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Version finale

**Answer to the
REVISED SCHEME
FOR
EVALUATING JUDICIAL SYSTEMS
2004 Data**

**Réponse à la
GRILLE REVISEE
POUR
L'ÉVALUATION DES SYSTÈMES JUDICIAIRES
Données 2004**

SCOTLAND/ECOSSE



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 15 September 2005

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**EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE
(CEPEJ)**

REVISED SCHEME FOR EVALUATING JUDICIAL SYSTEMS

**adopted by the CEPEJ at its 5th Plenary Meeting (Strasbourg, 15 – 17 June 2005) and
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(936th meeting of the Ministers' Deputies)**

Contents

I. Demographic and economic data	p. 3
I. A. General information.....	p. 3
I. B. Budgetary data concerning judicial system.....	p. 3
II. Access to Justice and to all courts	p. 5
II. A. Legal aid.....	p. 5
II.B. Users of the courts and victims	p. 6
II.B.1. Rights of the users and victims	p. 6
II.B.2. Confidence of citizens in their justice system.....	p. 8
III. Organisation of the court system	p. 9
III.A. Functioning.....	p. 9
III.B. Monitoring and evaluation	p. 13
IV. Fair trial	p. 15
IV.A. Fundamental principles.....	p. 17
IV.B. Timeframes of proceedings	p. 18
IV.B.1. General	p. 18
IV.B.2. Civil and administrative cases.....	p. 19
IV.B.3. Criminal cases.....	p. 19
V. Career of judges and prosecutors	p. 21
V.A. Appointment and training.....	p. 21
V.B. Practice of the profession	p. 24
V.C. Disciplinary procedures	p. 25
VI. Lawyers	p. 27
VII. Alternative Dispute Resolution	p. 30
VIII. Enforcement of court decisions	p. 32
VIII.A. Execution of decisions in civil matters	p. 32
VIII.B. Enforcement of decisions in criminal matters	p. 37
IX. Notaries	p. 38

REVISED SCHEME FOR EVALUATING JUDICIAL SYSTEMS

COUNTRY: Scotland

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I. Demographic and economic data

I. A. General information

- | | | |
|-----------|---|--|
| 1. | Number of inhabitants
Year of reference
<i>Source</i> National Statistics Online | 5,078,400
2005 |
| 2. | Total of annual State public expenditure / where appropriate, public expenditure at regional or federal entity level

Budget
Year of reference
<i>Source</i> www.scotland.gov.uk/publications/2005/12/12113803/38036 | £45.3 Billion estimate
2003-2004 |
| 3. | Per capita GDP
Year of reference
<i>Source</i> http://www.gesource.ac.uk/worldguide/html/1070_economic.html | 24,600 €
2004 |
| 4. | Average gross annual salary
Year of reference
<i>Source</i> http://www.scotland.gov.uk/stats/ses/ses-00m.asp | 33,500 €
2003 |

I. B. Budgetary data concerning judicial system

- | | | |
|-----------|---|---|
| 5. | Total annual budget allocated to all courts
was £64,784,000.

<i>Source</i> www.scotscourts.gov.uk
"publications" – annual report 2004-2005 | net cost of operations 2004-2005 |
|-----------|---|---|

Please specify:

6. **Within this budget, can you isolate the following budgets and specify, if appropriate, their amount:**

	Yes	Amount
▪ Salaries?		£21,920,000 (2004-5)
▪ IT?	x	2.5 million € for Supreme and Sheriff Courts
▪ Justice expenses borne by the State?		€

Year: 2003-2004

Source: Scottish Court Service Headquarters

7. **Annual public budget spent on legal aid** 216 million €

Source **Scottish Legal Aid Board Annual Report 2003/2004**

See also: http://www.slab.org.uk/annual_report/ANNUAL%20REPORT%2020032004.pdf

8. **If possible, please specify:**

▪ the annual public budget spent on legal aid in criminal cases	151.15 million €
▪ the annual public budget spent on legal aid in other court cases	64,78 million €

Source **Scottish Legal Aid Board Annual Report 2003/2004**

See also: http://www.slab.org.uk/annual_report/ANNUAL%20REPORT%2020032004.pdf

9. **Annual public budget spent on prosecution system** 131.3 million €

Source *Crown Office and Procurator Fiscal Service Review 2003/2004*

<http://www.crownoffice.gov.uk/Resource/Doc/13423/0000014.pdf>

10. **Bodies formally responsible for budgets allocated to the courts:**

	Preparation of the budget (Yes/No)	Adoption of the budget (Yes/No)	Management and allocation of the budget among courts (Yes/No)	Evaluation of the use of the budget (Yes/No)
Ministry of Justice	No	No	No	No
Other ministry. Please specify	No	No	No	No
Parliament	No	No	No	No
Supreme Court	No	No	No	No
Judicial Council	No	No	No	No
Courts	Yes	Yes	Yes	Yes
Inspection body. Please specify.	No	No	No	No

Other. Please specify	No	No	No	No
-----------------------	----	----	----	----

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your budgetary system

With regard to question 10 have a look at the following weblink:

<http://194.247.95.101/library5/finance/dbd03-04.asp>

II. Access to Justice and to all courts

II. A. Legal aid

11. Does legal aid concern:

	Criminal cases	Other than criminal cases
Representation in court (Yes/No)	Yes	Yes
Legal advice (Yes/No)	Yes	Yes
Other (Yes/No). Please specify		

Source: Source **Scottish Legal Aid Board Annual Report 2003/2004**

See also: http://www.slab.org.uk/annual_report/ANNUAL%20REPORT%2020032004.pdf

12. Number of legal aid cases:

▪ total	407,156
▪ criminal cases	246,988
▪ other than criminal cases	160,168

Source **Scottish Legal Aid Board Annual Report 2003/2004**

See also: http://www.slab.org.uk/annual_report/ANNUAL%20REPORT%2020032004.pdf

13. In a criminal case, can any individual who does not have sufficient financial means be assisted by a free of charge (or financed by public budget) lawyer?

Yes No

14. Does your country have an income and asset test for granting legal aid:

▪ for criminal cases?	No <input type="checkbox"/>	Yes/Amount <input checked="" type="checkbox"/>	an absolute test:
			income < 120 €
			advocacy assistance < 284 €

- for other than criminal cases? a subjective test

Comment:

Yes, an absolute test in civil cases but a subjective test in criminal cases. Income level: Civil legal aid will be available to a person if the Scottish Legal Aid Board is satisfied that he has probable cause and that it is reasonable in the particular circumstances of the case that he should receive legal aid. The financial limits for 2004-05 below which a contribution is not required are as follows: disposable income of Euro 4,373.72 a year and disposable capital of Euro 9,449. The financial limits for 2004-05 above which civil legal aid is not available are as follows: disposable income of Euro 14,276 a year and disposable capital of Euro 15,754.

