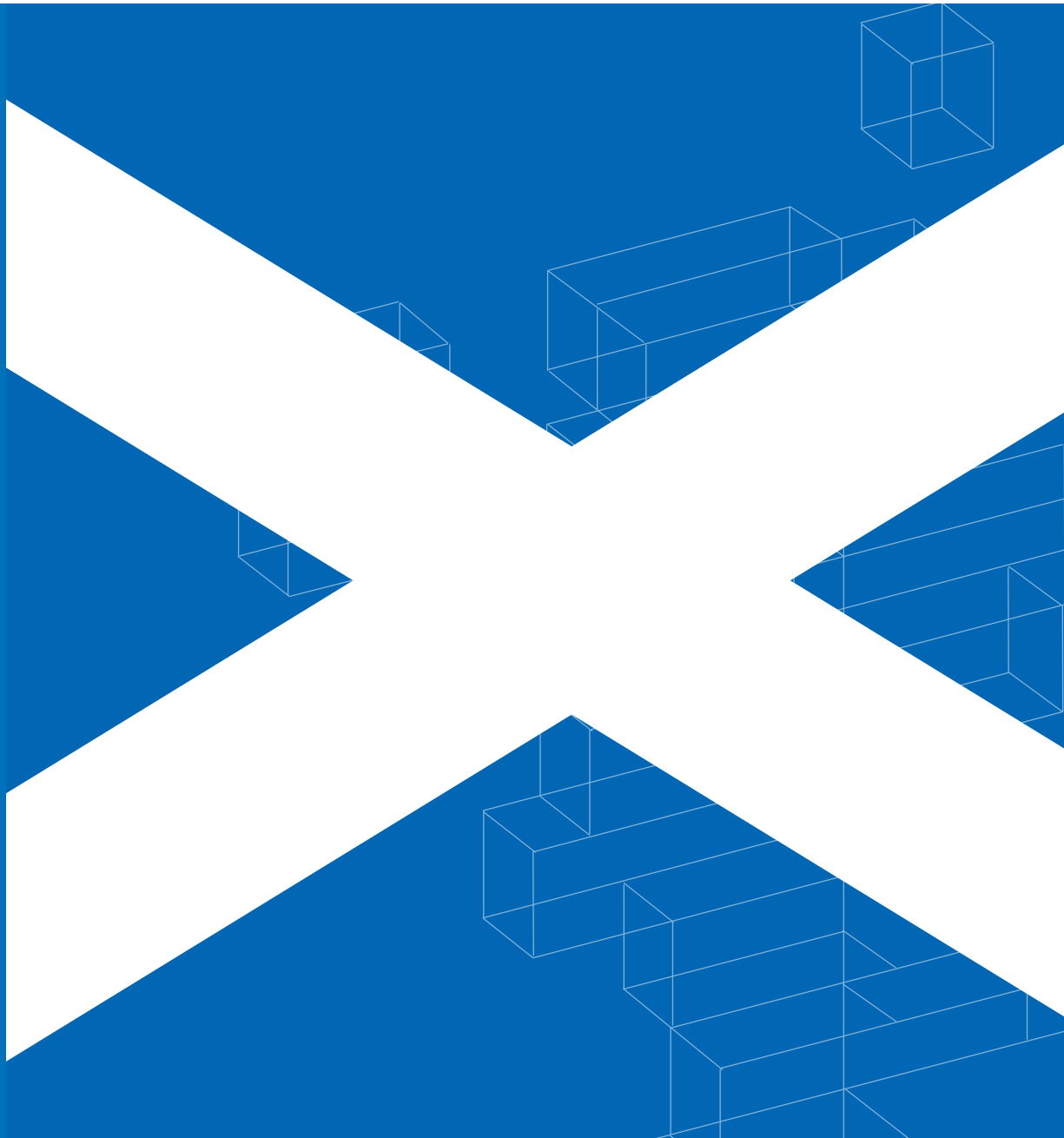


# Justice in an independent Scotland



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# Justice in an independent Scotland



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# Summary

This paper, the thirteenth in the ‘Building a New Scotland’ series, sets out the Scottish Government’s proposals for justice in an independent Scotland. The full publication provides more detail on the proposals, an analysis of the evidence that informs them, as well as references to sources.

This paper focuses on Scotland’s justice system, which is already largely devolved, and sets out the benefits that the full powers of independence could bring. Scotland’s distinctiveness as a legal jurisdiction long pre-dates devolution and was preserved in the Acts of Union 1707. The justice system already has its own independent judiciary, courts, prosecution service, tribunals, and other justice agencies, as well as its own legal profession. In addition there are also separate prison, police, and fire and rescue services.

Independence would mean that Scotland could take all the decisions in justice areas that are currently reserved and that policy and operational decisions were all located within Scotland. This would create opportunities for more focused and creative action on some of the most challenging issues facing our society such as drugs, gambling, and organised crime, with decisions attuned to Scotland’s specific circumstances and needs.

An independent Scotland would also be an open, engaged and positive international partner able to play a key role in justice issues across borders. Through cooperation with our international partners, an independent Scotland would advance our shared objectives, playing our full part in addressing global challenges particularly around counter-terrorism, cyber crime and serious organised crime.

## Approach to justice

The Scottish Government has set out a clear Vision for Justice in Scotland, which is of a just, safe and resilient country. Over the years there has been substantial improvement in many areas across the justice system. There is much of which Scotland can be proud, with more work to be done as shown in our ambitious delivery plans.

In an independent Scotland we would have the full range of policy and operational tools needed to keep the people of Scotland safe, building on our strong record of reducing crime and keeping people safe from harm. This government’s commitment to a human rights-based approach would extend across all areas of justice ensuring the rights of the people of Scotland would be upheld in line with the highest international standards, including the European Convention on Human Rights.

Our justice system would continue to focus on prevention, early intervention, and on rehabilitation as key aspects of the policy approach. In addition, embedding a person-centred, trauma-informed approach would remain a priority to help reduce victimisation and tackle violence against women and girls.

## **Making a difference**

Independence is about more than building the structures needed for a functioning state. This paper highlights a number of opportunities arising from independence that would provide new opportunities for Scotland to take a different approach, in areas such as serious organised crime, firearms and human trafficking.

Independence would allow us to extend our public health approach to violence reduction, where we focus on prevention – just as it is better to vaccinate against a disease, it is better to prevent violence happening than react once it has occurred. This approach would be extended into currently reserved areas like drug policy reform. Our proposals also show how policy and operational expertise would be brought together to tackle major threats in a way that focuses on the specific challenges facing Scotland, and how the security and intelligence capability needed to combat sophisticated threats from terrorism and cyber attacks would be developed.

## **Strengthening cooperation**

The Scottish Government's vision is for an independent Scotland to apply to join the EU as soon as possible after independence. Re-joining the EU would ensure that Scotland could enjoy the benefits of access to those systems and networks that were lost following Brexit.

With independence, Scotland would be able to represent itself on the international stage, with a seat at the table at the Council of Europe, United Nations and Interpol. Through cooperation with our international partners, an independent Scotland would be able to advance our shared objectives, playing our full part in addressing global challenges.

We would build on the existing, successful model of cooperation with authorities in other parts of the UK and the relationships that already exist. Our separate legal system and distinct criminal justice system mean that there are already arrangements concerning how our police and prosecutors cooperate across the existing jurisdictional borders between Scotland and England and Northern Ireland.

## **Conclusion**

Scotland has, since medieval times, had its own legal and justice system. We have many strengths and successes to build on, which provide confidence that we can add the remaining elements we would need to deliver fair and effective justice in an independent Scotland.

The Scottish Government has set out a clear vision of a just, safe, resilient Scotland, and set out an ambitious programme of reform to be delivered in collaboration with key partners across the justice sector.

With independence this ambitious programme of reform would also extend into areas where the UK Government currently retains control. The current arrangements can restrict the ability to align policy, legislation and delivery to fully address Scotland's specific needs and circumstances.

Independence would allow us to build on our current relationships, both within the UK and internationally, and forge new ones, working with nations as equals on our shared justice goals.

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# Foreword by the Cabinet Secretary for Justice and Home Affairs

We have a Vision for Justice of a just, safe, and resilient Scotland. I am proud of the work we have done over many years to strengthen and modernise the justice system, making improvements to ensure we have a system in which individuals and communities have trust. Our approach is based on the four principles set out in our Vision for Justice, an approach: founded in equality and human rights; that puts people at the centre of what we do; informed by recognised, credible, and robust evidence; and taken forward through collaboration and partnership.

