

## Justice Committee

### Community Justice (Scotland) Bill

#### Written submission from the Convenors of Scotland's Community Justice Authorities

##### Executive Summary

0.1 The Convenors of Scotland's eight Community Justice Authorities (CJAs) welcome the Justice Committee's invitation to submit evidence on the Community Justice (Scotland) Bill. Since 2012, we have actively engaged with the consultation process on community justice redesign. Our individual and collective CJA submissions to the earlier Scottish Government consultations can be accessed at:

<http://www.gov.scot/Publications/2013/07/7507/downloads>

*(Redesign of Community Justice)*

<http://www.gov.scot/Publications/2014/10/9125/downloads>

*(Future Model for Community Justice)*

0.2 The publication of the Bill marks an important milestone in the lengthy process of community justice redesign. As anticipated the Bill does introduce a combined local/ national model for community justice and we have supported its principles as articulated during the consultation process.

0.3 However we are not convinced that the proposals as published will deliver better outcomes or enhance governance, accountability and leadership. We believe CJAs already deliver a stronger model in terms of collaboration and have clearer accountability arrangements than the loose arrangements for Community Justice Partners proposed in the Bill. We cannot comment on the effectiveness of key components of the reforms such as the National Strategy, Performance Framework, funding and strategic commissioning arrangements, as these remain in development and are as yet unpublished. (Indeed it is unclear why any of these particular components require legislation).

0.4 Within the existing CJA arrangements, over the past decade the average number of reconvictions per offender has decreased by 18% and the reconviction rate has fallen by 4.1 percentage points,<sup>1</sup> both very positive outcomes.

0.5 However we have always been ambitious for a faster pace of improvement. We are not convinced that the Bill as published will either build on the successes and ambitions of CJAs to date, or adequately address the challenges we have faced. We look forward to continuing our dialogue with the Justice Committee at the September oral evidence session.

0.6 Our specific recommendations for change are:

a. Seek direct feedback on the Community Justice Bill from members of The Commission on Women Offenders, Audit Scotland and The Christie Commission, if

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<sup>1</sup> Statistical Bulletin, Reconviction Rates In Scotland: 2012-13 Offender Cohort, 31/3/15  
<http://www.gov.scot/Resource/0047/00474253.pdf>

these are all to remain cited in the accompanying documents as justifying the proposals.

- b. Redefine 'community justice' to fully reflect offending/ reoffending (including prevention, early intervention, risk management and public protection) not 'offenders', and to capture wider outcomes for individuals and communities.
- c. Critically assess the extent of added value in relation to the proposed role of Community Justice Scotland and amend as required, considering that its limited functions could more effectively and economically be delivered by the Scottish Government, supported by existing assurance, improvement and academic bodies.
- d. Place explicit duties on CPPs to integrate local community justice arrangements into the robust system of CPP governance and reporting, rather than setting up a loose grouping of 'Community Justice Partners' as a parallel arrangement outwith CPPs.
- e. Specify clear roles for Elected Members, the Third Sector and the voices of service users in the new community justice arrangements.
- f. Specify that 'Scottish Ministers' includes both the Scottish Prison Service and the Crown Office and Procurator Fiscal Service (COPFS).
- g. Remove reference to the National Strategy and Performance Framework from the Bill as these do not require legislative change.
- h. Replace reporting requirements by local partners to Community Justice Scotland with a requirement to simply 'publish' (i.e. make available) relevant reports.
- i. Include a commitment to equitable resourcing between Community Justice Scotland and CPPs, reflecting the minimal role of CJS within a predominantly local planning and delivery model.
- j. Consider the Angiolini Commission's proposal for a joint Board for Community Justice Scotland and the Scottish Prison Service.

**1. Will the proposals in the Bill transform the community justice system in the way envisaged by the Commission on Women Offenders in its 2012 report, such as addressing the weaknesses identified in the current model, tackling reoffending and reducing the prison population?**

1.1 There is no evidence that structural reform *in itself* ever guarantees better outcomes in any policy area, including community justice. The significant achievements of the Whole System Approach for Young People (including reducing reoffending and reducing the prison population) were notably delivered via a model of strong local partnership working and a genuine and systemic shift to early intervention and prevention, not via structural reform.

