

Protecting Scotland's Communities

FAIR, FAST AND
FLEXIBLE JUSTICE



safer
scotland
SCOTTISH GOVERNMENT

Protecting Scotland's Communities

FAIR, FAST AND
FLEXIBLE JUSTICE

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MINISTERIAL FOREWORD



Our communities want to feel as safe and crime free as possible. They deserve a first-class justice system that is fair, fast-acting and flexible. And, above all else, they deserve a system that has public safety at its heart. The Scottish Government is committed to providing that system.

Underpinning our vision is this Government's commitment to transforming Scotland's approach to early years and early intervention. There is a critical part for the justice system to play in breaking the generational cycle of offending and poor outcomes.

Our system will be supported by a framework of custodial and community sentences. This framework protects the public by imprisoning those who commit serious crimes or are a threat, and gives communities payback from those who offend against them. Where appropriate, and where offenders are willing, it will also give offenders the opportunity to turn their lives around – because reducing reoffending is the best way to reduce offending, and so protect our communities.

The Scottish Prisons Commission has done exceptional work on the future of our justice system. The key themes outlined in their report of swift justice, payback, reparation and more effective management of offenders for whom prison remains the right disposal underscores our vision for change and gives us our direction for the future.

This paper builds on the Commission's work and the findings of the 2007 Review of Community Penalties. Its contents outline the work already underway in many areas within the criminal justice system to innovate and improve. The paper recognises that the key to successful delivery lies with not just the Scottish Government but our local authority partners, health and third sector providers, the Community Justice Authorities, and the judiciary at every level.

Keeping our communities safe and helping offenders turn their lives around are inextricably linked. These aims transcend politics. They are about making bold decisions to work differently but together for the people of Scotland.

A handwritten signature in black ink that reads "Kenny MacAskill". The signature is written in a cursive, slightly slanted style.

Kenny MacAskill MSP
Cabinet Secretary for Justice

SCOTLAND'S FUTURE

The Scottish Government is committed to a policy that will deliver **Immediate, Visible, Effective, High Quality, Flexible and Relevant** justice. This is an important element of the Scottish Government's overarching purpose to deliver a more successful country by building confidence and maximising the potential of all our people.

Significant progress has already been made. Major reforms to the Scottish criminal justice system are already underway or complete. We will build on these, the 2007 Review of Community Penalties¹ and the far-sighted work of the Scottish Prisons Commission² to shape a comprehensive and coherent strategy for the treatment and management of all offenders.

This ambitious package is central to achieving the Scottish Government's core objective for local communities – **that they flourish, becoming stronger, safer places to live**. From the outset we must ensure that our policy:

- **Includes** a modern prison estate in which to **detain serious offenders who present the greatest threat to public safety**.
- **Enhances** public protection by providing a **new, flexible but tough sentence management regime for offenders for whom custody will still be the right and only option**.
- **Delivers smart disposals that** tackle needs as well as deeds.
- **Produces better case information** that travels with the offender from the moment of arrest and charge to the moment of disposal and beyond, so that everyone involved at every stage knows the full picture and victims are reassured that courts and those responsible for managing the sentence reach decisions from a fully informed position.
- **Delivers effective solutions to the problem of persistent but minor offenders** whilst building community confidence in our handling of less serious offenders.
- **Ensures appropriate and effective interventions for young people who offend**, ensuring that whether in the Children's Hearings System or the justice system, their needs are met and communities protected.
- **Creates greater speed and efficiency** in the system – providing a widely used and effective community pay-back sentence which reinforces that offences have consequences, tackles the underlying causes, reduces the scope for further offending and makes best use of resources, particularly the time of committed professionals.
- **Enhances public confidence in the criminal justice system** through clarity in sentencing, investment in local reparative and rehabilitative services and visible offender payback.
- **Plays its part in promoting safer communities** through efficient case handling as well as effective sentence management for offenders both in prison and in the community.
- **Engages local people** in the development, delivery and monitoring of community projects.
- **Engenders a collective commitment from all the agencies** to work together to ensure that organisational boundaries never become barriers to justice.

1 *Reforming and Revitalising: Report of the Review of Community Penalties*
<http://www.scotland.gov.uk/Publications/2007/11/20142739/0>

2 *Scotland's Choice* <http://www.scotland.gov.uk/Publications/2008/06/30162955/0>

Above all, we need to focus on outcomes. **Every change should be judged by a simple benchmark: will this contribute to a reduction in reoffending and make our communities safer, better places to live?**

These elements must never become mutually exclusive. Reducing reoffending is not an alternative to prioritising community welfare and safety. In short, by cutting reoffending we will cut offending and so create communities that are – and feel – safer places to live. We will ensure that those who offend against our communities pay back to them – through speedy, tough community penalties, rigorously enforced. And where offending is serious, or the offender is a risk to our communities, through custodial sentences that provide appropriate and proportionate restrictions for the full length of the sentence.

But we also want to give offenders the right opportunities to acquire skills and develop a personal sense of worth so that they see a positive way out of offending. We need to achieve all these aims if we want to see progress towards a more economically successful country where all can flourish.

Tackling the underlying causes

“A” is a 40 year old male who was made the subject of a 2 year Drug Treatment and Testing Order (DTTO) in October 2006. At that time “A” was using £80 worth of Heroin daily. He was injecting and was offending to fund his drug use. He was rootless and had 75 previous convictions 31 of which were custodial disposals. He had been assessed by the Social Enquiry Report (SER) writer as at high risk of reoffending. When he entered treatment it was agreed with “A” that due to the extent of illicit drug use he would be put on a substitute prescribing programme with a long-term goal of eventual abstinence.

“A” responded well to this stepped approach. He first of all ceased intravenous use and then all illicit drug use. He is no longer offending. “A” completed his Order in October 2008 and tells anyone who asks him that it saved his life. He now has his own tenancy and is undertaking training to work in the horticultural business. He has no outstanding charges and has ceased illicit drug use. He will continue to be supported by the DTTO community liaison nurse.

WORKING TOGETHER

Although working together is fundamental to the successful delivery of the whole policy, this is not about major structural change. Over the last few years there has been significant investment in reconfiguring the strategic oversight of offender management in Scotland, including the creation of the Community Justice Authorities. We must now ensure that by working together we improve delivery.

The Scottish Government has already agreed with the Convention of Scottish Local Authorities (COSLA) that working together we will:

- Ensure support for prisoners while they are in prison and as they reintegrate into the community.
- Provide a widely used, robust and effective system of community penalties with the appropriate balance of support for less serious offenders and payback to communities affected by their offending.
- Enhance public confidence in the criminal justice system through clarity in sentencing, investment in local reparative and rehabilitative services and visible offender payback.
- Strengthen the prevention of offending and re-offending by young people through early and effective intervention, managing high risk and improving transitions.

But making our communities safer and stronger does not begin and end with criminal justice interests. We need commitment from all involved in supporting our communities.

ROUTE TO SENTENCING

A smarter criminal justice system

We agree with the Prisons Commission that we must deal with offending in the round. Valuable opportunities are lost if we start trying to tackle an offender's problems only at the point when he or she is facing a criminal sentence.

The Scottish Government is committed, with COSLA, to transforming Scotland's approach to early years and early intervention. We recognise that investment in preventing poor outcomes pays for itself many times over in reduced costs down the line for individuals, communities, and the public purse. The majority of people who end up in the criminal justice system have experienced multiple disadvantages in their early years. That's not an excuse for criminal behaviour; but it is a challenge for us to get better at giving children and young people more choices and more chances before it's too late. Later in this document we describe how the approach to young people who offend is being strengthened to ensure that fewer of them end up in the criminal justice system, and that where they do, we build more effectively on the efforts made to that point.

In the context of the justice system, we have our part to play in delivering the early years framework. Stopping the generational cycle of poor outcomes and turning around the lives of offenders, so many of whom are parents or prospective parents.

Early and effective intervention is an underlying principle for our justice system. A criminal record, which can make it harder to get and keep employment, further undermines efforts to address offending behaviour. The initial targeting of prosecution is important. At the same time, it is important that where prosecution is required it is speedy, retaining the link between action and consequences.

We have already invested heavily in a criminal justice system that has more direct measures as alternatives to prosecution and which seeks to ensure that those who need to be prosecuted are brought to court more quickly.

Scottish Sentencing Council

In July 2006, the Sentencing Commission set up by the previous administration recommended the creation of a system of sentencing guidelines. Our Manifesto committed us to putting such a system in place. The Prisons Commission's report made a similar recommendation.