In this paper, part of the ‘Building a New Scotland’ series, the Scottish Government outlines what independence would mean for our justice system. It would allow us to build on the current policies and institutions that deliver effective justice in Scotland. It would allow us to play our role internationally by working with partners from across nations to develop the capability to combat threats from terrorism, cyber attacks, and serious organised crime. And, it would allow us to extend our public health approach into currently reserved areas like drug policy reform.

With independence our progressive approach would extend into areas where we do not currently have full responsibility. In these areas we are often restricted in our ability to align policy, legislation, and delivery to fully address the specific needs and circumstances in Scotland, including in areas such as serious organised crime, firearms, human trafficking, drug law reform, and gambling.

Independence would also enable Scotland to play a fuller role on the international stage. As set out in other papers in the series, this Scottish Government’s vision is for an independent Scotland to apply to join the EU as soon as possible after independence. This would enable an independent Scotland, through cooperation with partners within the EU and around the world, to advance our shared objectives and play our full part in addressing global challenges and increasingly sophisticated criminal networks.

Whilst much of the justice system in Scotland is devolved and has been for centuries, I hope the proposals in this paper will help stimulate debate over the kind of approach to justice we want to see in Scotland. I look forward to engaging with as many people as possible as we discuss Scotland’s future.



**Angela Constance MSP**  
Cabinet Secretary for Justice and Home Affairs

# What our proposals mean for Scotland

An independent Scotland would continue our long tradition of delivering effective justice – a reputation of which we are rightly proud – as set out in the Vision for Justice in Scotland.<sup>1</sup> Independence would mean we are able to take all the decisions required to provide a just, safe, resilient Scotland for all our communities and that currently reserved policy and operational decisions are all taken within Scotland. This would create opportunities for more focused and creative action on some of the most challenging issues facing our society such as drugs,<sup>2</sup> gambling,<sup>3</sup> and organised crime,<sup>4</sup> with decisions attuned to Scotland's specific circumstances and needs.

The proposals in this paper would allow Scotland to:

- build on the strong institutions of justice in Scotland, expanding these to cover the full range of functions needed to provide effective access to justice in an independent Scotland
- build on the public health approach to violence reduction<sup>5</sup> and expand this into currently reserved areas like drug policy reform
- bring together policy and operational expertise to tackle major global threats, including terrorism and cyber crime, in a way that focuses on the specific challenges facing Scotland
- give our police and prosecutors access to tools to pursue criminals across borders which were lost following Brexit,<sup>6</sup> such as European Arrest Warrants, which are essential to give victims justice and combat sophisticated criminal networks
- develop the security and intelligence capability needed to combat sophisticated threats from terrorism and cyber attacks, in cooperation with international partners

# What our proposals mean for you

We would use the full powers of independence to continue working towards a justice system that provides a just, safe, and resilient Scotland. The proposals in this publication would further develop a justice system that can be effective in reducing crime and harm while providing access to justice for those who need it. The proposals in this paper would allow you to:

- feel even safer across Scotland, by giving our justice system access to the full range of policy and operational tools needed to keep you safe
- be assured by a strong commitment to a human rights-based approach - we will create a framework where your rights will be protected in line with the highest international standards, including the European Convention on Human Rights
- be at the centre of our approach, by ensuring our justice system continues to focus on person-centred and trauma-informed services for victims and survivors, reducing victimisation, and tackling violence against women and girls
- benefit from safer communities by continuing to focus on prevention, early intervention, and rehabilitation as key aspects of this government's policy approach



# Introduction

The 'Building a New Scotland' series is intended to give people in Scotland the information they need to make an informed choice about independence. This paper focuses on Scotland's justice system, which is already largely devolved, and sets out the case for the powers of independence.

Keeping people safe is one of the fundamental responsibilities of government and is central to our Vision for Justice in Scotland,<sup>7</sup> which was set out in early 2022. Our vision is of a just, safe and resilient Scotland, where people are able to exercise their human and civic rights.

As stated in the Vision for Justice in Scotland, to address the causes of crime, Scotland's public services together must tackle societal inequalities such as child poverty, mental ill health, addiction, and adverse childhood experiences.<sup>8</sup> With independence, Scotland would have the opportunity to enhance and further embed our approach to justice, an approach that seeks to deal with many issues as public health issues rather than justice ones, particularly areas of addiction like drugs and gambling.

An independent Scotland would also be an open, engaged, and positive international partner able to play a key role in justice issues across borders. Joining the EU as an independent nation would enable Scotland to regain access to cross-border systems essential to fighting crime and bringing justice to victims which were lost following Brexit.<sup>9</sup>

## The structure of this paper

This paper is set out in four main parts:

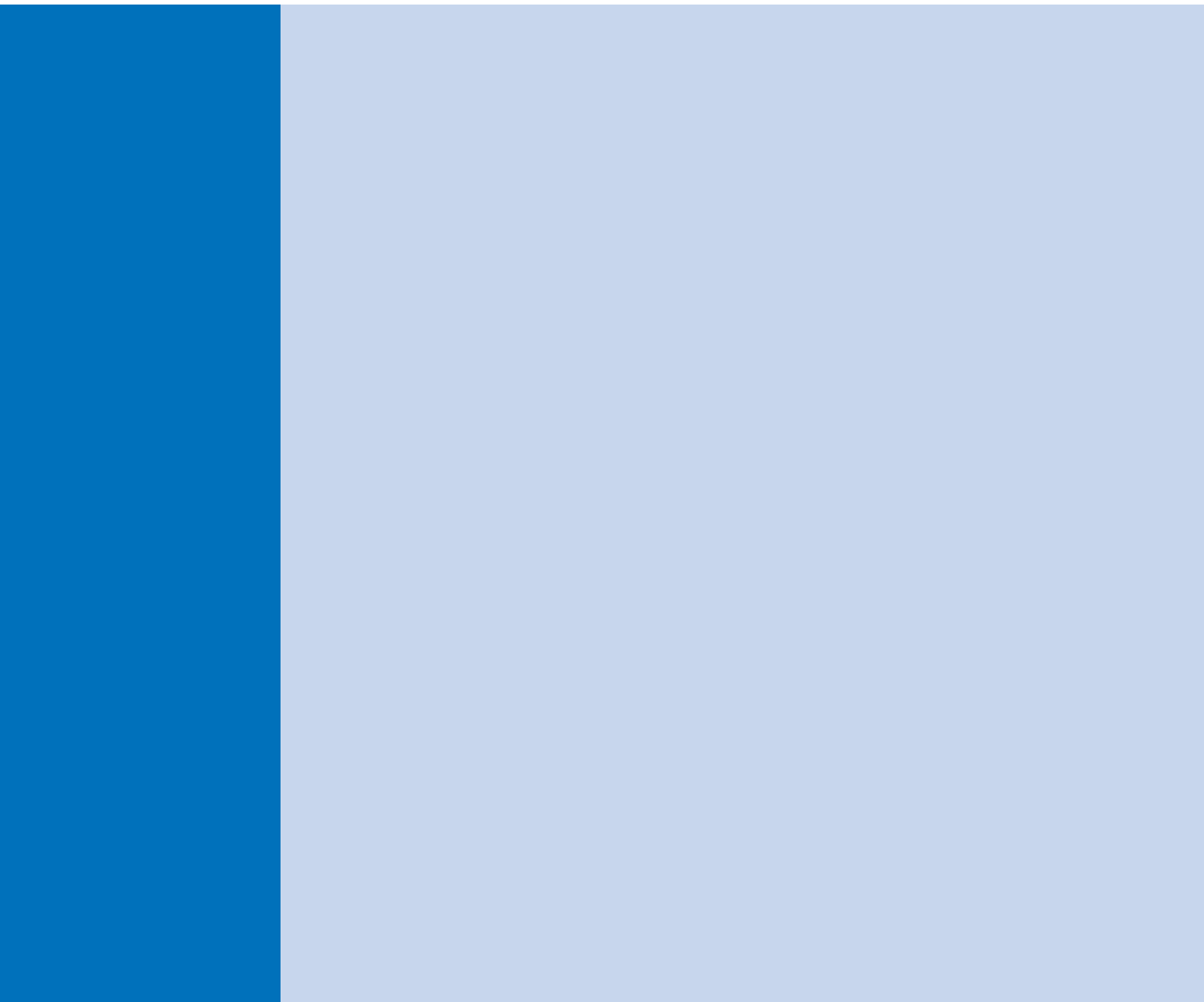
**Our approach to justice** sets out our Vision for Justice in Scotland and the progress we have made in working towards meeting our aims, and how that would be strengthened by the increase in powers and responsibility that would be gained through independence.

