



EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE  
(CEPEJ)

SCHEME FOR EVALUATING JUDICIAL SYSTEMS 2011

Country: UK-Scotland

National correspondent

First Name - Last Name: **GUY Julie**

Job title:

Organisation:

E-mail: **Julie.Guy@scotland.gsi.gov.uk**

Phone Number :

## 1. Demographic and economic data

### 1. 1. General information

#### 1. 1. 1. Inhabitants and economic information

##### 1) Number of inhabitants (if possible on 1 January 2011)

5 222 100

##### 2) Total of annual public expenditure at state level and where appropriate, public expenditure at regional or federal entity level (in €) - (If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP)

	Amount
State level	NA
Regional / federal entity level (total for all regions / federal entities)	69 264 000 000

##### 3) Per capita GDP (in €)

22 632

##### 4) Average gross annual salary (in €)

28 915

##### 5) Exchange rate from national currency (non-Euro zone) to € on 1 January 2011

0.8506

#### A.1

Please indicate the sources for questions 1 to 4 and give comments concerning the interpretation of the figures supplied if appropriate:

- Q1. is an estimate at June 30 2010
2. total government expenditure April 2009/March 2010
3. GVA
4. Median Gross Annual Full Time Earning estimate for 2010

### 1. 2. Budgetary data concerning judicial system

#### 1. 2. 1. Budget (courts, public prosecution, legal aid, fees)

##### 6) Annual approved public budget allocated to the functioning of all courts, in €(if possible without the budget of the public prosecution services and without the budget of legal aid):

TOTAL annual approved budget allocated to the functioning of all courts (1 + 2 + 3 + 4 + 5 + 6 + 7)	<input checked="" type="checkbox"/> Yes	146 420 820
1. Annual public budget allocated to (gross) salaries	<input checked="" type="checkbox"/> Yes	52 888 680
2. Annual public budget allocated to computerisation (equipment, investments, maintenance)	<input checked="" type="checkbox"/> Yes	4 914 000
3. Annual public budget allocated to justice expenses (expertise, interpretation, etc), without legal aid. NB: this does not concern the taxes and fees to be paid by the parties.	<input checked="" type="checkbox"/> Yes	13 718 250
4. Annual public budget allocated to court buildings (maintenance, operating costs)	<input checked="" type="checkbox"/> Yes	51 480 000
5. Annual public budget allocated to investments in new (court) buildings		NAP
6. Annual public budget allocated to training and education	<input checked="" type="checkbox"/> Yes	1 170 000

7. Other (please specify):

 Yes

22 249 890

**7) If you cannot separate the budget of the public prosecution services and the budget of legal aid from the budget allocated to all courts, please indicate it clearly. If "other", please specify:**

Budget Summary 2010-11 (Euro)

Revenue Budget Allocation from Scottish Government: 86,012,550

Capital Allocation from Scottish Government 23,790,780

TOTAL ASSIGNED BUDGET 109,803,330

Income from fees, fines, and other income: 37,512,540

TOTAL BUDGET INCLUDING INCOME 147,315,870

Outturn 146,101,410

The budgets for public prosecution and legal aid are separate from the budget allocated to all courts.

**8) Are litigants in general required to pay a court tax or fee to start a proceeding at a court of general jurisdiction:** for criminal cases? for other than criminal cases?

If yes, are there exceptions to the rule to pay court a tax or fee? Please provide comments on those exceptions:

Fees payable for various civil applications are set in Statutory Instruments, which are updated periodically by Parliament, on the recommendation of Scottish Ministers

Exemptions apply to the payment of civil court fees, where the individual is in receipt of certain means-tested benefits or is in receipt of civil legal aid. Details of exemptions are provided on the Scottish Court Service web site:

<http://www.scotcourts.gov.uk>**9) Annual income of court taxes or fees received by the State (in €)**

26 681 850

**10) Annual approved public budget allocated to the whole justice system, in € (this global budget does not include only the court system as defined under question 6, but also the prison system, the judicial protection of juveniles, the operation of the Ministry of Justice, etc.)**

.

 NA

1 993 680 000

**11) Please indicate the budgetary elements that are included in the whole justice system. If "other", please specify in the "comment" box below.**

Court system	Yes
Legal aid	Yes
Public prosecution services	No
Prison system	Yes
Probation services	No
Council of the judiciary	Yes
Judicial protection of juveniles	No
Functioning of the Ministry of Justice	Yes
Refugees and asylum seekers services	No
Other	Yes

Comment :

Other includes: community justice services, drugs and community safety, police and fire pensions, criminal injuries compensation, Scottish Tribunals Service, Scottish Resilience, Police - central government, Accountant in Bankruptcy, central government grants to local authorities

**12) Annual approved public budget allocated to legal aid, in €- If one or several data are not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

	Total annual approved public budget allocated to legal aid (12.1 + 12.2)	12.1 Annual public budget allocated to legal aid in criminal law cases	12.2 Annual public budget allocated to legal aid in non criminal law cases
Amount (in €)	NA	NA	NA

**13) Total annual approved public budget allocated to the public prosecution services (in €). Please indicate in the "comment" box below any useful information to explain the figures provided.**

Amount 135 475 200

Comment :

135,475,200 Euros

The above represents the total Crown Office and Procurator Fiscal Service budget for the 2010/11 financial year converted at the average exchange rates for April 2010 and March 2011 provided through the HMRC website.

