; the national reconviction rate has reduced by less than one per cent in the last three years, with around 44 per cent of offenders reoffending within two years.⁵³

In 2009/10, an estimated £81 million was spent by criminal justice bodies on services to reduce reoffending

102. The activities and money of most criminal justice bodies (excluding police) are directed towards processing cases through the system and implementing sentences, rather than supporting people to stop reoffending. It is difficult to identify exactly how much is spent by these bodies directly on reducing reoffending but we estimate that in 2009/10:

- £341 million was spent on processing cases through the court system (by COPFS, the Scottish Court Service, and SLAB)
- £281 million was spent on providing community sentences or prison sentences (by criminal justice social work and the Scottish Prison Service)
- £81 million was spent directly on reducing reoffending (by criminal justice social work and the Scottish Prison Service).^{54, 55}

103. This is an underestimate of the total amount of public money spent supporting offenders. Offenders are likely to receive support from a wide range of public services which are not specifically offender services but which may help reduce reoffending, for example NHS drug treatment services. However, the total expenditure on such services for offenders is not known. In addition, considerable police activity is directed towards preventing offending, some of which will be focused on existing offenders.

104. Reducing reoffending could reduce demand on other parts of the criminal justice system and therefore reduce overall criminal justice spending in the longer term, although achieving this will take time. The importance of preventative funding to reduce demand on public services is well recognised, most recently by the Christie Commission report.⁵⁶

Services to support offenders and reduce reoffending vary across the country

105. People who repeatedly offend often have many problems. For example, limited education or training, no paid work, nowhere to live, problems with alcohol or drugs, mental health problems or family difficulties (Exhibit 10).

106. Services to address these needs are delivered both in prisons and in the community by a range of different providers, including public bodies and voluntary organisations. Some services are designed specifically for offenders; some for specific groups of offenders (such as women offenders); and others are provided for people with particular needs and offenders may only be a minority of the clients (such as employment services).

Prison-based services vary across Scotland and focus on long-term prisoners

107. The Scottish Prison Service offers a range of different programmes to meet the diverse needs of people in prison and address their offending behaviour. These include, for example, treatment for addictions; programmed interventions to address offending behaviour; educational and vocational courses; and support on release. However, most of these services are provided for long-term prisoners (those sentenced to more than four years).

⁵³ <http://www.scotland.gov.uk/Resource/Doc/322680/0103823.pdf>

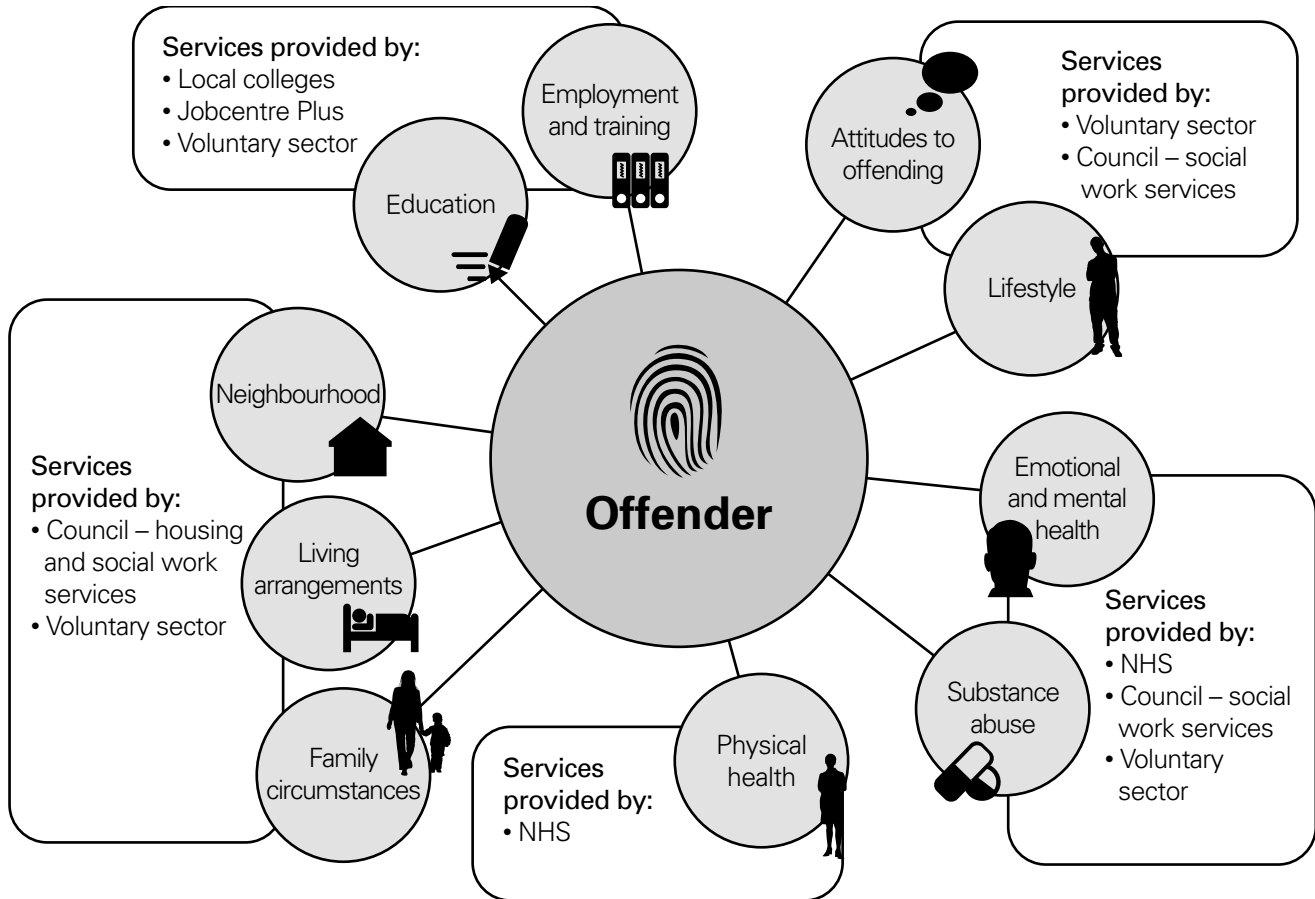
⁵⁴ Figures are based on estimated proportion of CJSW spend on delivering community sentences and on supporting offenders, and estimated prison spend on rehabilitation as detailed in Audit Scotland 2005 report on correctional opportunities for prisoners. SPS have no updated breakdown of spend.