**Justice in an independent Scotland** looks at how we would develop our justice system to encompass those areas that are currently reserved.

**Making a difference** describes how Scotland could use the powers of independence to improve outcomes for people and communities.

**Strengthening cooperation** sets out how we would work with the UK, EU, and internationally to tackle the increasingly international threats from crime.

# Our approach to justice



In February 2022 the Scottish Government published the Vision for Justice in Scotland,<sup>10</sup> which was endorsed by our partners on the National Justice Board.<sup>11</sup>

The vision has five aims that span criminal, civil, and administrative justice, with a focus on creating safer communities and shifting societal attitudes and circumstances which perpetuate crime and harm:

- **Safe:** we have a society in which people feel, and are, safer in their communities
- **Prevention and early intervention:** we work together to address the underlying causes of crime and support everyone to live full and healthy lives
- **Person-centred and trauma-informed:** we have effective, modern, person-centred and trauma-informed approaches to justice in which everyone can have trust, including as victims, those accused of crimes, and as individuals in civil disputes
- **Rehabilitation:** we support rehabilitation, use custody only where there is no alternative, and work to reduce reoffending and revictimisation
- **Transform:** we address the on-going impact of the COVID-19 pandemic and continue to renew and transform justice

The vision is an evolution of previous strategies and built on the positive progress that had been made in fostering safer communities, reducing crime and reoffending, modernising the justice sector, and supporting people in rehabilitation.<sup>12</sup> Recognising that there are still challenges remaining,<sup>13</sup> this Scottish Government's vision of a just, safe, resilient Scotland continues to focus reform efforts on prevention and early intervention while addressing the needs of all users, and empowering our people and communities to exercise their rights and responsibilities to resolve disputes and other civil justice problems at the earliest opportunity.

The Scottish Government's approach to justice seeks, where appropriate, to deal with many issues as public health issues rather than justice ones. Independence would enable Scotland to further embed this approach in areas that are currently reserved, including drug policy reform.

Published alongside the Vision for Justice in Scotland was a Year One Delivery Plan,<sup>14</sup> with a subsequent Three Year Delivery Plan published in November 2023.<sup>15</sup> The plans set out how we will meet the aims and were developed in collaboration with partners across the justice sector. The latter sets out an ambitious programme of reforms that are being taken forward to March 2026, and puts a fresh focus on early intervention to prevent and reduce crime to make communities safer.

## Justice achievements

There has been substantial improvement in many areas across the justice system. Much work still requires to be done as shown in our ambitious delivery plans. However, there is much of which Scotland can be proud.

In relation to levels of crime:

- in 2022-23 police recorded crime<sup>16</sup> was at one of the lowest levels seen since 1974, and is down 42% since 2006-07. Over the past ten years (since 2013-14), total recorded crime in Scotland has decreased by 13%<sup>17</sup> - this continues a generally decreasing trend in recorded crime over the longer term, from a peak in 1991
- the Scottish Crime and Justice Survey 2021/22<sup>18</sup> estimates that crime has fallen by 53% since 2008-09

- there were 52 homicide victims recorded by the police in Scotland in 2022-23,<sup>19</sup> the lowest number since comparable records began in 1976 - for all the 52 homicide victims recorded in 2022-23, the associated case was solved
- we have seen reductions in the number of under 18 -year-olds prosecuted in court and sentenced to custody. Between 2008-09 and 2019-20 (the most recent statistics available that are unaffected by the impact of the COVID-19 pandemic on court business), there was an 85% reduction in the number of children and young people prosecuted in Scotland's courts and a 93% reduction in 16-and 17-year-olds being sentenced to custody<sup>20</sup>

The Scottish Government has:

- created a single police and fire service through the Police and Fire Reform (Scotland) Act 2012,<sup>21</sup> one of the most significant pieces of public service reform to have ever taken place in Scotland
- introduced the world leading<sup>22</sup> Domestic Abuse (Scotland) Act 2018<sup>23</sup> that makes psychological domestic abuse and controlling behaviour a crime
- published the first-ever Violence Prevention Framework for Scotland,<sup>24</sup> supported by over £2 million investment<sup>25</sup> to take forward some priority activity to help build safer communities for everyone
- awarded £48 million to victims' organisations over three years as part of our commitment to putting victims at the heart of the justice system, with over 20 organisations benefitting from the new Victim Centred Approach Fund for 2022-25<sup>26</sup>
- extended the presumption against short sentences to 12 months or less in 2019 to enable a further shift away from ineffective short custodial sentences and help prevent reoffending – such sentences often disrupt factors that can help prevent offending, including family relationship, housing, employment and access to healthcare and support<sup>27</sup>
- published a revised National Strategy for Community Justice,<sup>28</sup> along with a delivery plan and performance framework, to drive further improvement work and support the long-standing ambition to encourage more widespread use of community interventions as an alternative to custody
- launched the Trauma-Informed Justice framework<sup>29</sup> in May 2023, providing the foundation for training across justice, in order to improve the experience of victims and witnesses, and reduce retraumatisation
- introduced new, improved facilities that are designed to meet the specific needs of women in custody, focusing on rehabilitation and reducing reoffending, including the opening of HMP & YOI Stirling<sup>30</sup> and community custody units in Dundee and Glasgow, supporting the delivery of trauma-informed care and management for women in custody
- promoted technological innovation including the Digital Evidence Sharing Capability Programme,<sup>31</sup> currently in pilot in Dundee, which will provide a modern and innovative route for digital evidence submission into Police Scotland and the criminal justice system as a whole

## A commitment to human rights and the ECHR

As set out in 'Building a New Scotland: An independent Scotland's place in the world',<sup>32</sup> the rights set out in the European Convention on Human Rights (ECHR)<sup>33</sup> are already part of domestic law and cases can be heard in the Scottish courts, with an option for individuals also to apply to the European Court of Human Rights in Strasbourg for judicial remedy.

These rights would be at risk were the UK Government to withdraw from the ECHR, a move that would place the UK alongside Russia and Belarus as the only countries in Europe not signed up to this fundamental treaty.<sup>34</sup>

Far from withdrawing from human rights commitments and institutions, Scotland wants to go further. In 2021, the Scottish Parliament voted unanimously<sup>35</sup> to incorporate the UN Convention on the Rights of the Child (UNCRC)<sup>36</sup> into Scots law so that those rights too can be directly justiciable in Scottish courts. However, as noted in 'Building a New Scotland: Creating a modern constitution for an independent Scotland',<sup>37</sup> the powers of the Scottish Parliament to protect and promote human rights even in devolved areas are limited. In October 2021, the UK Supreme Court judgment on the UNCRC Bill<sup>38</sup> found that some provisions were outwith the legislative competence of the Scottish Parliament. This followed a reference to the court made by the UK Law Officers.

Following that judgment, the Bill was amended and in June 2023, the Cabinet Secretary for Social Justice gave an update to Parliament on the Bill<sup>39</sup> providing clarity about how the compatibility duty, which makes it unlawful for a public authority to act in a way that is incompatible with the UNCRC requirements, would be amended.

The conclusion was that the most effective coverage for the compatibility duty was for it to apply only when public authorities are delivering duties under powers in an Act of the Scottish Parliament.

The Scottish Parliament unanimously passed the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill for the second time in December 2023.<sup>40</sup> The Bill received Royal Assent on 16 January 2024 and is now the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act.<sup>41</sup>

As set out in 'Building a New Scotland: Education and lifelong learning in an independent Scotland',<sup>42</sup> with the powers of an independent country, the Scottish Government would be able to incorporate – in full – the UNCRC into Scots law, further enhancing children's rights. This commitment, combined with our approach to implementing Getting it Right for Every Child,<sup>43</sup> aims to provide all children and young people with the best possible foundations for learning, regardless of their circumstance. 'Building a New Scotland: Creating a modern constitution for an independent Scotland'<sup>44</sup> sets out the intention to extend this approach by bringing forward further legislation to incorporate a further four human rights treaties into Scots law, as far as possible within devolved competence.

That paper also sets out that with independence, Scotland would have the opportunity to become a state party to treaties, conventions or agreements which the UK has not signed or ratified. That includes being able to identify areas where we could do things differently or go further than the UK, for the benefit of Scotland and our partners around the world.