Source Citizen Advice Bureau
Scottish Executive

http://www.adviceguide.org.uk/scotland/your_rights/legal_system_scotland/help_with_legal_costs_scotland.htm
<http://www.scotland.gov.uk/library5/justice/srlam-04.asp>

15. In other than criminal cases, is it possible to refuse legal aid for lack of merit of the case (for example for frivolous action)?

Yes No

Comment:

Civil legal aid will be available to a person if the Scottish Legal Aid Board is satisfied that he has probable cause and that it is reasonable in the particular circumstances of the case that he should receive legal aid.

Criminal legal aid is available from a duty solicitor to those appearing from custody; granted by the court in solemn cases if the expenses of the case would cause undue hardship to the accused or their family; and by the Scottish Legal Aid Board in summary cases if it is in the interests of justice and the expenses of the case would cause undue hardship to the accused or their family

Source: <http://www.scotland.gov.uk/library5/justice/srlam-04.asp>

16. If yes, is the decision taken by:

- the court?
- a body external to the court?
- a mixed decision-making body (court and external)?

Yes
 in criminal cases
 in civil cases

Comment:

Civil legal aid will be available to a person if the Scottish Legal Aid Board is satisfied that he has probable cause and that it is reasonable in the particular circumstances of the case that he should receive legal aid.

Criminal legal aid is available from a duty solicitor to those appearing from custody; granted by the court in solemn cases if the expenses of the case would cause undue hardship to the accused or their family; and by the Scottish Legal Aid Board in summary cases if it is in the interests of justice and the expenses of the case would cause undue hardship to the accused or their family

Source: <http://www.scotland.gov.uk/library5/justice/srlam-04.asp>

17. In general are litigants required to pay a court tax or fee to start a proceeding at a court of general jurisdiction:

- for criminal cases? Yes No
- for other than criminal cases? Yes No

If yes, are there exceptions? Please specify:

For other than criminal cases have a look at:

http://europa.eu.int/comm/justice_home/ejn/case_to_court/case_to_court_sco_en.htm

18. Is there a private system of legal expense insurance for individuals in order to finance legal proceedings to court?

No

Yes

x

Please specify:

There is no obligation for legal expense insurance, it is only voluntary.

19. Do judicial decisions have an impact on who bears the legal costs which are paid by the parties during the procedure in:

	Yes	No
▪ criminal cases?	x	
▪ other than criminal cases?	x	

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your legal aid system

weblinks:

<http://www.slab.org.uk/>

<http://www.lawscot.org.uk/>

<http://www.scotcourts.gov.uk/>

http://europa.eu.int/comm/justice_home/ejn/legal_aid/legal_aid_sco_en.htm

The legal aid scheme in Scotland is administered by the Scottish Legal Aid Board (the Board), which is a Non-Departmental Public Body funded by the Scottish Executive There are three types of legal assistance:

- Civil advice and assistance: Oral or written advice on the application of Scots law to any particular circumstances which have arisen in relation to the person seeking advice. It is provided by a solicitor and, where appropriate, by counsel
- Advice by way of representation (ABWOR): A category of advice and assistance that allows for representation by a solicitor or, where appropriate, by counsel in civil proceedings in designated courts and tribunals in Scotland
- Civil legal aid: A separate scheme that allows for representation by a solicitor or, where appropriate, by counsel in civil proceedings in other designated courts and tribunals in Scotland

II. B. Users of the courts and victims

II. B. 1. Rights of the users and victims

20. Are there official internet sites/portals (e.g. Ministry of Justice, etc.) for the following, which the general public may have free of charge access to:

	Yes	No
▪ legal texts (e.g. codes, laws, regulations, etc.)?	x	
Internet address(es): U.K.:	http://www.hmsso.gov.uk	
	http://www.parliament.uk	

▪ case-law of the higher court/s?	x	
Internet address(es): U.K.:	http://www.dca.gov.uk	

- other documents (for examples legal forms)?

Scotland

Internet address(es):

<http://www.scotcourts.gov.uk/index1.asp>

21. Is there an obligation to provide information to the parties concerning the foreseeable timeframe of the proceeding?

Yes

No

If yes, please specify:

There is no obligation to provide information to the parties concerning the foreseeable timeframe of the proceeding, but it is usual in practice to provide such time limits – although in most cases there is nothing specified in a law or a rule.

22. Is there a public and free-of-charge specific information system to inform and to help victims of crimes?

Yes

No

Comments:

See the following web sites:

Home Office:

<http://www.homeoffice.gov.uk/justice/victims/index.html>

Criminal Justice System Online:

<http://www.cjonline.org/virtual/victims.html>

23. **Are there special arrangements to be applied, during judicial proceedings, to the following categories of vulnerable persons:**

	Information mechanism (Yes/No)	Hearing modalities (Yes/No)	Procedural rights (Yes/No)	Other (Yes/No). Please specify
Victims of rape	Yes	Yes	Yes	Yes
Victims of terrorism	Yes	Yes	Yes	Yes
Child/Witness/Victim	Yes	Yes	Yes	Yes
Victims of domestic violence	Yes	Yes	Yes	Yes
Ethnic minorities	Yes	Yes	Yes	Yes
Disabled persons	Yes	Yes	Yes	Yes

Juvenile offenders	Yes	Yes	Yes	Yes
Other	-	-	-	-

24. Does your country have compensation procedure for victims of crimes?

Yes No

25. If yes, does this compensation procedure consist in:

- | | |
|------------------|-------------------------------------|
| | Yes |
| ▪ a public fund? | <input checked="" type="checkbox"/> |
| ▪ a court order? | |
| ▪ private fund? | |

26. If yes, which kind of cases does this procedure concern?

The Great Britain Criminal Injuries Compensation Scheme provides payments to blameless victims of crimes of violence and those injured in trying to apprehend criminals or prevent crime. The Scheme operates in England, Scotland and Wales. Anyone sustaining injury is eligible to apply. There is a separate scheme for Northern Ireland. The Scheme is administered by the Criminal Injuries Compensation Authority (CICA) and the complementary, independent appellate body, the Criminal Injuries Compensation Appeals Panel (CICAP).

Source: <http://www.scottish.parliament.uk/business/committees/historic/justice1/papers-01/j1p01-25.pdf>

Have also a look at the following weblink:

http://europa.eu.int/comm/justice_home/ejn/comp_crime_victim/comp_crime_victim_sco_en.htm

27. For victims, are there studies to evaluate the recovery rate of the compensation awarded by courts?

No
 Yes Please specify:

II. B.2. Confidence of citizens in their justice system

28. Is there a system for compensating users in the following circumstances:

- | | | |
|------------------------------------|-------------------------------------|--------------------------|
| | Yes | No |
| ▪ excessive length of proceedings? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ▪ wrongful arrest? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ▪ wrongful condemnation? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

If yes, please specify (fund, daily tariff):

Have a look at

http://www.legalappeal.co.uk/pages/justice/compensation_for_wrongful_imprisonment.php

29. Does your country have surveys on users or legal professionals (judges, lawyers, officials,

etc.) to measure public trust and satisfaction with the services delivered by the judiciary system?