⁵⁵ This total is less than £857 million reported in Part 2, as only the most relevant criminal justice budgets have been included.

⁵⁶ *Commission on the future delivery of public services*, Public Services Commission. 2011.

Exhibit 10**Repeat offenders may have a range of needs**

Offenders often have several problems that need to be addressed to reduce reoffending.



Note: In addition, the Scottish Prison Service may provide some of these services in prisons.
Source: Audit Scotland

There is no legal requirement for the Scottish Prison Service to provide support for short-term prisoners (ie, those sentenced to four years or less), who form the majority of the prison population.⁵⁷

108. Recent figures from the UK Ministry of Justice suggest that overall reconviction rates are lower in England than in Scotland and, in particular, among those sentenced to more than 12 months in prison (40 per cent reconvicted within two years, compared with 44 per cent in

Scotland). In England, there is a legal requirement to support, on release, everyone who is sentenced to more than one year; there is no such legal requirement in Scotland.

109. The Scottish Prison Service has a key performance indicator set by the Scottish Government for the number of 'offender development hours' that prisoners spend on activities like education, life skills, vocational training, work placements, health promotion and physical education. In 2009/10, the Scottish Prison

Service delivered 2.7 million offender development hours, or around 56 minutes of development activity per prisoner a day. However, the amount of time prisoners spend on these activities varies among prisons and prisoners depending on the availability of staff, the level of overcrowding and the assessed needs and risks of individual prisoners. Previous reports which have considered prisoners' views, found that a lack of access to activities meant prisoners were often bored and frustrated.^{58, 59}

57 In 2009/10, 44 per cent of the prison population were short-term prisoners, 38 per cent long-term prisoners and the remaining 18 per cent were on remand awaiting trial.

58 *What do the punished think of punishment?*, Scottish Centre for Crime and Justice Research, 2010.

59 *Managing increasing prisoner numbers in Scotland*, Audit Scotland, 2008.

110. The services available vary by prison and are delivered by a range of providers, for example local colleges, council, social work services, or voluntary organisations. A joint initiative by the voluntary sector, Lothian and Borders CJA and the Scottish Prison Service, identified 14 different projects in HMP Edinburgh run by voluntary organisations, in addition to those services provided by the public sector.⁶⁰

111. A recent report on social work services in prisons identified that there were different arrangements across Scotland and no national strategy or vision for the service overall. Only half of prisons and councils that provided services had formal arrangements outlining what services would be provided, and many services had developed over time to meet different needs of prisoners.⁶¹ The Scottish Prison Service and the Association of Directors of Social Work are working to introduce standardised arrangements. However, there is not yet any formal agreement.

