



The Scottish Parliament
Pàrlamaid na h-Alba

Published 1 December 2019
SP Paper 629
23rd Report, 2019 (Session 5)

Justice Committee Comataidh a' Cheartais

Pre-budget scrutiny of the Scottish Government's draft budget 2020/21: justice and policing



Published in Scotland by the Scottish Parliamentary Corporate Body.

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Justice Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.



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Introduction

1. The purpose of pre-budget scrutiny is for committees to reflect on a range of financial matters that they have considered throughout the parliamentary year and to then provide views and recommendations to the Scottish Ministers so that they can take them into account in advance of the publication of the draft budget. The next draft budget for 2020/21 is due for publication before the end of the calendar year.
2. The justice portfolio has responsibility for the civil, criminal and administrative justice systems, which include Scotland's prisons, courts, tribunals, the legal aid system and criminal justice social work services. It also supports the police and fire and rescue services.
3. This year, in particular, the Justice Committee agreed to focus on scrutinising budgets for prisons and prison-related health, education, employment and through-care programmes. The Committee also wanted to hear wider views on third and voluntary sector funding in the criminal justice sector.
4. The Justice Committee focussed on the following matters:
 - Priorities for operating and capital spend for 2020/21 and beyond within the Scottish prison system.
 - Effectiveness of spend, progress to date and spending levels proposed for the current prison modernisation programme.
 - Budgets provided to the public, third and voluntary sectors for health, education, employment, through-care, family contact, rehabilitation/re-offending, in-cell technology and other services provided to prisoners.
 - Longer-term challenges and financial requirements to tackle issues such as staffing levels in prisons, over-crowding, drug use, safety and security of staff and prisoners, the use of the open estate and an ageing prison population.
 - Views on how to achieve a rebalancing over the longer-term in expenditure on prisons and that of community-based alternatives to incarceration and preventative spend, including the challenges of provision in remote or rural areas.
 - Any wider views on the current spending priorities for 2020/21 in the justice portfolio, including third and voluntary sector funding in the criminal justice sector.
5. The Committee received a number of written submissions of evidence during its scrutiny and members are grateful to all of those who took the time to contribute their views.
6. The Committee is also grateful to the chief executive of the Scottish Prison Service, Colin McConnell, Governor Mick Stoney and all of the staff at HMP Barlinnie for facilitating a valuable visit to this prison by members of the Committee on 5

November 2019. The members were impressed by the professionalism and dedication of the staff and the particular challenges faced in this ageing prison.

Members of the Justice Committee visiting HMP Barlinnie along with Governor Stoney and Colin McConnell of SPS (November 2019)



7. **In addition to the work of the Justice Committee, its Sub-Committee on Policing focussed its pre-budget scrutiny on the police budget and, in particular, the capital budget. The Sub-Committee published its [report](#) on 22 November 2019.**

Prison budgets and statistics: some facts and figures

Prison population

8. In 1999-00, the total average daily prison population in Scotland was just under 6,000. In 2018-19, it was 30% higher (at almost 7,800).ⁱ The total figure rose from 5,975 in 1999-00 to a peak of 8,179 in 2011-12. It did fall back somewhat during the following years but rose again in 2018-19. Currently available weekly figures for 2019-20 show an average prison population again exceeding 8,000 – ranging between 8,099 (19 April 2019) and 8,283 (30 August 2019).
9. Splitting this into sentenced and remand prisoners, annual figures show that the average number of:
 - sentenced prisoners rose from 4,997 in 1999-00 to a peak of 6,588 in 2012-13
 - remand prisoners rose from 976 in 1999-00 to a peak of 1,679 in 2008-09
10. Despite some reduction in annual figures since those peaks, both categories experienced significant increases during the 20-year period up to 2018-19. In percentage terms, there was a particularly large increase in remand prisoners – up 56% (from 976 in 1999-00 to 1,525 in 2018-19).
11. Weekly figures for 2019-20 currently show the average number of:
 - sentenced prisoners ranging between 6,416 (9 August) and 6,536 (5 July)
 - remand prisoners ranging between 1,619 (19 April) and 1,808 (9 August)
12. The Scottish Prison Service has an operating capacity of 7,676 prisoners and a design capacity of 7,886 prisoners. According to Audit Scotland, the Scottish Prison Service has a maximum operating emergency capacity of 8,492 prisoners. On 4 October 2019, the Scottish Prison Service reported 8,270 prisoners were being held in custody; a figure in excess of both the operating and design capacities and only 222 prisoners short of the operating emergency capacity.
13. In the women's estate, there were 207 women prisoners in 2000-01, rising to 370 in 2017-18, of which 89 were on remand. Weekly figures for 4 October 2019 show 414 women in custody (with 82 untried).

ⁱ The Scottish Prison Service website, under the heading of "[SPS Prison Population](#)", provides information on prisoner numbers – both annual (currently up to 2017-18) and more recent weekly figures. Provisional figures provided by the Scottish Prison Service indicate that the average prison population in 2018-19 was 7,789.

Factors driving the prison population

14. The Scottish Government's [Programme for Scotland 2019-20](#) stated that, “We are progressing action to tackle Scotland's internationally high rate of imprisonment – the highest in Western Europe.” Some of the possible reasons for any rise or fall in the prison population include changes in the:
 - level and nature of criminal activity
 - likelihood of offences being reported to the police
 - approach of the police and prosecution to law enforcement
 - approach of the courts to questions of bail/remand and sentencing, e.g. longer sentences, more convictions overall or for certain offences
 - approach of the courts to alternative disposals such as community-based options, supervised bail etc.
 - proportion of custodial sentences served in custody
15. According to the HM Chief Inspector of Prisons for Scotland in her recent [2018-19 Annual Report](#), the sharp rise in prison population can be attributed to a variety of reasons including longer sentences for the most serious of crimes, a rise in the number of people being convicted of sexual offences, and more serious and organised crime being successfully prosecuted. In her view, other contributing factors include the reduction of prisoners being released on Home Detention Curfews (HDCs), very few prisoners subject to an Order for Lifelong Restriction achieving parole, and a legislative change that halted automatic early release for people serving long-term sentences.
16. The figures for HDCs in the week of 4 October 2019 were 34 men and 5 women had been released on this form of disposal. At the same point in time in 2018, the figures were 212 and 25 respectively.

Rehabilitation and reintegration of prisoners

17. In her 2018-19 Annual Report, the HM Chief Inspector of Prisons for Scotland stated that—

” Scotland's incarceration rate is one of the highest in Europe. A high proportion of remand prisoners, despite being involuntarily incarcerated, do not routinely access the available opportunities that could inhibit future criminogenic behaviour. The culture change required to address this lost opportunity has been highlighted in many of our inspection reports.

The additional number of prisoners and an increasingly complex population places a heavy burden on an already overstretched prison service in Scotland. I am very concerned that the number of prisoners is starting to exceed design capacity, resulting in not only additional pressures on staff, the prison regime and activities, but also on the essential programme and through-care activities designed to reduce recidivism.

18. The loss of the Through-care service was one of the triggers that resulted in the Justice Committee focussing this year's pre-budget scrutiny on prison budgets. In July 2019, this service was suspended by the Scottish Prison Service (SPS) and the prison officers on secondment to the scheme were sent back to their former roles within prisons due to operational need. The suspension took full effect from September 2019.
19. The Through-care scheme paired prisoners up with a Through-care Support Officer (TSO) who helped them make arrangements for housing, medical provision and benefits upon their release, thereby reducing the difficulties than former prisoners faced upon release and reducing the risk of re-offending. In total, 41 officers and 3 managers were removed from the scheme and returned to other duties within SPS.
20. As a consequence of the above, the 'New Routes' and 'Shine' partnerships currently operating in the Scottish Prison Service through third sector bodies were expended temporarily to make support available for more prisoners released from short-term sentences of up to four years and supporting male and female prisoners respectively. It is not immediately clear to the Committee, however, whether all prisoners previously supported by the Through-care scheme are now being covered by these programmes and if the services being provided are the same.

Violence, self-harm and suicide

21. In the context of the rise in the prison population, HM Chief Inspector of Prisons for Scotland commented, in the introduction to her 2018-19 Annual Report, that—

” I am pleasantly reassured to see that levels of violence, self-harm and prison suicide, although rising, have not risen as drastically as they did under similar conditions in the English prison service. I have been impressed by the SPS' efforts to manage the additional population safely, and it is reassuring to note that in all of our prison inspections, and return visit inspections in this reporting year, staff and prisoners regularly reported feeling safe.
22. According to Audit Scotland, there has been a slight improvement in the levels of seriousⁱⁱ prisoner on staff violence in 2018/19 compared to 2017/18, but not compared to 2016/17. Minor assaults on staff and both serious and minor prisoner

on prisoner assaults are up. Table 1 below sets out the statistics on violence produced by this body.

Table 1: Prisoner assaults

Indicator	2016/17	2017/18	2018/19
Serious prisoner on staff assaults	5	14	10
Minor and no injury prisoner on staff assaults	193	283	410
Serious prisoner on prisoner assaults	74	94	135
Minor and no injury prisoner on prisoner assaults	2,136	2,120	2,994

23. The Scottish Prison Service provides information on [prisoner deaths](#). In some cases, this sets out the cause of death (e.g. suicide or natural causes). However, the cause of death for many (including those who died in previous years) is recorded as awaiting determination so it is not yet possible to attribute the cause of death.
24. In 2019, the SPS has recorded 18 deaths in custody to date. In 2018, there were 32 deaths in custody over the calendar year, a slight rise from the 29 deaths in 2017. In 2016, the causes of death amongst the 28 prisoners who died in custody were 8 of natural causes-sudden, 3 of natural causes-expected, 9 by suicide and 7 still awaiting determination.

Meaningful/purposeful activities within prisons

25. One of the consequences of increased prisoner numbers is the challenge placed on prisoner officers in assisting prisoners to take part in meaningful or purposeful activities, such as education, training and employment. Table 2 below sets out the statistics on purposeful activity produced by Audit Scotland in its 2018-19 Audit of the SPS.

Table 2: Purposeful activity

Indicator	2016/17	2017/18	2018/19
Purposeful activity hours	6,758,800	6,500,472	6,258,125
Average purposeful activity hours per week per convicted prisoner	22	21	20
Vocational and employment-related qualifications	20,311	18,793	26,883
Vocational and employment-related qualifications (SCQF level 5 or above)	2,465	1,976	1,781

26. What the above table does not show is that purposeful activity in Scottish prisons is targeted primarily at longer-term convicted prisoners and not at those on shorter sentences or on remand.
27. Further figures were provided by the Scottish Prison Service by prison and by type of purposeful activity; see Figure 1 below.

ii A serious assault is defined as one which results in specified injuries: fracture, internal injuries, serious cuts, slash, lacerations, which require 4 or more stitches, sutures or staples, stab and puncture wounds, severe bruising; severe scalds or burns, severe general shock or any other injury which requires hospital treatment and admission to an external hospital as an inpatient, but excluding admission for observation.

Figure 1: Number of purposeful hours broken down by activity type e.g. education, addiction advice etc.

	Programme Appointments	Other Appointments	Link Centre Appointments	Scheduled Activity	Education Appointments	Enhanced Addiction Casework Service Appointments	TOTAL
Addiewell							304331
Barlinnie	2354	5846	2717	226008	20495	0	257421
Cornton Vale	0	4593	525	24100	2780	0	31997
Dumfries	3	7904	531	42188	6631	0	58645
Edinburgh	524	18395	1806	141672	15280	0	182684
Glenochil	2026	22505	4759	207042	15289	0	257916
Grampian	1304	14107	0	165432	9744	0	193517
Greenock	12	7651	1622	62561	5736	0	79246
Inverness	393	5917	1172	20823	4216	0	32520
Kilmarnock							205538
Low Moss	2149	23236	2689	223852	18476	0	303780
Open Estate	0	6016	2	96148	6830	0	96038
Perth	1356	3027	3122	135778	8399	339	161426
Polmont	2294	34766	2457	87441	11058	43	138058
Shotts	1905	17172	277	269110	12684	0	301147
Total per Activity	14319	171136	21678	1702155	137617	381	

Source: Scottish Prison Service

Prison staff

28. In 2018-19, staffing costs represented just over 50% of SPS's total operating expenditure. In 2019, SPS employed 2,865 staff. The figures for staff numbers were 2,868 in 2018 and 2,867 in 2017.
29. Sickness absences statistics are currently high and rising according to Audit Scotland. The average number of days lost to sickness was 10 in 2015/16, rising to around 16 in 2018/19. The figure in July 2019 is now 17 days. In comparison, the figure for England and Wales was an average of 9.3 working days in 2018/19. The total number of sick days lost to stress in Scotland was just over 6,000 in 2015/16 and is now in excess of 14,100.
30. SPS is managing to maintain its current service primarily because existing staff are working increased hours (which are not eligible as overtime). SPS has made significant voluntary *ex gratia* payments of £4.25 million (up from £2.15 million over the last three years) according to Audit Scotland.
31. Staffing vacancy levels are reasonable. However, according to the SPS, over 80% of its vacancies are in the Grampian region and are the result of the relative labour market conditions in this part of Scotland.