1.2 It is worth noting that the Commission on Women Offenders made 3 specific recommendations of relevance to community justice redesign (under Part 9: 'Making it work: leadership, structures and delivery'), as follows:

**"A new national service, called the Community Justice Service, is established to commission, provide and manage adult offender services in the community.**

**A National Community Justice and Prison Delivery Board**, with an independently appointed Chair, is set up to promote integration between the Community Justice Service and the Scottish Prison Service, and deliver a shared vision for reducing reoffending across the community and within custodial settings.

**A senior director in each of the key agencies** is identified to take **responsibility for women offenders**, championing and driving through change.”<sup>2</sup>

1.3 The Bill does not actually deliver *any* of these three specific recommendations, despite the Commission being mentioned 13 times in the accompanying documents as justification for the reforms. Regardless of one’s view on these recommendations, the Commission at least proposed a very decisive and clear model for community justice including structural reform at both operational and strategic levels. In contrast, the lengthy consultation process and the Bill itself have instead created another ‘least worst’ local/ national compromise, such as that which led to the creation of CJAs in the previous community justice reforms. And the current proposals once again restrict reform to the strategic level, leaving frontline operational delivery untouched.

1.4 Audit Scotland’s ‘Reducing Reoffending in Scotland’ report (2012) is also repeatedly referred to as justifying the reforms (being mentioned 15 times in the Bill’s accompanying documents). This report in fact called for improvements to arrangements for funding; performance measurement; managing offenders in the community; service planning, design and delivery; and understanding of unit costs. There were no recommendations relating to structural reform as such.

1.5 Very little mention is made in the Bill’s accompanying documents of the Commission on the Future Delivery of Public Services (the Christie Commission), however it is this vision which would really transform outcomes across the justice system, including community justice. In particular there is nothing in the Bill which will guarantee the decisive shift to prevention which is required.

1.6 Although CJA Convenors have a view on this first question, it would be more relevant to ask this of the members of the Commission on Women Offenders, as well as Audit Scotland and the Christie Commission – how far do *they* think the Bill will transform the community justice system in the manner they envisaged?

## **2 Are you content that the definition of ‘community justice’ in the Bill is appropriate?**

2.1 No. The focus is on *offenders* rather than *offending/ reoffending* more broadly, and on the actions of *agencies and services* rather than *outcomes* for individuals or communities.

2.2 There is an extremely broad definition of ‘offenders’ as “persons who have at any time been convicted of an offence”. This in fact refers to around a quarter of the adult population, an unworkable and inappropriate grouping. In addition, this focus on the ‘convicted’ excludes our essential aim of early intervention and prevention, i.e. of keeping people out of the justice system as far as possible through a presumption against escalation wherever appropriate.

2.3 The definition in the Bill is perhaps unavoidably legalistic, however the Policy Memorandum repeats the definition used in the 2014 consultation:

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<sup>2</sup> Source: Commission on Women Offenders, 2012, p11 (emphasis in original)

*“The collection of agencies and services in Scotland that individually and in partnership work to manage offenders, prevent offending and reduce re-offending and the harm that it causes, to promote social inclusion, citizenship and desistance”*

2.4 Whilst this is a more workable definition, there is a concern there is insufficient attention on the risk management and public protection function of community justice, yet this accounts for a significant proportion effort, resource and risk.

### **3 Will the proposals for a new national body (Community Justice Scotland) lead to improvements in areas such as leadership, oversight, identification of best practice and the commissioning of services?**

3.1 The creation of Community Justice Scotland (CJS) *in itself* will not guarantee improvements in leadership, oversight, identification of best practice or commissioning. All of these improvements could have been introduced either into the existing CJA structural arrangements (as suggested by Audit Scotland), or could be delivered instead within robust local community planning arrangements supported by the Scottish Government at policy level. Indeed this latter model is deemed sufficient for every other policy area outwith community justice, including areas of significant challenge such as safer communities, economic development, poverty and inequality, alcohol and drugs, and health improvement.

3.2 CJS will not have ultimate accountability for any improvements. Nationally accountability will remain with the Cabinet Secretary for Justice, and locally with Community Justice Partners. It is currently unclear what will happen if CJS recommends local improvements, beyond requiring Community Justice Partners simply to publish their response to any imposed improvement plan. There are no stated sanctions for Community Justice Partners who refuse to comply (nor is it clear who would actually be answerable or accountable for non-compliance from the loose grouping of Partners).