There is a wide range of community services but no national overview

112. Community services also play an important role in reducing reoffending. The Scottish Government provides a grant of around £100 million a year to Community Justice Authorities (CJAs) to distribute to the councils within their area. The CJAs are responsible for agreeing how this funding should be spent. The funding is for both implementing community sentences ordered by the courts and providing wider support services to reduce reoffending. The wider support services provided include, for example:

- throughcare addiction services (for offenders leaving prison)
- supported accommodation services
- mediation services
- employment services
- intensive support packages, designed around individual offenders.

113. A number of voluntary organisations, funded through public and charitable resources, also provide a range of specialist services aimed at reducing offending behaviour and often provide a link between prison and the community. For example:

- Apex Scotland specialises in providing support for offenders to get into employment and training.
- Sacro provides structured group work programmes on a range of issues including domestic abuse, alcohol education and sexual offending.
- Turning Point Scotland provides residential, person-centred, holistic support to persistent repeat offenders.

114. In addition, there is a range of smaller, voluntary sector initiatives, often focused on a particular group of offenders, or in a particular area. Many of the projects are set up by voluntary organisations and run in partnership with statutory service providers, such as councils or the Scottish Prison Service. Traditionally the voluntary sector has been able to provide a more flexible service, for example 24-hour support. It can also be easier

for voluntary organisations to build relations with clients, particularly offenders, as they can be seen by offenders as 'outside the system'.

115. There is variation in the range of services provided across the country. For example, analysis of CJA annual accounts shows that Fife and Forth Valley CJA offers specific support to violent offenders; Lanarkshire CJA and Northern CJA provide dedicated support to young people at risk; and Glasgow CJA is the only area to fund intensive residential support to women offenders. We have not explored the reasons behind this variation but factors such as the profile of offenders in the CJA area, the availability of funding or the profile of any prison located in the CJA area may have an impact. There may also be services for offenders that are not funded through the CJA, but full details are not known.

116. Information on the full range of services to offenders, either locally or nationally, is limited. However, there have been some attempts to map services in order to identify gaps in provision or improve partnership working. A recent initiative in Lothian and Borders CJA identified 30 different voluntary organisations or projects delivering community-based services to offenders within the five councils in the CJA area.⁶² Glasgow CJA recently mapped the provision of services to support offenders into employment and identified 37 providers delivering these services.⁶³

117. Evaluations of individual initiatives designed to support offenders to reduce their offending behaviour are providing evidence that a more person-centred approach can be effective in reducing reoffending (Case study 5).

60 *Partnership Development Initiative: Towards a model framework for third sector criminal justice services*, The Robertson Trust, SPS, CJVSF and Lothian and Borders CJA, 2010.

61 *Social work services in Scotland's prisons: a national inspection*, Social Work Inspection Agency, 2011.

62 *Partnership Development Initiative: Towards a model framework for third sector criminal justice services*, The Robertson Trust, SPS, CJVSF and Lothian and Borders CJA, 2010.

63 *Mapping of employability support for offenders in Glasgow*, Glasgow CJA, March 2011.

Case study 5

A more holistic person-centred approach can be effective in reducing reoffending

Evaluation of specialist initiatives indicates that positive results can be obtained by providing intensive support to offenders.

- Circle Scotland – national statistics state that 47 per cent of women return to prison within two years of being released. In a project run by Circle Scotland in 2008, 46 women were supported with throughcare services, having their progress monitored through interviews and the prison database. After a year, none of the women had returned to prison; and at the end of two years, 22 per cent (half the national figure) had returned to prison. At the time of the first evaluation in October 2010, the service had been offered to 75 young women with an 87 per cent sign-up rate.¹
- The Persistent Offender Project (POP) was established in Glasgow in 2006 and aims to reduce the offending rates of persistent offenders with drug and alcohol problems by encouraging the uptake of intensive support services. POP costs £254,000 a year and is funded and delivered jointly by Glasgow Addiction Services and Strathclyde Police. An evaluation of the project in 2010, concluded that levels of offending among those supported by POP fell by over 30 per cent from before they started the project to when they left. Scottish Government analysts calculated that this reduction in offending saved the public purse over £10 million.

Note:

1. *Throughcare for Female Offenders: Review of the first two years*, Circle Scotland, October 2010.
 2. *Persistent Offender Project: An analysis of the costs and benefits*, Scottish Government, 2010.
- Source: Audit Scotland

118. There is some evidence of unmet demand for services to reduce offending behaviour. For example:

- The Parole Board report that it is sometimes limited in its ability to grant parole because of the lack of availability of rehabilitation programmes in prison.
- Overcrowding in prisons can adversely affect the rehabilitation opportunities prisoners receive by reducing access to training and increasing the time spent in cells.⁶⁴

119. However, the level of unmet demand cannot be properly determined without a comprehensive picture of the services and number

of places that are available, linked to the level of demand. Although, for services to be effective, offenders must be willing to engage with the service to change their behaviour.