Yes

No

If possible, please specify their titles, how to find these surveys, etc:

Have a look at the following weblink:

<http://www.scotland.gov.uk/library5/justice/sccs-00.asp>

30. If yes, please specify:

	Trough systematic surveys (Yes/No)	Through ad hoc surveys (Yes/No)
Surveys at national level		Yes
Surveys at court level		Yes

31. Is there a national or local procedure for making complaints about the performance of the judicial system?

Yes

No

32. If yes, please specify:

	Time limit to respond (Yes/No)	Time limit for dealing with the complaint (Yes/No)
Court concerned	Yes	Yes
Higher court	Yes	Yes
Ministry of Justice	Yes	Yes
High Council of Justice	Yes	Yes
Other external organisations (e.g. Ombudsman)	No	No

Source: <http://www.dca.gov.uk/legalsys/4d>

Can you give information elements concerning the efficiency of this complaint procedure?

Have a look at the following weblink:

<http://www.scottishombudsman.org.uk/>

II. Organisation of the court system

III. A. Functioning

33. **Total number of courts (administrative structure):**

- first instance courts of general jurisdiction 22

Source

- specialised first instance courts 22

Source

Please specify the different areas of specialisation (and, if possible, the number of courts concerned):

Number of Judges: 227
→ 34 Supreme Court judges; 136 full-time Sheriffs; 53 part-time Sheriffs; and 4 Stipendiary Magistrates
Year: 2004
Source:

34. **Total number of courts (geographic locations)**

For full details on the High Court, Sheriff Courts and other courts and tribunals, see [Scottish Court website](#)

Source: <http://www.scotcourts.gov.uk/index1.htm> and go to « locations » and also « other courts and tribunals »

35. **Number of first instance courts competent for a case concerning:**

- a debt collection for small claims

These are dealt with at the Sheriff Court level – for full details see previous answer.

Please specify what is meant by small claims in your country:

Small claims actions are civil actions for the recovery of sums up to £750 (Summary cause actions are civil actions for the recovery of sums between £750 - £1,500. Any sums exceeding £1,500 are dealt with by Ordinary cause.)
--

- a dismissal
- a robbery

36. **Number of professional judges sitting in courts** see q33

(present the information in full time equivalent and for permanent posts)

Source

37. **Number of professional judges sitting in courts on an occasional basis and who are paid as such:**

- gross figure
- if possible, in full time equivalent

Year:

Source

Please specify:

See q 33

38. **Number of non-professional judges (including lay judges) who are not remunerated but who can possibly receive a simple defrayal of costs** 749 Justice of the Peace

Year: 2004

Source: Scottish District Court Statistical Bulletin 2003

Please specify:

39. Does your judicial system include trial by jury with the participation of citizens?

No

x

Yes

For which type of case(s)?

If possible, number of citizens who were involved in such juries for the year 2004?

NOT APPLICABLE!

40. **Number of non-judge staff who are working in courts** 1,231
(present the information in full time equivalent and for permanent posts)

Year: 2003/2004

Source: Scottish Court Service Headquarters, Edinburgh
Scottish District Courts Statistical Bulletin 2002-2003

41. **If possible, could you distribute this staff according to the 3 following categories:**

- non-judge staff whose task is to assist the judges (case file preparation, assistance during the hearing, keeping the minutes of the meetings, helping to prepare the decisions) such as registrars: [redacted]
- staff in charge of different administrative tasks as well as of the management of the courts (human resources management, material and equipment management, including computer systems, financial and budgetary management, training management): [redacted]
- technical staff: [redacted]

42. **In courts, do you have non-judge staff entrusted with judicial or quasi-judicial tasks having autonomous competence and whose decisions could be subject to appeal (such as German**

and Austrian Rechtspfleger):

No x
 Yes Number of staff

43. Number of public prosecutors 1,428 total COPFS staff
 (present the information in full time equivalent and for permanent posts)

Source **Crown Office and Procurator Fiscal Service**
<http://www.crownoffice.gov.uk/Resource/Doc/13423/0000014.pdf>

44. Do you have persons who have similar duties as public prosecutors?

No
 Yes Please specify:

45. Is the status of prosecutors:

- independent within the judiciary?
- independent from the judiciary ? x
- under the authority of the Ministry of Justice?

Comment:

The COPFS is a department of the Scottish Executive.

Source: <http://www.crownoffice.gov.uk/About/Departmental-Overview/Ministers-Officials>

46. Number of staff (non prosecutors) attached to the public prosecution service 1,428 total COPFS staff
 (present the information in full time equivalent and for permanent posts)

Source **Crown Office and Procurator Fiscal Service**
<http://www.crownoffice.gov.uk/Resource/Doc/13423/0000014.pdf>

47. Who is entrusted with the individual court budget?

	Preparation of the budget (Yes/No)	Arbitration and allocation (Yes/No)	Day to day management of the budget (Yes/No)	Evaluation and control of the use of the budget (Yes/No)
Management Board	-	-	-	-
Court President	-	-	-	-
Court administrative director	-	-	-	-

Head of the court clerk office	Yes	Yes	Yes	Yes
Other. Please specify	Scottish Court Service	Scottish Court Service	Scottish Court Service	Scottish Court Service

48. In general, do the courts in your country have computer facilities?

Yes No

49. What are the computer facilities used within the courts?

Functions	Facilities	100% of courts	+50% of courts	-50% of courts	- 10 % of courts
Direct assistance to the judge/court clerk	Word processing	X			
	Electronic data base of jurisprudence	X			
	Electronic files	X			
	E-mail	X			
	Internet connection	X			
Administration and management	Case registration system	X			
	Court management information system	X			
	Financial information system				
Communication between the court and the parties	Electronic forms	X			
	Special Website	X			
	Other electronic communication facilities	X			

50. Is there a centralised institution which is responsible for collecting statistical data regarding the functioning of the courts and judiciary?

No Yes Please specify the name and the address of this institution:

Judicial Appointments and Finance Division
 Scottish Executive Justice Department
 Hayweight House
 23 Lauriston Street
 Edinburgh EH3 9DQ
 telephone 0131 221 6819
 e-mail: courts@scotland.gsi.gov.uk

You can indicate below:

- any useful comments for interpreting the data mentioned above

- **the characteristics of your judicial system**

III. B. Monitoring and evaluation

51. Are the courts required to prepare an annual activity report?

Yes No

52. **Do you have a regular monitoring system of court activities concerning the:**

	Yes	No
▪ number of incoming cases?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
▪ number of decisions?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
▪ number of postponed cases?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
▪ length of proceedings?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
▪ other?	<input type="checkbox"/>	<input type="checkbox"/>

Please specify:

-

53. **Do you have a regular evaluation system of the performance of the court?**

No
Yes Please specify:

54. **Concerning court activities, have you defined:**

▪ performance indicators? Yes No

Please specify the 4 main indicators for a proper functioning of justice:

▪ targets? Yes No

Please specify who is responsible for setting the targets:

	Yes
- executive power?	<input checked="" type="checkbox"/>
- legislative power?	<input checked="" type="checkbox"/>
- judicial power?	<input type="checkbox"/>
- other?	<input checked="" type="checkbox"/>

Please specify:

The Government is responsible for setting these targets.