Scottish Government funding

Prisons

32. Scottish Government funding for prisons is provided in the Scottish Prison Service budget. The [Scottish Budget 2019-20](#) (December 2018) sets out the following information on what it covers—

” The Scottish Prison Service (SPS) budget covers expenditure associated with operating the prison system (both publicly- and privately-managed prisons) and the provision of a Court Custody and Prisoner Escorting Service (CCPES) on behalf of Scottish Courts, Police Scotland and the wider justice system. The SPS provides a wide range of services to care for and support those who are in custody and their families, as well as operating a Victim Notification Scheme for registered victims of crime.

33. Table 3 reproduces cash terms figures from the Scottish Budget 2019-20. Table 4 provides real terms figures (i.e. adjusted for the effects of inflation).

Table 3: Scottish Prison Service Budget (cash)

(£ million)	2017/18	2018-19	2019-20
Fiscal resource	311.2	312.2	312.2
Non-cash	34.0	33.0	34.0
Capital	15.8	16.2	47.5
Total	361.0	361.4	393.7

Table 4: Scottish Prison Service Budget (real terms)

(£ million)	2017/18	2018/19	2019/20
Fiscal resource	323.1	318.4	312.2
Non-cash	35.3	33.7	34.0
Capital	16.4	16.5	47.5
Total	374.8	368.6	393.7

34. According to Audit Scotland, the SPS's revenue budget represents a flat cash settlement for the third year since 2017/18. In real-terms, SPS's revenue budget has reduced by 12.5% between 2014/15 and 2018/19 from £394.7 million to £345.2 million. Its revenue budget for 2019/20 is a further 1.7% reduction.

35. At the end of March 2019, the chief executive of the SPS wrote to the Scottish Government seeking additional budget due to an inability to make all the necessary savings and because of the costs of buying additional prisoner places in the private HMP Addiewell. Cover of up to £24 million has been provided by the Scottish Government in this financial year (2019/20) according to the SPS.

36. According to information received by the Committee from the SPS, the service has purchased 96 places in HMP Kilmarnock and 96 places in HMP Addiewell in 2019. These places in privately-run prisons come with additional costs to the SPS. Tables 5 and 6 below set these costs out.

Table 5: Additional costs of purchasing places in HMP Addiewell

£	Cost per place per day	Min per day	Max per day	Min per annum	Max per annum
Tranche 1-24	45.31	45.31	1,087.44	16,538	396,916
Tranche 25-96	54.16	1,141.6	4,986.96	416,684	1,820,240

HMP Addiewell Prices are set for the period to 11th December 2019

Table 6: Additional costs of purchasing places in HMP Kilmarnock

£	Variable cost per place	Tranche cost	Min per day	Max per day	Min per annum	Max per annum
Tranche 1-48	14.29		14.29	685.96	5,216	250,377
Tranche 49-96	14.29	1,510.07	2,210.32	2,882	806,768	1,051,929
Tranche 97-144	14.29	3,398.19	4,784.41	5,456.08	1,746,309	1,991,469
Tranche 145-192*	14.29	5,295.45	7,367.63	8,039.30	2,689,185	2,934,345

Prices for HMP Kilmarnock cover the period 25 March 2019 - 24 March 2020

** On first use, each tranche of Additional Prisoner Places at HMP Kilmarnock has attracted a charge. The final tranche has not yet been utilised, and would attract a one-off cost of £173,290.46 to bring these places into use.*

Community Justice and Criminal Justice Social Work

37. Scottish Government funding for community justice and criminal justice social work (CJSW) is provided for under the:

- community justice services budget line (part of the Justice portfolio budget)
- ring-fenced central government grant to local authorities for CJSW

38. The Scottish Budget 2019-20 provided the following information on what these budget lines cover:

What the Community Justice Services budget does

This budget includes funding to support offenders who are serving community-based sentences, electronic monitoring of offenders (e.g. through Restriction of Liberty Orders) and offender mentoring services. It supports the work of Community Justice Scotland, Scotland's national body for promoting the highest standards of community justice services across Scotland.

What the Central Government Grants to Local Authorities budget does

This ring-fenced funding supports local authorities in providing Criminal Justice Social Work services across Scotland. These services include supervising those offenders aged 16 and over who have been subject to a community disposal from the courts; providing reports to courts to assist with sentencing decisions; and providing statutory supervision (Through-care) for certain offenders on release from prison. There are also special services for certain key groups of offenders.

39. Table 7 sets out the budget in cash terms figures from the Scottish Budget 2019-20. Table 8 provides real terms figures.

Table 7: Community Justice and CJSW Funding (cash)

(£ millions)	2017/18	2018/19	2019/20
Community Justice Services	33.6	35.4	37.1
CJSW	86.5	86.5	86.5
Total	120.1	121.9	123.6

Table 8: Community Justice and CJSW Funding (real terms)

(£ millions)	2017/18	2018/19	2019/20
Community Justice Services	34.9	36.1	37.1
CJSW	89.8	88.2	86.5
Total	124.7	124.3	123.6

40. Other areas of funding which may be of relevance include elements of the miscellaneous budget line (part of the Justice portfolio budget). The Scottish Budget 2019-20 included £18 million for victim/witness support, noting that it provided core funding for third sector organisations whose work supports the victims of crime and support for the justice contribution to tackling violence against women and girls.

Key issues - prisons

Prison numbers

41. As the Committee's report sets out above, the current number of people held in the prison estate (8,270 as at 4 October 2019) is above the SPS's operating capacity (7,676) and its design capacity (7,886). The figure is only 222 short of the Service's maximum operating emergency capacity. Similarly, in the women's estate, the current population of 414 prisoners (on 4 October 2019) is 160 over the proposed new capacity for the smaller, trauma-informed centres currently being constructed.
42. In his evidence to the Committee, Deputy Chief Inspector of Prisons, Stephen Sandham, said that he was "extremely concerned about the really dramatic rise in the prison population" and that this "has quite a dramatic impact on the safety of prisoners, but also on the safety of prison officers". He also said that this has an impact on other activities within the prison, such as the dispensing of medicine to prisoners.¹
43. Other bodies providing evidence to the Committee also expressed their concerns. Families Outside said that it wanted "to see a clear and immediate commitment and action to reduce the prison population". One suggestion made by this body was to consider a cap on the maximum number of people that can be held in prison or to legislate to prevent over-crowding. It said that these models (used for example in Sweden) should be "considered as a matter of urgency".²
44. Howard League Scotland noted that, in December 2018, nine out of Scotland's 15 prisons were at or above capacity, and that "it is clear that prison overcrowding can adversely affect recidivism in the wider community." It warned that "Scotland's falling rates of re-offending could thus be negatively affected by these conditions."³
45. Speaking about the current overcrowding, Colin McConnell, chief executive of the Scottish Prison Service, confirmed that "overcrowding has serious implications for not just the lives and working conditions of those in prison, but how the prison service sets about operating day by day". He added that there is "still headroom in the system, but the organisation is being stretched to its limits." In terms of impact, he said—

” For staff, it involves more work, stress, encounters and problems to deal with. For those who live with us, it means restriction on regime access, more confrontation, less space to move around in, and, frankly, a bit more downtime than we would otherwise like there to be.”⁴
46. Speaking later in the same meeting, Jim McMenemy of the SPS set out some of the measures that the Service had had to take to accommodate extra prisoners. For example, he said that to alleviate pressures in some of the larger and older local jails, SPS had "stripped out single beds in single cells in Low Moss and replaced them with 100 bunk beds".⁵ Elsewhere, SPS confirmed that the number of cells that are holding more than one person is 1,568, with only half of those cells

designed for two people. In HMP Barlinnie, 92 per cent of prisoners are sharing cells that were designed for one person.⁵

Home Detention Curfews

47. As set out [earlier](#), there are a range of factors behind the current high prison population. One of those factors is the changed regime for the authorisation of Home Detention Curfews. The change to the HDC regime was brought about by the SPS and the Scottish Government following the tragic murder of Craig McClelland by James Wright in Paisley, whilst the latter was unlawfully at large during his release on an HDC regime.
48. Previously, the numbers released at any given time on HDCs were of the order of 250+ as figures provided to the Committee above have shown. Currently, the figure for HDCs is 39. This substantial fall in the numbers of prisoners on a community-based HDC disposal is one of the factors behind the higher number of people being held in prisons.
49. Colin McConnell explained that the "constriction in the number of HDCs came about because something terrible happened" and confirmed that the current regime was being revisited. He wanted to "implement the new HDC procedures with a mind to ensuring that every decision is right and that the public is appropriately protected". He noted that—

” The way things have gone recently is that, because of individual events that have happened, there has been an absolute focus on the service and its decision makers, and incredible criticism has been levelled against the service for those events. You will have heard the term “error terror”. I think that we are in a period in which decision makers in the service are concerned about the degree to which they will be held accountable if they take a significant decision and something then happens elsewhere. You might say that it is absolutely right that, in public service, there is such accountability and, to a degree, that is the case, but individual decision makers, who must take into account lots of different information from different sources, different contributors and different professions, are always in the position of making the best judgment possible rather than an infallible one.

My counsel to the committee and the Parliament is to avoid the counsel of perfection. I worry about the fact that I often hear it said at the moment that, somehow, there are magic, perfect solutions out there if only we could achieve them. I must say to the committee that there are not.

Source: Justice Committee 08 October 2019 [Draft], Colin McConnell, contrib. 47⁶

50. The Cabinet Secretary for Justice also commented on the HDC figures and said that he hoped that the "revised guidance—together with political signals from the Parliament to the effect that there is too much risk aversion in the system—will help to rebalance the HDC regime slightly". He confirmed that whilst he did not necessarily envisage that the number of prisoners won these would go up to 300, he thought that "most people would agree that since it has gone from 300 to 37 the pendulum has perhaps swung too far the other way."⁷

51. Bodies such as the Criminal Justice Voluntary Sector Forum were supported of these moves but noted that, "while there are certainly steps that can be taken to relieve the pressure on prisons, such as increasing the use of Home Detention Curfew and parole, any long term solution to the current problems will require a reduction in the prison population and a focus on prevention and community based approaches to stop people entering the justice system in the first place." ⁸

Use of remand and bail supervision

52. The current use of remand instead of alternative, community-based disposals, is another factor behind the high prison population.
53. In its evidence to the Committee, Apex Scotland said that the loss of third sector bail supervision programmes has increased the numbers on remand ⁹ Community Justice Scotland noted that, almost half of all local authority areas did not undertake any bail supervision during 2017/18. ¹⁰ Families Outside said that "reduction in the use of remand is another important issue that needs to be addressed in order to reduce the use of imprisonment." ²
54. One of the consequences of the high numbers being held in remand and the overall high numbers held in prisons is, as SPS confirmed, that some remand prisoners are being held in the same cells/areas as convicted prisoners. ¹¹ This is despite the requirement to keep them separate in prisons, to manage them separately and to provide them with appropriate regimes.
55. In his evidence to the Committee, the Cabinet Secretary confirmed that "remand is one of the areas of priority that I will look at" and that "bail supervision will be an area of focus for us." ¹² He said overall that "If we take a suite of measures over the longer term, I am quite confident that we will be in the position of closing down prisons, not building additional prisons." ¹³ Some of the reasons behind the continued use of remand were, according to the Cabinet Secretary, because of the increasing numbers of people charged with sexual offences (whereby public protection issues favoured remand) and a growth in the number of people charged with serious and organised crime (where again bail was unlikely to be favoured). ¹³ The Cabinet Secretary confirmed that the Scottish Government had commissioned research on the law on bail and remand, to provide some of the detail on the underlying factors.
56. In the latest figures available (2013/14), the Scottish Government provided a breakdown of the types of offences that prisoners on remand have been charged with:
- 27% were for non-sexual crimes of violence (of which 3% were homicide and 15% were for serious assaults or attempted murders)
 - 4% were for sexual crimes
 - 19% were for crimes of dishonesty
 - 4% were for fire-raising/vandalism

- 27% were for other crimes (including 5% drug crimes and 6% were handling offensive weapons)
- 18% were for miscellaneous crimes¹⁴

These figures are, however, somewhat out of date but are the latest available.