The total funding is split between a Revenue (or running costs) budget of 129,139,200 Euros (£112,100,000) and a capital budget of 6,336,000 Euros (£5,500,000). The latter being net of transfers and target underspend for the year.

This includes funding for prosecutions, investigation of deaths and investigation of complaints against the police.

**14) Authorities formally responsible for the budgets allocated to the courts (multiple options possible) :**

	Preparation of the total court budget	Adoption of the total court budget	Management and allocation of the budget among the individual courts	Evaluation of the use of the budget at a national level
Ministry of Justice	Yes	Yes	No	No
Other ministry	No	No	No	No
Parliament	No	Yes	No	Yes
Supreme Court	No	No	No	No
Judicial Council	No	No	No	No
Courts	No	No	No	No
Inspection body	No	No	No	No
Other	Yes	No	Yes	Yes

**15) If any other Ministry and/or inspection body and/or other, please specify (considering question 14):**

The overall budget for the courts is set by Scottish Ministers as part of their Annual Budget Process and is approved by the Scottish Parliament within the annual Budget Act.

The independent Scottish Court Service Board, makes representations to Scottish Ministers as part of the Budget setting process. Once confirmed by the Scottish Parliament the Scottish Court Service Board allocated funds between individual courts and corporate services. The budget is monitored by the Scottish Court Service Board and, through the Chief Executive as Accountable Officer, by the Scottish Parliament.

The budget for judicial salaries is set and managed separately.

**A.2**

**You can indicate below:**

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your budgetary system and the main reforms that have been implemented over the last two years
- if available an organisation scheme with a description of the competencies of the different authorities responsible for the budget process

Government funding for legal aid in Scotland is not cash limited. Therefore, there is no set budget as such. The Scottish Government does allocate an amount to cover the cost of legal aid cases in their budgets based on projected expenditure. This is called the Legal Aid Fund. The Scottish Government also allocate Grant in Aid to the Scottish Legal Aid Board to meet the costs of the administration of the organisation. The allocation for the Legal Aid Fund is:

2012-13 - £144.1 million (€166 m)  
 2013-14 - £138.1 million (€158 m)  
 2014-15 - £132.1 million (€152 m)

From 1 April 2010, the Scottish Court Service transferred from being a Scottish Government Agency to an independent Non-Ministerial Department, accountable to a governing board. The Board is chaired by Scotland's most senior judge, the Lord President, and includes 6 other judicial members and 6 non-judicial members (13 in total).

The Scottish Court Service is responsible for providing the people, building and technology to support the work of Scotland's courts and the judiciary of those courts. The Scottish Court Service is not responsible for the payment of permanent judicial salaries.

**Please indicate the sources for answering the questions 6, 9, 10, 11, 12 and 13.**

Information on the Courts Budget was provided from the Scottish Court Service draft Annual Report 2010-11.

## 2. Access to Justice and to all courts

### 2. 1. Legal aid

#### 2. 1. 1. Principles

#### 16) Does legal aid apply to:

	Criminal cases	Other than criminal cases
Representation in court	Yes	Yes
Legal advice	Yes	Yes

#### 17) Does legal aid include the coverage of or the exemption from court fees?

Yes

No

If yes, please specify:

In civil cases, court fees, such as those for serving or lodging documents, are covered by legal aid. However, the actual costs of the court are not.

#### 18) Can legal aid be granted for the fees that are related to the enforcement of judicial decisions (e.g. fees of an enforcement agent)?

Yes

No

If yes, please specify:

In civil legal aid, the prior approval of the Board is required for any step in the execution of diligence – in execution of a final or interim decree. A separate application is required to raise an action for sequestration or civil imprisonment.

#### 19) Can legal aid be granted for other costs (different from questions 16 to 18, e.g. fees of technical advisors or experts, costs of other legal professionals (notaries), travel costs etc ? If yes, please specify it in the "comment" box below).

	Criminal cases	Other than criminal cases
	Yes	Yes

Comment :

A grant of legal aid covers the fees and outlays of the solicitor and counsel acting for the assisted person. This may include the cost of using expert witnesses, safeguarders, reporters or interpreters/translators where appropriate. In certain circumstances, this will require the solicitor obtaining authorisation from the Board before incurring this expenditure. This will include travel expenses in certain circumstances.

#### 20) Number of cases referred to the court and for which legal aid has been granted. Please specify in the "comment" box below, when appropriate. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

[This question concerns only the annual number of cases for which legal aid has been granted to those referring a case to a court. It does not concern legal advice provided for cases that are not brought before the court.]

	Number
Total	NA
in criminal cases	NA
other than criminal cases	NA

Comment :

This covers the period April 2010 to March 2011

## Criminal cases

126,417 grants of criminal legal aid & Assistance By Way Of Representation. This figure is made up of:

- 93,486 grants of legal aid in summary cases (including ABWOR)
- 11,724 grants of legal aid in solemn cases
- 1,173 grants of automatic criminal legal aid
- 1,762 1783 grants of legal aid for an appeal
- 18,272 grants of legal aid for Duty Solicitor (inc public defenders)

27,545 grants of criminal advice and assistance

## Other than criminal cases

17,399 grants of Civil Legal Aid – This figure is made up of:

- 13,068 grants of civil legal aid
- 4,331 grants of ABWOR

90,098 grants of civil advice and assistance

Children's Legal Aid: 4,710 grants of legal aid & 4,601 grants of advice and assistance

Contempt of Court: 1,008 grants of legal aid and 196 grants of advice and assistance and ABWOR.