As we set out in ‘Building a New Scotland: Creating a modern constitution for an independent Scotland’,<sup>45</sup> independence “would help Scotland to secure rights and further embed equality by putting them at the heart of its constitution”. This Government proposes that the interim constitution of an independent Scotland:

would embed human rights set out in the European Convention on Human Rights (ECHR), as well as the core international human rights treaties relating to economic, social, and cultural rights and the rights of children, women, minority ethnic communities, disabled people, and refugees, and the right to a healthy environment. The interim constitution would include a right to access a system of healthcare free at the point of need, and protect workers’ rights, including the right to strike. It would also embed equality safeguards and include a duty to advance equality of opportunity for all.<sup>46</sup>

# Justice in an independent Scotland



## Scotland's justice system

As set out in 'Building a New Scotland: Creating a modern constitution for an independent Scotland',<sup>47</sup> the Scottish Government would support a permanent constitution setting out and protecting fundamental values, such as the sovereignty of the people of Scotland, human dignity, equality, the rule of law, freedom, democracy, and justice.

Scotland has a long tradition of delivering effective justice - a reputation of which we are rightly proud – as set out in the Vision for Justice in Scotland.<sup>48</sup> It is a system that is largely devolved with its own courts, tribunals, judiciary, prosecution service, police service, prisons, fire and rescue service, and other justice agencies, as well as its own legal profession. Scotland's distinctiveness as a legal jurisdiction long pre-dates devolution and was preserved in the Acts of Union 1707.<sup>49</sup>

The Scotland Act 1998<sup>50</sup> saw powers for the Scottish justice system transferred to the Scottish Parliament. However, some legislative powers remain with the UK Government for example criminal law relating to firearms, and drug policy reform.<sup>51</sup>

The following sections set out how this Scottish Government would develop aspects of the existing justice system to meet the needs of an independent Scotland.

## Judiciary and courts

An independent judiciary<sup>52</sup> is a cornerstone of a fair and just society and this, alongside the independence of the Lord Advocate,<sup>53</sup> would be ensured in an independent Scotland. Scotland has a well-established and well-respected judiciary able to make carefully considered decisions without interference or influence from government or politicians.<sup>54,55</sup> The senior judge and head of the judiciary is the Lord President of the Court of Session. The judiciary includes a number of Judges of the Supreme Courts; Sheriffs Principal; Sheriffs; and Summary Sheriffs. They have a jurisdiction which encompasses civil and criminal cases. Most cases are heard at sheriff court level and the highest courts in Scotland are the Court of Session for civil cases and the High Court for criminal. Cases at first instance and appeals are heard within the courts in Scotland. However, some decisions can be appealed to the UK Supreme Court.

The UK Supreme Court is currently the highest court of appeal in relation to Scottish civil cases. However, an appellant must obtain permission to appeal from the Court of Session or in certain cases, if permission is refused, from the UK Supreme Court. In Scottish criminal cases, the High Court of Justiciary sitting as an appeal court is the final court of appeal. Its decisions are not subject to review by the UK Supreme Court. However, there is one limited exception to this rule: the UK Supreme Court may consider 'devolution issues' arising in Scottish criminal cases. Some devolution issues arising in criminal cases have now become 'compatibility issues' under the Scotland Act 2012.<sup>56</sup> However, it remains the case that the UK Supreme Court may not review the decisions of the High Court simply on matters of Scots criminal law.<sup>57</sup>

The courts in Scotland are supported by the Scottish Courts and Tribunals Service<sup>58</sup> which is an independent body corporate established by the Judiciary and Courts (Scotland) Act 2008,<sup>59</sup> headed by the Lord President.

As set out in 'Building a New Scotland: Creating a modern constitution for an independent Scotland'<sup>60</sup> the key structures of Scotland's devolved justice system would remain in place as part of an interim constitution. There would continue to be an independent judiciary and a robust and independent system of criminal prosecution and investigation of deaths, headed by the Lord Advocate. The independence and role of the Lord Advocate would be statutorily guaranteed.

The Court of Session (for civil matters) and the High Court of Justiciary (for criminal matters) would continue as the most senior courts in Scotland and collectively would become the Supreme Court of Scotland, replacing the current role of the UK Supreme Court. As set out in 'Building a New Scotland: Creating a modern constitution for an independent Scotland'<sup>61</sup> the development of a permanent written constitution would be an opportunity to consider the role of these courts in relation to enforcement of the constitution and the rights that arise under it. Consideration would be given to the role of the courts and the desirability of creating a specialised Constitutional Court for these matters.

## Tribunals

Tribunals are a central part of the Scottish justice system and play a vital role in protecting people's rights. People can go to a tribunal if they want to challenge a decision that affects them. Tribunals tend to be less formal and more accessible than the courts.<sup>62</sup> Whilst there is unlikely to be much change to Scotland's courts after independence, this would not be the case for our tribunals. The Tribunals (Scotland) Act 2014<sup>63</sup> created a new simplified statutory framework for tribunals in Scotland, bringing existing jurisdictions together and providing a structure for new ones. The Act created two new tribunals, the First-Tier Tribunal for Scotland and the Upper Tribunal for Scotland. The Lord President is the head of the Scottish Tribunals.

Whilst there are many areas covered by tribunals in Scotland including: housing and property, local taxation, health, and education, there are around 30 reserved tribunals where responsibility would require to be transferred to an independent Scotland.

Independence will mean that all aspects of the laws, rights, and duties pertaining to tribunals will be the responsibility of the Scottish Courts and Tribunal Service. Independence will mean that Scotland would be able to establish its own tribunals for social security, employment, and immigration and asylum, and consider how best to configure and manage the range of tribunal responsibilities that will transfer from Westminster.<sup>64</sup> Independence would bring benefits in streamlining the tribunals system and focusing on meeting the needs of the people of Scotland.

The Smith Commission Agreement<sup>65</sup> in 2014, outlined that the operation and management of the majority of reserved tribunals would be devolved – with the exception of a few that have national security implications.

In taking forward the development of the necessary legislative vehicle, the UK Government has adopted an approach which means that the continued effective operation of the tribunals across the UK will require a degree of coordination between the jurisdictions, particularly in relation to retaining some common rules and time limits.

The preferred approach is for a concordat agreement to be developed between both governments setting out the continued cooperation and coordination in relation to the development of new and existing rules. This includes the need for consultation and the need for a transfer of funds from one jurisdiction to another if new approaches or rules lead to costs elsewhere. The agreement of a concordat on this basis is an integral part of the UK's offer on devolution. There is an inherent risk with this approach that whilst operation and management of the tribunals would be devolved, the ability of Scottish Ministers to take an alternative approach may be limited without being seen to break the terms of a concordat agreement.

The limitations of the devolution of reserved tribunals under the Smith Commission would not exist in a transfer to an independent Scotland. Independence would also ensure this transfer of powers, which has not yet progressed, takes place.

The laws governing the underlying substantive rights and duties would be the responsibility of the Scottish Parliament. Whilst a degree of coordination with the UK tribunal system is likely to still be desirable, Scottish Ministers would not be bound to retain common rules and time limits where divergence in these matters was considered preferable.

The tribunals which would not transfer under the Smith Commission Agreement would transfer with independence giving Scotland a coherent and unified tribunal system, including the Special Immigration Appeals Commission, Proscribed Organisations Appeals Commission, Pathogens Access Appeals Commission, and the Investigatory Powers Tribunal.

## Policing and security

Police Scotland was established in 2013 by the Police and Fire Reform (Scotland) Act 2012,<sup>66</sup> with a single police service replacing the previous eight service model, immediately becoming the second largest police service in the UK. Within Police Scotland there are 13 local policing divisions, each headed by a Chief Superintendent who ensures that local policing in each area is responsive, accountable and tailored to meet local needs. Each division encompasses response officers, community officers, local crime investigation, public protection, and local intelligence.

One of the advantages of having a single police service is the operational capability it can bring to bear in areas such as serious organised crime, where the local policing divisions are supported by national specialist divisions.<sup>67</sup> The Specialist Crime Division provides investigative and intelligence functions such as Major Crime Investigation, Public Protection, Organised Crime, Counter-Terrorism, Intelligence, and Safer Communities. The Operational Support Division provides specialist support functions such as Road Policing, Firearms, Public Order, Air Support, Marine Policing, Dogs, and Mounted Branch, as well as Emergency and Events Planning. These national divisions ensure every community in Scotland has access to specialist policing services.