Presumption against short sentences

57. One of the measures which - particularly in the case of women offenders - is hoped to have some impact on prison numbers or at least one the churn rate is the introduction of a presumption against short sentences.
58. Professor Nancy Loucks of Families Outside told the Committee that, "the presumption against short sentences is extremely important, particularly in relation to women who have been sentenced to less than 12 months, because it will prevent the churn of people going through prison."¹⁵
59. That said, Howard League Scotland said that whilst the presumption may marginally reduce the overall prison population, other legislative changes, such as the Prisoners (Control of Release)(Scotland) Act 2015ⁱⁱⁱ and changes to the criteria for Home Detention Curfew (HDC) have had the opposite effect.³
60. HMIPS agreed in its written evidence that "it is logical to assume that extending the presumption against sentences of up to 12 months may lead to a significant reduction in the women's population over time, as 90% of women receive sentences under 12 months."¹⁶
61. From a budgetary perspective, however, Includem warned that the extension of presumption against short sentences to 12 months is expected to result in an increased in the number of community disposals. It said that "it is not enough to provide funding to increase the numbers of social workers to supervise these orders" and that "significant funding to the third sector is required if the Scottish Government aim of Smart Justice is to be achieved."¹⁷
62. Colin McConnell's view was that "it will take some time yet for the expectations and behaviours of society that influence the judiciary, court procedures and what happens in prisons to work through and to get us to the ambitious position that Scotland wants to achieve."¹⁸
63. The Cabinet Secretary said that he was "not waiting to hit the 8,400-plus figure that is often cited as the maximum [number of prisoners], but [was] taking action now" and that "that is why we introduced the presumption against short sentences."¹⁹ He thought that those changes would those probably reduce prisoner numbers by between 200 and 300 a year.

iii Amongst other provisions, this Act ended the right of certain long-term prisoners to automatic early release from prison at the two-thirds point of their sentences.

Prison estate

64. The state of the prison estate was another feature of the evidence heard by the Committee. Of particular note were the current challenges of upkeep and a replacement for prisons such as HMPs Barlinnie, Inverness and Greenock, and the timescale for the replacement of the current women's prison at Cornton Vale with a number of smaller units.
65. Delays in replacements for HMP Barlinnie and that Women's National Facility (Cornton Vale) have caused, according to Audit Scotland, an underspend of £4.7 million in SPS's capital budget in 2018/19. It has reported underspends against its capital budget in the past three years demonstrating that this has been an issue for some years now.

HMP Barlinnie

66. As Audit Scotland notes in its recent audit—
 - ” Delays in redeveloping parts of the prison estate present significant risks. HMP Barlinnie in Glasgow is currently housing 17.6 per cent of all prisoners and operating around 50 per cent above capacity. It presents the biggest risk of failure in the prison system as it has the capacity to buffer fluctuations in the national prison population. The prison's Victorian design does not support the delivery of a modern prison service. Its age also means that it is expensive to maintain and there is a high risk of failure in some parts of the building, for example the drainage and sewerage systems. If it were to fail, there is no clear contingency plan for accommodating the 1,460 prisoners it currently holds.
67. There are a significant number of problems with HMP Barlinnie in addition to overcrowding according to HMIPS. Stephen Sandham told the Committee that it "should not be in doubt at all that it is a Victorian prison that is not fit for purpose in a modern prison service" and that "the sooner that we can get a replacement for it, the better."²⁰ He noted that the prison had "drainage issues that make it high risk for the SPS." Phil Failie of the Prison Officers Association (POA) Scotland agreed on the need for replacement, noting also that he "genuinely [did] not know where inside the Scottish prison system we would deal with the prisoner movement that would be required" if there was a serious maintenance problem at the prison.²⁰
68. Mr Sandham also noted that, "in Barlinnie, for example, for a population of 1,300 or 1,400 prisoners, there are only five cells that are suitable for disabled prisoners" describing this as "unacceptable in a modern prison service."²¹
69. During our visit to the prison, we saw first hand some of the challenges with this prison, noting that HMP Barlinnie has only one cell suitable for hosting a prisoner requiring a wheelchair.
70. HMIPS further noted that—

” HMP Barlinnie is the main mechanism for coping with surges in the prison population, using single cells to accommodate two prisoners, but in some cases this breaches the minimum space standard of 4m² per prisoner (excluding toilet area) and is well below the minimum desirable standard of 5m² per prisoner set by the Council of Europe European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).¹⁶

71. Colin McConnell noted that, as far back as 1997, the then 51 per cent overcapacity at the prison was described as a “national disgrace”. In October 2019, the prison was around 50% over capacity. He confirmed that over the past 10 years, £30 million has been invested to keep the prison functioning to a reasonable standard.²² Mr McConnell confirmed that, after a period of nearly eight years, SPS were at the final stages of purchasing the land for a new site and that “we should have a new Barlinnie by the end of 2024, or perhaps 2025”.²³
72. In his evidence, the Cabinet Secretary said that he took the issues around HMP Barlinnie “with the utmost seriousness” and that “the issue with the infrastructure causes [him] grave concern”.²⁴ He confirmed that he had asked Scottish Government officials to work with the SPS to consider whether they can take interim measures to ensure that the estate is in a better condition.

Women’s National Facility (Cornton Vale)

73. Weekly figures for 4 October 2019 show 414 women are currently in custody. Previously, the bulk of these would have been held at HMP YOI Cornton Vale in Stirling. Currently, women prisoners are being held elsewhere in Polmont, Edinburgh, Greenock and Grampian prisons.
74. Initially, the Scottish Government planned to replace Cornton Vale by constructing HMP Inverclyde, a large women's prison near the existing HMP Greenock. In 2015, the then Justice Secretary revised plans and announced he wanted to replace Cornton Vale with a much smaller facility, and add to this capacity by building up to five, smaller, regionally based units. The Scottish Government said it also intended to promote the use of community-based alternatives to short-term prison sentences, including the restriction of liberty through the increased use of electronic monitoring.
75. In 2018, the Scottish Government said that it would move initially to two community custodial units (CCUs). The first of the CCUs will be located in Maryhill (24 places) in Glasgow and the second at a site in Dundee, and are due for completion by the end of 2021/22.
76. One of the challenges the SPS will face is that the expected capacity of the smaller, trauma-informed units is to be around 250 whereas the current women's prison population is over 400. As HMIPS notes, the current design capacity of 250 requires continued location of women in male establishments.
77. In evidence to the Committee on how the gap can be tackled and by when, Colin McConnell said—

” Everything we do between now and the end of 2021-22 must be geared towards taking a broader, more trauma-informed and individualised view of what will work best for women who have to come into the justice system. For the vast majority, that will not mean prison. If we do not grasp that need and do something about it as a nation and a Parliament, I absolutely entertain the possibility that we will have more women in our care than the new facilities and strategies are primarily intended to care for. We will have to put in place workarounds for that. That is the reality of the situation.

Source: Justice Committee 08 October 2019 [Draft], Colin McConnell, contrib. 38²⁵

78. The Cabinet Secretary also commented on this matter, saying—

” With the new national facility, and when the five community custody units are eventually in place, there will be a smaller footprint than there is at the moment for the number of women in our prisons. We have other options, and we will look to reduce those numbers through the presumption against short sentences; the work on bail and remand; and early intervention, prevention and so on. We have enough sites—Greenock, Edinburgh and Polmont—that hold women. I hope that, once we have the national facility and all five CCUs up and running, we will not require that extra capacity, but it is there if it is needed.

Source: Justice Committee 08 October 2019 [Draft], Humza Yousaf, contrib. 134²⁶

79. He confirmed, however, that this "extra capacity" is not part of the trauma-informed estate that is currently being put in place although some elements of the approach in these units could be used.

Other prisons

80. HMP Barlinnie and HMP YOI Cornton Vale were not the only prisons that the Committee took evidence on. HMIPS noted in its written submission that even with changes to the former, "that will still leaves Scotland operating with old Victorian prisons at HMP Inverness, HMP Greenock, HMP Dumfries, and parts of HMP Perth." HMIPS said "there needs to be sufficient capital funding to support work on the design and planning of replacement facilities, while recognising that planning consent and securing a suitable site may still inhibit an early start to construction of these other replacement prisons." ¹⁶

81. In its audit, Audit Scotland noted that—

” The previous three-year Infrastructure Investment Plan included a replacement for HMP Greenock but this has been replaced in the forward plan with the headquarters 'work smart' initiative that aims to enhance digital infrastructure, records management and human resources. It is anticipated that this will be delivered in 2020/21.

82. Stephen Sandham of HMIPS noted that—

” As historical cases come to court, an increasing number of sex offenders will come into jail at a relatively older age and will stay in prison for a long time as older prisoners. Therefore, it is a particular priority for the SPS to consider how it looks after older prisoners.²¹

83. The issue of a lack of suitable facilities to house an increasing older and more infirm group of prisoners has been raised with the Committee previously.

Purposeful activity

84. [Table 2](#) above, from Audit Scotland, shows that purposeful activity within Scottish prisons has by and large declined in the year where statistics are available. The figures show a 7% fall in purposeful activity from 2016/17 to 2018/19. The average number of hours of such activity has fallen too from 22 to 20 hours per week per convicted prisoner. Although the number of vocational and employment-related qualifications is up overall, the number at SCQF level 5 or above, has fallen.
85. As we note above also, these figures mask the actual picture in prison across all types of prisoners as purposeful activity, such as education, training, employment within prisons, is primarily targeted at longer-term prisoners, not those on remand or short-term sentences.
86. According to Howard League Scotland (HLS), the situation in specific prisons is deteriorating due to a lack of resources. It said that, in a recent Freedom of Information request, a very low completion of programmes to address offending behaviour was revealed in Scottish prisons with only 41 people at HMP Barlinnie, which holds approximately 1,300 prisoners, appearing to take part in any accredited rehabilitative activity for the whole of 2017-18. In HLS's view, "this further emphasises the pressure that SPS are under, and their inability to provide the services which can best support prisoners during their sentences".³
87. Overall, HMIPS said that—
- ” For a sustained period the prison population has been over 8,300 - more than 500 above the planned operational capacity of the prison system, which is the level at which the SPS can provide an effective and purposeful regime for prisoners. The current level of resource funding for the SPS is insufficient to manage the challenge of maintaining order and providing adequate levels of purposeful activity and time out of cell for prisoners, or make adequate progress with running national programmes focussed on rehabilitation and reducing the risk of reoffending.¹⁶
88. In relation to employment specifically, Apex Scotland's view is that the key problem seems to be that there is little obvious linkage between the Employability and Skills Division and the Justice Division in the Scottish Government when it comes to funding and strategic thinking. In its opinion, while employability and employment are key factors in the justice strategy given the acknowledged impact employment has on desistance, the funding for services tends to come through Employment sources. As a result, it says, there is no clear strategic pathway which ensures that

the mainstream (one size fits all) approach of the Employability Division is fit for purpose in achieving the needs of the justice strategy.⁹

89. One example, according to Apex Scotland, is the Fairstart programme which copied the model pioneered in the UK under the Work Programme. According to Apex Scotland, the Scottish Government has said that this scheme is not what is needed. Apex Scotland says that prisoners now fall through the net as they are not economic for the large providers of Fairstart to take on. It says that this is particularly the case with people who have additional barriers to work such as sex offenders reporting restrictions or mental health and addiction issues.⁹
90. The POA Scotland agree with HMIPS that one of the reasons for a decline in purposeful activity is staffing, or lack thereof. Phil Fairlie of the POA Scotland told the Committee that—

” ... part of the reason for the numbers being down is that staff who are qualified to deliver purposeful activities to the prisoner population have, simply because of staff shortages, been taken off those posts to supplement and assist staff in residential areas. We have staff who are supposed to be contracted from 8 to 5 or 9 to 5 during the week to provide purposeful activities who have come off such contracts to do to shift work to assist in residential areas, just because of the numbers.