Please specify the main objectives applied:

Source

55. Which authority is responsible for the evaluation of the performances of the courts:

.

- | | | |
|----------------------------------|-------------------------------------|-----------------|
| | Yes | |
| ▪ the High Council of judiciary? | <input type="checkbox"/> | |
| ▪ the Ministry of justice? | <input checked="" type="checkbox"/> | |
| ▪ an Inspection body? | <input type="checkbox"/> | |
| ▪ the Supreme Court? | <input checked="" type="checkbox"/> | |
| ▪ an external audit body? | <input type="checkbox"/> | |
| ▪ other? | <input checked="" type="checkbox"/> | Please specify: |

Scottish Court Service

56. Does the evaluation system include quality standards concerning judicial decisions?

- No
 Yes Please specify:

Source

57. Is there a system enabling to measure the backlogs and to detect the cases which are not processed within an acceptable timeframe for:

- | | | |
|-------------------------|--------------------------|-------------------------------------|
| | Yes | No |
| ▪ civil cases? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ▪ criminal cases? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ▪ administrative cases? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

58. Do you have a way of analysing queuing time during court procedures?

- No
 Yes Please specify:

Details can be found in the Scottish Court Service annual report at www.scotcourts.gov
 At "publications"

59. Do you monitor and evaluate the performance of the prosecution services?

- No
 Yes Please specify:

The Crown Office and Procurator Fiscal Service is in charge of this issue.

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your court monitoring and evaluation system

weblink:

<http://www.crownoffice.gov.uk/>

IV. Fair trial

IV. A. Fundamental principles

60. Is there in your judicial system:
- a right for an interpreter for all those within your jurisdiction who cannot understand or speak the language used in court?
Yes No
 - the right to have reasons given for all prisons sentences?
Yes No
 - for all cases, an effective remedy to a superior jurisdiction?
Yes No
61. Which is the percentage of judgements in first instance criminal cases in which the suspect is not actually present or represented? **NOT APPLICABLE**
- Source
62. Is there a procedure to effectively challenge a judge if a party consider he/she is not impartial?
- No
Yes If possible, number of successful challenges (in a year): **NOT POSSIBLE!**
63. **Please give the following data 2003 and 2004 concerning the number of cases regarding the violation of Article 6 of the European Convention of Human Rights:** Not applicable to Scotland – this information is not collected at present

		Cases communicated by the Court		Cases declared inadmissible by the Court		Friendly settlements		Judgements establishing a violation		Judgements establishing a non violation	
		2003	2004	2003	2004	2003	2004	2003	2004	2003	2004
Criminal proceedings	Article 6§1 (equity)										
	Article 6§1 (duration)										
	Article 6§2										
	Article 6§3a										
	Article 6§3b										
	Article 6§3c										
	Article 6§3d										
	Article 6§3e										
Civil proceedings	Article 6§1 (equity)										
	Article 6§1 (duration)										
	Article 6§1 (non execution only)										

Source

IV.B. Timeframes of proceedings

IV. B. 1. General

64. Are there specific procedures for urgent matters in:

	Yes	No
▪ civil cases?	X	
▪ criminal cases?	X	
▪ administrative cases?	X	

65. Are there simplified procedures for:

	Yes	No
▪ civil cases (small claims)?	X	
▪ criminal cases (petty offences)?	X	
▪ administrative cases?	X	

66. Is it possible for a second instance court to send back a case to a first instance court for a new examination?

Yes No

67. Do courts and lawyers have the possibility to conclude agreements on modalities for processing cases (presentation of files, binding timeframes for lawyers to submit their conclusions and dates of hearings)?

No Yes Please specify:

IV. B. 2. Civil and administrative cases

68. Total number of civil cases in courts (litigious and not litigious):

These figures are not published by Scottish court service, but business processing levels are (see annual report as before)

Please specify the main types of cases:

Source

69. Litigious administrative and civil cases in courts – please complete this table concerning the number of cases/length of proceedings/pending cases and specify definitions of incoming cases, starting and ending point of length and pending cases:

See q 68

	Civil cases	Administrative cases	Divorce	Employment dismissal
Incoming cases				
Decisions on the merits				

Total number (1st instance)	Percentage of decisions subject to appeal in a higher court				
	Pending cases by 1 January 2005				
	Percentage of pending cases of more than 3 years				
Average length (from date of lodging of court proceedings*)	1st instance decisions				
	2nd instance decisions				
	Total procedure				

* If you cannot calculate the average length from the date of lodging of court proceedings, how do you calculate length of proceedings?

Where appropriate, please specify the specific procedure as regards divorce:

Have a look at:
http://europa.eu.int/comm/justice_home/ejn/divorce/divorce_sco_en.htm

Source **European Judicial Network Website, link, see above**

IV. B. 3. Criminal cases

70. Please describe the role and powers of the prosecutor in the criminal procedure:

	Yes	No
▪ to conduct or supervise police investigation?	x	
▪ to conduct investigation?	x	
▪ when necessary, to demand investigation measures from the judge?	x	
▪ to charge?	x	
▪ to present the case in the court?	x	
▪ to propose a sentence to the judge?	x	
▪ to appeal?		x
▪ to supervise enforcement procedure?		x
▪ to end the case by dropping it without the need for a judicial decision?		x
▪ to end the case by imposing or negotiating a penalty without a judicial decision?		x
▪ other significant powers?		x

Please specify:

For a typical prosecution timeline in Scotland have a look at the following weblink:
<http://www.crownoffice.gov.uk/About/roles/pf-role/prosecution/time-line>

71. Does the prosecutor also have a role in civil and/or administrative cases?

No x

Yes Please specify:

72. Functions of the public prosecutor in relation to criminal cases– please complete this table:

		Total number of 1st instance criminal cases
Received by the public prosecutor		
Discontinued by the public prosecutor	In general	
	Because the offender could not be identified	
	Due to the lack of an established offence or a specific legal situation	
Concluded by a penalty, imposed or negotiated by the public prosecutor		
Charged by the public prosecutor before the courts		

Source

73. Criminal cases in courts – please complete this table concerning the number of cases/length of proceedings/pending cases and specify definitions of incoming cases, starting and ending point of length and pending cases:

See q 68

		Criminal cases	Robbery cases	Intentional homicides
Total number (1st instance)	Incoming cases			
	Judicial decisions			
	Convicted persons			
	Acquitted persons			
	Percentage of decisions subject to appeal in a higher court			
	Pending cases by 1 January 2005			
	Percentage of pending cases of more than 3 years			
Average length*(from the date of official charging)	1st instance decision			
	2nd instance decision			
	Total procedure			

* If you cannot calculate the average length from the date of official charging, how do you calculate length of

proceedings?