We will legislate in the forthcoming Criminal Justice & Licensing (Scotland) Bill to create a judicially-led Scottish Sentencing Council (SSC). This new body will develop and oversee a national system of sentencing guidelines to bring greater consistency and transparency to the sentencing process. This in turn, will promote greater understanding of the sentencing process and enhance public confidence in the criminal justice system.

The new Scottish Sentencing Council will take a strong lead and provide clear information to the public on the sentencing process and how it operates in Scotland. The Council will:

- help to ensure that sentencing practice and policy is transparent and understandable; and
- inform the public about sentencing policies and decision making.

Direct measures

Since autumn 2007 the police have had powers to issue fixed penalty notices for low level antisocial behaviour. This effective and efficient tool delivers swift and visible justice, minimises police bureaucracy while maximising officers' time spent on the street dealing with more serious crime. Between December 2007 and September 2008 some 36,230 Police Fixed Penalty Notices for anti-social behaviour were issued by police forces across Scotland.

In March 2008 the Summary Justice Reform programme expanded the range of direct measures available to the prosecution by:

- Increasing the maximum level of Fiscal Fine from £100 to £300, providing a swift and proportionate response to lower level offending.
- Introducing Fiscal Compensation offers to a maximum level of £5000, providing a swifter means of ensuring that money paid by the offender goes to the victim of the crime.
- Commencing on 2 June 2008 the Fiscal Work Order Pilot in 4 pilot areas, facilitating the delivery of swift and visible justice by offenders paying back to the community through a number of hours of unpaid work.

This package is already contributing to a marked reduction in court business. For example, in the six months from April to September 2008 a total of 44,621 complaints were registered for prosecution in the sheriff summary courts, compared to 50,259 in the same period last year – a reduction of 11% in sheriff summary court business.

Local authorities are also actively supporting diversion from prosecution for appropriate cases with some encouraging new social work initiatives (for example, there is now a social work run diversion scheme in Glasgow for the first time).

The courts

The recent Summary Justice Reform programme has also brought about a marked reduction in the period from offence to disposal. This is reducing the system churn and consequently the number of cases where “rolling up” multiple cases against the same accused has to be considered. We noted the Prisons Commission's views on “rolling up” cases and whilst Procurators Fiscal are committed to this process wherever possible, it may not always be appropriate. A number of factors must be considered including the stage of proceedings reached in older case(s) and, very importantly, the effect this action may have on victims and witnesses. But Procurators Fiscal will continue to make full use of the new power available in section 152A of the Criminal Procedure (Scotland) Act 1995 which allows Procurators Fiscal to ask the court to have multiple complaints, calling separately for trial, conjoined, heard and determined on the same date.

Under Summary Justice Reform the proportion of cases concluded within the 26 week period from offence to disposal has increased substantially, with all Local Criminal Justice Boards (LCJBs) now exceeding the 60% benchmark. This is felt significantly in the courts with a reduction of new cases of around 10% and up to one-third of additional cases being disposed of at the earliest stage in court proceedings. This, in turn, has supported the stepped reduction in court loadings for intermediate and trial diets that will provide the court capacity to spend more time on serious cases, reduce the system churn and give more certainty to trials going ahead on dates set.

With court unification being well advanced and due for completion in October 2009 we are starting to see the benefits of a single IT system that provides court scheduling and case management capabilities for summary criminal business, and from systems improvements in Sheriff Courts and Justice of the Peace Courts being driven through LCJBs and the opportunities to ensure that we can target investment in a highly specialised court estate, ensuring we get both the best utilisation and offer the best facilities to court users.

The changes to the payment of summary criminal legal aid, introduced at the end of June 2008, have led to an increase in early guilty pleas. Between July and September 2008 there were a total of 10,139 pleas of guilty at first calling, representing a guilty plea rate of 35%. In the same time period in 2007 there were a total of 5,164 guilty pleas at first calling, representing a guilty plea rate of 20%.

Bail

Public safety is, and will, remain the first priority of our justice system. But we are also conscious that – as the Prisons Commission identified – there has been a very significant increase in the use of remand over the last few years. The number held on remand has almost doubled since 2000/01, rising from 881 to 1560 in 2007/08.

Decisions about bail or remand must be for the court in every case, and we will do nothing to constrain that freedom. But we must ensure that we have the right range of options available to the judiciary for those who can be bailed without significant risk to the community, but who may need some support to keep court appointments and, more generally, to address the health and social issues which make it harder for them to stop offending.

Problem solving

“B” is a 43 year old woman who has been homeless for the past 3½ years, living in hostel accommodation or sleeping rough. She started using alcohol at the age of 12, graduating to a bottle of spirits and six cans of lager a day along with daily use of cocaine and diazepam. “B” has a history of offending behaviour, including Breach of the Peace and Assault, which can be directly linked to her alcohol use, compounded by her mental health difficulties. She had a case of wasting police time outstanding and was on bail. She was referred to the 218 service and was admitted to the residential unit in 2006 for a period of 4-6 weeks.

“B” engaged fully with the programme requirements addressing her substance use, criminal justice issues, and trauma and loss. Her daily programme at the 218 service included medication, exercise, one-to-one sessions, groupwork, meeting with other agency workers, social care, etc. “B” reports to have benefited from her involvement in the 218 project, specifically around the areas of alcohol/substance use, securing accommodation in the community and developing a range of skills to help her maintain these lifestyle changes. She continues to work on her offending behaviour and the relationship that this has with her addiction issues.

The 218 centre was established in Glasgow in August 2003 with the aim of providing a range of services for women within the criminal justice system.

This year we have increased by over a third the investment – from £1.2m to £1.7m – directed to local authorities for bail information and supervision schemes. This is aimed at minimising the numbers of accused remanded in custody, who, subject to the appropriate public safety safeguards, could be released on bail to the community until their next court hearing.

We have issued new guidance to improve throughput and ensure wider access to services. Full information about the schemes available to the courts across Scotland will also feature in an updated version of our Information for Sentencers website.

The Prisons Commission recommended that we should make electronic monitoring of a curfew available when someone is bailed. A pilot of electronic monitoring on bail as a clear alternative to remand when the judge first considers bail or remand ended in December 2007. It was not rolled out further because the evaluation showed that uptake – and hence impact on custodial remands – was very low, despite excellent information and support to the pilot courts. There is no evidence to suggest that its reintroduction would have a different outcome.

One of the messages which we have heard very clearly from commentators on the Commission's report is the need to have proportionate, but also escalating, sanctions available for the breach of trust which abuse of bail represents. Where public safety is not the key issue remand may not be necessary, but it is important to be able to impose significant additional restrictions on those who have failed to respect the authority of the court. We will make electronic monitoring of a curfew available to judges who are considering a breach of bail.

Victims

Where there are identifiable victims, those victims are entitled to know how their cases are being dealt with, including when cases have not been proceeded with or where direct measures have been applied, and what the implications are for them of any sentence handed down. Timely, clear, accurate and relevant information is key to improving the confidence of victims in the justice system. The rights of the accused and the offender have to be balanced by the rights of their victims and this is especially crucial when managing sentences from end to end.

COMMUNITY PAYBACK

As highlighted earlier, there is nothing in our proposals that will constrain our judges' discretion when an individual offender is before them. But we will give them a clear, flexible community sentencing framework within which to operate. And we will ensure that sentences can be delivered quickly and managed and enforced effectively. Our strategy has four elements;

- Supporting problem solving by improving the flow of timely, accurate information about offenders to our judges.
- Ensuring that judges have the right range of sentences, so that they can combine effective restrictions on liberty and payback to communities with activities which help the offender to change.
- Working with Community Justice Authorities and local authorities to improve the delivery of community sentences, and to secure community understanding and buy-in.
- Giving judges new tools to manage sentences effectively once they have been imposed.

Better information to the courts

A more problem-solving approach to offenders – as recommended by the Prisons Commission – is linked to improving our information about offenders and the risk they pose. Given the priority we accord to public safety, we need to be more sophisticated and consistent in the way in which we assess risk.

The Scottish Government is already working with local authorities, the Scottish Prison Service and other partners to roll out a new tool for assessing the risk posed by adult offenders and the priorities to address in managing that risk. Once implemented this will provide consistent, up-to-date case information, travelling with the offender from the point of disposal. The same risk assessment will be used by professionals in prison and in the community.

That risk assessment will inform Social Enquiry reports, which judges request and receive before sentencing in many cases, particularly for the under 21s and where a first custodial sentence is being considered.

We must also be smarter about the information that our courts need rather than producing the same level of detail whatever the level of risk. We must make communication between courts and social work quicker through better use of Information Technology. Saving field staff time, where possible, by standardising information on a common IT-based template that will contribute greatly to more efficient and effective working. We will work with stakeholders on the business process – it sounds very basic and simple, but better communication across the system is vital to delivering better, quicker justice.