Source: Justice Committee 17 September 2019 [Draft], Phil Fairlie, contrib. 38²⁷

91. Jim McMenemy of the SPS agreed. He said "SPS has a finite ability to deliver purposeful activity, which means that although we might have more people in prison, we cannot get more people into work and education-related activity". He noted that programmes relating to tackling sexual offences and violence reduction had been affected and that, in the long-term, it was these areas where the SPS had to focus on.²⁸
92. Mr McMenemy also made reference to SPS's new contract with Fife College, which is focused on individual learning plans, particularly the needs of people who require to learn the basics, focusing on Scottish vocational qualification levels 1, 2, 3 and 4. According to him, the SPS annual report showed that there was a significant increase in those qualifications last year, which was linked to the new partnership with Fife College.
93. In his evidence, the Cabinet Secretary recognised that the high prison population was a factor in the amount of purposeful activity in which inmates can take part.²⁹

Role for the third sector

94. One line of questioning explored by some members of the Committee was whether, in the absence of prison staff being able to ensure prisoners could receive purposeful activity, the SPS could make greater use of the third sector as providers.
95. Phil Fairlie explained however that the fundamental problem was the ability of his officers to get the prisoner population to education services across the various sites, rather than an absence of these services in the first place. He explained that—

- ” The fact that staff who are tasked with providing the purposeful activity inside prisons are not doing that is not down to them, but down to the prison system's not having enough prison officers on the front line in the residential areas.³⁰

Through-care and rehabilitation

96. One of the most high-profile examples of the current challenges brought on by a high prison population and problems with staffing (e.g. absence levels) is the removal of the Through-care scheme in the summer of 2019.
97. In 2015, the Scottish Prison Service appointed just over 40 Through-care Support Officers (TSOs) across the prison estate (with the exception of Open Estate and Shotts) to support people on their journey into desistance. TSOs helped prisoners prepare for and successfully make the transition from custody into the community.
98. An independent [evaluation](#) of Through-care in 2017 showed that overall, progress was being made on tackling a range of individual issues affecting service users at a strategic and operational level (e.g. benefits and finance; housing; substance misuse; physical and mental health; education and employability). Additionally, there were improvements to self-efficacy and desistance.
99. Jim McEnemy explained that the reasons behind the closure of the Through-care scheme in the summer of 2019 were operational and were due to the need to bring the 45 TSOs back on to the wings in prisons to provide "front-line residential functions".³¹ Colin McConnell described the service as "paused" and "postponed".³²
100. It is clear from the wider evidence taken by the Committee that the Through-care service enjoyed substantial support from other bodies in the criminal justice sector and that the decision to postpone/pause the service will have wider consequences.
101. For example, Howard League Scotland said—
- ” The reassignment of Throughcare Support Officers (TSOs) is perhaps the most vivid illustration of the damaging effects of the financial pressures on SPS: the important work that TSOs do in helping people make the difficult transition from prison to “normal” life has been rendered impossible by the lack of resources and the immediate need to maintain order in badly understaffed prisons.³
102. Similarly, the Robertson Trust said that whilst it recognised the challenges that budget constraints and over-crowding in Scottish prisons present, it was "concerned that the suspension of such a valuable support service will make the transition from prison to community life harder for people with convictions". In the long term, it said, "it might also lead to increased rates of reoffending."³³
103. Local authority body COSLA explained that the decision will have a direct impact on its membership. It said that previously TSOs had been responsible for helping offenders make arrangements for housing, medical provisions and benefits. In its view, the consequence of the closure is that "there will be no service in place to

provide the necessary support in some parts of the country and it will fall to local authorities to fill the gap." Its most immediate concern was "around homelessness, and the repeat offending that can occur as a result".³⁴

104. The Scottish Government and the SPS has responded to this situation with the former providing additional resources to two programmes operated by the third sector; the Shine and New Routes Public Sector Partnerships (PSPs). These previously provided rehabilitation support to women and younger offenders respectively. These restrictions have been removed so that the programmes can provide some form of cover along the lines previously provided by TSOs. The Cabinet Secretary explained that that was the reasoning behind the now annual investment of £3.4 million in these schemes.³⁵
105. In subsequent comments, the Cabinet Secretary said that restarting the Through-care service was a matter for the SPS but he did not see this starting until the beginning of 2020 or after that. He said he would "keep the situation under regular review."³⁶

Family contact officers

106. The Through-care service was not the only programme in Scottish prisons to be covered in the evidence we received. Families Outside, for example, raised issues regarding the role of Family Contact Officers.
107. Families Outside explained that funding from the SPS for family support is entirely for the limited pool of Family Contact Officers. Professor Loucks of Families Outside was concerned that the decision taken on Through-care could be replicated elsewhere. She said—
- ” Our concern at Families Outside is that we will see other vulnerable roles go a similar way—the family contact officers are a prime candidate for that—and we really cannot afford to see that, not least because things like family contact, which seem not to be related to justice, are, in fact, critical to people's resettlement when they come out of prison.³⁷
108. In her view, in theory, family contact is prioritised in prisons. In practice, she said, the priority is dealing with overcrowding and so there has been a reduction in the level of attention on family contact, even though it was, in her view, critical to successful resettlement. She explained that family contact ensures that people have a place to live, financial and social support, links to employment etc. In her view, this "is a problem if the Prison Service has to restrict access to visits, for example if the staff are overpressed and cannot support visits in the same way."³⁸
109. The value of family contact was also highlighted by HMIPS. It said that "there is strong evidence on the value of supporting family contact in promoting good behaviour and reducing tensions in prison, encouraging reintegration back into family life on liberation, and laying the groundwork for successful rehabilitation."¹⁶

Staffing issues

110. As noted above, some of the evidence the Committee heard around the suspension of the Through-care scheme and the fall in purposeful activity in Scottish prisons relates to staffing issues. In the evidence received, a number of other staffing matters were raised, including:
- overall staffing levels
 - recruitment and retentions issues
 - terms and conditions (including comparators with private prisons)
 - sickness and absence levels
 - levels of violence facing staff
 - an ageing workforce and the physical challenges of some aspects of the job of a prison officer
 - retirement age and pensions
111. According to the SPS, overall staffing levels have been fairly static over the last four years at around 2,867 prison officers. This, however, according to the Jim McMenemy of the SPS, is a staffing level designed to manage a prison population of 7,700.³⁹ With the population now nearly 8,300, there are clearly some staffing challenges facing the SPS.
112. The Committee has touched previously on some of these challenges, such as the ability of officers to assist prisoners with purposeful activity such as education and training. Additionally, as both prisoner numbers rise and the number of staff remain static, we have heard about rising tensions in Scottish prisons resulting in increased levels overall of prisoner on staff assaults and prisoner on prisoner assaults.
113. One of the more physical challenges outlined to the Committee is the increasing difficulties faced by a relatively ageing prison workforce required at the moment to work until 67 years of age before an officer can gain access to his/her pension, as a result of a change by the UK Government. The physical challenge of dealing with prisoners, especially in the case of a violent event and/or in the case of a prisoner becoming unruly through the use of drugs or psychoactive substance, should not be underestimated.
114. Tackling the smuggling of drugs and psychoactive substances into prisons and thereby preventing some of the physical challenges faced by prisons officers has been problematic. As Phil Fairlie of POA Scotland explained, psychoactive substances are an issue in every single establishment and although the SPS uses the Rapiscan system to search for drugs "it requires capital investment to buy that equipment and so prevent the substances from coming in". Mr Fairlie said that there are only three Rapiscans for the whole estate and that they rotate around the service. It was therefore "pot luck whether one is available at any given time". He said, "when they are available, they are very effective" but that there should be one in every prison.⁴⁰ Each scanner costs approximately £30,000.

115. In relation to sickness absence, according to Colin McConnell, one of the most significant reasons behind the current levels of staff absence are musculoskeletal issues, secondly only to stress and mental health. The Cabinet Secretary said he recognised this problem, explaining that—
- ” For a prison officer, having to work until the age of 67—soon to be 68—is an issue. Members have probably seen reports about new psychoactive substances that can give the people who take them additional strength. If you consider what happens when a prison officer in their 60s tries to deal with an incident that involves a person who has double, triple or quadruple the strength that they normally have, you can imagine the musculoskeletal damage that can be caused. A number of sickness absences are related to musculoskeletal issues. Indeed, I have the figure here: approximately 15,000 days per annum are lost because of musculoskeletal issues. That is a huge number. ⁴¹
116. The Cabinet Secretary stated that efforts were being made to tackle this problem. He pointed to a pilot physiotherapy scheme in HMPs Edinburgh and Polmont launched in October 2018. He said that the SPS will review the service at the end of the financial year and consider whether it should be rolled out across all establishments.
117. Phil Fairlie also highlighted staff sickness and absences in his evidence. He said that they were "a significant factor in describing the impact of overcrowding on the health and welfare of staff inside prisons". He said that the current 60 per cent increase in sick absence levels indicates "clearly what is going on with the staff's ability to cope in that environment." ¹ He also explained that one of the consequences of increased staff absence is that other staff were working longer and doing overtime and were then themselves reporting sick.
118. Staff sicknesses and absences were also an issue for HMIPS. Stephen Sandham told the Committee that the current levels of additional sick leave were equivalent to the SPS "being 50 people down". He also noted that the service is about "60 staff down in respect of what it would need to cover the additional prisoner numbers and it has about 100 staff who cannot be deployed for various reasons—they are on maternity leave or phased returns to work." ⁴² HMIPS also said that "the 60% increase in sickness over the last three years includes a 32% increase in staff sickness due to stress, no doubt related to the pressures caused by the overcrowding". ¹⁶
119. Colin McConnell indicated that the absence rate was also one of people being off on long-term sick. He said—
- ” The absence rate is therefore about people who go off work ill and stay off, which is why the number of days lost is compounded. It is not the case that an increasing number of people are taking sickness absence; it is clearly that when people go off, they stay off for a long time. That suggests that there are deep-rooted, long-term issues with the people who have to go off sick. Our challenge as an organisation is to try to find some way to relate to those people, to keep them supported and to target them to possible solutions in order that they always believe that there is a way back to the organisation. ⁴³

120. In addition to staffing levels and problems caused by staff sickness and absences, some of those who gave evidence to the Committee indicated that the SPS also had a issue with recruitment and retention.
121. Phil Fairlie was concerned that some of the current challenges in the SPS and the amount of media coverage about prisons was putting people off from joining the service. He said—

” I think that the problem is partly to do with media coverage in the past year and, maybe even more so, in the past six months, that has highlighted issues inside our prisons. What people on the outside who are looking for a career change see and read about what happens inside prisons does not make it look like a particularly attractive career move, no matter what the salary is.

[...]

The pay deal that we have just done has made the employment more attractive salarywise, but the real test will come when people start to look at the service as a career move, and look away from the headlines that are currently running, which are all about overcrowding, an increase in violence and huge sickness absence levels, which suggest a particularly unattractive environment for people to come and work in.