Source

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your system concerning timeframes of proceedings

See the following weblink:

http://www.dca.gov.uk/criminal/procrules_fin/rulesmenu.htm

V. Career of judges and prosecutors

V. A. Appointment and training

74. Are judges initially/at the beginning of their carrier recruited and nominated by:

- | | |
|--|---|
| | Yes |
| ▪ a body composed of members of the judiciary? | |
| ▪ a body composed of members external to the judiciary? | |
| ▪ a body composed of members of the judiciary and external to the judiciary? | x |

Comment:

Judges are recruited/nominated by the independent Scottish Judicial Appointments Board. The Judicial Appointments Board has an even split of legally qualified and lay members. They make their recommendations to the First Minister and he will normally accept their recommendations.

Source:

http://www.judicialappointmentsscotland.gov.uk/judicial/JUD_Main.jsp?pContentID=445&p_applic=CCC&p_Menu0=46&p_service=Content.show&

75. Are prosecutors initially/at the beginning of their career recruited and nominated by:

- | | |
|--|---|
| | Yes |
| ▪ a body composed of members of the prosecution system? | x |
| ▪ a body composed of members external to the prosecution system? | |
| ▪ a body composed of members of the prosecution system and external to the prosecution system? | |

Comment:

Prosecutors are recruited/nominated by the Crown Office and Procurator Fiscal Service.

76. Is the mandate given for an undetermined period for:

- | | | |
|----------------|---|---|
| | Yes | No |
| ▪ judges? | x | |
| ▪ prosecutors? | | x |

Are there exceptions ? Please specify:

--

If no, what is the length of the mandate:

Is it renewable?

		Yes	No
▪ of judges?			
▪ of prosecutors?	individually determinable	x	

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of the selection and nomination procedure of judges and prosecutors

In September 1999, the Scottish Ministers set out their commitment to consulting on the system of judicial appointments in A Programme for Government. In the summer of 2000, a public consultation exercise was carried out under the auspices of the Scottish Executive consultation paper, Judicial Appointments: An Inclusive Approach. Responses to the consultation paper demonstrated substantial support for the creation of an independent Judicial Appointments Board and, in March 2001, the Justice Minister, Jim Wallace, announced the setting up of such a Board to create more open and accessible arrangements for judicial appointments in Scotland.

The Remit of the Judicial Appointments Board for Scotland is:

- to provide the First Minister with a list of candidates recommended for appointment to the offices of Judge of the Court of Session, Sheriff Principal, Sheriff and Part-time Sheriff
- to make such recommendations on merit, but in addition to consider ways of recruiting a Judiciary which is as representative as possible of the communities which they serve
- to undertake the recruitment and assessment process in an efficient and effective way.

The Board began its work in June 2002 under the Chairmanship of Sir Neil McIntosh CBE.

Recruitment Policy Statement of the Crown Office and Procurator Fiscal Service
 The Crown Office and Procurator Fiscal Service is an equal opportunity employer and welcomes applications from all sectors of the community, particularly from people from ethnic minority communities, women and people with disabilities. Our policy is to provide equality of opportunity in relation to employment, career development and promotion to all, where eligible, on the basis of ability, qualifications and suitability for the work. Being part of the Civil Service selection is on the grounds of fair and open competition and irrespective of applicants' sex (including those intending to undergo, are undergoing, or have undergone gender reassignment treatment), marital status, age, race, ethnic origin, sexual orientation, disability or religion/belief.

[Investors in People](#) ensures that the Crown Office and Procurator Fiscal Service is committed to developing staff and providing access to a range of learning opportunities.

Sources:
http://www.judicialappointmentsscotland.gov.uk/judicial/JUD_Main.jsp?pContentID=438&p_applic=CCC&pMenu0=44&p_service=Content.show&
<http://www.crownoffice.gov.uk/Working/recruitment/careers-info/Recruitment-Policy>

77. Nature of the training of judges: !Attention: Just my assumption!

	Compulsion (Yes/No)		Frequency (Yes/No)	
Initial training	Compulsory	Yes	Yes	
	Highly recommended			
	Optional			
General in-service	Compulsory	Yes	Annual	

training	Highly recommended		Regular	Yes
	Optional		Occasional	
In-service training for specialised functions (e.g. judge for economic or administrative issues)	Compulsory	Yes	Annual	
	Highly recommended		Regular	Yes
	Optional		Occasional	
In-service training for specific functions (e.g. head of court)	Compulsory	Yes	Annual	
	Highly recommended		Regular	Yes
	Optional		Occasional	

78. Nature of the training of prosecutors: !Attention: Just my assumption!

	Compulsion (Yes/No)		Frequency (Yes/No)	
Initial training	Compulsory	Yes		
	Highly recommended			
	Optional			
General in-service training	Compulsory	Yes	Annual	
	Highly recommended		Regular	Yes
	Optional		Occasional	
Specialised in-service training	Compulsory	Yes	Annual	
	Highly recommended		Regular	Yes
	Optional		Occasional	

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your training system for judges and prosecutors

For the training systems have a look at the following weblinks:

Judges: <http://www.judicialstudies-scotland.org.uk/>

Prosecutors: <http://www.crownoffice.gov.uk/Working/recruitment/careers-info/traineeships>

V. B. Practice of the profession

79. Gross annual salary of a first instance professional judge at the beginning of his/her career

High Court Judge 223,100 €

Circuit Judge 167,270 €

Year: 2004

Source **Scottish Executive**

<http://www.scotland.gov.uk/News/Releases/2004/09/08100205>

80. Gross annual salary of a judge of the Supreme Court or of the highest appellate court

Lord of Appeal in Ordinary 253,559 €
 Year: 1 April 2004
 Source **Review Body on Senior Salaries**

81. Gross annual salary of a public prosecutor at the beginning of his/her career

Year 2004
 Source **Crown Office Procurator Fiscal Service**

82. Gross annual salary of a public prosecutor of the Supreme Court or of the highest appellate court

See question 81.

83. Do judges and public prosecutors have additional benefits?

	Judges (Yes/No)	Public prosecutors (Yes/No)
Reduced taxation	No	No
Special pension		
Housing	No	No
Other financial benefit (If yes, please specify)		

Source:

84. Can judges or prosecutors combine their work with any of the following other professions?

	Judges			Prosecutors		
	Yes with remuneration (part-time)	Yes without remuneration	No (full-time)	Yes with remuneration	Yes without remuneration	No
Teaching	X		X			
Research and publication	X		X			
Arbitrator	X		X			
Consultant	X		X			
Cultural function	X		X			
Other function to specify	X		X			

Comment:

As for salaried full time judges there is no other remunerated employment allowed.