Police Scotland takes a rights-based approach to policing<sup>68</sup> and one area where this is specifically important is around groups' right to protest. The rights to peaceful public assembly and freedom of expression are important rights that the Scottish Government is committed to uphold.<sup>69</sup> They are at the heart of all healthy democracies and allow us to express our feelings and identity by protesting about issues that concern us, and to celebrate culture and hold memorials to those who have been important in our lives. It is right that all of our communities should be able to participate in such activity.

The British Transport Police (BTP) in Scotland currently operates under a joint governance arrangement between the Scottish and UK Governments. The BTP Division in Scotland is integrated into the wider structure of the BTP, which operates on a GB-wide basis. In the event of a vote for independence, arrangements would be made to transfer BTP officers, staff and operations in Scotland to sit within Police Scotland. This would be done in a way that respects the specialisms and skills of BTP Scotland officers and which maintains safety and security on our railways.

As highlighted in the 'Building a New Scotland: An independent Scotland's place in the world',<sup>70</sup> this government believes that the best guarantee of security and stability for an independent Scotland is through strong relationships with our neighbours in these islands, Europe, and internationally.

An independent Scotland's intelligence needs in this area would be met by the establishment of a single Scottish Security and Intelligence Agency which would significantly expand our security and intelligence capability. This new body would support Scotland's role as a good global citizen,

contributing to national security whilst promoting and protecting human rights, the rule of law, and democratic values. As in all other aspects of an independent Scotland, national security would be delivered in line with Scotland's values, with institutions that would be accountable to Ministers and subject to scrutiny by Parliament, with an independent oversight mechanism to ensure transparent examination of the most delicate matters whilst respecting the need to protect sensitive information.

The specific capability of this agency would be informed by a comprehensive strategic threat assessment following a vote for independence, but the key functions it would deliver and how it would operate are already clear. A Scottish Security and Intelligence Agency would, at a minimum, undertake:

- risk and threat assessments
- investigation of threats
- liaison with Police Scotland and others (including the military), the UK, and internationally
- intelligence gathering, receipt, and handling
- production of open-source intelligence assessment and analysis
- protection of Scotland's critical infrastructure
- cyber security functions
- monitoring of, and response to, threats to the democratic process
- protection of classified material
- security of 'Information Agreements' with the EU and other key allies

## **Prisons and reducing reoffending**

There will always be a need for prison in our justice system. Prisons are a crucial component of the justice system and vital for supporting rehabilitation. However, The Scottish Government recognises that Scotland's prison population, like that in England and Wales, is among the highest per capita in Western Europe.<sup>71</sup> This Government will therefore continue to work to reduce the demand on prisons. Community interventions are more effective than short prison sentences at addressing offending behaviour and breaking the cycle of reoffending, although it should be noted that those who receive community sentences have often committed less serious crimes.<sup>72</sup> Official statistics show that those released from a short prison sentence of 12 months or less are reconvicted nearly twice as often than those sentenced to serve community payback orders.<sup>73</sup> Prison can by its very nature disrupt factors that can help prevent offending, including family relationships, housing, employment, and access to healthcare and support.<sup>74</sup> That is why shifting the balance between custodial and community disposals remains at the heart of our Vision for Justice in Scotland<sup>75</sup> and our National Strategy for Community Justice.<sup>76</sup>

Responsibility for prisons is devolved. The Scottish Prison Service (SPS) currently operates sixteen prisons across the estate, with one prison operated by a private contractor.<sup>77</sup> SPS is responsible for ensuring a safe and secure environment for all prisoners and staff, delivering a range of services in a way that is person-centred, inclusive, trauma-informed, and rights-based.<sup>78</sup>

In an independent Scotland, the health, safety, and wellbeing of everyone living and working in Scotland's prisons will remain a top priority. It would be this Scottish Government's intention that all prisons would be managed and operated as a public service and not be driven by profit. The Scottish Government policy on this is clear and this is why in 2024 this government ensured the safe and smooth transfer of HMP Kilmarnock, which was operated under a contract for 25 years since opening in 1999, into public ownership from a private provider.<sup>79</sup>

With independence the current Scottish Government would maintain the policy of prison officers having a right to strike, which is different from the rest of the UK.

The full powers of independence could also allow a future government to consider issues such as the retirement age for prison officers. This is currently set by the reserved Civil Service pension scheme and means prison officers carry out frontline operational duties, including control and restraint, until the State Pension Age, which is due to rise to age 68.<sup>80</sup>

The Scottish Government works to ensure the Scottish Prison Service has the resources required to respond to the dynamic, demand-led and extremely complex landscape in which they operate. The government continues to invest in the modernisation of the prison estate, having recently opened a new, state of the art female prison at HMP Stirling,<sup>81</sup> as well as two pioneering community custodial units for women. In addition, replacements for HMP Inverness and HMP Barlinnie are being progressed. In an independent Scotland, there would be no change to the government's work to continue to modernise the prison estate, ensuring prisons remain safe, secure environments while effectively supporting rehabilitation and contributing to our wider ambitions such as net zero.<sup>82</sup>

## Violence against women and girls

The Scottish Government remains committed to preventing and eradicating violence against women and girls as set out in the refreshed Equally Safe Strategy (2023).<sup>83</sup> We want men to desist from all forms of violence against women and girls and perpetrators of such violence to receive a robust and effective response, including early intervention and prevention. Those who perpetrate violence and abuse against women, the majority of whom are men,<sup>84,85</sup> must face up to their actions and accept responsibility<sup>86</sup> and it is only through fundamental societal change that women can be protected.<sup>87</sup>

This is also a key part of delivering 'Scotland's strategic approach to challenging and deterring men's demand for prostitution and supporting the recovery and sustainable exit of those involved in prostitution'.<sup>88</sup> Lived experience research<sup>89</sup> that informed our approach highlighted the need to promote social inclusion and the importance of tackling stigma, with this being at the heart of the new support pathway pilot that will begin in summer 2024.<sup>90</sup> We have also taken learnings from other international jurisdictions to inform this approach.<sup>91</sup>

To that end we are working with justice partners to promote a system which identifies and addresses gender biases and encourages women's active participation at all levels of the criminal justice system. The Vision for Justice confirmed the aim for a justice system which prioritises the experience of victims, and places women and children at the heart of service delivery. It also recognises and supports 'Equally Safe',<sup>92</sup> Scotland's strategy for preventing and eradicating violence against women and girls. The strategy sets out a vision to prevent violence from occurring in the first place, build the capability and capacity of support services, and strengthen the justice response to victims and perpetrators.

The Women in Justice Leadership Panel report,<sup>93</sup> recognised that there is a need to improve gender and intersectional data collection and research across the justice system as well as deeper and meaningful engagement with women and girls with experience of the justice system. The report will promote the development of strategic outcomes which can guide and enhance the scope and uptake for gender competent policy making and the design of justice policies which can go further for women and help achieve our Vision for Justice in Scotland<sup>94</sup>. Outputs from the Panel will inform, and complement, this work and our transformational reforms.

The Scottish Government is investing funding to support victims through a range of front-line specialist services. Our Victim-Centred Approach Fund<sup>95</sup> will provide £48m to 23 organisations across Scotland over the period of 2022 to 2025. This includes £18.5 million for specialist advocacy support for survivors of gender-based violence. Our Delivering Equally Safe Fund<sup>96</sup> provides £19 million annually to 121 projects combatting violence against women.

More recently the Scottish Government launched a pilot which will allow complainers in High Court sexual offences cases to have free access to transcripts of their court cases.<sup>97</sup> This initiative was progressed having listened to campaigners and survivors' concerns<sup>98</sup> about the financial challenges associated with access to transcripts and how overcoming those barriers would form part of their recovery process.

It is important that we continue to listen to the experience of victims and their families and consider further improvements that can be made. We are committed to improving the police and health care response for people who have experienced rape or sexual assault.<sup>99</sup> This Scottish Government disagrees with the UK Government's reservation which exempts migrant women from the protections afforded by the Istanbul Convention.<sup>100</sup>

## Counter-terrorism

In an independent Scotland, all counter-terrorism legislation making powers would come to the Scottish Parliament, allowing decisions to be made in line with Scotland's values of promoting and protecting human rights, the rule of law and democratic values. This could include further consideration of the powers currently lying with the UK Government such as those outlined in the Counter-Terrorism and Security Act 2015<sup>101</sup> and the Terrorism Prevention and Investigation Measures Act 2011.<sup>102</sup>

The Scottish Government already operates a devolved version of the CONTEST counter-terrorism strategic coordination approach, as well as delivering many devolved aspects of the CONTEST strategy.<sup>103</sup> In an independent Scotland this would be expanded to cover those areas which are currently reserved and incorporate the activities of the new security and intelligence agency as set out earlier in this paper. Our aim would be to deliver continuity in policy as far as possible.