We also support the Prisons Commission's views on making better use of social workers in court. Funding has been made available to allow a significant number of authorities to pilot innovative methods of using court-based social workers to provide better targeted information to judges, so far as possible, on the day of request.

Paying back to communities

The Prisons Commission identified two key principles at the heart of its proposals on sentencing:

- Custody should be used only when it is needed to reflect the seriousness of the offence and for those who pose a risk of harm – community sentences should be the norm for less serious offenders.
- Sentences served in the community should involve payback. Those who have damaged their communities should make reparation to those against whom they offended.

Paying back to the community

In Orkney, Community Service clients built a serpentine shaped wall at St Andrew's School. Lindsay Hall, the Community Service Supervisor tells us, "The idea behind this construction was to provide sheltered space for play activities whatever the prevailing wind. Those who know Orkney will be aware of how practical that is and how well received it has been by the children."

"The project was an initiative of the Parent Council and, being outside the remit of the Education Department, Community Service was contacted to see if we could help. The project has been seen as of genuine benefit to the younger members of our community and had the additional advantage of improving skills for some of the offenders engaged."

"Once the wall had been built, the school children decorated it very effectively and renamed it the "Wibbly Wobbly Wall."

We have previously said that we support those principles. There are too many short prison sentences, which achieve nothing beyond warehousing the offender. We need a more effective and publicly acceptable system of community sentences. And the key for broader support for community sentences is to show that they are not only served **in** the community, but that they are **for** the community. That means they must be **speedy** – so victims see action being taken immediately after the court makes an order. And they need to be **relevant**, making communities safer, either through direct reinvestment by the offender, or by the offender seriously tackling his offending behaviour, or both. And they must be **visible** to communities.

We will **introduce** a new community sentence structure which:

- highlights the scope for courts to punish offenders in a way which also addresses the areas of their lives which need to change; but also
- underlines the fact that a community sentence is *principally* a punishment, not merely a supportive intervention.

At the heart of this new structure will be a new Community Payback Sentence. We will replace the existing sentences of Community Service, Probation and the Supervised Attendance Order with a new sentence which:

- Enables the court to impose one or more of a range of requirements on the offender, including unpaid work, supervision, alcohol or drug interventions or a requirement to take part in a programme to address offending behaviour.

- Reserves the sanction of an electronically monitored curfew, as an option to be considered following breach, not at the point of initial imposition of the sentence.
- Provides for an unpaid work and activity requirement as part of the overall sentence lasting from 20-300 hours which must be served within 6 months (or three months where it is a sentence of 100 hours or less) (instead of 12 months at present) unless the court decides otherwise at the point of sentence.
- Enables Justice of the Peace Courts to impose certain requirements including an unpaid work and activity requirement of between 20 and 100 hours.

Community Service

“C” is a 46 year old man. His father was abusive towards his mother, particularly when under the influence of alcohol. “C” is married with three children. He has a good employment record. Alcohol has been a significant factor in his offending behaviour. He has come to the court’s attention on 12 occasions since 1988 for a variety of offences including assault (on occasions including domestic violence), breach of the peace, Road Traffic Act offences, and others. Sentences have included fines, disqualification from driving, one compensation order, and two Community Service Orders, the most recent of which was in 2007 and was an 80 hour order for an assault charge. He has also been imprisoned twice.

For this most recent Community Service Order (CSO), which he has completed, he attended a weekend placement (Sundays) on a Community Service Work team carrying out furniture removals for local people in the community who are vulnerable, e.g. homeless, youths in transitional care, etc. Through completing the Community Service Order he learned negotiation and communication skills whilst in the work team. His alcohol intake was also assessed prior to starting work each Sunday and there was no evidence to suggest he was not fit to do his hours. He attended regularly and performed well throughout his placement. It does not appear that there have been any further episodes of offending since the completion of his order.

We will not at this stage ‘roll up’ the high tariff Restriction of Liberty Orders (RLO) and Drug Treatment and Testing Orders (DTTO) in the single Community Payback Sentence. Under an RLO an individual can be restricted to a specified place for up to 12 hours a day and/or away from a specified place for up to 24 hours, and the curfew monitored electronically. The order can last for a period of up to 12 months. We will retain this sentence so that it is available for high tariff offenders where the safety of the public in general or of particular individuals (for example, in relation to a conviction related to domestic violence) is at risk.

We are currently piloting DTTOs with lower tariff offenders. It would be premature at this stage to make radical changes to the current sentences for drug-related offending. We will revisit this area when the current pilot ends in June 2010.

The Prisons Commission proposed that it should, for the first time, be possible for the courts to impose a conditional (suspended) sentence in Scotland. The Commission envisaged that the judge would impose a specific custodial sentence on a “suspended” basis. The offender would have to comply with a series of requirements during the suspension period. Failure to comply could mean custody for the full custodial sentence.

We have looked carefully at the evidence for this proposal and at the impact of the very similar form of suspended sentence now in force in England and Wales. We also noted from that experience the concerns expressed around the early figures that suspended sentences are not replacing custodial sentences (as intended) but primarily community sentences. The Scottish Government will therefore take more time in partnership with the judiciary, to consider how suspended sentences might best fit with our wider sentencing framework. In parallel, we want to consider whether more and better use could be made of the deferred sentence, a lower tariff disposal already available in Scotland.

We intend to ask the planned Scottish Sentencing Council to consider:

- Issuing a guideline on the most appropriate use of deferred sentences.
- Examining the issues around suspended sentences with recommendations for legislative reform if it is considered necessary.

As part of their consideration, the Sentencing Council will be required to assess the likely impact of any changes proposed on both the prison population and the use of community sentences.

The Prisons Commission also recommended that the Scottish Government introduce legislation to require a sentencing judge, who would otherwise have imposed a sentence of 6 months imprisonment or less, to impose a Community Supervision Sentence instead, except in particular circumstances. We will legislate to make it clear that judges should not impose a custodial sentence of 6 months or less unless the particular circumstances of the case lead them to believe that no other option would be appropriate. In line with the Commission's views, we will also legislate to provide that the judge must explain in court the circumstances which made them conclude that only a custodial sentence could be imposed.

Working with local authorities and community justice authorities

Making community sentences more immediate and effective is as much about better delivery and better information as it is about reshaping our sentencing structure.

There is a great deal which can be done – and is already being done – to deliver **speedier** justice and improve our **engagement** with communities on what they want community sentences to deliver:

- We are working very closely with our professional stakeholders to agree a new, tighter framework for the starting and completing community sentences, so that in most cases an order will be signed before an offender leaves the court, with a first appointment with criminal justice social work arranged within one working day.
- The overall intention is that where the court has imposed an unpaid work and activity requirement the work placement should commence within 7 working days.
- We have just invested an extra £1m from next year to assist local authorities to reorganise service provision to meet much tighter timescales.
- In partnership with COSLA, we will provide change management support and audit change in delivery as it is achieved. We expect to see measurable improvement by the end of the next financial year.

- We have funded three Community Justice Authorities (CJAs) – South West, Glasgow and Fife & Forth Valley – to evaluate new approaches to improving the **visibility** of community sentences in their areas. Learning from these pilots will be available in spring 2009. These CJAs are currently using a range of tools including print and broadcast media, to heighten community awareness of the benefits gained from unpaid work undertaken locally, and the scope for them to prioritise the work which they want to be done.

Improving the community

This year has seen Community Service in Aberdeenshire and Aberdeen City working together on a number of joint-projects. One such project followed on from environmental campaigners securing agreement from Aberdeenshire Council to create a green haven in Portlethen – an Aberdeen commuter town. The local Conservation Group secured significant funding from a well known oil company to take the project forward.

As well as providing a new woodland area, with trees, footpaths and a natural play area for children, the scheme will also link the north and south of the town with plans to reopen a footpath running alongside Portlethen Church. Offenders serving Community Service orders from both Aberdeenshire and Aberdeen City have been clearing gorse, picking up litter and maintaining footpaths. Team Manager Fiona Westland says, “Over the last few months Aberdeenshire and Aberdeen City have joined forces and are committed to working together especially in large environmental tasks. Aberdeenshire are also in negotiation with the Forestry Commission to help maintain woodlands, which are good projects providing on-going work which is of benefit to the local community.”

We must operate within the constraints of the current Spending Review period and it would not be appropriate to anticipate the outcome of the next review. So our immediate priorities are to lay a sound foundation for the future, building a robust model of community sentences commanding public confidence, and beginning a planned expansion of provision. We will accelerate expansion of capacity as soon as resource transfer from prison to community becomes possible and after the prison population falls to manageable levels to enable us to introduce the proposed new sentence management regime.