THESE FIGURES ARE THE TOTAL NUMBER OF GRANTS. IT IS NOT POSSIBLE USING THE BOARD'S SYSTEMS TO ACCURATELY SHOW HOW MANY OF THESE GRANTS RESULTED IN A COURT CASE.

**21) In criminal cases, can individuals who do not have sufficient financial means be assisted by a free of charge (or financed by a public budget) lawyer? Please specify in the "comment" box below.**

Accused individuals	Yes
Victims	No

Comment :

See Q23

**22) If yes, are individuals free to choose their lawyer within the framework of the legal aid system**

Yes

No

**23) Does your country have an income and assets evaluation for granting legal aid to the applicant ? Please provide in the "comment" box below any information to explain the figures provided. If you have such a system but no data available, please indicate NA. If you do not have such a system, please indicate NAP.**

	amount of annual income (if possible for one person) in €	amount of assets in €
for criminal cases	Yes	No
for other than criminal cases?	Yes	No

Comment :

Advice and Assistance: A person's income and capital must be within the current financial limits. A person whose disposable capital exceeds the capital limit of £1,716 is not eligible for advice and assistance, whatever their disposable income or eligibility for state benefits. A person whose disposable income exceeds the limit of £245 a week is not eligible for advice and assistance, whatever their level of disposable capital, unless they are in receipt of certain state benefits - for example, income support. Disposable income is the total income an applicant and any partner has, from all sources, after deducting standard allowances. If the applicant's disposable income is between £105 and £245 per week, the applicant has to pay a contribution. It is the solicitor that grants advice and assistance and it is for the solicitor to decide whether they collect the contribution from the applicant.



**Criminal Legal Aid:** For summary criminal applications, an applicant's income and capital must be within the current financial limits. A person whose disposable capital exceeds the capital limit of £1,716) is not eligible for criminal legal aid. A person whose disposable income exceeds the limit of £222 a week is not eligible for criminal legal aid. However, after considering the financial circumstances of the accused person, the Board must be satisfied that the costs of the case cannot be met without undue hardship to him or his dependants. For solemn legal aid, there is one test. The court assesses whether, after consideration of the person's financial circumstances that the expenses of the case cannot be met without undue hardship to him or his dependants.

**Civil Legal Aid:** To be eligible for civil legal aid, a person must have a disposable income of less than £26,239 a year. If the applicant has disposable income between £3521 and £26239, they will have a contribution to pay. A person must also have disposable capital of less than £13,017. If the applicant has disposable capital of between £7853 and £13017, they will have a contribution to pay.

**24) In other than criminal cases, is it possible to refuse legal aid for lack of merit of the case (for example for frivolous action or no chance of success)?**

Yes

No

If yes, please explain the exact criteria for denying legal aid:

Civil Legal Aid

As well as assessing a person's financial means, the Board will also need to be satisfied that (a) it is reasonable to use public funds to support the case and (b) there is a legal basis to take forward the case. In considering whether it is reasonable to use public funds the Board will consider, for example:

- (i) The prospects of the person winning the case;
- (ii) Whether the right court is being used;
- (iii) Whether the person has fully considered other ways of sorting out the problem before seeking court action;
- (iv) Whether the proceedings are frivolous or vexatious.

Children's Legal Aid

With regard to grants for Legal Aid to appeal to the Sheriff Principal or Court of Session against any decision of a Sheriff, the Board must be satisfied that there are substantial grounds to either make or respond to the appeal in question and whether the appeal is reasonable. Substantial grounds will include the point of law in question and/or the irregularity in the conduct of the case. In cases where it is the sheriff that takes the decision to grant legal aid, the sheriff considers the best interests of the child.

**25) Is the decision to grant or refuse legal aid taken by :**

the court?

an authority external to the court?

a mixed decision-making authority (court and external bodies)?

**26) Is there a private system of legal expense insurance enabling individuals (this does not concern companies or other legal persons) to finance court proceedings?**

Yes

No

If appropriate, please inform about the current development of such insurances in your country; is it a growing phenomenon?

People may have rights to indemnity under an insurance policy (legal expenses insurance, home insurance, motor insurance) or membership of a professional association or trade union. Solicitors in Scotland also operate 'no win, no fee' payment arrangements.

The Board is aware that many people who have insurance under house or car insurance policies are not aware that they are covered. We are working with the Scottish Government in trying to ensure that legal aid is used only as a funder of last resort and that insurance is used whenever possible.

**27) Can judicial decisions direct how legal costs, paid by the parties during the procedure, will be shared, in:**

criminal cases?	No
other than criminal cases?	Yes

**B.1**

**You can indicate below:**

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your legal aid system and the main reforms that have been implemented over the last two years

Q 25 The Board takes decisions in relation to civil and criminal legal aid applications.

The court can grant children's legal aid for some types of cases. The Board grants legal aid for appeals.

Question 27: A grant of Civil Legal Aid covers the fees and outlays of the solicitor and counsel acting for the assisted person. If the court awards expenses against an assisted person, they are personally liable for these. As assisted person found liable in expenses can apply to the court making the award for an order restricting their liability. This will be to an amount the court considers reasonable in all the circumstances of the case, having regard to the means of the parties and their conduct in the dispute. In many cases, the court will assess the assisted person's liability at "nil".