As for part-time fee paid judges there is the possibility to undertake remunerated employment on the days they are not sitting as a judge.

- 85. Do judges receive bonus based on the fulfilment of quantitative objectives relating to the delivering of judgments?**

No Yes **Please specify:**

V. C. Disciplinary procedures

- 86. Types of disciplinary proceedings and sanctions against judges and prosecutors:**

		Judges	Prosecutors
Reasons for disciplinary procedures	Total number	0	0
	Breach of professional ethics (Yes/No) If yes, please specify the number	No	No
	Professional inadequacy (Yes/No) If yes, please specify the number	No	No
	Criminal offence (Yes/No) If yes, please specify the number	No	No
	Other (Yes/No) If yes, please specify	No	No
	Types of sanctions	Total number	0
Reprimand (Yes/No) If yes, please specify the number		No	No
Suspension (Yes/No) If yes, please specify the number		No	No
Dismissal (Yes/No) If yes, please specify the number		No	No
Fine (Yes/No) If yes, please specify the number		No	No

Other (Yes/No) If yes, please specify	No	No
--	----	----

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your system concerning disciplinary procedures for judges and prosecutors

The 1980 Solicitor's (Scotland) Act provides the statutory basis for the Scottish Law Society, the right to practise, professional practice, conduct and discipline, and complaints and disciplinary proceedings relating to solicitors in Scotland.

VI. Lawyers

87. Number of lawyers practising in your country 9,443

Year: 2004

Source: The Annual Report of the Law Society of Scotland

<http://www.lawscot.org.uk/annualreport/2004/assets/FullAR2004.pdf>

88. Does this figure include legal advisors (solicitors or in-house counsellor) who cannot represent their clients in court?

Yes x

No

89. Do lawyers have a monopoly of representation:

	Monopoly (Yes/No)		If no, possible representation by (Yes/No)	
Civil cases*			Member of family	
			Trade Union	
			NGO	
			Other	
Criminal cases*	Defendant		Member of family	
			Trade Union	
			NGO	
			Other	
	Victim		Member of family	
			Trade Union	
			NGO	
			Other	
Administrative cases*			Member of family	
			Trade Union	
			NGO	
			Other	

* If appropriate, please specify if it concerns first instance and appeal.

90. Is the lawyer profession organised through?

- a national bar? Yes
- a regional bar?
- a local bar?

Please specify:

Yes, there is the Law Society of Scotland for solicitors and the Bar of Scotland for barristers.

91. Is there a specific initial training or examination to enter the profession of lawyer?

Yes No

92. Is there a mandatory general system for lawyers requiring continuing professional development?

Yes No

93. Is the specialisation in some legal fields tied with a specific level of training/ qualification/ specific diploma or specific authorisations?

No
 Yes [see www.lawscot.org.uk](http://www.lawscot.org.uk) - "Accredited Specialists"

94. **Can users establish easily what the lawyers' fees will be?**

Yes No

Comment:

Lawyer's fees are individually negotiated. When a client first meets a solicitor, the solicitor should give their best estimate of costs, and some may actually charge a fixed fee for the whole service. If litigants think they have been overcharged for a service, the Law Society of Scotland can intervene and regulate the solicitor's fees.

See: www.lawscot.org.uk - "Using the services of a solicitor"

95. **Are lawyers fees:**

- regulated by law? Yes
- regulated by Bar association?
- freely negotiated?

Comment:

Solicitors fees are freely negotiated but through a Law Society of Scotland remuneration certificate or court assessment, these fees can be queried. The fee for a solicitors service is a contract between the solicitor and the client.

96. Have quality standards been formulated for lawyers?

Yes No

97. If yes, who is responsible for formulating these quality standards:

- Yes
- the bar association?
 - the legislature?
 - other?
 -
- Please specify:

The Law Society of Scotland regulates solicitors in Scotland and will advise customers accordingly if they think they have been overcharged for a service.

98. Is it possible to complain about :

- the performance of lawyers? No Yes Please specify:

Have a look at the following weblink, under section "Complaints against Scottish Solicitors": <http://www.lawscot.org.uk/>

- the amount of fees? Yes No

99. Disciplinary proceedings and sanctions against lawyers:

	Yes /No (If yes, please specify the annual number)	
Reasons for disciplinary proceedings	Breach of professional ethics	Yes
	Professional inadequacy	Yes
	Criminal offence	Yes
	Other	
Type of sanctions	Reprimand	Yes
	Suspension	Yes
	Removal	Yes
	Fine	Yes
	Other	

Source: <http://www.lawscot.org.uk/pdfs/leaflets/ComplaintsagainstScottishSols.pdf>

100. Who is the authority responsible for the disciplinary procedures:

Yes

- a professional body? Please specify:

Yes, there is the Scottish Solicitors Disciplinary Tribunal.

- the judge?
 - the Ministry of justice?
 - other?
- Please specify:

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your system concerning the organisation of the Bar

For extensive information see the following weblink:

<http://www.lawscot.org.uk/>

VII. Alternative Dispute Resolution

101. If appropriate, please specify, by type of cases, the organisation of the judicial mediation:

	Compulsion (Yes/No)		Body providing mediation (Yes/No)	
Civil cases	Compulsory stage prior to court proceedings		Private mediator	
			Public or authorised by court body	
			Court	
	Compulsory stage in court proceedings		Judge	
	Ordered by judge in certain cases		Prosecutor	
Family cases	Compulsory stage prior to court proceedings		Private mediator	
			Public or authorised by court body	
			Court	
	Compulsory stage in court proceedings		Judge	
	Ordered by judge in certain cases		Prosecutor	
Administrative cases	Compulsory stage prior to court proceedings		Private mediator	
			Public or authorised by court body	
			Court	
	Compulsory stage in court proceedings		Judge	
	Ordered by judge in certain cases		Prosecutor	
			Private mediator	

Employment dismissals	Compulsory stage prior to court proceedings		Public or authorised by court body	
			Court	
	Compulsory stage in court proceedings		Judge	
	Ordered by judge in certain cases		Prosecutor	
Criminal cases	Compulsory stage prior to court proceedings		Private mediator	
			Public or authorised by court body	
			Court	
	Compulsory stage in court proceedings		Judge	
	Ordered by judge in certain cases		Prosecutor	

102. Can you provide information about accredited mediators?

Mediation is a problem-solving procedure and its essence is about finding a solution that satisfies everyone. This is often called the win/win approach. It differs from the legal process, which is often said to produce a win/lose outcome. The process of mediation treats both parties equally. Both parties must therefore have a desire to resolve the problem in hand. Mediators avoid taking sides, making judgments or giving guidance. Mediation is, therefore, different from processes like advocacy, counselling, arbitration, and advice giving. The mediator is responsible for developing effective communication and building consensus between the parties. Mediation is a flexible process which can take place face to face or by a series of private meetings. These meetings are all completely confidential and cannot be used later in Court. At the end of the process the parties very often agree on a settlement for the future. A mediator can work in many contexts. S/he can use his/her skills formally - mediating between parties in conflict, or informally - perhaps at work or within the home. A Community Mediator works in the local community mediating in a wide range of different contexts. S/he may mediate between disputing neighbours, or be actively engaged in providing mediation skills to school children. Perhaps s/he is using mediation to help make young offenders accountable to their victims or providing mediation between work colleagues to counteract office bullying. Many of the people who work in the community in this way do so on a voluntary basis. They come from a wide variety of backgrounds including housing, the probation service, the legal profession and other diverse areas of life. Their profession is not important - their skills as mediators are.