MANAGING SENTENCES EFFECTIVELY

Community

Progress courts

The Prisons Commission argued strongly that the Scottish Government should legislate for “progress courts” to hold swift and frequent reviews of progress and compliance with community sentences.

Judges can make a substantial contribution to the successful completion of a community sentence. By holding regular reviews at which the offender’s progress is monitored, the judge can motivate and offer regular encouragement when the offender is doing well. And they enable early identification of potential problems, rather than waiting for formal proceedings for breach of the order. Regular reviews also send a positive signal to offenders that those involved in the justice system are there to help and support them, as well as to determine and enforce sanctions.

Scope exists already within the criminal justice system for judges to set review hearings for a number of existing sentences. We intend to legislate to ensure that these hearings can be set at a judge’s discretion whenever a Community Payback Sentence is given. Like the present review hearings frequently used in DTTOs, we would see these as informal discussions between the judge and the offender. Where a need emerges for breach proceedings because there is evidence that the offender has failed to comply and, he or she is not content to agree an amendment to the order suggested by the court at the review hearing, a formal breach hearing involving defence and prosecution would be set up.

Breach

Improving the process

It is key to an effective justice system that breaches of a sentence result in swift and effective action. Together with key stakeholders, we will look again at every stage of breach handling to establish whether we can simplify and speed up the process without compromising the rights of the offender.

Sanctions

An effective response to breach requires the right range of sanctions for the judge. As with breach of bail, it is important that courts have an effective range of escalating sanctions.

Responding to breach

A 24 year old man, "D", was convicted of Breach of the Peace. An 18 month Probation Order was imposed in May 2007, with an additional condition that he attend drug counselling. Shortly after the imposition of the Order "D" was sentenced to 6 months custody for Road Traffic Act offences and this represented a breach of probation. Discussions took place with "D" while he was in custody and a Breach Report was submitted to Court requesting that the Order be allowed to continue. The Sheriff agreed to this.

Intervention from Social Work involved one to one contact with the supervising officer and work undertaken by local drugs agency. "D" was a chronic cannabis user. During the remainder of the Order "D" attended for appointments with his supervising officer and was prepared to discuss relevant issues. There appeared to be some reduction in his cannabis use. He received advice about accommodation and employment and there was no further reoffending. The order was successfully completed in November 2008.

The option of revoking the community sentence and replacing it with custody must remain. But we propose to provide that where a Community Payback Sentence is breached, it will be possible for the court also to impose a curfew condition, monitored electronically. Not every breach is a public safety risk but judges need effective sanctions to ensure that offenders understand that a community sentence is just that – a sentence, not just a supportive intervention – and that compliance is not optional. Equally, the community and victims need to know the types of sanction that are imposed in the community to reassure them that the sentence has been reinforced.

CUSTODY

End-to-end sentence management

We are committed to introducing a strong but flexible sentence management regime for offenders for whom prison will always be the right punishment. We want a system that ensures the punishment is clear and that can respond to the varying risk and needs of the individual offender from the point of sentence right through to the end of that sentence. The need to protect the public will be the primary driver and must underpin sentence management, risk assessment and rehabilitation. Enabling the Scottish Prison Service, the Parole Board for Scotland and the Local Authorities as appropriate, to be able to adapt and adjust any offender's sentence management regime to take account of the risk posed at any given time, is the right way to enhance public protection. But it will also give those offenders who want to turn their lives around, the supports they need to stop offending.

During its passage through the Scottish Parliament, we supported the offender management principles in the Custodial Sentences and Weapons (Scotland) Act 2007 (2007 Act). However, we were always clear that, as enacted, the process would not work and would place an intolerable burden on the Scottish Prison Service and the Local Authorities that would undermine the core intentions of the legislation.

Such was our commitment to ensure that we achieved the appropriate regime, we asked the Prisons Commission specifically to look at the feasibility of using the offender management measures in the 2007 Act. It concluded that, subject to certain modifications, the 2007 Act could provide the structure upon which to build a modern offender management regime for offenders who are sentenced to a period of imprisonment.

We accept the Prisons Commission's key recommendations and intend to use the forthcoming Criminal Justice and Licensing (Scotland) Bill to make the necessary changes to the 2007 Act to deliver a more proportionate and effective system for end to end sentence management of offenders and consequently end the current arbitrary system of early release provided by the Prisoners and Criminal Proceedings (Scotland) Act 1993.

End-to-end management

"E", a 20 year old man, is serving a 3½ year sentence for an assault using a knife. Alcohol has been a significant factor in his offending behaviour. He has 2 previous convictions for a minor assault and breach of the peace for which he received fines.

Under the current legislation he would be released automatically and unconditionally at the half-way point of the sentence. But under the proposed provisions, he could be detained beyond the court imposed punishment part (usually half way) until the three-quarter point of his sentence if he is assessed in custody as being an unacceptable risk to public safety and the Parole Board supports that assessment. Regardless of the point at which "E" is released from the custodial part of the sentence, he would be subject to restrictions for the entire period of the sentence imposed by the court. In such a case, licence conditions would most likely include attendance at alcohol and anger management counselling but could also include restrictions on where he could live and on electronically monitored curfew. He would be compelled to comply and a breach of his licence conditions may result in him being returned to custody to serve the remainder of his sentence.

We will ensure that the essence of the clarity in sentencing principles is retained; that there is sufficient inbuilt flexibility within the combined sentence structure for that regime to be applied sensibly and proportionately; and ensure that all offenders who are sentenced to imprisonment are subject to restrictions for the entire period of the sentence imposed by the court.

The Prisons Commission was also very clear, however, that these far reaching changes, that will vastly improve the way that offenders are both assessed and managed in prison and in the community, cannot be activated until we have tackled the current, unacceptably high numbers of those in custody for whom it is already clear that prison is not addressing their offending behaviour. This key finding underscores our core objective to tackle re-offending through robust community penalties that deliver visible and immediate payback for communities.

We have already committed to reviewing the current Home Detention Curfew (HDC) arrangements when HMP Addiewell is fully operational. However, the Prisons Commission took a similar view that any move to end the HDC scheme could not be achieved until all other recommendations had been fully implemented. We will consider fully the findings of the review, and the impact of the other recommendations, before making a final decision on the Prisons Commission's recommendation on HDC.

Prisoner outcomes

Drugs strategy

The major challenges facing the Scottish Prison Service (SPS) in dealing with illegal drug use within the prison environment are no different from those faced in the community. Scale and integration remain particular challenges. Two-thirds of people coming into prison have a drug problem and their crime is often associated with funding their addiction. Integrating the chain of health and addiction services, continuity of care on admission, transferring through the prison estate and, on release, to the community remain the key issues.

The Scottish Government is committed to zero tolerance of drug use and trafficking in prisons. The National Strategy for the Management of Offenders – Reducing Re-offending (2006)³ included a key outcome to “reduced or stabilised substance misuse”. To meet this outcome SPS is taking a twin-track approach to:

- ensure that effective security measures are in place to reduce the supply of illegal drugs and to prevent the trafficking of drugs within the prison setting; and
- support problematic drug users to address their addiction by delivering services which are broadly equivalent to those available in the community.

We are committed to preventing all illegal commodities coming into prisons. Significant investment has been made in the development of new technology and staff training to detect and deter the introduction of illegal drugs, including paraphernalia and mobile phones into Scottish prisons. Daily use of intelligence, tactical strategies and assessments, together with extensive use of the Tactical Dog Unit in targeted searches are central to combating the continuous threat of illegal commodity to both the prison environment and the wider community.

³ *The National Strategy for the Management of Offenders – Reducing Re-offending*
<http://www.scotland.gov.uk/Publications/2006/05/19094327/0>

We have amended the Prisons and Young Offenders Institutions (Scotland) Rules 2006 to make personal communication devices, such as mobile telephones and component parts of mobile telephones, prohibited articles. This amendment, which will come into force mid-December, will have the immediate effect of making it a criminal offence to possess or introduce a mobile phone or personal communication device into a prison. There are also plans to use the Criminal Justice and Licensing (Scotland) Bill to amend the Prisons (Scotland) Act 1989 to create additional specific offences around the introduction and use of personal communication devices in prisons.

It is an ongoing challenge to prevent illegal drugs and associated contraband being introduced into the prison estate. Complete eradication would require the operation of excessively repressive regimes in Scottish prisons, thus preventing access for the majority of prisoners to family contact, access to the community in preparation for release, general association with other prisoners and meaningful interventions and support.