Recent reforms/developments

- Major package of reforms to deliver legal aid savings introduced by the Scottish Government in early 2011. These included reductions in solicitors' fees (for criminal cases and travelling); introduction of a table of fees for Counsel in Sheriff Court and Court of Session cases which will reduce the amount paid in cases; removal of certain exemptions from monies or capital that the Board is permitted to clawback from applicants; changes to the assessment of financial eligibility in children's cases; strengthening the responsibilities of solicitors to check for financial eligibility in advice and assistance.
- In response to the publication of the Scottish Government's budget in September 2011 the Scottish Government published a paper 'A Sustainable Future for Legal Aid' which the Board helped them to develop which outlines proposals for the future of legal aid provision in Scotland. This starkly sets out the challenge in delivering the spending review settlement for the legal aid fund and will form the basis of negotiations on future savings. The paper describes the direction of travel for making savings and maintaining access to justice.
- Following a decision from the Supreme Court on the HMA v Cadder case, emergency legislation was passed by the Scottish Parliament giving the Board a duty to make solicitors available to provide advice to suspects in police detention from July 2011. We worked jointly with the Scottish Government, the Law Society and others to develop a Police Station Duty Scheme which was implemented on 4 July 2011.
- On 25 November 2010 responsibility for determining applications for solemn criminal legal aid cases was transferred to the Board. This was previously done by the courts. The transfer is expected to result in greater consistency of decisions and provide some savings.
- Increased demand for the Board's direct funding of targeted advice services including the Civil Legal Assistance Offices. The Scottish Government agreed to continue funding into 2011-12.
- The Board has been given a new duty to monitor and report to Ministers on the availability and accessibility of legal services across Scotland. This is a role of significant importance and goes wider than the services funded through legal aid.
- Development of the Making Justice Work Programme, a Scottish Government led, cross justice agency programme aimed at improving joint working and efficiency across the justice system. The Board is leading a key project to develop the use of video links between solicitors and their clients in prisons and police stations.

**Please indicate the sources for answering the questions 20 and 23**

20. Scottish Legal Aid Board Annual Report 2010-2011 – available at [www.slab.org.uk](http://www.slab.org.uk)

23. Legal Aid Keycard – available at [www.slab.org.uk](http://www.slab.org.uk)

## 2. 2. Users of the courts and victims

### 2. 2. 1. Rights of the users and victims

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

-----

**The websites mentioned could appear in particular on the internet website of the CEPEJ. Please specify in the "comment" box below what documents and information the addresses for "other documents" include:**

- legal texts (e.g. codes, laws, regulations, etc.)?  Yes [www.legislation.gov.uk](http://www.legislation.gov.uk)  
Internet address(es):
- case-law of the higher court/s? Internet address(es):  Yes <http://www.scotcourts.gov.uk/opinionsApp/index.asp?txt=False>

other documents (e.g. downloadable forms, online registration)?  Yes <http://www.scotcourts.gov.uk/library/rules/index.asp>

Comment :

Rules and forms for both civil and criminal procedure can be found here <http://www.scotcourts.gov.uk/library/rules/index.asp>

**29) Is there an obligation to provide information to the parties concerning the foreseeable timeframes of proceedings?**

Yes

No

If yes, please specify:

However, in solemn (very serious) criminal cases there are time limits within which the prosecution must start a trial (12 months if the accused is at liberty, 140 days in High Court or 110 in Sheriff Court if the accused is remanded in custody). Only the court can extend these.

A timetable of a case may published by the court in several types of civil action (personal injury, commercial). An example of this can be found here: [http://www.scotcourts.gov.uk/session/rules/forms/form43\\_6.rtf](http://www.scotcourts.gov.uk/session/rules/forms/form43_6.rtf)

**30) Is there a public and free-of-charge specific information system to inform and to help victims of crime?**

Yes

No

If yes, please specify:

Victims of Crime can contact Victim Support Scotland for emotional support, practical help and information. Victims can also access the victims of crime in Scotland website which has information about support and advice, reporting a crime and the criminal justice system.

**31) Are there special favourable arrangements to be applied, during judicial proceedings, to the following categories of vulnerable persons. If "other vulnerable person" and/or "other special arrangements", please specify it in the "comment" box below.**

**[This question does not concern the police investigation phase of the procedure and does not concern compensation mechanisms for victims of criminal offences, which are addressed under questions 32 to 34.]**

	Information mechanism	Special arrangements in court hearings	Other
Victims of rape	Yes	Yes	Yes
Victims of terrorism	No	No	No
Children (witnesses or victims)	Yes	Yes	Yes
Victims of domestic violence	No	No	No
Ethnic minorities	Yes	No	Yes
Disabled persons	Yes	Yes	Yes
Juvenile offenders	No	No	No
Other (e.g. victims of human trafficking)	No	No	No

Comment :

All of these groups are eligible to be considered for special measures to help them give evidence in court under the Vulnerable Witnesses (Scotland) Act 2004. Children (up to age 16, or up to 18 in human trafficking cases) are automatically eligible for a screen or to use a live TV link and have a supporter with them. This includes child accused. They may also be considered for giving evidence through a prior statement or via a commissioner. Vulnerable adults (including accused) can be considered for any of these measures if they have a defined mental disorder or if their evidence would be significantly affected by fear or distress.

Other arrangements are as follows:

Victims of rape – automatically entitled to Crown Office & Procurator Fiscal Service (COPFS)' Victim Information and Advice (VIA) service – general information, case-specific information and information about support organisations

Victims of terrorism – would get general information about the justice system, and specifically about their case and be eligible to give their evidence in different ways if deemed vulnerable. May be entitled to COPFS' VIA service. Victims may be eligible for compensation under the provisions of the Criminal Injuries Compensation Scheme.