We would want to continue close liaison with other UK law enforcement agencies and want our future relationship to be governed by Memoranda of Understanding between Scottish policing and security bodies and their UK equivalents (including the National Crime Agency) as we would with other countries. As set out later in this paper, there is the opportunity to improve access to EU structures and tools in this area which have the potential to enhance security.

## Cyber security

The adoption and use of digital technologies have increased rapidly in recent years, and this has benefitted the country hugely. However, alongside this digital transformation there have been changes in the types of threat we are now seeing, such as fraud increasingly moving online.<sup>104</sup> Threats to our democracy and way of life no longer come only from ground, sea, or air. Conflict is both physical and virtual and there have been several instances of the use of cyber to undermine elections and the democratic process.<sup>105</sup>

We want to ensure we are ready for what lies ahead as we become even more reliant on the internet and digital technologies and the cyber threat becomes more sophisticated. It will be of the utmost importance to keep Scotland safe: enabling us to defend our democracy and counter high levels of malicious state and criminal activity. We will want and need the capabilities, the networks, the relationships and the approaches to keep Scotland safe, secure, and resilient.

As set out in ‘Building a New Scotland: An independent Scotland’s place in the world’,<sup>106</sup> these objectives are eminently achievable. Following the restoration of its independence, Estonia, with a population only a quarter that of Scotland,<sup>107</sup> has become an exemplar for secure digital public services and has demonstrated that small states can outperform their bigger neighbours when it comes to security.<sup>108</sup> The paper also provides further information on the cyber resilience aspects of our proposals.<sup>109</sup>

## Border control

As set out in ‘Building a New Scotland: Migration to Scotland after independence’<sup>110</sup> there would be a new body established with overall responsibility for border security – the Scottish Immigration and Border Agency (SIMBA). The Scottish Government would seek to cooperate with UK and Ireland on matters related to border control and, whilst Scotland would not be part of border control elements of the Schengen Agreement because of the Common Travel Area, even as an EU member state, the government would collaborate on EU migration policy and would fully participate in EU refugee resettlement and relocation initiatives.

The migration paper also sets out that responsibility for immigration and asylum tribunals would transfer from HM Courts and Tribunals Service to the Scottish Courts and Tribunals Service. With this responsibility, better outcomes for migrants would be sought through simplifying the immigration system and empowering and training caseworkers to make better decisions.<sup>111</sup> As noted in the migration paper, prior to the pandemic, three-quarters of all judicial reviews initiated at the Court of Session were related to immigration decisions.<sup>112</sup>

That migration paper also sets out an important opportunity from independence which is to implement effective alternatives to detention and removal. Detention should only be used sparingly and only when justifiable. These alternatives would seek to provide a better balance between the rights of individuals and the duty to protect the public. As with the approach to justice, dignity, respect, and fairness would be at the heart of Scotland’s approach to enforcement, as it would for all aspects of the immigration system.

# Making a difference



Independence is about more than building the structures needed for a functioning state. There are a number of opportunities arising from independence which would be available to seize. In doing so, we would be building on Scotland's strong track record in justice outcomes.<sup>113 114</sup> For example, as outlined earlier in this paper, we have seen the level of recorded crime falling to near 50-year lows<sup>115</sup> and homicide at the lowest levels since comparable records began.<sup>116</sup> We have taken concerted action to focus on Scottish needs and circumstances as well as establishing a preventative approach through initiatives like the Scottish Violence Reduction Unit.<sup>117</sup> Independence would provide the opportunity to apply this to a number of currently reserved areas.

We know that to address the causes of crime Scotland's public services together must tackle societal inequalities such as child poverty, mental ill health, addiction, and adverse childhood experiences.<sup>118</sup> The broader economic, employment, and social security powers that will come with independence, as set out throughout the Building a New Scotland series of papers,<sup>119</sup> mean that we can take a more effective approach to improving justice outcomes, reducing burdens on the justice system and reducing the number of victims of crime.

## Serious organised crime

Organised crime is a global issue, meaning that Police Scotland and the Crown Office and Procurator Fiscal Service (COPFS) already work closely with partners in the rest of the UK, Ireland and internationally to tackle serious organised crime groups whether based in Scotland or elsewhere. Collaboration was at the heart of our vision for the Scottish Crime Campus at Gartcosh. Initially, this saw Police Scotland, COPFS, Scottish Police Authority (SPA) Forensics, the National Crime Agency, and HMRC come together in a building designed to encourage collaboration and information sharing. The collaborative model has continued to evolve. Eighteen law enforcement agencies are now represented under one roof and we will continue to build on that partnership approach to tackling serious organised crime.

The organised crime landscape is currently complex with a mixture of UK and Scottish legislation, agencies, and policies. In addition, some key tools have been removed from Scottish bodies as a result of Brexit.<sup>120</sup> While the UK-EU Trade and Cooperation Agreement<sup>121</sup> goes some way to remedying that capability gap, it cannot provide for the level of cooperation that Scotland previously enjoyed when part of the EU.

While operational cooperation is currently good,<sup>122</sup> we believe there is scope to simplify this landscape and make it more effective through independence. Our focus would be on simplifying the policy and legislative landscape, restoring EU cooperation and tools, and ensuring a streamlined operational landscape with minimum interfaces. By doing so, our aim would be to make our justice response to a serious threat to our communities<sup>123</sup> more effective over time.

As noted in 'Building a New Scotland: An independent Scotland in the EU',<sup>124</sup> by participating fully as an independent state in EU police and judicial cooperation systems, we would improve intelligence and information-sharing with other EU member states' police forces and public prosecutors. Regaining access to tools such as the Schengen Information System and European Arrest Warrant would mean Scotland's police and prosecutors are better equipped with more tools to combat increasingly sophisticated criminal networks.<sup>125</sup>

## Firearms

Air weapons licensing was devolved under the Scotland Act 2012.<sup>126</sup> Following that, in 2016 the Scottish Government introduced a system of air weapon licensing under the Air Weapons and Licensing (Scotland) Act 2015.<sup>127</sup> As such, Scotland is the only part of Great Britain to licence air weapons, and air weapon licensing gives Police Scotland the power to remove potentially deadly weapons from the hands of those who cannot safely possess them. The latest published firearms offence statistics (for 2021-22) showed that, since the introduction of the licencing legislation in 2015 we have seen offences involving an air weapon fall by over a half from 190 to 83 offences.<sup>128</sup>

Aside from air weapons, the remainder of firearms law is reserved, and its implementation is a matter for the Chief Constable of Police Scotland. If the Scottish Government had full responsibility for firearms legislation, we would give early consideration to:

- aligning the requirements for a shotgun certificate with the requirements for a firearm certificate
- introducing a minimum age for a shotgun certificate
- reviewing additional regulation of High-Energy Rifles (capable of muzzle energies in excess of 10,000 foot-pounds), including consideration of a ban on civilian ownership

## Human trafficking and anti-slavery

The Human Trafficking and Exploitation (Scotland) Act 2015,<sup>129</sup> which was passed unanimously by the Scottish Parliament,<sup>130</sup> gives police and prosecutors greater powers to detect and bring to justice those responsible for trafficking as well as strengthening protections for survivors.

Sections 9 and 10 of the 2015 Act require Scottish Ministers to secure support and assistance for adult victims of human trafficking where there are reasonable grounds (as currently determined through the National Referral Mechanism) to believe an adult is a victim of human trafficking and/or slavery, servitude, and forced or compulsory labour.

Under the Scotland Act 1998,<sup>131</sup> implementation of international law in non-reserved areas is devolved. This means that the Scottish Ministers have obligations to determine how victims of trafficking are identified and subsequently supported. The Human Trafficking and Exploitation (Scotland) Act 2015<sup>132</sup> places this on a statutory basis. However, recent UK Government legislation intends to prevent potential victims of trafficking, who are deemed to have entered the UK 'illegally', accessing the safety and support available under our devolved legislation.