Performance information on the effectiveness of services to reduce reoffending is limited and inconsistent

120. There is a lack of good, consistent performance information relating to reducing reoffending. The Scottish Government's national indicator uses the two-year reconviction rate. This is based on the number of people who first offended two years previously, so does not provide real-time performance

information on reoffending. The information cannot be used to determine the impact of local projects or interventions, as it does not reflect recent changes in the frequency or level of reoffending.

121. A national inspection of social work services in Scotland's prisons found that while councils and the Scottish Prison Service were collecting performance monitoring data, they were unable to determine the difference that prison-based services were making to protecting the public or reducing reoffending.⁶⁵ HM Chief Inspector of Prisons for Scotland expressed similar concerns about the inability of the Scottish Prison Service to track people when they return to the community, and therefore measure the effectiveness of the various programmes and interventions they received while in prison.⁶⁶

122. Although CJAs were established in 2007, there are no agreed measures to assess their performance or impact. As a result, CJAs use a range of different performance indicators developed locally with different systems for reporting and presenting data. CJAs have recently agreed to improve information sharing and to look at developing a common set of core measures and associated information requirements.

123. The lack of agreed performance indicators across the range of services designed to reduce reoffending means the cost-effectiveness of different local projects cannot be compared.

⁶⁴ *Managing increasing prisoner numbers in Scotland*, Audit Scotland, 2008.

⁶⁵ *Social work services in Scotland's prisons: a national inspection*, Social Work Inspection Agency, 2011.

⁶⁶ *HM Chief Inspector of Prisons 2009/10 annual report*, Scottish Government, 2010.

Funding arrangements are complex and there are risks to future service delivery

124. Funding arrangements for services to support offenders are complex, in particular given the high level of voluntary sector involvement. CJAs are responsible for distributing funding to criminal justice social work services and monitoring how it is spent to improve the management of offenders. The funding is ring-fenced and divided into 'core' and 'non-core' elements.⁶⁷ Core funding is for delivery of the main criminal justice social work services, such as submitting reports to the courts or Parole Board, implementing community sentences ordered by the courts or any other service agreed by the CJA. Non-core funding is used for support services such as providing supported accommodation. CJAs often try and source additional (or match) funding from other bodies to fund particular initiatives in their areas aimed at reducing reoffending.

125. The way criminal justice social work services are currently funded does not provide a financial incentive to change offenders' behaviour and reduce reoffending. The Scottish Government grant is based largely on activity (eg, number of community service orders) over the preceding three years. While the funding formula needs to recognise the level of demand for criminal justice social work services, this arrangement means that unsuccessful interventions may result in additional funding. For example, if a community sentence is breached after three weeks and a second issued, this is counted twice in the statistics used to calculate future funding. Moreover, if a particular area is successful in reducing levels of offending then it could receive less money as there

Case study 6

A £5 million social impact bond is funding an initiative to reduce reoffending in Peterborough

This is the first initiative of its kind.

In September 2010, a pilot project was launched to reduce reoffending funded through a social impact bond.

Social Finance attracted £5 million of private investment to fund a range of voluntary organisations to support short-term male prisoners (sentenced to one year or less) and their families. If the pilot is successful and reduces reoffending by more than 7.5 per cent then the private investors will earn a proportion of the savings produced as a result of the fall in reoffending.

Source: Audit Scotland

will be fewer community sentences imposed by the courts. Following the introduction of Community Payback Orders, the Scottish Government is planning to revise the funding formula.

126. There is a risk that reduced budgets could affect the provision of services for offenders if the main funders (criminal justice social work and the Scottish Prison Service) prioritise their spending to deliver only these services required by legislation. This may mean that services for other offenders, and particularly short-term prisoners, could be adversely affected.

127. Reduced budgets pose particular risks for voluntary organisations. A focus group with voluntary organisations providing services to offenders highlighted that partnerships with the public sector, primarily councils, had been adversely effected by reduced budgets. Voluntary organisations can often lever in additional funding from external sources, such as charitable foundations or donations. There is therefore a risk that the quality and level of services currently provided by the voluntary sector could suffer.

128. There is little evidence that the potential for alternative funding models is being explored in Scotland. For example, social impact bonds are being piloted in England as an alternative way to fund services often delivered by the voluntary sector. Assuming that agreed outcomes are achieved, investors get a return on their investment by receiving a share of the savings made through improving the social problem being targeted. In August 2010, the Big Lottery announced an £11 million fund to support the development of social impact bonds in the UK. In September 2011, the Ministry of Justice and Social Finance launched an initiative to reduce reoffending in Peterborough, funded through a social impact bond (Case study 6).⁶⁸

⁶⁷ This is often referred to as Section 27 funding.