3.3 Audit Scotland identified that, as strategic planning bodies, CJAs have at times experienced difficulties gaining sufficient leverage to drive forward operational improvements on the ground. CJS will have even greater difficulties in this respect, given the absence of any local presence or relationships. CJS will also face a significant administrative burden in relating to up to 32 separate local arrangements.

3.4 CJS will be heavily reliant on the quality of performance information gathered and submitted by Community Justice Partners, and on its own analytical capacity and expertise. The Scottish Government is currently leading the development of a new national Performance Management Framework (as yet unpublished), but it remains challenging to meaningfully measure collaborative community justice outcomes (not processes or outputs) at any level. This is certainly challenging at CPP level and even more so at neighbourhood level where many CPPs are now focusing as part of their planning around ‘Place’. We are not yet confident that CJS or Community Justice Partners will be operating within a strong community justice performance framework.

3.5 As a largely advisory body with no ‘teeth’, it is not clear that CJS brings sufficient added value to the new community justice arrangements, instead potentially acting as an additional layer of bureaucracy and expense (at a cost of £2.2 million per year plus significant initial set up costs). It may be that the functions of Community Justice Scotland could be more economically and effectively delivered by the Scottish Government, supported by existing assurance and improvement bodies such as Audit Scotland, the Improvement Service, relevant Inspectorates and existing academic centres of excellence.

**4 Taking into account the reforms set out in the Community Empowerment (Scotland) Bill relating to Community Planning Partnerships, will Community Justice Partners have the powers, duties and structures required to effectively perform their proposed role in relation to community justice?**

4.1 No. It remains unclear why there is such a complete disconnect between CPPs and the so called ‘Community Justice Partners’ within the Bill. This was not anticipated from any of the earlier communications from the Scottish Government which stated a strong commitment to a predominantly local model for community justice through CPPs (a position largely supported by CJAs, given that we were to be disestablished in any case).

4.2 Since publication of the Bill, we have queried the lack of any reference to CPPs or community planning in the legislation. We have been informed by the Scottish Government that CPPs cannot be mentioned in legislation because they are not legal entities, however there are 22 mentions of the term ‘Community Planning Partnership’ in the Community Empowerment Bill as introduced (and 42 mentions in the Bill as passed on 19 June 2015).

4.3 A more concerning explanation may be that the Scottish Government is in fact *not* committed to the new model of community justice being driven by CPPs despite their earlier assurances, or even that there is a lack of long term confidence that CPPs will remain in place at all.

4.4 The proposed local arrangements for community justice are subsequently very concerning. As evidenced in our previous consultation submissions, if CJAs are to be disestablished in favour of a new local model, it makes sense to integrate arrangements into CPPs, which deliver against all other policy areas locally. Indeed this was previously sold as a key advantage of locating community justice in CPPs, in terms of the ability to link across disparate CPP policy areas which impact on reducing reoffending.

4.5 However what is proposed in the Bill is a parallel set of planning arrangements by a list of individual Community Justice Partners who may or may not act independently from each other, and who can certainly act independently from CPP governance structures. There is no requirement for these Partners to work as a formal Partnership, with an identifiable and accountable Chair or lead officer, nor to be integrated within the CPP governance arrangements, leaving them as a number of essentially free-floating organisations. The majority of these Partners (five from the list) are governed from the centre as national organisations.

4.6 It is not our role to present a critique of CPPs as to whether or not they will be able to deliver community justice improvements. The Scottish Parliament will be well aware of previous Audit Scotland reports on CPP performance and the intention to strengthen CPPs through the new Community Empowerment legislation (which of course in itself is new untested legislation). The issue is that the Scottish Government had previously committed to using CPPs as the governance vehicle for local community justice planning, and this commitment is no longer evident. It is inadequate to leave interpretation of the legislation in this respect to chance or to optional Guidance which could be interpreted at least 32 different ways.