Source: Justice Committee 17 September 2019 [Draft], Phil Fairlie, contrib. 54⁴⁴

122. Overall, according to Colin McConnell, "SPS has an enviable brand in the marketplace and [has] no difficulty at all in recruiting." However, he accepted that there were problems in the North-East of Scotland. He said that 80% of the SPS's vacancies are in Grampian, and that was "all to do with the economy and the marketplace". Analysis produced for SPS suggested that it was somewhere "between £8,000 and £10,000 per annum off the market rate for equivalent work."⁴⁵

Prison budgets

123. In this section of the Report, the Committee looks specifically at the financial and budgetary situation in the SPS and for prison-related programmes.
124. During 2018/19, SPS spent over a third of a billion pounds (£358.2 million). It currently looks after over 8,200 people across 15 prisons. Private sector organisations operate two of these prisons (HMP Addiewell and HMP Kilmarnock).
125. The Audit Scotland audit of 2018-19 concluded—
- ” SPS is facing threats to its financial sustainability and its operational safety and effectiveness. SPS has received no increase in revenue budget since 2017/18 and its 2019/20 budget is under pressure from rising prisoner numbers and increased costs.⁴⁶
126. Similarly, HM Inspectorate of Prisons for Scotland said that there were two key priorities for SPS at the moment:

- An urgent need to increase resource/revenue funding for SPS to cope with the very significant rise in Scotland's prison population.
- The planned investments to replace our antiquated prisons should proceed without delay and interim measures sought to relieve the overcrowding pressures.¹⁶

127. Others, such as Howard League Scotland also provided commentary, with this body saying that the result of the financial pressures facing the SPS are such that—

” We find ourselves in a situation where current budget constraints mean that we cannot expand in-cell technology; we cannot extend the use of video links for family visits; we cannot adequately control the influx of new psychoactive substances (NPS) by increasing the number of whole body scanners available across the estate; we cannot provide suitably accessible cells for more than 5 disabled prisoners in Barlinnie; and we cannot ask any more of staff already covering the increasing levels of sickness of their colleagues.³

128. Melanie Allan, Head of Financial Policy and Services at the SPS told the Committee that—

” It is important to point out that, over the last three years, the Prison Service has received a flat cash settlement. Out of that settlement, we have to absorb the cost pressures in relation to pay, major contract inflation and additional pension costs. A flat cash settlement does not take account of that, so having written to the Cabinet Secretary we have secured some cover, of up to £24 million for this financial year. That is a one-off for the current financial year and we will need to plan for the future.

Source: Justice Committee 08 October 2019 [Draft], Melanie Allan (Scottish Prison Service), contrib. 56⁴⁷

129. This evidence sets out the fact that the SPS has, over the last three years, been managing with a real-terms reduction in its budget and, as at March 2019, had to ask the Scottish Government for additional funds to meet its operating needs, and that a sum of up to £24 million was provided by the Government. It should be noted that £6 million of this additional sum was provided in order to meet the consequences of UK Government changes to public sector pension employer contributions.⁴⁸

130. In his evidence to the Committee, the Cabinet Secretary said that he had secured an additional £31 million in SPS's capital budget for the modernisation of its estate and that he would keep the operating costs "under review and will factor in the operational pressures that the SPS faces when [he has] discussions with the Finance Secretary about the future spending review."⁴⁸

131. As the Committee has heard above, however, estate modernisation is not the only draw on SPS's capital budget. There are also challenges in investing in new technology.

In-cell technology and other IT-related investment

132. In previous work undertaken by some of the Committee, and during our recent visit to HMP Kilmarnock, members have seen at first hand the use of in-cell technology and other IT equipment. Such technology, now being piloted at HMP YOI Polmont, allows prisoners to be more in touch with their families and reduces social isolation. Other IT equipment such as the kiosks in use in Kilmarnock allow prisoners to take more control of their affairs (e.g. booking courses, ordering meals etc.) and thereby reducing the demands on SPS staff and freeing them for other duties.
133. Bodies such as Families Outside say that they "enthusiastically welcome the introduction and roll-out of in-cell technology". In its experience, people who maintain positive family ties are "up to six times less likely to reoffend on release, as these are the ones who will have a place to stay, social support, financial support, links to employment, etc. – factors essential to successful resettlement."²
134. Similarly, HMIPS told the Committee that there was—
- ” ... already clear evidence of its value when introduced in prisons in England and Wales, where it has been shown to reduce violence and incidents of self-harm. We understand the cost of putting this technology into our older prisons, but its introduction into the more modern facilities of Low Moss and Grampian should be relatively inexpensive. Similarly, information kiosks allow prisoners to book appointments and visits, make menu choices, and get information on other activities contributing to the responsible prisoner agenda and the normalisation of the regime. These kiosks are well established in our private sector prisons and in other legal jurisdictions, and have been proven to cover the cost of installation, in stationery reduction and staff time in dealing with these issues. We support capital investment for these developments.¹⁶
135. There have, however, already been challenges in implementing a wider IT strategy than enabled the use of video-conferences and online links for family contact where this could not take place face-to-face. One of the problems is that the various institutions in the prison estate are not, unlike in Northern Ireland, connected to each other.⁴⁹
136. There are also issues with finding sufficient staff to facilitate such virtual visits although the Committee were told that similar schemes in other parts of the world use unpaid volunteers to make this happen.

The impact of using private prisons on SPS's budget

137. As the Committee heard, one of the ways in which the SPS has managed the currently high prison population is by purchasing, at an additional cost, extra places at the two privately-run prisons at HMP Kilmarnock and HMP Addiewell. The Scottish Government agreed to provide an in-year budget increase to the SPS to cover these costs.
138. As Stephen Sandham pointed out to the Committee, these places come with "a significant financial cost". Audit Scotland noted that—

” SPS does not currently have a medium-term financial strategy. It is preparing a strategy covering 2019–22 to align with its revised corporate plan, but there is no financial planning in place beyond this three-year period. It is critical that SPS has a strategy to respond to the challenges it faces and achieve financial sustainability over a longer period. The need for this is highlighted by the financial pressures of operating two PFI/PPP^{iv} prisons. Inflation-linked increases built into the contracts for these two prisons will require additional recurring savings of around £12 million a year by 2022/23.⁵⁰

139. Melanie Allan confirmed that both contracts have obligations for increases of the Retail Price Index plus 1.5 per cent, so the cost of both contracts increases over the term of the contract. She also said that this was "part of the cost pressures that we have identified for four years going forward and that is not sustainable on a flat-cash settlement."⁵¹
140. Audit Scotland also indicated that SPS predicts it will need to buy additional provision from HMP Addiewell at a cost of £1.82 million per annum and that this not currently budgeted for.⁵⁰ It is not clear to the Committee whether the additional in-year sum provided by the Scottish Government included this sum.

Long-term and preventative spend

141. As many bodies stated in their evidence to the Committee, the longer-term trend in the criminal justice system has to be a move away from incarceration towards effective community-based disposals whilst maintaining public protection. Similarly, many submissions also stressed the need to spend on programmes which prevent offending behaviour in the first place. Such a system requires, unless additional money is provided, a shift in resources over the longer-term from spending on prisons to spending on community justice and preventative actions.
142. Alastair Muir of the Violence Reduction Unit (VRU) stated that "prevention is key" and that efforts need to go "right back to education". He highlighted the VRU's Mentors in Violence Prevention projects in 30 of the 32 local authorities, which look right across violence, including gender-based violence. Mentors in Violence Prevention is a peer-to-peer education programme that helps young people to challenge others if they see inappropriate behaviour and ensure they are equipped and are sufficiently confident to challenge that behaviour. The projects look at a range of issues, from bullying to controlling behaviour and sexting. This is one of a number of programmes being run by the VRU.⁵²
143. Similarly, Sean Duffy of the Wise Group spoke of the prison mentoring scheme offered by his organisation and the Public Sector Partnership (PSP) model that the Wise Group has now in place through the New Routes programme^v to secondary S4, S5 and S6 pupils. The Wise Group had been working with Police Scotland to develop programmes in the area of education to prevent offending behaviour from occurring.⁵³ According to Mr Duffy, only 9.7 per cent of the people who are worked with through the New Routes PSP return to prison within the first year.

iv Public Finance Initiative/Public Private Partnership

144. Despite some of the positives, Tom Halpin of Sacro said that "there is a huge gap between the rhetoric about preventative spend and the resourcing of it" and that "discretionary spend on innovation and prevention has virtually disappeared."⁵⁴ His view was that we know what works, but are we going to do things differently and reflect on where we are today?" He concluded that "we have to be big not just in our ambition and our rhetoric but in what we do about system change."
145. In her evidence to the Committee, Professor Loucks commented on some of the models used in other countries to move away from prisons, citing Sweden which passed legislation to restrict prisons from being overcrowded. Swedish prisons operate a waiting list to go in, or offer weekend prisons. She said that "there is merit in looking at how we use prisons" and also commented on the work of the McLeish Commission which considered capping the number of people in prison. In conclusion, she said—
- ” We need to look at what our priorities are for justice in Scotland and whether we want to spend our resources on prison and have a never-ending supply of people going into prison, or whether we want to examine ways of preventing people from going into, and keeping them out of, prison.⁵⁵
146. Similarly, the Criminal Justice Voluntary Sector Forum said that its "members believe that it is necessary to revisit the concluding recommendations of the Scottish Prisons Commission that Scotland should pursue a prison population of 5000 people through focusing the use of imprisonment on those who have committed serious crimes and constitute a danger to the public." They noted that "while this is a bold commitment, [they] believed that it is necessary to drive transformational change in justice."⁸
147. In the Cabinet Secretary's view—
- ” There will come a point at which part of the solution will require some rebalancing of funding from prisons to community justice. We are not at that stage yet; we cannot reduce the prisons budget, for all the reasons that we have just spoken about. However, that does not mean that we cannot consider whether funding is being used in the best possible way, whether the frameworks are appropriate and whether we can increase investment—and, if so, how we should target it.⁵⁶

v The New Routes programme is a wider initiative run by the Wise Group. Until its extension to others in recent months, the programme mentored young men leaving prison to develop their independence and social skills, link to appropriate services, explore aspirations, identify goals and put in place achievable steps to improve their quality of life. Specialist family support is also available to help with re-integration and help achieve stability. Support was previously offered to young men predominantly serving a short term custodial sentence who would not be eligible for statutory Through Care support. Mentors can also work with those on Home Detention Curfew.

Key issues - other sectors

Third sector funding in the justice portfolio

148. In addition to looking in-depth at the SPS's budget and for prison-related projects, the Committee also sought wider views on the current spending priorities for 2020/21 in the justice portfolio, including third and voluntary sector funding in the criminal justice sector.
149. As such, the Committee received a number of submissions on such matters, many of which repeat some of the concerns that the Committee heard at its pre-budget scrutiny last year.
150. One of the challenges of looking at funding for voluntary sector delivery of services in prison is, as pointed out by the Criminal Justice Voluntary Sector Forum, there is no single, dedicated budget for this. The CJVSF said that, in terms of spending on prisons, it would welcome "a review to establish current levels of funding for voluntary sector provision of services in prison and how funding can best be joined up to ensure maximum availability and effectiveness of resources." ⁸
151. The CJVSF also said, more widely, that its members continued to "report uncertain or short term funding arrangements". In its view, "short term funding and late decisions on renewals of funding or decommissioning of services leads to considerable difficulties for providers of justice services". Its members also expressed "considerable concerns about the over-reliance of both local and national funders on "pilot projects" that are then not mainstreamed into general justice budgets." ⁸
152. For Apex Scotland, "funding of third sector activity is extremely wasteful and inefficient, being subject to annualised funding rounds, competitive tendering, non-strategic commissioning and competitive mission creep." Apex Scotland also said that—

” Many third sector organisations provide services under grant funding arrangements. However these are usually short term funded on the basis of ‘proving the value of an innovative service model’. The reality is that such pilot schemes rarely if ever achieve mainstream funding because however good the results are, to implement them would mean disinvesting in something else. As a direct result of this the justice machinery including Sheriffs and criminal justice social work cite a lack of confidence in third sector provision which may be available for a couple of years and then vanish as the funding runs its course. This creates many other problems not least the inability of the sector to recruit and retain quality staff given the short term nature of contracts, the inability to plan ahead, improve or invest in staff development and of course the impact on service users who may engage with a service only for it to be removed without any replacement once the money is no longer available. The net result of this lack of confidence in community disposal options is that sentencing to prison becomes more likely with its concurrent expenses. Compounding this is the ‘requirement’ for local authorities to put services which they fund out to tender after a year. This is a massive disincentive to innovation because good models attract bids from larger organisations who are able to promise very low cost and powerful infrastructure. In reality these race to the bottom tactics often backfire with serious financial consequences but in the interim the originating organisation has lost staff, income and motivation.⁹

153. Community Justice Scotland said that issues in this sector were well known and included reduced overall funding levels; short term funding cycles; insecure funding sources (one-off grants rather than mainstreamed funding, etc.). For smaller providers, in their view, there are issues of constrained capacity and constrained capability, resulting in an imbalance in provision - larger providers continue to grow or dominate, despite not always being able to tailor services to local needs due to scale.¹⁰

154. Similarly, Includem said that "short term funding cycles are prohibitive not only in terms of organisations' ability to deliver services but also in achieving meaningful, lasting outcomes for young people, families and communities."⁵⁷

155. The Cabinet Secretary also commented on third sector, stating—

” In 2019-20, we have invested more than £11.6 million in third sector services, which is aimed at reducing reoffending and bolstering capacity in relation to community sentences and support services. That investment includes annual funding of £3.4 million to the New Routes and Shine partnerships, to support Through-care services for men and women leaving short-term sentences.⁵⁸

Local authority funding of criminal justice

156. One of the particular challenges reported by a number of third sector bodies to the Committee is the funding of criminal justice projects where the money has been channelled through local authorities. At present, criminal justice activity, such as social work in local authorities, has funding provided to local authorities in a ring-fenced grant provided under sections 27A and 27B of the Social Work (Scotland)

Act 1968 as amended (referred to hereafter as the section 27 grant). As such, the majority of funding that is then provided to third sector organisations comes from this section 27 funding stream.