Source: <http://www.scottishmediation.org.uk/>

Have also a look at the following weblink: http://europa.eu.int/comm/justice_home/ejn/adr/adr_sco_en.htm

103. Can you provide information about the total number of mediation procedure concerning:

- civil cases?
- family cases?
- administrative cases?
- employment dismissals?
- criminal cases?



Source

104. Can you give information concerning other alternative dispute resolution (e.g. Arbitration)? Please specify:

Arbitration is a procedure for resolving disputes privately, in which both sides agree to be bound by the decision of an independent third party, known as an arbiter.

Source: http://europa.eu.int/comm/justice_home/ejn/adr/adr_sco_en.htm

Have also a look at the following weblinks:

<http://www.adrgroup.co.uk/>

<http://www.scia.co.uk/Arbitration.html>

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your system concerning ADR

The parties in dispute, rather than the mediator, decide how a dispute will be resolved. Mediation is a problem-solving procedure and its essence is about finding a solution that satisfies everyone. This is often called the win/win approach. It differs from the legal process, which is often said to produce a win/lose outcome. The process of mediation treats both parties equally. Both parties must therefore have a desire to resolve the problem in hand. Mediators avoid taking sides, making judgments or giving guidance. Mediation is, therefore, different from processes like advocacy, counselling, arbitration, and advice giving. The mediator is responsible for developing effective communication and building consensus between the parties. Mediation is a flexible process which can take place face to face or by a series of private meetings. These meetings are all completely confidential and cannot be used later in Court. At the end of the process the parties very often agree on a settlement for the future. Mediation in Scotland is used in many contexts including:

- Neighbour and community disputes
- Family disputes about children and assets
- Education particularly in relation to Special Needs
- Environmental and planning issues
- Between victims and accused in Criminal matters
- Civil legal matters such as contract disputes
- Personal injury and professional negligence claims
- Work place conflict

Source: *Scottish Mediation Network*

<http://www.scottishmediation.org.uk/mediation/default.asp>

See also <http://www.adrgroup.co.uk/mediation-procedure.html>

<http://www.adrgroup.co.uk/>

<http://www.scottishmediation.org.uk/>

http://europa.eu.int/comm/justice_home/ejn/adr/adr_sco_en.htm

VIII. A. Execution of decisions in civil matters

105. Are enforcement agents:

- | | |
|---|-------------------------------------|
| | Yes |
| ▪ judges? | <input type="checkbox"/> |
| ▪ bailiff practising as private profession ruled by public authorities? | <input checked="" type="checkbox"/> |
| ▪ bailiff working in a public institution? | <input checked="" type="checkbox"/> |
| ▪ other enforcement agents? | <input checked="" type="checkbox"/> |
- Please specify their status:

Enforcement falls to sheriff officers and messengers-at-arms. These are independent fee paid contractors who hold a Commission from the sheriff principal of the Sheriffdom in which they are authorised to act. These officers are subject to the control and supervision of the court although not directly employed by the court. The Debtors (Scotland) Act 1987 sets out a statutory framework for control of their admission, training and conduct in the exercise of their official functions, Only where further court procedures are needed is it necessary to use a lawyer. [Details of the fees](#) which sheriff officers and Messengers-at-Arms can currently charge for executing diligence are set out in the Act of Sederunt Fees of Sheriff Officers 2004 (SSI 2004/513) and Act of Sederunt (Fees of Messenger-at-Arms) 2004 (SSI 2004/515) which can be found on.

Source: *European Judicial Network Website*

http://europa.eu.int/comm/justice_home/ejn/enforce_judgement/enforce_judgement_sco_en.htm

106. Number of enforcement agents

200 sheriff officer's,
130 of whom are also messenger-at-arms

Source <http://www.connexions-direct.com/jobs4u/jobfamily/legalandpoliticalservices/bailiff.cfm?fd=1326>

107. Is there a specific initial training or examination to enter the profession of enforcement agent?

Yes No

108. Is the profession of enforcement agent organised by?

- | | |
|--------------------|-------------------------------------|
| | Yes |
| ▪ a national body? | <input checked="" type="checkbox"/> |
| ▪ a regional body? | <input type="checkbox"/> |
| ▪ a local body? | <input type="checkbox"/> |

109. Can users establish easily what the fees of the enforcement agents will be?

Yes No

Source: *Office of Public Sector Information*

http://www.opsi.gov.uk/cgi-bin/html.pl?DB=opsi&STEMMER=en&WORDS=act+sederunt+fees+sheriff+officers+2004+&COLOUR=Red&STYLE=s&URL=http://www.opsi.gov.uk/legislation/scotland/ssi2004/20040513.htm#muscat_highlighter_first_match

110. Are enforcement fees:

- regulated by law?
- freely negotiated?

Yes

111. Is there a body entrusted with the supervision and the control of the enforcement agents?

No

Yes

Which authority is responsible for the supervision and the control of enforcement agents:

- a professional body?
 - the judge?
 - the Ministry of justice?
 - the prosecutor?
 - other?
- Please specify:

Yes

The Scottish Sheriffdoms are responsible for the supervision and the control of enforcement agents.

112. Have quality standards been formulated for enforcement agents?

No

Yes

Who is responsible for formulating these quality standards?

The Society of Messengers-at-Arms and Sheriff Officers

The Society of Messengers-at-Arms and Sheriff Officers, established in 1922, is the only organisation which represents the interests of Scottish officers of court and acts as a channel of communication between officers of court, the legal professions, prospective clients and various authorities concerned with the execution of civil court warrants, within Scotland.

The Society continuously strives to enhance the profession by setting the highest standards for its membership. All members are required to abide by the Society's Constitution and Code of Professional Ethics, thus ensuring confidentiality and good business practice. Comprehensive training courses designed to cover the legislation surrounding the duties of Messengers-at-Arms and Sheriff Officers exist in order to train and prepare candidates for their professional examinations, which are set and regulated by an independent Examination Board.