Child victims/witnesses – automatically entitled to COPFS' VIA service

Victims of domestic violence – automatically entitled to COPFS' VIA service. In areas covered by the Glasgow Domestic Abuse Court, adult and child victims can access support from ASSIST, a specialist support and advocacy service.

Ethnic minorities – automatically entitled to COPFS' VIA service. Provision of translated information and interpreters (by police, COPFS, Scottish Court Service)

Disabled persons – May be entitled to COPFS' VIA service. Help with access to court and any additional support needs e.g. communication

Victims of human trafficking – May be entitled to COPFS' VIA service. Suspected adult victims of human trafficking for the purposes of exploitation, domestic servitude or (for males only) sexual exploitation can access support from Migrant Helpline. Women suspected of being human trafficked for the purposes of commercial sexual exploitation can access support from the Trafficking Raising Awareness Alliance.

### 32) Does your country allocate compensation for victims of crime?

Yes

No

If yes, for which kind of offences

Payments are made to innocent victims of violent crime under provisions of the Criminal Injuries Compensation Scheme, which applies in Scotland, England and Wales and is founded on the Criminal Injuries Compensation Act 1995, an Act of the UK Parliament.

### 33) If yes, does this compensation consist in:

a public fund?

damages to be paid by the responsible person (decided by a court decision)?

a private fund?

### 34) Are there studies that evaluate the recovery rate of the damages awarded by courts to victims?

Yes

No

If yes, please inform about the recovery rate, the title of the studies, the frequency of the studies and the coordinating body:

### 35) Do public prosecutors have a specific role with respect to the victims (protection and assistance)?

Yes

No

If yes, please specify:

The prosecution service will apply to the court for special measures to assist victims at court where appropriate and assists them through the court process

### 36) Do victims of crime have the right to dispute a public prosecutor's decision to discontinue a case?

-----  
Please verify the consistency of your answer with that of question 105 regarding the possibility for a public prosecutor "to discontinue a case without needing a judicial decision".

Yes

No

NAP (the public prosecutor cannot decide to discontinue a case on his/her own. A judicial decision is needed).

If necessary, please specify:

There is no right of challenge to a decision by the public prosecutor but a person could ask for the decision to be judicially reviewed

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

**37) Is there a system for compensating users in the following circumstances:**

- excessive length of proceedings?
- non execution of court decisions?
- wrongful arrest?
- wrongful condemnation?

Where appropriate, please give details on the compensation procedure, the number of cases, the result of the procedures and the existing mechanism for calculating the compensation (e.g. the amount per day for unjustified detentions or convictions):

In the case of wrongful arrest claims for compensation may be made though these are handled by legal representatives. No data were available on numbers of cases.

**38) Does your country have surveys aimed at legal professionals and court users to measure their trust and/or satisfaction with the services delivered by the judicial system? (multiple options possible)**

- (Satisfaction) surveys aimed at judges
- (Satisfaction) surveys aimed at court staff
- (Satisfaction) surveys aimed at public prosecutors
- (Satisfaction) surveys aimed at lawyers
- (Satisfaction) surveys aimed at the parties
- (Satisfaction) surveys aimed at other court users (e.g. jurors, witnesses, experts, interpreters, representatives of governmental agencies)
- (Satisfaction) surveys aimed at victims

If possible, please specify their titles, object and websites where they can be consulted:

Court User Satisfaction Survey – this survey is aimed at both professional and non-professional court users and reports on their level of satisfaction with the various services provided by Scottish Court Service. Results from the 2009 survey are available on the Scottish Court Service website:

[http://www.scotcourts.gov.uk/docs/report/Court\\_User\\_Satisfaction\\_Survey2009.pdf](http://www.scotcourts.gov.uk/docs/report/Court_User_Satisfaction_Survey2009.pdf)

The results of the 2011 survey are due to be published in 2012.

The Scottish Court Service run a regular survey for their staff – results from the 2010 survey can be found on the Scottish Court Service website

<http://www.scotcourts.gov.uk/courtsadmin/docs/ScottishCourtService.pdf>

A survey aimed at members of the judiciary is being run for the first time in 2010-11.

**39) If possible, please specify:**

	Surveys at a regular interval (for example annual)	Occasional surveys
Surveys at national level	Yes	No
Surveys at court level	No	Yes

**40) Is there a national or local procedure for making complaints about the functioning of the judicial system (for example the treatment of a case by a judge or the duration of a proceeding)?**

- Yes
- No

**41) Please specify which authority is responsible for dealing with such complaints and inform whether there is or not a time limit to respond and/or a time limit for dealing with the complaint (multiple options possible). Please give information concerning the efficiency of this complaint procedure in the "comment" box below.**

	Time limit to respond (e.g. to acknowledge receipt of the complaint, to provide information on the follow-up to be given to the complaint, etc.)	Time limit for dealing with the complaint	No time limits
Court concerned			

	No	No	No
Higher court	No	No	No
Ministry of Justice	No	No	No
High Council of the Judiciary	No	No	No
Other external bodies (e.g. Ombudsman)	No	No	No

**Comment :**

The Judicial Office for Scotland will consider any complaint about the personal conduct of judicial office holders, but cannot deal with complaints about judicial decisions or the way in which cases have been handled. The usual way to challenge a decision is to appeal. Information on complaints regarding the judiciary are available on the Judiciary of Scotland website: <http://www.scotland-judiciary.org.uk/15/0/Complaints>