The UK Government's 'hostile environment' has included successive pieces of legislation (Nationality and Borders Act 2022<sup>133</sup> and Illegal Migration Act 2023 (IMA))<sup>134</sup> which appear intended to erode the rights of potential victims of human trafficking in the UK. For example, the provisions within the IMA seek to disapply sections 9 and 10 of the Human Trafficking and Exploitation (Scotland) Act 2015<sup>135</sup> for individuals subject to the removal duty. The UK Parliament's Joint Committee on Human Rights warned<sup>136</sup> during the IMA's passage that it breached the Council of Europe Convention on Action Against Trafficking in Human Beings and is likely to breach obligations on the UK under the European Convention on Human Rights.

In line with 'Building a New Scotland: Migration to Scotland after independence'<sup>137</sup> the Scottish Government is fully committed to tackling human trafficking and exploitation. We believe that by providing safety and a recovery space to victims, we would meet the requirements detailed in the Council of Europe Convention on Action against Trafficking in Human Beings<sup>138</sup> and foster an environment which would provide our law enforcement with the optimum conditions to

disrupt those behind this evil behaviour. We firmly believe that people seeking asylum should be provided with the right to work, have access to employability, and social security support. These key interventions would reduce vulnerability to human trafficking and exploitation.

An independent Scotland could decide whether to carry forward or remove any of the UK's declarations and reservations which qualify the extent to which the provisions of some treaties currently apply to it. This Scottish Government disagrees, for example, with the UK Government's reservation which exempts migrant women from the protections afforded by the Istanbul Convention.<sup>139</sup>

## Drug law reform

In January 2021 the Scottish Government announced a National Mission to reduce drug deaths and improve lives.<sup>140</sup> The Mission takes a holistic, public health response to the challenge. This includes mobilising an emergency response, focusing on harm reduction and preventing fatal overdoses; reducing risk by improving treatment and recovery services; and reducing vulnerability by addressing the social determinants of health by improving access to quality housing, social security, employment, and social connection. It also recognises the need to address stigma, respond to the voices of people with lived and living experience, and support a resilient workforce.

The Scottish Government made an additional £250 million funding available over the duration of this parliament to deliver the National Mission on Drugs<sup>141</sup>.

In Scotland, we continue to view drug use as a health condition and promote a public health approach.<sup>142</sup> However, we are constrained because the law on the control of drugs, set out in the Misuse of Drugs Act 1971,<sup>143</sup> is reserved and limits the effectiveness of our public health approach.<sup>144</sup> It criminalises people who experience the inequalities that drive drug use<sup>145</sup> and presents a barrier to seeking treatment.<sup>146</sup>

In July 2023, the Scottish Government published 'A caring, compassionate and human rights informed drug policy for Scotland'<sup>147</sup> at the Global Commission on Drugs Policy Annual General Meeting which was held in Edinburgh and included former heads of state and heads of government from around the world. The paper outlined what a progressive, evidence-based drugs policy would look like with public health and reduction of harm as its underlying principles.

Key to this is approaching the issue from a public health and human rights, and not a criminal justice, perspective. Reducing drug deaths would not just make us safer - the traditional criminal justice measure of success - but crucially reduce suffering, increase wellbeing, and improve Scotland's health.<sup>148</sup>

It is clear that the Scottish Government's ambition to implement evidence-based policies based on a public health approach is limited by the UK's legal framework within which it must currently operate.

The Scottish Government has repeatedly called for a review of drug laws, including the Misuse of Drugs Act 1971, and has supported the many other calls from experts<sup>149</sup> to do the same. Other UK legislation also limits a public health approach, and in the past we have asked for the exemption in the Equality Act 2010 (Disability) Regulations (2010),<sup>150</sup> which excludes people with substance dependency from the protected characteristic of disability, to be removed.

One of the main proposals that the Scottish Government has consistently called for is the creation of a statutory framework under which Supervised Drug Consumption Facilities (SDCF) would be able to operate. These facilities would provide a supervised and safe space for people who use drugs and give immediate benefits to individuals, their families, and the wider community.<sup>151 152</sup>

However, the UK Government has resisted calls to establish a statutory framework or offer support for an SDCF pilot in Glasgow despite recommendations from the Scottish Affairs Committee of the UK Parliament.<sup>153</sup>

In September 2023, the Lord Advocate responded to a request for a focused statement of prosecution policy in relation to the proposed SDCF facility in Glasgow, which was also provided to the Scottish Parliament's cross-committee on tackling drug deaths and drug harm.<sup>154</sup> In that response, the Lord Advocate said that she would be prepared to issue a public statement of prosecution policy that it would not be in the public interest for people using a pilot SDCF to face prosecution for possession within the facility. This has allowed Glasgow Health and Social Care Partnership to move forward with their plans to establish a pilot SDCF in Glasgow which is due to open in summer 2024. This is a novel approach, and in the absence of a change to, or exemption under, the Misuse of Drugs Act 1971, such a facility will be constrained in ways that SDCFs in other countries are not.<sup>155</sup> Furthermore, the Lord Advocate has only considered her position with regards to the specific proposal put before them regarding the facility in Glasgow. As such, a legislative solution would provide the most certainty for this approach and is what would be taken forward in an independent Scotland.

Other harm reduction proposals that would be taken forward under this government's proposals include a review of the drug classification system and clarification of the law so that services can provide drug paraphernalia legally. Also utilising licensing powers to enable and encourage a full suite of treatment options, including the introduction of drug checking facilities, and the reclassification of naloxone from prescription-only to a pharmacy or general sale medicine.

We recognise that there is not one country in the world that has stopped drugs crossing its borders. There are many factors that have an impact on drug use and the evidence indicates that decriminalisation directs more people into treatment.<sup>156 157</sup> Therefore, and more clearly linked to justice, this Scottish Government has developed proposals to decriminalise some drugs for personal use. However, we are clear that this would not solve the drug crisis by itself but could provide a framework within which the existing policies to help, treat, and support people rather than criminalise, stigmatise and fail them, can be better pursued.

It is clear that the drug market continues to provide revenue to fund other illegal activity,<sup>158</sup> further driving violence and crime in our communities, an analysis of the social costs of drug use in Portugal, which decriminalised drugs in 2001, found that they had dropped by 18% by 2010.<sup>159</sup> Decriminalisation was linked to a 'significant reduction' in costs associated with criminal proceedings when supported by a large-scale support programme.<sup>160</sup> In 2018, Canada shifted from prohibiting and criminalising cannabis to an approach grounded in regulated and controlled access, production, and distribution to minimise the risks and harms for individuals and communities.<sup>161</sup> By the first half of 2023, more than 70% of cannabis consumed in Canada was from a legal source, an increase from 22% in 2018, with the available evidence indicating a substantial displacement of the illicit market.<sup>162</sup> The Global Commission on Drug Policy has predicted that the reach and violence of organised criminals would be significantly reduced with decriminalisation.<sup>163</sup> While not committing to any changes to regulate supply, this government does provide a proposal to explore the relative merits of these ideas through citizen engagement and expert assessment.<sup>164</sup>

The Scottish Government has committed to taking a rights-based approach to transforming the way services and support are delivered. The National Collaborative Charter of Rights<sup>165</sup> aims to empower people affected by substance use so that their voices, and critically, their rights, are acted upon in policy and decision-making at a national level. It will also set out how the rights to be included in a forthcoming Human Rights Bill can be effectively implemented in the drug and alcohol sector.

We have been clear that the simplest and quickest way for these policies to be enacted now would be for the UK Government to change its UK-wide drug laws. Independence would provide Scotland with the necessary powers to achieve the overarching ambition of the Scottish Government National Mission. It would ensure that we could embed a fully-fledged public health approach so that no person finds themselves dependent on substances, but that if they do, they should be supported and not criminalised for that condition.

A fairer, safer, and healthier country must care about all its citizens and be inclusive of those with health conditions such as drug dependence. Future generations, our children and grandchildren, have a right to health and happiness. They have the right to live in a country where they are helped and supported, not stigmatised and punished for their health conditions.

Our proposals present an opportunity to do something different, something bold and progressive, which would make a real difference to people's lives. They build on the international evidence, and set out a policy based on human rights, that prioritises interventions that will work. Independence would provide the opportunity to implement these policies.

## Gambling

Another area where a public health approach would be taken is in relation to gambling laws. Gambling is regulated by the UK Gambling Act 2005,<sup>166</sup> which covers all forms of gambling across the UK and established the UK-wide Gambling Commission.<sup>167</sup> Responsibility for licensing gambling in Scotland lies with local licensing boards and the Gambling Commission. Currently the Scottish Government's ability to take any direct action is limited as gambling is a largely reserved matter, meaning Scottish Ministers currently have very limited powers to direct licensing boards and have no power over the Gambling Commission under the legislation.