4.7 Given that CJAs are being disestablished following criticism of our leadership, governance and accountability arrangements, it is disappointing (to say the least) to see that there will now be no single point of contact in this respect at a local level. The current arrangements whereby a CJA Convenor and CJA Chief Officer can be (and are) called to account in relation to local community justice issues was supposed to be replaced by clear CPP arrangements. However the current proposals instead have a loose grouping of Community Justice Partners with equal accountability and responsibility; with no governance by the local CPP; and with no clear leadership at all. Even in the most practical terms, it is unclear *who* exactly is responsible for completing the required tasks. This 'looseness' then relies on people having a consistent interpretation of what is required, which fundamentally undermines the point of legislation.

4.8 Another key rational for the disestablishment of CJAs was the so-called 'cluttered landscape' listed in great detail by the Commission on Women Offenders. However there is an assumption in the Bill that the new local arrangements will be formed on a local authority basis not a regional basis, thereby replacing 8 CJAs with up to 32 new and varied community justice arrangements (plus a national body). Note again that there is no requirement for these 32 community justice arrangements to sit within CPP governance arrangements, but they are rather parallel arrangements to CPPs.

4.9 Whilst some named 'Community Justice Partners' have already created partnership facing structures and are already active within CPPs (e.g. Police Scotland, Scottish Fire and Rescue), and should find engagement relatively straightforward, in practical terms being named as a 'Community Justice Partner' will create significant challenges for others. This includes the Scottish Prison Service, Scottish Courts and Tribunals Service, and the Crown Office and Procurator Fiscal Service, none of whom currently have the operational capacity or structure to actively participate in 32 different local governance arrangements (not to mention sub groups or working groups which may emerge locally).

4.10 There is no explicit mention in any of the documents of the Crown Office and Procurator Fiscal Service (COPFS) who are *essential* partners in delivering better community justice outcomes. Whilst our understanding is that they are included under 'Scottish Ministers' along with the Scottish Prison Service, this is not clarified in any of the accompanying documents. This is a serious omission which should be rectified.

4.11 There is a lack of clarity as to how service user voices will influence the new arrangements. CJAs have engaged with service users over many years, and have highlighted their strengths, needs, experiences and issues in a range of ways, including direct engagement and representation, research, and creative approaches such as film and drama.

4.12 There will also be significant challenges for the new local arrangements in maintaining some critical and influential networks, such as longstanding working relationships between CJAs, Local Criminal Justice Boards and individual sentencers. As Chairs of these Boards, a number of Sheriffs Principal have already made clear that multiple CPP representatives will not be invited to replace individual CJA Chief Officers in future arrangements. A key strategic link between community justice and judicial decision makers locally will be lost.

## **5 Does the Bill achieve the right balance between national and local responsibility?**

5.1 No. The new model has been repeatedly described as a predominantly local model, supported by a national assurance and improvement function, however the Bill suggests a very different dynamic. The looseness of the local arrangements is in some contrast to the extensive detail given to Community Justice Scotland.

5.2 Whilst there has been great emphasis during the previous consultation period that local outcomes would be overseen by local CPPs not by Community Justice Scotland, there is a change of direction in the legislation. Prior to publication of the Bill, CPPs were preparing for the transition of CJA responsibilities into their governance arrangements, and were unaware that the proposals would instead place duties on a list of individual Community Justice Partners.

5.3 The Bill states that the required Community Justice Outcomes Improvement Plan, and related performance reports, must be sent to CJS (not simply 'published' and therefore made available). This suggests a reporting relationship to CJS which is contrary to the Scottish Government's earlier commitments.

5.4 Consultation on national matters by Scottish Ministers and CJS is to be with "each of the Community Justice Partners" not local community justice partnerships or Community Planning Partnerships, risking that the consultee list for any national developments consists of national contacts within national organisations/representative bodies, not locally based contacts or indeed local partnerships who should form a collective view on any proposals.

5.5 In this local leadership vacuum it is inevitable that Community Justice Scotland will become the sole centralised leadership voice for community justice, and that local views will remain unheard.

5.6 There is a significant resource inequity between the proposed national body (proposed new budget £2.2 million, plus 22 staff) and the proposed local arrangements for Community Justice Partners (to be delivered within existing budgetary and staffing arrangements).

**6 Will the proposed reforms support improvement in terms of: (a) leadership, strategic direction and planning? (b) consultation and accountability? (c) partnership and collaboration? (d) commissioning of services and achieving best value for money?**

6.1 This question groups together a very wide range of issues. For example 'leadership' and 'planning' are very different functions, and 'consultation' is quite different than 'accountability'. In the Bill and accompanying documents these terms are often used interchangeably and are not defined.