We are currently developing a revised Substance Misuse Strategy to reflect the National Drug Strategy, *The Road to Recovery – A New Approach to Tackling Scotland's Drug Problem*⁴ which focuses on the concept of recovery, incorporating the principle that recovery is most effective when service users' needs and aspirations are placed at the centre of their care and treatment. This revised strategy, which was endorsed by the Scottish Parliament in June, advocates a person-centred approach by ensuring that an integrated treatment and care process is in place to encourage prisoners to distance themselves from illegal drug use, whilst recognising the reality that lapse and relapse are often part of the treatment cycle.

Addiction Support Areas encourage prisoners to access the appropriate social skills and specialist addiction services to assist them to become drug free, in preparation for transfer to the mainstream prison regime and ultimately, integration back into the community on release.

Addressing the needs of chaotic drug users who stay for short periods in custody remains a key challenge. Short stay prisoners currently receive healthcare support in terms of detoxification or continued substitute prescribing; harm reduction awareness seminars; and can access appropriate throughcare support, dependent on sentence length and criteria. However, the short length of their stay means that there is not enough time to provide support to address their wider needs. Overcrowding negatively affects prisoners' access to rehabilitation activities, with remand and short term prisoners most affected.

The SPS has developed an improved "Integrated Addictions Process", which has recently been piloted at HMP Edinburgh. The aim of this new model of care is to ensure that every prisoner can access a package of treatment and care tailored to meet their individual needs. This is achieved through the integration of health care with addictions work, whilst linking individuals to essential wraparound services and vital throughcare support as a part of their treatment agreement and Community Integration Plan (CIP). This model of care, if deemed successful following evaluation, will be implemented in each establishment and, it is hoped, will effectively contribute to reducing re-offending and ultimately, drug-related deaths after liberation.

The SPS and the National Health Service (NHS) are working to achieve closer integration of services for this high need group in custody. Health services will be provided to the prisoner population directly by the NHS in the future.

4 *The Road to Recovery – A New Approach to Tackling Scotland's Drug Problem*
<http://www.scotland.gov.uk/Publications/2008/05/22161610/0>

By preparing offenders to return to positive life choices, SPS aims to support a reduction in re-offending to contribute to the national target to reduce overall reconviction rates by 2% by 2011.

Rehabilitation

We are committed to reducing reoffending and protecting the public and have increased our focus on risk assessment and risk management of offenders with the introduction of shared risk assessment tools. SPS is an active participant in the Multi Agency Public Protection Arrangements (MAPPA) process for high risk offenders, helping to support their supervision during transition to the community and sharing information with community partners to better protect the public.

Whilst high risk, longer sentence prisoners are in custody much can be done to encourage change in their offending behaviour. Integrated Case Management (ICM) is the focus for motivating change for this offender group. Annual case conferencing in partnership with Community Justice Social Work (CJSW) partners and other relevant agencies ensures effective information sharing and preparation for release. The current review of prison based social work services in partnership is designed to further focus joint delivery on ICM. ICM provides a mechanism for targeting intervention resources effectively. Further work to develop the ICM process in discussion with partners is planned and will include work on management information so that levels of risk and need across offender groups can be better measured. In tandem with this work on offender case management a new Intervention Strategy is being developed. This will:

- Inform an evidence based approach to intervention developments such as prisoner programmes and approved activities.
- Engage more recent research on desistance to consider the wider role of prison staff and the prison environment in motivating and supporting offenders to change.

Key work currently being undertaken within SPS includes a formal review of the existing range of sex offender programmes to ensure that they represent best practice. Multiagency training for prison staff is recognised as a further important development area for effective partnership working.

Infrastructure

We are committed already to a significant investment programme to create a modern fit-for-purpose prison estate:

- Four key establishments currently being redeveloped – HMP Edinburgh, HMP Glenochil, HMP Perth and HMYOI Polmont – involving the provision of modern replacement prisoner accommodation and regime facilities. Work is scheduled for completion during 2009 and 2010.
- Two new prisons. The first at Addiewell in West Lothian is due to open in December. The other will be located on the former HMP Low Moss, Bishopbriggs and construction work should begin in 2009-10.
- A new, outward focusing prison (HMP Grampian) – to be built on the existing HMP Peterhead site replacing that prison and HMP Aberdeen.
- Continuing modernisation of the rest of the prison estate in Scotland. HMP Shotts, for example, is to be redeveloped on its existing site with HMP Greenock and HMP Inverness being replaced by HMP Inverclyde and HMP Highland respectively.

YOUNG PEOPLE WHO OFFEND

Waiting for people to come into the criminal justice system and then trying to deal with the complexities of turning their lives around is a poor use of our time, energy and valuable human resources. It is far better to intervene early to prevent offending than deal with the consequences, not least for the victims, families and communities who know first hand how damaging offending behaviour can be. Scotland has a proud tradition of taking a need-based approach to problematic behaviour by young people and this Government is committed to continuing to strengthen the Children's Hearings System with legislation next year. At the same time, we are building on best practice in early and effective intervention, ensuring we are *Getting It Right For Every Child*⁵ with all agencies acting quickly to nip problematic behaviour in the bud.

Young offenders in the justice system

The Prisons Commission's focus on 16 and 17 years olds is anticipated by the partnership strategy, *Preventing Offending by Young People: A Framework for Action* (June 2008)⁶, which includes a strand of work focusing on young people who present a high risk of harm and those who make the transition between the Children's Hearing System and the criminal justice system.

We are committed to considering further the Prisons Commission's recommendation around a specialist hearing for 16 and 17 year olds, and the objectives underlying it. We do believe that the Children's Hearings System and the court system have sufficient powers already to deal effectively with both the needs and deeds of young people who offend. However, there is no doubt that we can improve practice in both systems, reducing the likelihood of young people moving into the criminal justice system, but, where necessary, strengthening the transitions between the two. We are also keen to learn lessons from the youth courts about how to increase the effectiveness of the justice system in dealing with young people who offend. An evaluation of the youth court pilots is expected in summer 2009.

In the meantime, under the Framework, the Scottish Children's Reporter Administration (SCRA) and the Crown Office & Procurator Fiscal Service (COPFS) are leading work to reduce the disproportionate number of young people in prison through agencies working better together to share information, develop services and ultimately prevent young people from pursuing adult criminal careers. These agencies have already drafted a joint agreement that will improve information sharing and decision making when young people make the transition between their services.

We are also promoting continuity of service provision across the child and adult systems as good practice. In some areas this is already happening. In the Lanarkshire CJA area approaches have been developed to cross the artificial barrier between services for children and adults that can continue to focus on the needs of young people in an age-appropriate way. This means that young people do not need to offend again before they get a response – better protecting the community and providing more chances for young people to move on to positive opportunities. All CJAs should be providing services in this way.

Few young people become involved in serious offending behaviour but, for the small proportion who do, our responses must be robust and challenging. As with adult offenders, assessment of risk of future offending is paramount in understanding what needs to be done to protect the public from harm.

5 *Getting It Right For Every Child*
<http://www.scotland.gov.uk/Publications/2008/09/22091734/0>

6 *Preventing Offending by Young People: A Framework for Action*
<http://www.scotland.gov.uk/Publications/2008/06/17093513/0>

We have invested heavily in the past to improve the response to young people who offend, and while funding allocation is now a matter for local authorities, we continue to support the further development of social work practice in this area. We have supported the Criminal Justice Social Work Development Centre at the University of Edinburgh to bring practitioners together to learn from research and effective practice. By March 2009, 1,000 practitioners will have had the opportunity to participate in events across Scotland. We have also supported a training for trainers course which will see 300 practitioners skilled in working with young people who display sexually harmful behaviour – undoubtedly one of the most challenging areas of practice.

Young offenders in custody

Some young people cannot remain in their communities as the risks they present, both to themselves and others, are too great and may need to be managed within a secure environment. This Government has sustained the investment in the secure estate made by the last administration, and as a result we have world-class facilities for the young people who pose a high risk to themselves and/or others. Our secure accommodation needs to be effective in challenging and changing behaviour. We will continue to work with local authorities, and third sector secure and residential care providers to ensure that services are successfully meeting the needs of the children and communities, and that accommodation is available for the most difficult and challenging young people.

“F” is 16. When he was 9 he watched as his father drove his car at his mother in an attempt to kill her. They had recently separated. Both his parents are known to the police for various petty offences. That same year “F” was first charged by the police for assault. Over the next 5 years he was charged with committing over 20 offences. Some were serious and he was reported to the Procurator Fiscal. At 13 he began smoking cannabis and drinking alcohol to excess. He was also excluded from school, was placed with foster carers and, due to his ongoing unmanageable behaviour, later placed in secure care. During his time in secure care he built a relationship with a worker who was able to explore the issues in his life and help him come to terms with his own problems and his problem behaviour. It’s early days but “F” has not offended again. He is settled in his own accommodation away from negative influences. He has re-engaged with education and is volunteering in his local community. He is grateful to the worker who was willing to spend the time and effort with him, and set him on the right course.