157. In its evidence to the Committee, Apex Scotland said that there was "little accountability for how this is spent or where." In its view, "the vast majority of [its] funding is brokered through an organisation which is a competitor" because local authorities can themselves decide whether to compete for projects in the criminal justice sector and do them 'in-house'. Apex Scotland said that local authorities—
- ” ... have a vested interest in providing the services internally and retaining as much of the funding as possible to ensure their own stability. For instance local authorities are providers of justice services and are increasingly reluctant to commission external services. The almost complete lack of a platform for co-design of service makes this increasingly the case during times of austerity. Even government broker organisations such as Skills Development Scotland are themselves providers of the same services they are funded to commission externally. This does not make for a smooth or outcomes centred model of service provision.”⁵⁹
158. Apex Scotland also said that "the absence of a commissioning framework means that most services come under some form of competitive procurement process which means constant re-tendering, competitive behaviour, race to the bottom bidding and the waste of millions of pounds as each organisation commits staff time and effort into bids which may well not even amount to the amount spent on obtaining the contract."⁵⁹
159. Similarly, the Criminal Justice Voluntary Sector Forum said that "budgetary pressures and the funding structures for community justice have meant that Local Authorities are prioritising the in house provision of services, where previously the third sector would have been commissioned to deliver services". In its view, recent allocations of additional funding for supported bail services and money to prepare for the expansion of the electronic monitoring and the introduction of a presumption against short sentences have been administered through the same processes.⁸
160. The Forum said that it was "therefore unlikely that this money will be used to fund voluntary sector services; this, together with ongoing concerns about the general withdrawal of funding from third sector providers, means that there is a considerable risk that the voluntary sector will not be adequately resourced to provide services that are integral to the success of these initiatives." ⁸
161. In response, the Cabinet Secretary said that Community Justice Scotland was doing some work on what a commissioning framework might look like and that, "once it has done further work on that, we can ask it to provide the Committee with appropriate details."⁶⁰

Funding of other justice sector bodies

Criminal Justice Social Work

162. Work undertaken by criminal justice social work (CJSW) departments in local authorities is an important component of the criminal justice sector and in particular the rehabilitation and management of individuals subject to community-based supervision.
163. Representative body - Social Work Scotland - raised a number of issues in its evidence to the Committee. It said that there "have been several practice developments in the last 10 – 15 years that have had a significant impact on CJSW workloads and the ability of services to work effectively with individuals and are not fully funded". These include the use of new structured and accredited risk assessment tools, the introduction of ViSOR (an electronic Home Office sex and violent offender register), the introduction of Multi-Agency Public Protection Arrangements (MAPPA) and also of the Order of Lifelong Restriction (OLR), and changes to the management of sex offenders and domestic abuse (e.g. the Caledonian System) and other matters. ⁶¹
164. Social Work Scotland said that "many of these developments are, in themselves, welcome but most are driven forward in isolation, with too little consideration given to the compound effect they collectively impose on CJSW." They also said that "Despite the seismic change in the demands and requirements placed on CJSW since the early 2000s, there has not been a comprehensive review to quantify and accurately cost the component parts of the work CJSW does", noting that whilst the section 27 funding formula referred to above has been reviewed, this was limited to how the grant is distributed. Furthermore, under the current formula, Social Work Scotland says that CJSW is actually penalised for reducing re-offending, as retrospective three year activity levels are the basis for allocation since any success they have in reducing rates results in a cut in funding as funding levels are set using reoffending rates from previous years. ⁶¹
165. The body said that the section 27 grant is made up of the 'criminal justice social work' allocation in the Scottish Government budget, topped up from money in the community justice 'offender services' budget. In its view, "the former budget has remained static for several years at £86.5 million noting that in 2017-18, the total allocation to CJSW including money from 'offender services' was £98,819,949; since then there have been marginal increases to £100,080,038 in 2018-19 and £100,115,038 in 2019-20." Social Work Scotland said that it believed "that this has led to significant, systemic underfunding of CJSW impacting on the ability of CJSW to deliver on ... reducing reoffending; promoting social inclusion; and public protection and community safety. " ⁶¹
166. COSLA also made similar concerns in its submission, stating that—

” Over the last decade, this means that inflation and pay awards, as well as increasing demand, have eroded the funding available for frontline delivery as these pressures have had to be accounted for. Although the cash value has remained static, there has been a significant real-terms reduction. This then has an impact on wider local authority budgets when the funding allocated for this policy has to be ‘topped up’ from core resources.³⁴

167. The Cabinet Secretary commented on the funding levels in his evidence to the Committee, stating—

” We have committed in our programme for government to ring-fenced funding for criminal justice social work of more than £100 million to deliver community sentences, support rehabilitation and reduce reoffending. An additional £1.5 million to support the implementation of the extended presumption is budgeted for 2020-21, and the impact of the extension will be monitored closely.³⁵

Crown Office and Procurator Fiscal Service

168. In the previous year's pre-budget scrutiny, the Committee looked in particular at the Crown Office and Procurator Fiscal Service. One of the issues then was a suggestion of potential problems with retention of staff, particular with the number of lawyers that were leaving the service for other, more highly remunerated (but at the same grade) positions elsewhere, particularly in the Scottish Government.

169. This issue has arisen again in the evidence from the Procurators Fiscal Section of the FDA union. It said that a comparison exercise it had carried out showed that, based on the current salary structure and assuming that a trainee stays on for 5 years post-qualification, the employee in COPFS will earn almost £94,000 less than their counterpart in Scottish Government.⁶²

170. The FDA said that it had—

” ... recently undertaken a consultation exercise with our members across the country and the feedback, almost unanimously, is that they feel undervalued for the important work that they do; and that they are motivated to support action (including, if necessary, industrial action) to urgently address this issue.⁶²

171. The union said that between 1 July 2018 and 30 July 2019, approximately 87 staff left COPFS with approximately 17 of those from its legal grades. It said that it knew, "from discussions, ... that this is, in significant part, due to the levels of pay offered within COPFS".⁶²

172. In his response when questioned, the Cabinet Secretary said that he was "not aware that there was a particular issue in relation to the recruitment of lawyers to COPFS" and that he would "look at that in detail". He confirmed that—

- ” ... nobody has suggested that we are on the cusp of industrial action. However, if warning shots have been fired at the Committee or anybody else, we should take those very seriously, because the last thing that the Government wants is industrial action in that area.⁶³

Scottish Courts and Tribunals Service

173. The final body considered by the Committee is that of the Scottish Courts and Tribunals Service (SCTS). In its written submission, SCTS said that, over recent years, the SCTS has absorbed pressures and delivered savings, through a reduction in staff and the closure of over 20% of Scotland's courts, and through the management of a significant maintenance backlog without major incident. It said that multi-million pound cost pressures have been absorbed in each of the past 5 years, alongside significant and sustained system change – major reform of the civil justice system; taking on the administration and reform of devolved tribunals; leading proposals for transformational reform of criminal justice; innovation to improve the services and experience of children and vulnerable witnesses; and investing in digital services, including the introduction of new end to end digital services in the civil courts.⁶⁴
174. SCTS warned that the pressure on its budget "is now at the point where both the delivery of reform and the maintenance of a high-quality core service will be placed at significant risk if a sustainable funding package cannot be secured". It noted that the level of demand for its services is not in its control and whilst there have been some marginal reductions in summary criminal business over the past few years these have been substantially offset by the continued increases in sexual offending, serious organised crime and the growing caseload of the devolved tribunals. SCTS noted that over 30% of its funding is derived from court fees and retained fines income – both of which have declined in recent years.⁶⁴
175. SCTS concluded that "further financial restraint will, at the very least, reduce [its] ability to deliver improvements" and "may also lead to a real deterioration in the delivery of [its] core business, impacting significantly on the provision of access to justice in Scotland."⁶⁴

Conclusions and recommendations - prisons

176. It is clear from the evidence taken by the Committee and from the recent reports from [HM Inspectorate of Prisons in Scotland](#) (HMIPS) and [Audit Scotland](#) that the Scottish Prison Service (SPS) is under substantial pressure. This is not sustainable.
177. In part this pressure is due to the absolute numbers currently housed in prison in Scotland (including the high levels on remand) and the more risk-adverse climate around using certain community-based disposals or early release schemes (such as Home Detention Curfews). It is also due, in part, to a variety of other challenges such as the level of prison staff absences, an ageing prison estate in some parts, current budgetary resources, increased pension age for staff, problems with drug use in prisons and the challenges of looking after such large numbers of prisoners and their health and welfare needs.
178. The advice from the Auditor General for Scotland is stark. In her audit, she concludes that the "SPS is facing threats to its financial sustainability and its operational safety and effectiveness."⁵⁰ Similarly, the Chief Inspector of Prisons in Scotland stated that she was "concerned that the number of prisoners is starting to exceed design capacity, resulting in not only additional pressures on staff, the prison regime and activities, but also on the essential programme and through-care activities designed to reduce recidivism"⁶⁵. She said that "the financial pressures currently facing the SPS are also immense."⁶⁵ **We agree with both the Auditor General and the Chief Inspector of Prisons and share their concerns.**
179. The evidence taken by the Committee is overwhelming and almost uniform in the views expressed that something has to change. At the time of drafting, Scotland's prisons are only 222 prisoners short of SPS's operating emergency capacity of 8,492 prisoners. The consequences of these high numbers and the budgetary/staffing pressures set out above have led to falling levels of purposeful activity in education and training, the loss (perhaps temporary) of the highly-acclaimed Through-care service, overall rising levels of violence and increasing levels of staff sickness and absenteeism due to the pressures of work.
180. **The Committee pays tribute to the staff of the SPS and the third sector and other bodies that are involved in our prisons. It is only through the sheer hard work of these organisations and individuals that Scottish prisons are continuing to deal with the high numbers of prisoners, maintain order and to try to look after prisoner needs and their reintegration into the community.**
181. The Committee welcomes the decision of the Scottish Government to provide an in-year additional budget of up to £24 million in 2019/20. This money is being used, in part, for SPS to purchase additional places in the two privately-run prisons at HMP Kilmarnock and HMP Addiewell. This comes at an increased cost to SPS's budget. These additional sums come, as SPS told us, on the back of three years of a flat cash (and therefore a real-terms reduction) budget settlement. It is not clear to the

Committee whether such additional funds will be provided in future years despite the continuing need brought on by the prison population.