6.2 In terms of our overall response, we would repeat our earlier comments that structural reform does not *guarantee* any of these improvements. The extent to which people can work together around a shared value base and shared outcomes is a more significant predictor. For example there are assumptions throughout the Bill and accompanying documents that effective partnerships can be created through a simple change in governance and reporting arrangements. In fact strong partnerships are heavily reliant on good personal relationships, a history of joint working which builds communication and trust, and an established track record of joint planning and delivery to grow community confidence and commitment.

6.3 We have particular concerns about the lack of any stated role for either Elected Members or the third sector in the proposals. Both have played a key role within CJAs in driving forward local and national community justice improvements. We do not support the Scottish Government's assertion that consulting with 'community bodies' will in any way be equivalent to active membership of CJA Boards. Whilst a statutory duty cannot be placed on the third sector to engage, a duty *can* be placed on the statutory partners to involve relevant third sector bodies as equal partners in local arrangements.

6.4 It is not the simple existence of a National Strategy, Performance Framework or Strategic Commissioning approach which delivers better outcomes, but the quality of each of these and the way in which they are implemented. We are unable to comment on any of these aspects at present, as they remain in development and unpublished. It is unclear why any of these require legislation to be introduced.

6.5 We are not convinced that the risks associated with loss of expertise and specialist skills have been adequately taken into account. For example the CJA Training and Development Officers (TDOs) are a highly trained, specialist group providing both local and national professional training capacity. They cannot be easily or quickly replaced however no assurances have been given that they will be transferred via TUPE or other arrangements into the new local or national bodies.

**7 Are the resources, as set out in the Financial Memorandum, sufficient to transform the community justice system in the way envisaged by the Commission on Women Offenders in its 2012 report?**

7.1 No. The most significant resource challenge for community justice (whatever the structures) remains that the vast majority of resources for offender management are still held on the custodial side of the system – or in the Christie Commission's term, to resource 'failure demand'. In 2015-16, £113.2 million was allocated by the



Scottish Government for community justice<sup>3</sup> compared to £396.2 million allocated to the Scottish Prison Service. The custodial budget is therefore three and a half times higher than the community justice budget, despite over 4,000 more people (29% more) being given a community sentence than a custodial sentence each year.<sup>4</sup> Re-engineering existing resources within the same inequitable framework will not deliver a decisive shift to prevention.

7.2 The detailed financial arrangements within the proposals are (as with the National Strategy, Performance Framework etc) still in development and therefore unpublished. It is therefore unclear whether many of the disadvantages of the existing system as highlighted by the Commission on Women Offenders, Audit Scotland and the Christie Commission will be resolved, such as an inability to identify unit costs; perverse incentives to maintain and indeed escalate people into the system; a lack of strategic commissioning approaches discouraging long term planning and so on. Indeed none of these difficulties required structural change to be resolved.

7.3 The Commission on Women Offenders proposed a joint Board between the national Community Justice Service and the Scottish Prison Service (a National Community Justice and Prison Delivery Board). This proposal should be seriously considered for Community Justice Scotland to enable more equitable and needs-led resourcing.

7.4 The costs *already expended* on community justice reform are not detailed in the Financial Memorandum and are of considerable concern given that we are still almost two years away from the new arrangements. These costs include significant officer time (e.g. CJA Convenors, staff, partners; Scottish Government and other national bodies; more recently CPP partners) as well as numerous external consultancy contracts.

7.5 The opportunity costs of structural reform are also absent from the Financial Memorandum, but will be very significant given the 5 year transition period from 2012-17 (discussed further below) followed by potentially 3 to 5 years of development time for the new arrangements to bed in and deliver their full potential.

7.6 With reference to training and development, there is a potential for underestimating the costs of training new learning and development staff as there is no guarantee that existing Training and Development Officers will be successful if they apply for posts with CJS. There are already issues around the *existing* training capability around some very important specialist areas, particularly around high risk offenders. The potential costs of not being able to train staff in the interim period may have an impact on delivery of Criminal Justice Social Work reports etc, if staff do not have the required training.