An estimated 18,000 adults in Scotland are classed as problem gamblers and a further 68,000 are at risk.<sup>168</sup> These harms affect people's financial wellbeing, relationships, and health. Negative effects can include loss of employment, debt, crime, breakdown of relationships, and the deterioration of physical and mental health.<sup>169</sup> Gambling-related harms are complicated in origin and affect a range of people. These harms are not limited to adults and can be seen in children through gambling-like activities in gaming (such as loot boxes and skin betting) through the games and platforms they access.<sup>170</sup>

With the full powers of an independent nation, the Scottish Government could consider a range of measures, such as raising the legal age of gambling and reviewing how gambling appeals to young people, both online and in person. We know that young people themselves are concerned about gambling harm<sup>171</sup> and we would give them an active role in shaping future policy.

# Strengthening cooperation

## European Union

As noted in 'Building a New Scotland: an independent Scotland in the EU'<sup>172</sup>, Scotland has lost out on access to one of the world's most developed and integrated international justice and crime-fighting ecosystems. For example, the loss of the European Arrest Warrant means many EU member states will no longer surrender their nationals to face justice in Scotland. As a result, some victims of crime in Scotland may have to travel abroad and take part in foreign criminal proceedings in the hope of obtaining justice. Others may not see justice done at all.

Scotland has lost out on access to real time Europe-wide alerts and notices about wanted or missing persons through the EU's Schengen Information System. Police Scotland instead has to use slower, less effective systems to check if people are wanted in the EU for serious crime<sup>173</sup>. Re-joining the EU would allow Scotland to take full advantage of EU law enforcement cooperation and technology to keep Scotland safe.

Since EU exit, measures have had to be brought in to try to replicate, as far as possible, some of the systems to which we no longer have access.

The Scottish Government's vision is for an independent Scotland to apply to join the EU as soon as possible after independence. Re-joining the EU would ensure that Scotland could enjoy the benefits of access to those systems and networks again. As stated in 'Building a New Scotland: An independent Scotland in the EU,' by participating fully as an independent state we would equip Scotland's police and prosecutors with more tools to better combat sophisticated criminal networks.<sup>174</sup>

As a member of the EU, Scotland would play its part in the further development of justice, home affairs, security, and defence policies. Our justice system, with its single national police force and single prosecution authority, is already a contributor to the administration of justice across Europe.<sup>175</sup> We have experience of having a hybrid legal system, straddling both civil and common law traditions. As an EU member state, an independent Scotland could draw on this to contribute to the EU's legal institutions and development of good law.

## International cooperation

As an independent state, Scotland would be expected to play its role in international justice cooperation with other states and partners across the world. Through EU membership, joining the Council of Europe, United Nations, and Interpol, an independent Scotland would expect to see the already good cooperation internationally continue.

An independent Scotland would be able to consider how best to serve its own interests through the deployment of police and prosecution resources abroad.<sup>176</sup> The exact shape, nature, and resourcing of that network would be for the government of an independent Scotland to determine, bearing in mind the threat picture posed by transnational crime at that time.

Becoming independent would change the nature of cooperation between Scottish and UK authorities. Cooperation with the UK would remain important for an independent Scotland. Currently, Scotland's separate legal system and distinct criminal justice system mean that there are already important differences in how Scottish authorities cooperate with their counterparts across the UK. An independent Scotland would seek a comprehensive justice cooperation agreement with the UK, including on extradition, mutual legal assistance, and cross-border operations in order to combat criminality across the UK and ensure criminals cannot escape justice by changing jurisdiction.

There are already arrangements concerning how our police and prosecutors cooperate across the existing jurisdictional border between Scotland and England, and the Scottish Government would expect that similar arrangements would be agreed in the event of independence.

# Conclusion



Scotland has long had its own legal and justice system. It has its own courts, tribunals, judiciary, prosecution service, police service, prisons, as well as its own legal profession. Scotland's distinctiveness as a legal jurisdiction long pre-dates devolution and was preserved in the Acts of Union 1707.<sup>177</sup> We have many strengths and successes to build on, which provide confidence that we can add the remaining elements we would need to deliver fair and effective justice in an independent Scotland.

Our Vision for Justice in Scotland<sup>178</sup> set out the ambition for a just, safe, resilient Scotland. Our reforms are focussed on renewing efforts on prevention and early intervention while addressing the needs of all users and empowering our people and communities to exercise their rights and responsibilities. An approach founded in equality and human rights; that puts people at the centre of what we do; is informed by recognised, credible, and robust evidence; and is taken forward through collaboration and partnership.

In the areas where the UK Government retains control, this can restrict the ability to align policy, legislation, and delivery to fully address the specific needs and circumstances which prevail in Scotland, and to take creative approaches based on a public health approach, where we focus on prevention. And this Government is clear that an independent Scotland should have a framework for human rights law that protects and promotes fundamental freedoms, including the European Convention on Human Rights.

With independence, Scotland would represent itself on the international stage, with a seat at the table at the Council of Europe, United Nations, and Interpol. Through cooperation with our international partners, an independent Scotland would advance our shared objectives, addressing global challenges and working together to tackle sophisticated criminal networks.

Independence would not be to the detriment of the relationships that already exist within these islands. Our separate legal system and distinct criminal justice system mean that there are already arrangements concerning how our police and prosecutors cooperate across the existing jurisdictional border between Scotland and England. Independence would allow us to build on these relationships and forge new ones, working with other nations as equals on our shared goals.

# Endnotes

- 1 Scottish Government (2022) [The Vision for Justice in Scotland](#)
- 2 Scottish Government (2023) [A caring, compassionate and human rights informed drug policy for Scotland](#)
- 3 Walton, B (2022) [A Public Health Approach to Gambling Harms \(The Scottish Parliament\)](#)
- 4 Scottish Government (2022) [Serious Organised Crime strategy](#)
- 5 Scottish Government (2023) [Violence prevention framework](#)
- 6 See Dawson, J and Gower, M (2020) [End of Brexit transition: Security cooperation](#) (House of Commons Library) and House of Lords (2021) [Beyond Brexit: policing, law enforcement and security](#). See also [Letter 25 July 2023 from Baroness Hamwee, Chair Justice and Home Affairs Committee to The Rt Hon Suella Braverman KC MP, Home Secretary regarding the outcome of the Committee's inquiry into Post-Brexit UK-EU security cooperation](#) (UK Parliament)
- 7 Scottish Government (2022) [The Vision for Justice in Scotland](#)
- 8 Scottish Government (2022) [The Vision for Justice in Scotland: Annex C – Evidence Supplement](#)
- 9 See Dawson, J and Gower, M (2020) [End of Brexit transition: Security cooperation](#) (House of Commons Library) and House of Lords (2021) [Beyond Brexit: policing, law enforcement and security](#). See also [Letter 25 July 2023 from Baroness Hamwee, Chair Justice and Home Affairs Committee to The Rt Hon Suella Braverman KC MP, Home Secretary regarding the outcome of the Committee's inquiry into Post-Brexit UK-EU security cooperation](#) (UK Parliament)
- 10 Scottish Government (2022) [The Vision for Justice in Scotland](#)
- 11 The Board includes representation from Community Justice Scotland, Crown Office and Procurator Fiscal Service, Police Scotland, Scottish Children's Reporter Administration, Scottish Courts and Tribunals Service, Scottish Fire and Rescue Service, Scottish Legal Aid Board, Scottish Government and Scottish Prison Service.
- 12 Scottish Government (2022) [Vision for Justice in Scotland: Annex C – Evidence Supplement](#)
- 13 See, for example pages 9 and 10 of Scottish Government (2022) [The Vision for Justice in Scotland](#)
- 14 Scottish Government (2022) [One Year Delivery Plan](#)
- 15 Scottish Government (2023) [Vision for Justice in Scotland: three year delivery plan](#)
- 16 Scottish Government (2023) [Recorded Crime in Scotland, 2022-23](#) Last Accessed (22/04/2024)
- 17 Scottish Government (2023) [Recorded Crime – 2022-23 – Bulletin Tables](#). See Table 5: Number of crimes recorded by the police, Scotland, 1971 to 2022-23. Total recorded crime figures were 497,424 in 2006/07, 331,629 in 2013/14 and 289,362 in 2022/23 Last Accessed (22/04/2024)
- 18 Scottish Government (2023) [Scottish Crime and Justice Survey 2021/22](#) Last Accessed (22/04/2024)
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