Complaints regarding the administrative functions of the courts, e.g. delays, inadequate facilities, problem with a non-judicial staff member in Scotland are dealt with by Scottish Court Service. Further information on the complaints procedure is available on the Scottish Court Service website: [http://www.scotcourts.gov.uk/you\\_and\\_us/complaints\\_faq.asp](http://www.scotcourts.gov.uk/you_and_us/complaints_faq.asp)

### 3. Organisation of the court system

#### 3. 1. Functioning

##### 3. 1. 1. Courts

**42) Number of courts considered as legal entities (administrative structures) and geographic locations. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

	Total number
42.1 First instance courts of general jurisdiction (legal entities)	99
42.2 First instance specialised Courts (legal entities)	NAP
42.3 All the Courts (geographic locations) (this includes 1st instance courts of general jurisdiction, first instance specialised courts, all second instance courts and courts of appeal and all supreme courts)	64

**43) Number (legal entities) of first instance specialised courts (or specific judicial order). If "other specialised 1st instance courts", please specify it in the "comment" box below. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

Total (must be the same as the data given under question 42.2)	NAP
Commercial courts	NAP
Labour courts	NAP
Family courts	NAP
Rent and tenancies courts	NAP
Enforcement of criminal sanctions courts	NAP
Administrative courts	NAP
Insurance and / or social welfare courts	NAP
Military courts	NAP
Other specialised 1st instance courts	NAP

Comment :

For question 42.2 in Scotland we refer in some situations to specialist courts however they (for example, domestic abuse courts, youth courts) sit under the jurisdiction of sheriff courts, whilst using specialised procedures and we have therefore not included them in the reply to question 42.

**44) Is there a foreseen change in the structure of courts [for example a reduction of the number of courts (geographic locations) or a change in the powers of courts]?**

Yes

No

If yes, please specify:

The Scottish Court Service Board Corporate Plan 2011-14 includes a commitment to review, and potentially rationalise, court locations. Final decisions on the potential court closure require approval by the Scottish Parliament through statutory instrument, on the recommendation of Scottish Ministers following an open public consultation.

Scottish Ministers have indicated their intention to legislate on proposals to reform Civil Justice in Scotland, including, potentially, the transfer of responsibilities between certain courts and the establishment of new national courts to deal with Sheriff Court Appeals and Personal Injury cases. These proposals will be subject to public consultation ahead of consideration by the Scottish Parliament.

**45) Number of first instance courts (geographic locations) competent for the following cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

	Number of courts
a debt collection for small claims	NAP
a dismissal	NAP
a robbery	49

**Please give the definition for small claims and indicate the monetary value of a small claim:**

In Scotland, a small claim is an action for payment of up to £3000 in value. Small Claim cases are heard with in the 49 Sheriff Courts, however the courts do not enforce the decrees or collect the debts. It is the responsibility of the successful party to have the court's order enforced, the court cannot do so on their behalf. If the unsuccessful party does not comply with the court's final order, steps can be taken to compel them to do so. However, the court cannot assist with enforcement procedures.

Employment issues are dealt with through a separate Employment Tribunal System

**Please indicate the sources for answering questions 42, 43 and 45:**

Please note

42.1 - 99 Justice of the Peace Courts and Sheriffs Court

42.3 - 64 seperate court locations

For geographical locations see Scottish Court Service web site:

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

Source

Scottish Court Service Web Site: <http://www.scotcourts.gov.uk>

**3. 1. 2. Judges and non-judge staff**

**46) Number of professional judges sitting in courts (if possible on 31 December 2010) (please give the information in full-time equivalent and for permanent posts actually filled for all types of courts - general jurisdiction and specialised courts). If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

**Please provide in the "comment" box below any useful comment for interpreting the data above.**

\*\*\*\*\*

**[Please make sure that public prosecutors and their staff are excluded from the following figures (they will be part of questions 55-60). If a distinction between staff attached to judges and staff attached to prosecutors cannot be made, please indicate it clearly.**

**Please indicate the number of posts that are actually filled at the date of reference and not the theoretical budgetary posts.]**

	Total	Males	Females
Total number of professional judges (1 + 2 + 3)	185	147	38
1. Number of first instance professional judges	168	131	37
2. Number of second instance (court of appeal) professional judges	17	16	1
3. Number of supreme court	NA	NA	NA



professional judges			
---------------------	--	--	--

Comment :

First instance professional judges include: 22 Outer house Senators, 1 Scottish land Judge, 141 Sheriffs; and 4 Stipendiary Magistrates

**47) Number of court presidents (professional judges). If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

	Total	Males	Females
Total number of court presidents (1 + 2 + 3)	1	1	NA
1. Number of first instance court presidents	NA	NA	NA
2. Number of second instance (court of appeal) court presidents	NA	NA	NA
3. Number of supreme court presidents	NA	NA	NA

**48) Number of professional judges sitting in courts on an occasional basis and who are paid as such (if possible on 31 December 2010). If necessary, please provide in the "comment" box below any information to explain the answer under question 48.**

Gross figure  Yes 99  
 If possible, in full-time equivalent NA

Comment :

The number of professional judges sitting on an occasional basis include; 5 temporary judges (who are not other judicial office holders), 11 re-employed retired judges, 63 part time sheriffs, 13 re-employed sheriffs, and 7 part time stipendiary magistrates.