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<sup>3</sup> This includes over £95 million for Criminal Justice Social Work services (distributed via CJAs) and a number of other Scottish Government investments in community justice.

<sup>4</sup> In 2013-14, 14,101 people were sentenced to custody, compared to 18,231 given a community sentence. This is in addition to 73,217 people given a financial penalty or other sentence. Source: Scottish Government (December 2014) Criminal Proceedings in Scotland 2013-14, <http://www.gov.scot/Publications/2014/12/1343/downloads>

7.7 With the creation of new national outcomes and indicators, and indeed, new *local* outcomes and indicators there may be an added financial burden for CJS and all Community Justice Partners and partnerships in respect of IT for data gathering and amalgamating information from multiple partners. Currently local authority systems (and probably most partners' systems) are based on outputs and not outcomes.

7.8 We have expanded on such financial challenges in our submission to the Scottish Parliament's Finance Committee.

## **8 Is the timetable for moving to the new arrangements by 1 April 2017 achievable?**

8.1 CJAs were established in shadow form in April 2006 with full duties following in April 2007. Just five years later, in April 2012, the Commission on Women Offenders concluded that whilst *"Some of the recommendations set out in the earlier parts of the report could be implemented within the existing systems, ... we concluded that to deliver the very best outcomes ..., a radical transformation of the existing structural and funding arrangements, and associated working practices, is required.* (p80)

8.2 This (perhaps premature) recommendation has been followed by an extremely protracted redesign process, already stretching to three years, with almost two years to go. There have been significant and inexplicable delays within this process (such as a 12 month gap between the publication of the first consultation and the Government's response, and an 8 month gap in the case of the second consultation).

8.3 During this lengthy change period it has been extremely challenging for CJA Boards, staff and partners to remain focused on the task at hand. We have continued to make strong progress, however it is worth considering how much more progress might have been made without the distraction and resource drain of redesign so predominantly on the agenda.

8.4 We therefore conclude that there are challenges around moving to the new arrangements by 1 April 2017, but we would not support any further delay.

## **9 Could the proposals in the Bill be improved and, if so, how?**

9.1. Seek direct feedback on the Community Justice Bill from members of The Commission on Women Offenders, Audit Scotland and The Christie Commission, if these are all to remain cited in the accompanying documents as justifying the proposals.

9.2. Redefine 'community justice' to fully reflect offending/ reoffending (including prevention, early intervention, risk management and public protection) not 'offenders', and to capture wider outcomes for individuals and communities.

9.3. Critically assess the extent of added value in relation to the proposed role of Community Justice Scotland and amend as required, considering that its limited

functions could more effectively and economically be delivered by the Scottish Government, supported by existing assurance, improvement and academic bodies.

9.4. Place explicit duties on CPPs to integrate local community justice arrangements into the robust system of CPP governance and reporting, rather than setting up a loose grouping of 'Community Justice Partners' as a parallel arrangement outwith CPPs.

9.5. Specify clear roles for Elected Members, the Third Sector and the voices of service users in the new community justice arrangements.

9.6. Specify that 'Scottish Ministers' includes both the Scottish Prison Service and the Crown Office and Procurator Fiscal Service (COPFS).

9.7. Remove reference to the National Strategy and Performance Framework from the Bill as these do not require legislative change.

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9.9. Include a commitment to equitable resourcing between Community Justice Scotland and CPPs, reflecting the minimal role of CJS within a predominantly local planning and delivery model.

9.10. Consider the Angiolini Commission's proposal for a joint Board for Community Justice Scotland and the Scottish Prison Service.

## **10 Closing Comments**

10.1 Within the existing CJA arrangements, over the past decade the average number of reconvictions per offender has decreased by 18% and the reconviction rate has fallen by 4.1 percentage points,<sup>5</sup> both very positive outcomes.

10.2 However we have always been ambitious for a faster pace of improvement. We are not convinced that the Bill as published will either build on the successes and ambitions of CJAs to date, or adequately address the challenges we have faced. We look forward to continuing our dialogue with the Justice Committee at the September oral evidence session.

Convenors of Scotland's Community Justice Authorities  
11 August 2015

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<sup>5</sup> Statistical Bulletin, Reconviction Rates In Scotland: 2012-13 Offender Cohort, 31/3/15  
<http://www.gov.scot/Resource/0047/00474253.pdf>