We are committed with COSLA to ensuring that secure care, a very specialist and costly intervention, is targeted at the very few young people who need it. Following a successful pilot, we have rolled out nationally the power to use Intensive Support and Monitoring Services (ISMS), with a movement restriction condition (electronic tagging) where appropriate, as a robust alternative to secure care. This intervention allows young people who are at risk of offending or harming themselves to be monitored and supported in the community. As with adult offenders, keeping young people in their communities with additional support to prevent reoffending achieves far better long term outcomes.

This Government is committed to ending for good the practice of sending under 16s to prison. The Criminal Justice & Licensing (Scotland) Bill will abolish the legislation that allows 14 and 15 year olds to be remanded to adult prisons, and Scottish Ministers have already committed to place all sentenced under 16s in secure accommodation, and retain them there until they are at least 18 wherever possible. We have a well resourced secure care estate and robust alternatives in the shape of ISMS so there should never be a need to send children to prison. We are working with the judiciary to discourage the practice of remanding children to prison in advance of legislative change.

We agree with the Prisons Commission that the next area for focus is 16 and 17 year olds in custody. This Government is committed to the principles of the United Nations Convention on the Rights of the Child, and we are looking carefully at how to ensure where possible that under 18s in prison are kept separate from adults. The redevelopment of Her Majesty's Young Offender Institution Polmont provides an opportunity to strengthen significantly the regime for young male offenders, including providing an opportunity to develop links to secure units to ensure shared learning and effective transitions across the sector.

Taking it forward

We are committed to reducing the flow into the criminal justice system by:

- Committing with COSLA to transform Scotland's approach to Early Years, the next milestone being the publication of the Early Years Framework in December 2008.
- Continuing to work with COSLA and other partners to deliver *Preventing Offending by Young People: A Framework for Action* and embed the principles and practice of *Getting It Right For Every Child* in all our work with vulnerable children and young people.
- Strengthening the sharing of information and joint working across the transition from the Children's Hearings system into adult services and, where necessary, to the criminal justice system.
- Ensuring that the needs of young people are met and their risks effectively managed, with a focus on preventing re-offending, whichever system they are in, including by learning lessons from the youth court pilot evaluation.
- Ending the practice of sending under 16s to prison, and strengthening the regime for under 18s in custody to prevent offending and get young people back into productive lives.

STRUCTURES, PEOPLE AND COMMUNICATIONS

Structures

The principles identified in 'Reform and Revitalise' are relevant across the whole of offender management – they are about speedy delivery of an appropriate range of sentences, which meet the community's and victims' needs for visible rigour and payback for harm done, while giving an offender the opportunity to access support to turn their life around. So our strategy focuses on ensuring that when a sentence is given it is implemented immediately and with rigour, but in a way which builds a foundation for changed behaviour.

We do not plan to create another community justice body. We believe that the aims envisaged by the Prisons Commission for a National Community Justice Council can be achieved just as well by developing the existing structure which sets our strategy for offender management – the National Advisory Body (NAB) on Offender Management. We will work with those represented at the NAB to establish a forum which can help to guide the delivery partners – the Scottish Government and local authorities represented by COSLA – in taking forward the strategy for offender management set out here.

People

It is vital to the success of this package that our judges have confidence in the risk assessments carried out by social work and in the robustness of the sentences which social work supervises. The Prisons Commission's report raised important issues about how best to organise criminal justice social work to ensure a timely and appropriate flow of information to the judiciary, both before sentence and as part of sentence management.

Social work resources and social workers are valuable and finite resources. We must make the best use of them, ensuring that the delivery programme is flexible enough to allow for a proportionate response to each offender's risk and needs. Not all offenders need the same levels of supports, intervention and supervision. Many offenders simply need help – into housing, employment or training or with basic matters such as getting the right benefits. We need to think innovatively about how we deliver for all types of offenders.

Communications

We will continue to work to get our message across to the public. In particular we will show the benefits to communities and victims of tough community penalties instead of short term prison sentences. But we will also stress our determination to ensure that offenders whose crimes deserve custody are kept under restriction for the entire length of the sentence whether it is the part served in prison or under licence conditions in the community.

COMMUNITY REINTEGRATION

We recognise that reducing reoffending – stopping people coming back into the system at all, not just stopping them going back into prison – is the key. We support fully the Prisons Commission's view that we will not achieve reintegration in society through criminal justice interventions alone, and that the Scottish Government needs to promote across the public sector the need to address the social and health related needs of offenders.

Part of that responsibility lies with the Scottish Government. We are committed to ensure that our strategies on redressing the inequalities created by, for example, poverty or poor health, reflect consistent messages about the important benefits of investing in the welfare of offenders – not just for the offenders themselves, but for their families and the communities from which they come and to which (in almost all cases) they will return.

The Scottish Government has highlighted the importance of early intervention – forestalling problems, rather than dealing with them only when they arise. This continues to be our priority – and it means more focus on the issues of young people and their journeys into adulthood. We recognise that we need to get much better at linking our strategies for youth and adult justice, with a stronger focus on meeting the needs of young people, rather than on how their cases are processed in the hearings or court systems. We will take forward this improved co-ordination as part of the implementation programme for this strategy.

However, the critical arena for effective “joining up” is at local level. CJAs have been tasked with developing and delivering plans for the reduction of reoffending in their areas. Their performance management framework explicitly recognises that most of the outcomes which will really make a difference to offenders – accessing and sustaining suitable housing, improving skills and accessing training/employment, addressing issues of mental and physical health – are not delivered by criminal justice agencies, but through wider joint action which spans Community Planning Partnerships.

This is an area in which local leadership will be needed, but local issues and voices need to be “heard” at the centre. COSLA is already working hard to ensure that the needs of adult offenders are more widely heard through a new Executive group focusing on wider community safety issues. But this needs to be complemented by effective CJA engagement at local level to translate high level commitments – for example, the commitment in *Equally Well*⁷ to making drug treatment accessible more quickly to those leaving prison – into practical local action. The Scottish Government and COSLA are committed to continued support and development of CJAs in that important role.

⁷ Equally Well: Report of the Ministerial Task Force on Health Inequalities
<http://www.scotland.gov.uk/Publications/2008/06/25104032/0>

CONCLUSION: HOW WE WILL DELIVER THIS AGENDA

Our communities quite rightly want to feel safe and as far as possible be crime free and there is evidence to show that recorded crime is dropping. Yet our prisons are quite literally overflowing and re-offending rates are dismal. Scotland is no different from any other country in so far as we will always need prisons because it is absolutely right that the public is protected from serious and dangerous offenders. These offenders are by no means the majority of the 8,000 routinely overcrowding our prisons on any given day.

However, we do know that a third of all offenders coming into prison have alcohol problems; two-thirds have drugs problems and many have mental health problems. This is not the best justice system we can give the people of Scotland.

Our plan involves changing the law in a number of key areas, most notably in relation to the Scottish Sentencing Council, the community payback sentence and the end-to-end sentence management for those serving custodial sentences. We are committed to bring forward this legislation in the forthcoming Criminal Justice & Licensing (Scotland) Bill.

But success in delivery is critically dependent on delivering change which takes into account the interests of key stakeholders. We therefore propose early and formal engagement with those directly interested in criminal justice policy. Success also involves engagement with stakeholders to ensure sensible and workable changes in areas of good practice, like minimising the gap between sentence and penalty to accelerate justice.

What we have already done

We have already invested heavily in the criminal justice system.

- through summary justice reform we have:
 - provided more direct measures as alternatives to prosecution to ensure that those who need to be prosecuted come to court more quickly;
 - changed the law relating to criminal proceedings;
 - increased sentencing powers of the sheriff summary courts;
 - changed the system for fines collection and enforcement, including the introduction of fines enforcement officers;
 - created a unified courts administration under the control of the Scottish Court Service; and
 - improved the arrangements for recruitment and training of lay justices.
- We have strengthened arrangements for local offender management in Scotland, including the creation of the Community Justice Authorities.
- We have increased by over a third the investment directed to local authorities for bail information and supervision schemes to minimise the numbers of accused remanded in custody.
- We have invested an extra £1m from next year to assist local authorities to reorganise service provision to meet much tighter timescales in delivering community sentences.
- We have made record investment in a modern fit-for-purpose prison estate, including three new prisons and redevelopment and modernisation of the rest of the estate.

- We have rolled out nationally the power to use Intensive Support and Monitoring Services (ISMS), with a movement restriction condition (electronic tagging), as a robust alternative to secure care, to allow young people who are at risk of offending or harming themselves to be monitored and supported in the community.
- We have funded three Community Justice Authorities (CJAs) – South West, Glasgow and Fife & Forth Valley – to evaluate new approaches to improving the visibility of community sentences in their areas.