182. Outwith the day-to-day running costs, the SPS is also facing substantial challenges with its estate which, in many parts, is deeply outdated. Ageing prisons such as HMPs Barlinnie, Greenock and Inverness are no longer fit for 21st century standards and, overall, the prison estate is, despite the valiant efforts of staff, not designed to meet the health and welfare needs of an ageing prison population and/or able to look after prisoners with disabilities. HMP Barlinnie, for example, has only 5 cells suitable to house prisoners with a disability and only one suitable for a prisoner in a wheelchair.
183. Furthermore, in excess of 90% of prisoners in Barlinnie are doubling up in cells that were designed only for one person. As we heard, this involves breaching the minimum space standard of 4m² per prisoner (excluding toilet area). It is also below the minimum desirable standard of 5m² per prisoner set by the Council of Europe European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). We also heard that the SPS cannot guarantee that convicted prisoners are always held separately from remand prisoners, contrary to its guidelines. Aware that any such mixing of different categories of prisoners can increase tensions, the Prison Service takes steps to keep them apart. The Scottish Prison Service also make substantive efforts to reduce tensions by keeping prisoners who have a known history of antagonism to each other separate within prisons wherever possible.
184. The Committee welcomes the evidence heard that a site has now been purchased for a new HMP Glasgow to replace Barlinnie. However, this process has taken 10 years to date and we heard from the SPS that no such replacement will be available for a further five years until the end of 2024 or 2025. The Committee heard from the Scottish Prison Service that some of this delay was due to the challenges of identifying and purchasing a suitable site. Furthermore, there is little obvious movement on investment plans for replacing HMP Inverness, HMP Greenock, HMP Dumfries, and parts of HMP Perth.
185. There are also delays to replacing HMP YOI Cornton Vale with a new, trauma-informed Women's National Facility and a number of smaller community custodial units. Furthermore, as we heard from SPS, even when these are all built, capacity will be for 250 women prisoners compared to the 414 currently being held at the time of drafting. Therefore, as HMIPS said, the current design capacity of 250 will require continued location of women in male establishments.
186. The Committee is also concerned that the above issues are having an impact on the health and well-being of prison staff and are affecting the culture in Scotland's prisons. Staffing absence levels due to stress and musculoskeletal issues for example are rising. As the Cabinet Secretary noted, the fact that such staff are currently expected to work in often a very physically demanding job into their 60s before being eligible for their pension is said by him to be one of the factors behind increased absences caused by musculoskeletal issues in what is often a very physically demanding job.⁴¹
187. Other staff are having to cover absences through increased overtime, which in turn is causing increased levels of longer-term absences. Additionally, the perception of

some to working in a prison and the local labour market conditions in some parts of Scotland, such as Grampian, are placing challenges on the SPS to recruit and retain staff.

188. In terms of prison culture, we welcome the fact that serious prisoner on staff assaults are down in 2018/19 (10) compared to the previous year (14), although they are up compared to 2016/17 (5). In any case, serious and minor prisoner on prisoner assaults and minor prisoner on staff assaults are all on the increase. The fact that the levels of violence are lower in Scotland compared to England and Wales is to be welcomed and in part is due to the relative expertise and experience of our prison staff, and the positive relationships staff try to build with prisoners.
189. The demands of the job are, as we heard, made more difficult by rising problems with drug use in prisons which can cause some prisoners to react more aggressively and physically than would otherwise be the case. Tackling drug use by tightening security in order to minimise contraband from entering prisons is somewhat of a lottery as the SPS only has, as we heard, access to three Rapiscan systems. It is therefore not possible for these to be operable at all times across all of the estate.
190. As this Report and our forthcoming Report on mental health support for young people held in secure care and HMP YOI Polmont has shown, despite all of the current good work, Audit Scotland has pointed out that purposeful activity (such as education) levels overall are falling and that such activities are not readily available in any case to remand and short-term prisoners due to the targeting of resources elsewhere. This and the lack of facilities such as in-cell telephones and family contact suites for videoconferences across the estate is exacerbating the risk of social isolation.
191. The Committee welcomes the efforts that have been made in HMP Barlinnie and elsewhere in the prison estate to have 'safe cells' for prisoners to be housed in on a temporary basis if they are vulnerable and undergoing mental health difficulties. However, in our view, there are too few of these available to the Scottish Prison Service.
192. Furthermore, as prisoners prepare for release, the loss of valuable services such as the Through-care scheme means that the longer-term aim of preventing re-offending by improving the re-integration of former prisoners into society is at risk. Similarly, the relative spend on preventative programmes compared to the costs of operating our prisons means that they are not making the change that is needed in the longer-term if Scotland is to bring down its overall prison numbers and move to more community-based alternatives which enjoys the confidence of sentencers and the general public.
193. The Committee welcomes the efforts that have been made by the Scottish Government, the Scottish Prison Service and others in the third/voluntary sector to provide a short-term alternative to Through-care, and also hopes that moves to address churn in prison through, for example, the introduction of the presumption against shorter term sentences, will be successful. However, the Committee recognises the need for a fundamental shift in policy and financial resources where appropriate towards alternative disposals and away from sending people to prison.

Prison Numbers: short-, medium- and longer-term actions

194. Fundamentally, Scotland has too many prisoners for the current capacity of its prison estate. Views on the merits of the presumption against short sentences differ in the Committee. Nevertheless, now that this measure has been agreed by the Scottish Parliament, the Committee wishes to see if this initiative can have an impact in the short-term on reducing prison numbers at the margins. The Scottish Government envisages that this measure could reduce prisoner numbers by 200 - 300 per year.
195. Additionally, **the Committee calls on the Scottish Government and the Scottish Prison Service to bring forward the revised guidance for the use of Home Detention Curfews (HDC) without delay.** The Committee heard that this could raise the numbers on HDC from the current 39 back towards the previous level of 250+. We are concerned at the evidence from the chief executive of the Scottish Prison Service that there is now a culture of "error terror" around decision-making on HDCs. This must be addressed so that experienced professionals feel confident to make decisions on an informed and risk-assessed basis. Furthermore, when released on HDCs, offenders must be fully supported by bodies in the community to make a success of controlled release.
196. Both of the measures above have scope in the short-term to contribute to a limited reduction of a few hundred prisoners and to help with the churn rate in prisons^{vi}. In the medium-term, however, further steps need to be taken to address the overall number of people being sent to prison on remand. This is something that the Committee has commented on before. **We again recommend that the Scottish Government sets out its plans on how it will work with partners in the justice system to bring down the levels of remand. We wish to see a list of specific actions, timescales and costs drawn up and reported to the Committee by the end of the financial year.** This should address decision making by the courts and the use of measures such as bail supervision.
197. The Committee regrets that the latest figures for the types of offences that remand prisoners have been charged with are from 2013/14. This does not aid informed policy making. The Committee recommends that the Scottish Government updates these figures and publishes these as part of a regular statistical bulletin.
198. Part of this action over the medium-term will also need to address the issue of the confidence that sentencers have in community based alternatives to prison. The Committee is concerned that some of the evidence we took suggests that resources for criminal justice bodies and the third/voluntary sector is resulting in a patchy service and a lack of confidence amongst sheriffs/judges in some areas. **Whilst recognising the independence of the judiciary, we plan to host a meeting of the Scottish Government, Community Justice Scotland, Police Scotland, relevant third/voluntary sector organisations and the judiciary to discuss how confidence in community based alternatives to prison can be secured.**
199. Part of the action in the medium-term could also come through reforms to the system of parole and society's attitudes to this. **The Committee calls on the Scottish Government for an update on its expected legislative proposals for reform of parole.**

^{vi} A measure of how fast a prison population turns over.

200. The Committee has stated previously that, over the longer-term, prison numbers cannot keep rising. Neither can we build our way out of the problem. The Committee heard examples of more radical action taken in other countries such as Sweden, Finland and the Netherlands as well as in the recommendations of the 2008 [McLeish Commission](#). These included the introduction of a cap on prison numbers and other legislative steps to reduce overall prisoner numbers. **The Committee recommends that the Scottish Government enters into a dialogue with us on the merits or otherwise of longer-term options that will set a timetable to finally deliver on the move from prison to custody.**

201. Such longer-term options must also address the balance of funding between that spent on preventative actions such as violence reduction and the sums spent on keeping people in prison. **The Committee recommends that as part of this year's budget proposals the Scottish Government sets out specific financial proposals over the next 3- 5 years detailing the sums of money it would hope to commit for preventative actions to stop people from re-offending or committing crimes in the first place.** This would have the benefit of encouraging the third/voluntary sector to take forward innovative projects on more than an ad hoc and pilot basis if they could be assured of a long-term income stream.

Prison estate

202. In relation to the women's estate, **the Committee recommends that the Scottish Prison Service and the Scottish Government provides a detailed update on the timescales for the construction of the new women's national facility at Cornton Vale and for each of the five proposed community custodial units. Furthermore, this should set out specifically what interim measures and workarounds they will put in place to ensure that all women prisoners benefit from the new trauma-informed approach given that the proposed capacity of the new estate will be around 250+ and yet SPS fully expects numbers to be well in excess of this limit in the short and medium-term.**

203. The Committee welcomes the progress made towards securing a new site for HMP Glasgow to replace HMP Barlinnie, albeit noting that this process can be expected to have taken nearly 15 years from when this was first proposed to when we are likely to see HMP Glasgow (2024/25). **The Committee calls on the Scottish Prison Service and the Scottish Government to provide a detailed update on the timescales from this point forward for HMP Glasgow and to set out what measures can, realistically, be taken forward in meantime in HMP Barlinnie given its age and design. Furthermore, this update should cover specific plans and dates for investment in other outdated prisons such as HMPs Inverness, Greenock, Dumfries and Perth.**

204. Additionally, we recommend that this longer term capital investment plan should also sets out specific proposals for tackling the social and health needs of an ageing prison population and prisoners with disabilities as the current estate is inadequate. These needs are only going to increase over time if prisoners continue to serve longer sentences and we continue to sentence significant numbers of people for historic sex offences who are likely to be older.

205. The Committee welcomes the investment from the Scottish Government in the pilot scheme for in-cell telephones at HMP Polmont which we believe will help tackle social isolation. However, subject to appropriate safeguards, more can be done in this area and we are supportive of a further extension of in-cell telephones and family contact video-conferencing facilities across the entire estate if these can be shown to be feasible in terms of the design of a particular prison, cost-effective and have the positive effects on welfare that are suggested. Any such use also has to satisfy concerns of some that such facilities cannot be used to make contact with victims or for other nefarious purposes. In any case, the Committee is in favour of a roll-out of the kiosks^{vii} that some members saw in use in HMP Kilmarnock as these help reduce the burden on prisoner officers thereby freeing up time for other tasks. **The Committee recommends that the Scottish Government details its plans and timescales for further capital investment in these areas as part of this year's budget proposals.**

206. Finally, tackling use of drugs in prisons, particularly the growth of new psychoactive substances, is a priority. In this respect, the current patchy provision of Rapiscan facilities is not satisfactory given the evidence we heard that the Scottish Prison Service only has 3 of these machines (each costing around £30,000) and they are therefore not in use at all prisons at all times. **The Committee recommends that the Scottish Government extends the current pilot and sets out details of its plans and timescales for further capital investment to combat smuggling as part of this year's budget proposals.**

Purposeful activity: education, training, employment etc, and rehabilitation

207. The Committee is disappointed at the falling levels of purposeful activity in Scottish prisons as reported by Audit Scotland. The Committee recognises the pressures on prison staff in facilitating this activity and notes the initiatives we heard such as the new partnership between the Scottish Prison Service and Fife College. Nevertheless, purposeful activity is absolutely vital to tackling social isolation in prisons and helping with rehabilitation and reintegration.

vii Prisoners have access to these kiosks in the communal space and can book courses, order books and meals etc. This means that prison staff do not have to spend as much of their time managing these transactions in prisons and can therefore devote this to other activities.