The Society is a member of the Union Internationale des Huissiers de Justice et Officiers Judiciaires, which is a worldwide association of civil officers of court. The Society has a permanent member who regularly attends Union Internationale meetings and provides a flow of information relating to international policies and matters affecting the profession.

Messengers-at-Arms and Sheriff Officers

A Messenger-at-Arms is an officer of the Court of Session which is the supreme civil court in Scotland. A Messenger-at-Arms can travel anywhere in Scotland and can serve documents and enforce court orders of the supreme court.

A Sheriff Officer is an officer of the regional civil court. Scotland is geographically divided into six sheriffdoms and 49 local sheriff court districts. Unlike a Messenger-at-Arms, a Sheriff Officer can only operate in the geographical area for which he holds a commission.

Messengers-at-Arms & Sheriff Officers are employed within private business partnerships with fees charged being regulated by government statute.

Source: <http://df08.dot5hosting.com/~smasoorg/background.html>

113. What are the main complaints of users concerning the enforcement procedure:

Complaints have not been formally collected and quantified.

- no execution at all?
- lack of information?
- excessive length?
- unlawful practices?
- insufficient supervision?
- excessive cost?
- other?

114. Does your country prepared or has established concrete measures to change the situation concerning the enforcement of court decisions?

No



Yes Please specify: The Debt Arrangement and Attachment (s) Act 2002, which came into force on 30 Dec 2002

See: www.opsi.gov.uk/legislation/scotland/acts2002/20020017.htm

115. Is there a system measuring the timeframes of the enforcement of decisions :

	Yes	No
▪ for civil cases?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
▪ for administrative cases?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

116. As regards a decision on debts collection, can you estimate the average timeframe to notify the decision to the parties which live in the city where the court seats:

	Yes
▪ between 1 and 5 days	<input type="checkbox"/>
▪ between 6 and 10 days	<input type="checkbox"/>
▪ between 11 and 30 days	<input checked="" type="checkbox"/>
▪ more: please specify <input type="text"/>	<input type="checkbox"/>

Source

117. Disciplinary proceedings and sanctions against enforcement agents:

Enforcement agents are members of The Society of Messengers-at-Arms and Sheriff Officers (SMASO), which is the Professional Association of Scottish Process Servers and which is affiliated to the Union Internationale des Hussiers de Justice et Officiers Judiciaires. (See response to question 112 for more background information on SMASO)

SMASO's disciplinary procedures can be summarised as follows. A formal complaint is considered by a Board of Enquiry convened by SMASO. If the complaint is upheld, the member can be reprimanded, suspended or expelled. In addition, if the Board deems it appropriate the decision is intimated to the Lord President at the High Court and to the relevant Sherrif Principal. Any expelled officer can submit an application for re-admission to SMASO, to be considered by its governing body. Figures on disciplinary procedures are not available.

	Yes /No (If yes, please specify the total number)	
Disciplinary proceedings	Breach of professional ethics	
	Professional inadequacy	
	Criminal offence	
	Other	
Sanctions	Reprimand	Yes
	Suspension	Yes
	Dismissal	Yes, effectively (i.e. expulsion from SMASO)
	Fine	
	Other	

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your enforcement system of decisions in civil matters

For extensive information, see the following weblink:
http://europa.eu.int/comm/justice_home/ejn/enforce_judgement/enforce_judgement_sco_en.htm

VIII. B. Enforcement of decisions in criminal matters

118. **Is there a judge who has in charge the enforcement of judgments?**

Yes Please specify his/her functions and activities (e.g. Initiative or control functions):

No Please specify which authority is entrusted with the enforcement of judgements (e.g prosecutor):

It is the sheriff officer's and messenger-at-arms's responsibility to enforce the judgment in criminal matters.

119. **As regards fines decided by a criminal court, are there studies to evaluate the effective recovery rate?**

No
 Yes Please specify:

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your enforcement system of decisions in criminal matters

IX. Notaries

120. **Is the status of notaries:**

- a private one?
- a status of private worker ruled by the public authorities?
- a public one?
- other?

Yes	No
<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>

Please specify:

Source: *The Notaries Society*

http://www.thenotariessociety.org.uk/public_statement.asp

121. Do notaries have duties:

	Yes	No
▪ within the framework of civil procedure?	x	
▪ in the field of legal advice?	x	
▪ to authenticate legal deeds?	x	
▪ other?	x	

If yes, please specify:

http://www.thenotariessociety.org.uk/public_statement.asp

122. Is there a body entrusted with the supervision and the control of the notaries?

No

Yes

Which authority is responsible for the supervision and the control of the notaries:

	Yes
▪ a professional body?	<input type="checkbox"/>
▪ the judge?	<input type="checkbox"/>
▪ the Ministry of justice?	<input type="checkbox"/>
▪ the prosecutor?	<input type="checkbox"/>
▪ other?	x Please specify:

The Law Society of Scotland is responsible for the supervision and control of the notaries under the Solicitors (Scotland) Act 1980.

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your system of notaries
-

The notarial profession in Scotland

Sixteenth century legislation provided important roles for the notary in relation to writs dealing with heritable property. The Subscription of Deeds Act 1540 required the subscription of a notary to a deed and the Deeds Act 1579 provided that "all writs importing heritable title or other bonds of obligations of great importance should be subscribed and sealed by the principal..." or "twa famous notars", whilst the Subscription of Deeds Act 1681 provided that the witnesses should hear the party give warrant to the notaries and in evidence thereof touch their pens.

After a long period of decline during the nineteenth century, the late twentieth century has seen a resurgence in a requirement for the notary's services, Affidavits in the affidavit divorce procedure are sworn before a notary. Furthermore, the terms of the Matrimonial Homes (Family Protection) (Scotland) Act 1981, certain declarations under that Act require to be formal affidavits sworn before a notary.

One of the most frequent notarial functions is the attestation or authentication of powers of attorney for use abroad. Many foreign legal systems require powers of attorney or factories and commissions to be executed before a notary.

Notaries are also required to note and draw protests in maritime matters and to protest bills of exchange. Other functions include the drawing for repayments of bonds of debenture, the completion of documentation for the registration of a company in different parts of the Commonwealth or overseas and sometimes for the entry of a person to overseas territories.

The administration of oaths has always been an important function of the notary. The Solicitors (Scotland) Act 1980 provided that in any case where the administration of an oath or the receipt of an affidavit or solemn affirmation to be authorised by or under any enactment it shall be lawful for

the oath to be administered or, as the case may be, for the affidavit or affirmation to be received by a notary public. The affidavit should not relate to any matter in respect of the preservation of the peace, a prosecution, trial or punishment of an offence, or any proceedings before either House of Parliament or any Committee thereof. All notaries in Scotland are solicitors regulated by the Law Society of Scotland under the Solicitors (Scotland) Act 1980.

Source: http://www.thenotariessociety.org.uk/public_statement.asp

123. **Please indicate main orientations for reform and concrete measures which could improve the quality and the efficiency of your judicial system:**