What's next

- We will legislate in the forthcoming Criminal Justice & Licensing (Scotland) Bill to:
 - create a judicially-led Scottish Sentencing Council (SSC) to help bring greater consistency and transparency to the sentencing process;
 - end the practice of sending under 16s to prison;
 - reduce the very short term prison population by legislating to make it clear that judges should not impose a custodial sentence of 6 months or less, unless the particular circumstances of the case lead them to believe that no other option would be appropriate;
 - requiring those passing a sentence of 6 months or less to explain in court the circumstances which made them conclude that only a custodial sentence could be imposed;
 - introduce a new Community Payback Sentence, to enable the court to impose one or more of a range of requirements on the offender, including unpaid work, supervision, alcohol or drug interventions or a requirement to take part in a programme to address offending behaviour;
 - ensure that review hearings can be set at a judge's discretion whenever a Community Payback Sentence is given;
 - make it an offence to introduce or use personal communication devices, such as mobile telephones and component parts of mobile telephones, in our prisons; and
 - make the changes to the Custodial Sentences and Weapons (Scotland) Act 2007 necessary to deliver, in due course, a more proportionate and effective system for end to end sentence management of offenders and consequently end the current arbitrary system of early release provided by the Prisoners and Criminal Proceedings (Scotland) Act 1993.
- We will make electronic monitoring of a curfew available to judges who are considering a breach of bail.
- We will improve the delivery of community sentences and secure community understanding and buy-in by working with local authorities and Community Justice Authorities.
- We will improve communication across the system and deliver better, quicker justice by working with key stakeholders on the business processes.
- We will continue to build public confidence by demonstrating that a community sentence is in every case a punishment, not merely a supportive intervention.

- We intend to ask the planned Scottish Sentencing Council to consider issuing a guideline on the most appropriate use of deferred sentences, examining the issues around suspended sentences, and make recommendations for legislative reform, if it is considered necessary.
- We will also work to ensure that offenders whose crimes deserve custody are kept under restriction for the entire length of the sentence whether it is the part served in prison or under licence conditions in the community.
- We will ensure that services are successfully meeting the needs of children and communities, and that accommodation is available for the most difficult and challenging young people by continuing to work with local authorities and third sector secure and residential care providers.
- We will establish a programme delivery board and will bring stakeholders together early in the new year to map the areas where further joint work would be useful, and to agree how it should be taken forward.
- We will assess what our changes are achieving in terms of improved case handling and impact on reoffending. And we will develop and maintain enhanced engagement with communities to measure our achievements against our overarching goal to create confident communities that **flourish, becoming stronger, safer places to live.**

SCOTTISH PRISONS COMMISSION RECOMMENDATIONS - COMPARISON WITH THE SCOTTISH GOVERNMENT PROPOSALS

Prisons Commission Objectives	Prisons Commission Recommendations	Scottish Governments Proposals
1. To target imprisonment better and make it more effective	Imprisonment should be reserved for people whose offences are so serious that no other form of punishment will do and for those who pose a threat of serious harm to the public.	We have agreed with the Convention of Scottish Local Authorities (CoSLA) that prison should be for serious offenders who present the greatest threat to public safety, where sentences are managed effectively.
2. To move beyond our reliance on imprisonment as a means of punishing offenders	Paying back in the community should become the default position in dealing with less serious offenders.	We will introduce a new community sentence structure which: <ul style="list-style-type: none"> • highlights the scope for courts to punish low-tariff offenders in a way which also addresses the areas of their lives which need to change; but also • underlines the fact that a community sentence is <i>principally</i> a punishment, not merely a supportive intervention.
3. To make sure that court business is properly focussed only on those cases that need to be formally prosecuted	The [Scottish] Government extend the types and availability of effective alternatives to prosecution coordinated by enhanced court-based social work units.	Through summary justice reform we have already provided more direct measures as alternatives to prosecution and expanded the range available to the prosecution by <ul style="list-style-type: none"> • Increasing the maximum level of fiscal fine from £100 to £300, providing a swift and proportionate response to lower level offending. • Introducing Fiscal Compensation offers to a maximum level of £5000, providing a swifter means of ensuring that money paid by the offender goes to the victim of the crime. • Piloting the Fiscal Work Order Pilot in 4 areas, facilitating the delivery of swift and visible justice by offenders paying back to the community through a number of hours of unpaid work.
4. To make the court and sentencing process more efficient	The Government legislate to place an onus on the Crown to seek to roll-up outstanding matters.	Procurators Fiscal will continue to make full use of the new powers available to them to ask the court to have multiple complaints, calling separately for trial, conjoined, heard and determined on the same date.

<p>5. To target more effectively the use of remand custody</p>	<p>The Government extend the types and availability of bail-related information and supervision services across Scotland, including electronically monitored bail conditions, operated through enhanced court-based social work units.</p>	<p>Evaluation of a recently ended pilot of electronic monitoring on bail showed that uptake – and hence impact on custodial remands – was very low. No justification in continuing. But we will make electronic monitoring of a curfew available to judges who are considering a breach of bail as a proportionate but also escalating sanction short of remand. Where public safety is not the key issue remand may not be necessary, but it is important to be able to impose significant additional restrictions on those who have failed to respect the authority of the court.</p>
<p>6. Recognising their age and stage of development – and the potential that young offenders may be negatively influenced by older prisoners</p>	<p>The Government explore options for detaining 16 and 17 year olds in secure youth facilities separate from older offenders and those under the age of 16.</p>	<p>We will legislate in the forthcoming Criminal Justice & Licensing (Scotland) Bill to end the practice of sending under 16s to prison and look carefully at how to ensure where possible that under-18s in prison are kept separate from adults.</p>
<p>7. To bring Scotland into line with international conventions and to deal more appropriately and effectively with younger offenders</p>	<p>The Government re-examine the case for diverting 16 and 17 year olds to Specialist Youth Hearings with a wider range of options than are presently available in the Children's Hearings System.</p>	<p>We will examine the evaluation of the youth court pilots expected in Summer 2009 to learn lessons about how to increase the effectiveness of the justice system in dealing with young people who offend.</p>
<p>8. To drive forward consistency and improve the effectiveness of sentencing</p>	<p>The Government establish an independent National Sentencing Council (NSC) to develop clear sentencing guidelines that can be applied nationwide.</p>	<p>We will legislate in the forthcoming Criminal Justice & Licensing (Scotland) Bill to create a judicially-led Scottish Sentencing Council (SSC), that will develop and oversee a national system of sentencing guidelines to bring greater consistency and transparency to the sentencing process.</p>
<p>9. To lead the implementation of a new Community Supervision Sentence, develop improved services for ex-prisoners and drive forward changes in a diverse criminal justice system</p>	<p>The establishment of a National Community Justice Council (NCJC).</p>	<p>We do not plan to create another community justice body. Instead, we will develop the existing structure which sets our strategy for offender management – the National Advisory Body (NAB) on Offender Management to meet the aims envisaged by the Prisons Commission.</p>

<p>10. To address the need for clearer communication with the wider public about sentencing and community sentences</p>	<p>The National Sentencing Council and the National Community Justice Council should be jointly charged with enhancing public understanding of, and confidence in, the credibility of both sentencing and the management of community sentences. The NCJC should work with the Scottish Prison Service and the Parole Board for Scotland to enhance public understanding of and confidence in the credibility of release and resettlement arrangements.</p>	<p>The Scottish Sentencing Council will take a strong lead and provide clear information to the public on the sentencing process and how it operates in Scotland by:</p> <ul style="list-style-type: none"> • helping to ensure that sentencing practice and policy is transparent and understandable; and • informing the public about sentencing policies and decision making. <p>We have also funded three Community Justice Authorities (CJAs) – South West, Glasgow and Fife & Forth Valley - to evaluate new approaches to improving the visibility of community sentences in their areas. Learning from these pilots will be available in spring 2009. These CJAs are currently using a range of tools including print and broadcast media, to heighten community awareness of the benefits from unpaid work undertaken locally, and the scope for them to prioritise the work which they want to be done.</p>
<p>11. To provide judges with a wide range of options through which offenders can payback in the community and find constructive ways to compensate or repair harms caused by crime</p>	<p>Where sentences involving supervision are imposed, there should be one single Community Supervision Sentence (CSS) with a wide range of possible conditions and measures.</p>	<p>We will replace the existing sentences of Community Service, Probation and the Supervised Attendance Order with a new Community Payback Sentence that:</p> <ul style="list-style-type: none"> • in most cases, will be signed before an offender leaves the court, with a first appointment with criminal justice social work arranged within one working day; • where there is an unpaid work and activity requirement as part of the overall sentence, the work placement should commence within 7 working days; and • will be served within 6 months (or three months where it is a sentence of 100 hours or less) (instead of 12 months at present) unless the court decides otherwise at the point of sentence.
<p>12. To enhance clarity and consistency in sentencing and to promote a problem-solving approach in criminal justice</p>	<p>The development of a 3-stage approach to sentencing and managing community sentences:</p> <ul style="list-style-type: none"> • Stage 1: How much payback? 	<p>The new Community Payback Sentence will:</p> <ul style="list-style-type: none"> • provide for an unpaid work and activity requirement as part of the overall sentence lasting from 20 – 300 hours; • enable Justice of the Peace courts to impose certain requirements including an unpaid work and activity requirement of between 20 and 100 hours;