**49) Number of non-professional judges who are not remunerated but who can possibly receive a simple defrayal of costs (if possible on 31 December 2010) (e.g. lay judges and "juges consulaires", but not arbitrators and persons sitting in a jury).**

Gross figure  Yes 386

**50) Does your judicial system include trial by jury with the participation of citizens?**

- Yes  
 No

If yes, for which type of case(s)?

Yes – in criminal and civil.

Criminal - In serious criminal cases prosecutors can elect to proceed through solemn procedure which results in trial with a jury (of 15). The judges sentencing powers are higher than summary. Around 5% of criminal cases in Scotland are solemn cases.

Civil - In the highest civil court (Court of Session) there is provision for a proof before a jury (of 12). A small fraction of 1% of civil cases per annum would proceed this way in any year.

**51) Number of citizens who were involved in such juries for the year of reference:**

NA

**52) Number of non-judge staff who are working in courts for judges (if possible on 31 December 2010) (this data should not include the staff working for public prosecutors; see question 60) (please give the information in full-time equivalent and for permanent posts actually filled). If "other non-judge staff", please specify it in the "comment" box below.**

Total non-judge staff working in courts (1 + 2 + 3 + 4 + 5)  Yes 1500

1. Rechtspfleger (or similar bodies) with judicial or quasi-judicial tasks having

autonomous competence and whose decisions could be subject to appeal		NAP
2. Non-judge staff whose task is to assist the judges (case file preparation, assistance during the hearing, court recording, helping to draft the decisions) such as registrars	<input checked="" type="checkbox"/> Yes	1350
3. Staff in charge of different administrative tasks and of the management of the courts (human resources management, material and equipment management, including computer systems, financial and budgetary management, training management)	<input checked="" type="checkbox"/> Yes	150
4. Technical staff		NAP
5. Other non-judge staff		NAP

Comment :

**53) If there are Rechtspfleger (or similar bodies) in your judicial system, please describe briefly their status and duties:**

Apparently there are no UK members of the European Union of Rechtspflegers

**54) Have the courts delegated certain services, which fall within their powers, to private providers (e.g. IT services, training of staff, security, archives, cleaning)?**

Yes

No

If yes, please specify:

NOT known

**C.1**

**You can indicate below:**

- any useful comments for interpreting the data mentioned in this chapter

- the characteristics of your judicial system and the main reforms that have been implemented over the last two years

The Head of the Scottish Judiciary is the Lord President – he is also counted as an Inner House Judge in the response to question 46.

**Please indicate the sources for answering questions 46, 47, 48, 49 and 52**

3. 1. 3. Public prosecutors and staff

**55) Number of public prosecutors (if possible on 31 December 2010) (please give the information in full-time equivalent and for permanent posts actually filled, for all types of courts – ordinary and specialised jurisdictions). If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP. Please provide in the "comment" box below any useful information for interpreting the data.**

	Total	Males	Females
Total number of prosecutors (1 + 2 + 3)	NA	NA	NA
1. Number of prosecutors at first instance level	496	192	304
2. Number of prosecutors at second instance (court of appeal) level	NA	NA	NA
3. Number of prosecutors at supreme court level	NA	NA	NA

Comment :

**56) Number of heads of prosecution offices. If data is not available, please indicate NA. If the situation is**

**not applicable in your country, please indicate NAP. Please provide in the "comment" box below any useful information for interpreting the data.**

	Total	Males	Females
Total number of heads of prosecution offices (1 + 2 + 3)	NA	NA	NA
1. Number of heads of prosecution offices at first instance level	40	23	17
2. Number of heads of prosecution offices at second instance (court of appeal) level	NA	NA	NA
3. Number of heads of prosecution offices at supreme court level	NA	NA	NA

Comment :

**57) Do other persons have similar duties to public prosecutors?**

Yes

No

Number (full-time equivalent)

**58) If yes, please specify their title and function:**

**59) If yes, is their number included in the number of public prosecutors that you have indicated under question 55?**

Yes

No

**60) Number of staff (non-public prosecutors) attached to the public prosecution service (if possible on 31 December 2010) (without the number of non-judge staff, see question 52) (in full-time equivalent and for permanent posts actually filled).**

Number

Yes

1 188

**C.2**

**You can indicate below:**

- any useful comments for interpreting the data mentioned in this chapter

- the characteristics of your judicial system and the main reforms that have been implemented over the last two years

**Please indicate the sources for answering questions 55, 56 and 60**

Crown Office and Procurator Fiscal Service

**3. 1. 4. Court budget and new technologies**

**61) Who is entrusted with responsibilities related to the budget within the court? If "other", please specify it in the "comment" box below.**

	Preparation of the budget	Arbitration and allocation	Day to day management of the budget	Evaluation and control of the use of the budget
Management Board	Yes	Yes	No	Yes
Court President	No	No	No	No
Court administrative director	No	No	Yes	No
Head of the court clerk office	No	No	Yes	No
Other	No	No	No	No

Comment :

**62) For direct assistance to the judge/court clerk, what are the computer facilities used within the courts?**

Word processing	100% of courts
Electronic data base of jurisprudence	100% of courts
Electronic files	100% of courts
E-mail	100% of courts
Internet connection	100% of courts

**63) For administration and management, what are the computer facilities used within the courts?**

Case registration system	100% of courts
Court management information system	100% of courts
Financial information system	100% of courts
Videoconferencing	100% of courts

**64) For the electronic communication and exchange of information between the courts and their environment, what are the computer facilities used by the courts?**