208. **The Committee recommends that the Scottish Government and the Scottish Prison Service builds on the current Public Sector Partnerships and other ties with the third/voluntary service to identify a number of innovative and fully-funded solutions that can be implemented quickly and that will address the falling levels of purposeful activity. The Committee recognises that some of this may require investment in staff to facilitate this.**

209. **The Committee further recommends that the Scottish Government and the Scottish Prison Service provides the Committee with a cost-estimate of how much would be required to roll out, over time, such meaningful activity to remand prisoners and those serving relatively shorter sentences. Currently, both of these types of prisoners lose out. Any such activity would need to be designed to flexible or modular so that prisoners serving short sentences could benefit as they may not be able to enter into longer commitments to study.**

210. **The Committee also notes the view of HMIPS that not enough is being done to collect data on the levels of meaningful activity amongst remand prisoners and asks SPS to work with HMIPS take steps to address this.**

211. Finally, the Committee is disappointed at the loss of the highly-regarded and demonstratively effective Through-care service but understands the operational pressures on the Scottish Prison Service that required it to make this decision. The Committee welcomes the steps taken by the Scottish Government to extend some provision of this type through the Shine and New Routes programmes. **The Committee calls for an update from the Scottish Prison Service on when we expect a resumption of the Through-care service and what specific steps are being taken to make this happen with the full involvement of possible third/voluntary sector partners.**

Staffing

212. The Committee welcomes the efforts being made by the management of the Scottish Prison Service to recruit and retain staff, and also to address rising levels of sickness, particularly because of stress and musculoskeletal conditions. **The Committee recommends extension of the pilot programme for musculoskeletal problems in staff at HMPs Edinburgh and Polmont to other sites if it can prove to be have been effective and value for money. Furthermore, the Committee requests an update from the Scottish Prison Service on its work with the Prison Officers Association Scotland to provide workplace counselling and support to staff for stress and mental health needs and to bring down the levels of long-term absentees in this area.**

213. The Committee welcomes the evidence from the Scottish Prison Service that it is managing to maintain its overall number of prison officers. Nevertheless, it is clear that there is an issue in the Grampian region which has over 80% of SPS's vacancies and where the pay of newly appointed officers is said to lag by £8,000 to £10,000 relative to the local labour market. **The Committee calls on the Scottish Prison Service to set out fully-costed options for the Committee on how this specific local issue can be addressed over time and to also provide these to the Scottish Government to consider as part of this year's budget proposals.**

214. Finally on staffing, although a reserved matter, the Committee notes the evidence from the Prison Officers Association Scotland and others that the requirement on officers to work to the age of 67 before they can have access to their pension is causing problems. Some of these include the effect on the health of staff from the physical nature of work in prisons being carried out in their later years. **The Committee asks the Scottish Government what discussions it has had, or is prepared to have, on an pan-UK basis with the UK and other devolved governments to look at the expectations that we place on prison staff and the often physical nature of their jobs. The intergovernmental ministerial bodies may be one such vehicle to have these discussions.**

215. The Committee welcomes the slight improvement in the levels of serious prisoner on staff violence in 2018/19 compared to 2017/18. The Committee pays tribute to the staff in achieving this, given the current prison population and pressures. We note, however, that the current figures are an increase compared to 2016/17 and that minor assaults on staff and both serious and minor prisoner on prisoner assaults are up. **The Committee recognises the challenges of working in a prison but agrees that no staff or prisoner should be subjected to an attack however minor and asks the Scottish Prison Staff what further measures/ resources would assist them to bring down the levels further.**

Budgets

216. The Audit Scotland report notes that, in real terms, the SPS's revenue budget fell by 12.5% between 2014/15 and 2018/19. Its planned revenue budget for 2019/20 represented a further real terms reduction. The Committee therefore welcomes the additional in-year cover of up to £24 million from the Scottish Government for day-to-day operational costs. This was clearly required as a matter of some urgency.

217. **The Committee recommends that the Scottish Government makes it clear as part of this year's budget proposals whether similar additional budget cover will be required in 2020/21. The Committee, taking into account all the costs pressures currently faced by the Scottish Government, sees merit in the Cabinet Secretary for Justice base-lining a real-terms increase in the revenue and capital budgets for the Scottish Prison Service for 2020/21.**

218. Furthermore, **the Committee notes the comment from Audit Scotland that potentially a further £1.82 million per annum is needed to pay for additional places at the privately run HMP Addiewell and that this not currently budgeted for.**⁵⁰ **The Committee recommends that the Scottish Government and Scottish Prison Service confirm whether this is still the case and, if so, how this will be covered.**

219. The Committee is concerned about the contractual situation with using places at the privately run prisons at HMPs Kilmarnock and Addiewell and the resulting impact on the operating costs of the Scottish Prison Service. The Committee notes the evidence from Audit Scotland that the inflation-linked increases built into the contracts for these two prisons mean that the SPS has to find additional recurring savings in its budget of around £12 million a year by 2022/23. The Committee also notes that the costs of these contracts rise every year by RPI+1.5%. **The Committee cannot see how these cost increases are sustainable in the future if budgets for SPS remain static and asks the Scottish Government how it plans to address this and the timetable for review of the relevant contracts.**

Non-prison related conclusions and recommendations

Third sector budgets and the use of section 27 funding via local authorities to fund criminal justice issues

220. In last year's pre-budget [scrutiny](#) by the Committee, we called upon the Cabinet Secretary to consider introducing three-year budget settlements for third and voluntary sector bodies within his portfolio and welcomed his assurances that he would look into this issue. This year's evidence from third and voluntary sector groups shows that little, if any, progress has been made on this. **The Committee calls on the Cabinet Secretary as part of this year's budget settlement to set out specific plans for multi-annual funding (even if indicative in later years) for some priority components of the justice sector in order to provide surety of funding and prevent, as Apex Scotland said, the "extremely wasteful and inefficient" annualised funding rounds.**

221. The Committee was also concerned that some of the evidence from third and voluntary sector bodies suggested that such funding uncertainties were causing sheriffs to lack confidence that alternatives to prison supported by these bodies in their area would be available year-on-year to support offenders. **As recommended above, we plan to host a meeting with the Scottish Government, Community Justice Scotland, Police Scotland, relevant third/voluntary sector organisations and the sheriffs to discuss how confidence in community based alternatives to prison can be maintained.**

222. Finally, we note the evidence from some third and voluntary sector bodies that funding for criminal justice projects via local authorities (through section 27 of the Social Work (Scotland) Act 1968 as amended) is causing problems, with some local authorities acting more as direct competitors. **We welcome the Cabinet Secretary's agreement to look into this matter and we await his response as part of this year's budget proposals.**

Funding of criminal justice social work

223. The Committee notes the evidence from Social Work Scotland, COSLA and others on the funding of criminal justice social work and the relatively static nature of the financial settlement in the past years. **The Committee calls on the Scottish Government to review whether funding is adequate for the increased pressures being placed on these services and whether a further near status quo settlement is sustainable.**

Staff recruitment and retention in the Crown Office and Procurator Fiscal Service

224. The Committee is concerned by the evidence from the Procurators Fiscal Section of the FDA union about potential retention issues in the service, particularly of its legally qualified staff leaving for better paid, but equally-graded jobs, in the core Scottish Government. This was pointed out last year by the FDA and we have now been provided with more evidence, indicating potential industrial action. **We welcome the Cabinet Secretary for Justice's assurances that, although not a matter for him directly, he would look into this matter and we seek an immediate update from him on discussions between Scottish Government Finance officials, the Lord Advocate/Crown Agent and the FDA and other relevant trades unions.**

Scottish Courts and Tribunals Service

225. The Committee notes the evidence from the Scottish Courts and Tribunals Service about its budget and the challenges and limitations it would have if further restraint and savings are required. **The Committee calls on the Scottish Government to review whether funding is adequate for the increased pressures being placed on the service and whether a further near status quo settlement is sustainable.**

Funding of policing and the Scottish Police Authority

226. Finally, the Committee welcomes the [extensive scrutiny](#) of the financial situation in Police Scotland and the Scottish Police Authority by the Justice Sub-Committee on Policing. In particular, we note its focus on the capital budgets currently available to these organisations.

Annex

Details of the meetings held by the Committee and extracts from the Official Report can be found [online](#).

Copies of the [written evidence](#) received are also available. Written submissions were received from:

- Apex Scotland
- COSLA
- CJVSF
- Community Justice Glasgow
- Community Justice Scotland
- Families Outside
- Howard League Scotland
- HMICS
- HMIPS
- Includem
- Robertson Trust
- Scottish Courts and Tribunals Service
- Scottish Human Rights Commission
- Scottish Women's Aid
- Social Work Scotland
- Turning Point Scotland

- [1] Justice Committee. (2019, September 17). Official Report, col 4.
- [2] Families Outside. (2019). Written submission.
- [3] Howard League Scotland. (2019). Written submission.
- [4] Justice Committee. (2019, October 8). Official Report, cols 4-6.
- [5] Justice Committee. (2019, October 8). Official Report, col 13.
- [6] Justice Committee 08 October 2019 [Draft], Colin McConnell, contrib. 47,
<http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12315&c=2208661>
- [7] Justice Committee. (2019, October 8). Official Report, col 33.
- [8] Criminal Justice Voluntary Sector Forum. (2019). Written submission.
- [9] APEX Scotland. (2019). Written submission.
- [10] Community Justice Scotland. (2019). Written submission.
- [11] Justice Committee. (2019, October 8). Official Report, col 12.
- [12] Justice Committee. (2019, October 8). Official Report, col 34.
- [13] Justice Committee. (2019, October 8). Official Report, col 35.
- [14] Scottish Government. (2015). Prison statistics and population projections Scotland: 2013-14, Table A.5: Main crime/offence of people in custody by sex and custody type.
- [15] Justice Committee. (2019, September 17). Official Report, col 34.
- [16] HMIPS. (2019). Written submission.
- [17] Includem. (2019). Written submission.
- [18] Justice Committee. (2019, October 8). Official Report, col 8.
- [19] Justice Committee. (2019, October 8). Official Report, cols 31-32.
- [20] Justice Committee. (2019, September 17). Official Report, col 16.
- [21] Justice Committee. (2019, September 17). Official Report, col 18.
- [22] Justice Committee. (2019, October 8). Official Report, col 3.
- [23] Justice Committee. (2019, October 8). col 20.
- [24] Justice Committee. (2019, October 8). Official Report, col 39.
- [25] Justice Committee 08 October 2019 [Draft], Colin McConnell, contrib. 38,
<http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12315&c=2208652>
- [26] Justice Committee 08 October 2019 [Draft], Humza Yousaf, contrib. 134,
<http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12315&c=2208748>

- [27] Justice Committee 17 September 2019 [Draft], Phil Fairlie, contrib. 38, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12264&c=2200144>
- [28] Justice Committee. (2019, October 8). Official Report, col 22.
- [29] Justice Committee. (2019, October 8). Official Report, col 32.
- [30] Justice Committee. (2019, September 17). Official Report, col 10.
- [31] Justice Committee. (2019, October 8). Official Report, col 21.
- [32] Justice Committee. (2019, October 8). Official Report, col 23.
- [33] Robertson Trust. (2019). Written submission.
- [34] COSLA. (2019). Written submission.
- [35] Justice Committee. (2019, October 8). Official Report, col 29.
- [36] Justice Committee. (2019, October 8). Official Report, col 41.
- [37] Justice Committee. (2019, September 17). Official Report, col 21.
- [38] Justice Committee. (2019, October 8). Official Report, col 27.
- [39] Justice Committee. (2019, October 8). Official Report, col 4.
- [40] Justice Committee. (2019, September 17). Official Report, col 20.
- [41] Justice Committee. (2019, October 8). Official Report, col 44.
- [42] Justice Committee. (2019, September 17). Official Report, col 6.
- [43] Justice Committee. (2019, October 8). Official Report, cols 24-25.
- [44] Justice Committee 17 September 2019 [Draft], Phil Fairlie, contrib. 54, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12264&c=2200160>
- [45] Justice Committee. (2019, October 8). Official Report, col 26.
- [46] Audit Scotland. (2019). The 2018/19 audit of the Scottish Prison Service, page 13.
- [47] Justice Committee 08 October 2019 [Draft], Melanie Allan (Scottish Prison Service), contrib. 56, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=12315&c=2208670>
- [48] Justice Committee. (2019, October 8). Official Report, col 38.
- [49] Justice Committee. (2019, September 17). Official Report, col 30.
- [50] Audit Scotland. (2019). The 2018/19 audit of the Scottish Prison Service.
- [51] Justice Committee. (2019, October 8). Official Report, col 18.
- [52] Justice Committee. (2019, September 17). Official Report, col 31.

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- [53] Justice Committee. (2019, September 17). Official Report, col 32.
- [54] Justice Committee. (2019, September 17). Official Report, col 33.
- [55] Justice Committee. (2019, September 17). Official Report, col 35.
- [56] Justice Committee. (2019, October 8). Official Report, col 43.
- [57] Includem. (2019). Written submissions.
- [58] Justice Committee. (2019, October 7). Official Report, col 29.
- [59] APEX Scotland. (2019). Written submission.
- [60] Justice Committee. (2019, October 8). Official Report, col 42.
- [61] Social Work Scotland. (2019). Written submission.
- [62] Procurators Fiscal Section of the FDA. (2019). Written submission.
- [63] Justice Committee. (2019, October 8). Official Report, cols 30-31.
- [64] Scottish Courts and Tribunals Service. (2019). Written submission.
- [65] HMIPS. (2019). HM Chief Inspector of Prisons for Scotland: Annual Report 2018-19.