	<ul style="list-style-type: none"> • Stage 2: What kind of payback? • Stage 3: Checking progress and payback. 	<ul style="list-style-type: none"> • enable the court to impose one or more of a range of requirements on the offender, including unpaid work, supervision, alcohol or drug interventions or a requirement to take part in a programme to address offending behaviour; • enable the judge to hold review hearings to check on progress; and • reserve the sanction of a curfew electronically monitored, as an option to be considered following breach, not at the point of initial imposition of the sentence.
13. To increase the visibility, credibility and effectiveness of the new Community Supervision Sentence	The establishment of progress courts that enable swift and regular review of progress and compliance with community sentences – and that deal robustly with offenders who do not pay back.	We will legislate to ensure that review hearings can be set at a judge's discretion whenever a Community Payback Sentence is given. Like the present review hearings frequently used in DTTOs, we would see these as informal discussions between the judge and the offender. Where a need emerges for breach proceedings because there is evidence that the offender has failed to comply and he or she is not content to agree an amendment to the order suggested by the court at the review hearing, a formal breach hearing involving defence and prosecution would be set up.
14. To reduce the use of short-term prison sentences	The Government bring forward legislation to require a sentencing judge, who would otherwise have imposed a sentence of 6 months imprisonment or less, to impose a Community Supervision Sentence instead, except in particular circumstances.	We will legislate to <ul style="list-style-type: none"> • make it clear that judges should not impose a custodial sentence of 6 months or less unless the particular circumstances of the case lead them to believe that no other option would be appropriate; and • provide that the judge must explain in court the circumstances which made them conclude that only a custodial sentence could be imposed.
15. To provide judges with an additional option in sentencing and to keep certain offenders focussed on reforming	The Government bring forward legislation to enable a sentencing judge who has formed the view that a custodial sentence is appropriate, to consider whether it should be served as a conditional sentence. A conditional sentence means that the period of custody is imposed but suspended subject to the offender keeping to a strict set of conditions.	We have looked carefully at the evidence for this proposal and at the impact of the very similar form of suspended sentence now in force in England and Wales. We intend to ask the Sentencing Council to consider: <ul style="list-style-type: none"> • Issuing a guideline on the most appropriate use of deferred sentences; and • Examining the issues around suspended sentences with recommendations for legislative reform if it is considered necessary; and to assess. As part of their consideration, the Sentencing Council will be required to

		assess the likely impact of any changes proposed on both the prison population and the use of community sentences.
16. Given that Home Detention Curfew (HDC) raises concerns about clarity and transparency in sentencing	Subject to the full implementation of our other recommendations, the current Home Detention Curfew scheme should be terminated.	We have already committed to reviewing the current Home Detention Curfew (HDC) arrangements when HMP Addiewell is fully operational. However, the Prisons Commission took a similar view that any move to end the HDC scheme could not be achieved until all other recommendations had been fully implemented. We will consider fully the findings of the review, and the impact of the other recommendations, before making final decision both as respects the current scheme in the Prisoners and Criminal Proceedings (Scotland) Act 1993 and the (as yet uncommenced) provisions in the Custodial Sentences and Weapons (Scotland) Act 2007.
17. To provide dynamic leadership in developing the status, visibility, quality, consistency and credibility of criminal justice social work nationwide	The National Community Justice Council (NCJC) should be charged with and resourced to undertake these tasks.	We do not plan to create another community justice body. The aims envisaged by the Prisons Commission for a National Community Justice Council can be achieved just as well by developing the existing structure which sets our strategy for offender management – the National Advisory Body (NAB) on Offender Management.
18. To ensure progress in developing services that are available nationwide to address the social and health related needs of many offenders	The Government promote recognition across all Government departments, all public services, all sectors and all communities of a duty to reintegrate both those who have paid back in the community and those who have served their time in prison.	We are committed to ensure that our strategies on redressing the inequalities created by, for example, poverty or poor health, reflect consistent messages about the important benefits of investing in the welfare of offenders – not just for the offenders themselves, but for their families and the communities from which they come and to which (in almost all cases) they will return.
19. To address offending behaviour and the underlying causes	A more restricted and rational use of imprisonment to enable the Scottish Prison Service to get better at regulating prisons and prisoners, at using accommodation resources intelligently to incentivise prisoners to come off and stay off drugs (for example, by providing drug free wings) and at providing and prioritising rehabilitation.	To reducing reoffending and protect the public, we: <ul style="list-style-type: none"> ◆ have increased our focus on risk assessment and risk management of offenders with the introduction of shared risk assessment tools; ◆ actively participate in the Multi Agency Public Protection Arrangements (MAPPA) process for high risk offenders, helping to support their supervision during transition to the community and sharing information with community partners to better protect the public.

		<p>To prevent all illegal commodities coming into prisons, we will</p> <ul style="list-style-type: none"> ◆ continue to invest in the development of new technology and staff training to detect and deter the introduction of illegal drugs, including paraphernalia and mobile phones into Scottish prisons; and ◆ use the Criminal Justice and Licensing Bill to create additional specific offences around the introduction and use of personal communication devices in prisons.
20. To tackle rising rates of recall to custody of released prisoners	The Parole Board should be provided with additional options to better manage release and compliance with licence conditions, including drug treatment and testing services and extending electronically-monitored home detention.	We will work with the Parole Board, SPS and CoSLA to look at the options for joined-up working to ensure offenders can be safely released, and supported, in the community. Together with key stakeholders, we will look at every stage of breach handling to ensure that the Parole Board has available escalating sanctions in response to a breach of licence. If necessary we will make necessary changes to the Parole Board Rules.
21. To deliver end to end sentence management for offenders sentenced to imprisonment	If the Custodial Sentences and Weapons (Scotland) Act 2007 is to be implemented, its implementation must <i>follow</i> the implementation of this Commission's other recommendations and the achievement of reductions in the short sentence prison population. Thereafter, the provisions around risk assessment, conditional release and compulsory post-release supervision arrangements should be reserved for those serving 2 years or more. Those serving shorter sentences should be released under licence conditions and directed to support services.	<p>We will legislate in the forthcoming Criminal Justice & Licensing (Scotland) Bill to make changes to the Custodial Sentences and Weapons (Scotland) Act 2007 necessary to deliver, in due course, a more proportionate and effective system for end to end sentence management of offenders.</p> <p>We will ensure that the essence of the clarity in sentencing principles are retained; that there is sufficient inbuilt flexibility within the combined sentence structure for that regime to be applied sensibly and proportionately; and ensure that all offenders who are sentenced to imprisonment are subject to restrictions for the entire period of the sentence imposed by the court.</p>
22. For Scotland to have a world-leading prison service and a well-run open estate	Preparing for release and training for freedom should be retained and reinforced as the proper purposes of the open estate – not easing overcrowding.	We are already implementing the recommendations from the review carried out following the Foye case. We are also looking at how we can maximise the appropriate use of the Open Estate and will report on this soon.

<p>23. By focusing the use of imprisonment on those who have committed serious crimes and constitute a danger to the public</p>	<p>The Government should pursue a target of reducing the prison population to an average daily population of 5,000, guiding and supporting the efforts of relevant statutory bodies in achieving it.</p>	<p>To ensure joint working to achieve a penal policy that will contribute to delivering a safer and stronger Scotland – in particular to enhance public safety and reduce re-offending, we have agreed key delivery objectives:</p> <ul style="list-style-type: none">• Prison for serious offenders who present the greatest threat to public safety where sentences are managed effectively.• A widely used and effective system of community based sentences that provide the appropriate balance of support for offenders and payback to the communities affected by their offending.• Enhanced public confidence in the criminal justice system through clarity in sentencing; investment in local reparative and rehabilitative services and visible offender payback.• A robust framework to improve offender reintegration built on early intervention work already underway that supports the needs of the entire community to provide.
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