⁶⁸ Social Finance is a social investment organisation.

Appendix 1.

Audit methodology

The focus of our work was Scotland's adult criminal justice system from the time police identify a suspect until he or she leaves the system, for example, until the accused is found not guilty by a court, leaves prison or finishes a community sentence. In Part 1 we considered how the criminal justice system works. In Part 2 we identified how much the system costs (including the costs of different processes and interventions) and looked at the possible impact of reduced budgets. In Part 3 we looked at the efficiency of the system and highlighted a number of areas where efficiency could be improved and in Part 4 we considered the effectiveness of the system in reducing reoffending.

Our audit methodology had four main components:

- Interviews with representatives of all the main criminal justice bodies.
- Desk-based research of existing information relating to Scotland's criminal justice system.
- Analysis of existing data including activity and performance measures.
- Financial analysis of the costs involved in Scotland's criminal justice system.

Interviews

We conducted a combination of individual and group interviews, some on a multi-agency basis, with a wide range of operational and strategic staff from across the criminal justice system:

- Association of Chief Police Officers in Scotland
- Association of Directors of Social Work
- Community Justice Authority chief officers

- Crown Office and Procurator Fiscal Service
- Law Society for Scotland
- local criminal justice boards
- members of the judiciary, including the Sheriffs' Association
- National Audit Office
- Parole Board for Scotland
- Risk Management Authority
- Scottish Court Service
- Scottish Criminal Cases Review Commission
- Scottish Government
- Scottish Legal Aid Board
- Scottish Legal Complaints Commissioner.
- Scottish Prison Service
- Serious Fraud Office
- the voluntary sector, including services for victims and offenders.

Desk-based research

We researched national information and local research, identified during our interviews, on areas such as the cost effectiveness of different interventions and the victim's perspective of the criminal justice system. We also commissioned the Scottish Centre for Crime and Justice Research (SCCJR) to research other areas such as changes to the criminal justice system since devolution.

Data analysis

We commissioned SCCJR to analyse the existing data to determine the activity and performance of Scotland's

main criminal justice bodies. We also analysed the national criminal justice management information system for activity information at a local and national level, for example the proportion of cases which progressed through the summary courts as planned and the proportion that did not.

Financial analysis

We analysed the annual accounts of criminal justice bodies and the Scottish Government budget to determine the costs of the system. We also estimated the unit costs of processing cases through court. We mapped out the staff who would be involved at each stage of the court process and their average salaries. We then used information provided by the Scottish Court Service on the average times to estimate staff costs and included the costs of legal aid, witnesses and an estimate of court running costs. We applied these costs to the number of cases which were delay or resolved later than necessary in 2009/10 to estimate the total costs to the criminal justice system. We also analysed Community Justice Authority (CJA) accounts and national statistics to calculate the unit costs of community sentences and identify regional variation.

We used CJA accounts to estimate how much is spent on delivering community sentences and how much on services designed to reduce reoffending. We applied previous estimates of the proportion of Scottish Prison Service spend on rehabilitative activities to 2009/10 spend to determine its spend on services to reduce reoffending and implementing services. This allowed us to estimate the proportion of criminal justice spent directly on services to reduce reoffending and the proportion spent on implementing sentences.

Appendix 2.

Project advisory group members

Audit Scotland would like to thank members of the advisory group for their input and advice throughout the audit.

| Member | Organisation |
|--------------------------|-------------------------------------------------------------------------------------|
| Aileen Murphie | Director of Home Office VFM studies, National Audit Office |
| Bridget Campbell | Director of Justice, Scottish Government |
| David Strang | Chief Constable, Lothian and Borders Police, (Association of Chief Police Officers) |
| Eric Murch | Director of Partnerships and Commissioning, Scottish Prison Service |
| Gillian Little | Chief Officer, Glasgow Community Justice Authority |
| Lindsay Montgomery | Chief Executive, Scottish Legal Aid Board |
| Professor Michele Burman | Co-director, Scottish Centre for Crime and Justice Research |
| Michelle MacLeod | Head of Policy, Crown Office and Procurator Fiscal Service |
| Neil Rennick | Executive Director of Strategy and Infrastructure, Scottish Court Service |

Note: Members of the project advisory group sat in an advisory capacity only. The content and conclusions of this report are the sole responsibility of Audit Scotland.

An overview of Scotland's criminal justice system

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