Electronic web forms	100% of courts
Website	100% of courts
Follow-up of cases online	100% of courts
Electronic registers	100% of courts
Electronic processing of small claims	0 % of courts
Electronic processing of undisputed debt recovery	0 % of courts
Electronic submission of claims	0 % of courts
Videoconferencing	100% of courts
Other electronic communication facilities	100% of courts

**65) The use of videoconferencing in the courts (details on question 65). Please indicate in the "comment" box below any clarification on the legal framework and the development of videoconferencing in your country.**

	65.1 In criminal cases, do courts or prosecution offices use videoconferencing for hearings in the presence of defendants or witnesses?	65.2 Can such court hearing be held in the police station and/or in the prison?	65.3 Is there any specific legislation on the conditions for using videoconferencing in the courts / prosecution offices, especially in order to protect the rights of the defence?	65.4 Is videoconferencing used in other than criminal cases?
	Yes	No	Yes	Yes

Comment :

Online payment of fines

**C.3**

**You can indicate below:**

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your judicial system and the main reforms that has been implemented over the last two years

Other electronic communication facilities - on-line payment of fines

**3. 2. Performance and evaluation**

## 3. 2. 1. Performance and evaluation

**66) Is there a centralised institution that is responsible for collecting statistical data regarding the functioning of the courts and judiciary?** Yes No

If yes, please indicate the name and the address of this institution:

1. Justice Analytical Services, Scottish Government, St Andrew's House, Regent Road, Edinburgh, EH1 3DG. 2. Management Information and Analysis Team, Scottish Court Service N1 Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD

**67) Are individual courts required to prepare an annual activity report (that includes, for example, data on the number of cases processed or pending cases, the number of judges and administrative staff, targets and assessment of the activity)?** Yes No**68) Do you have, within the courts, a regular monitoring system of court activities concerning:**

-----  
**The monitoring system aims to assess the day-to-day activity of the courts (namely, what the courts produce) thanks in particular to data collections and statistical analysis (see also questions 80 and 81).**

 number of incoming cases? number of decisions delivered? number of postponed cases? length of proceedings (timeframes)? other?

If other, please specify:

The Scottish Court Service collects regular management information from all courts.

**69) Do you have a system to evaluate regularly the activity (in terms of performance and output) of each court?**

-----  
**The evaluation system refers to the performance of the court systems with prospective concerns, using indicators and targets. The evaluation may be of more qualitative nature (see questions 69-77). It does not refer to the evaluation of the overall (good) functioning of the court (see question 82).**

 Yes No

Please specify:

Scottish Court Service Board have a 'Scorecard' which covers:

- Judicial satisfaction
- Court User satisfaction
- Disposal of criminal cases in 26 weeks
- Ineffective use of court time
- Court room utilisation
- Waiting Times
- Employee engagement

Relating only to Criminal Summary business – the Scottish Government Summary

Justice Reform Key Performance Indicators can be found at

<http://www.scotland.gov.uk/Topics/Justice/legal/criminalprocedure/19008/monitoringandevaluation>**70) Concerning court activities, have you defined performance and quality indicators (if no, please skip to question 72)** Yes

No

**71) Please select the 4 main performance and quality indicators that have been defined:**

- incoming cases
- length of proceedings (timeframes)
- closed cases
- pending cases and backlogs
- productivity of judges and court staff
- percentage of cases that are processed by a single sitting judge
- enforcement of penal decisions
- satisfaction of court staff
- satisfaction of users (regarding the services delivered by the courts)
- judicial quality and organisational quality of the courts
- costs of the judicial procedures
- other:

If other, please specify:

The Scottish Government monitors and evaluates specific aspects of summary justice including the duration of cases within the justice system, fines enforcement. These measures cover all aspects of the criminal justice system, not just the courts aspect.

The Scottish Court Service undertakes regular Employee Satisfaction and Court User Satisfaction surveys. Links to the most recent publications are available on the Scottish Court Service web site ([http://www.scotcourts.gov.uk/courtsadmin/scs\\_strategy.asp](http://www.scotcourts.gov.uk/courtsadmin/scs_strategy.asp))

**72) Are there quantitative performance targets (for instance a number of cases to be addressed in a month) defined for each judge?**

- Yes
- No

**73) Who is responsible for setting the targets for each judge?**

- executive power (for example the ministry of Justice)?
- legislative power
- judicial power (for example a High Judicial Council or a Higher Court)
- other

If other, please specify:

**74) Are there performance targets defined at the level of the court (if no please skip to question 77)?**

- Yes
- No

**75) Who is responsible for setting the targets for the courts?:**

- executive power (for example the ministry of Justice)?
- legislative power
- judicial power (for example a High Judicial Council, Higher Court)
- other

If other, please specify:

Scottish Court Service Board and collaborative working with criminal justice partners

**76) Please specify the main targets applied to the courts:**

Targets are set out in the Scottish Court Service Board Scorecard Relating only to Criminal Summary business – the Scottish Government Summary Justice Reform Key Performance Indicators (<http://www.scotland.gov.uk/Topics/Justice/legal/criminalprocedure/19008/monitoringandevaluation>)

**77) Who is responsible for evaluating the performance of the courts (see questions 69 to 76)? (multiple options possible)**

- High Council of judiciary
- Ministry of justice
- inspection authority
- Supreme Court
- external audit body
- other

If other, please specify:

The Lord President and the Sheriff Principal are responsible for overseeing the efficient operation of courts. The Scottish Court Service Board are responsible for the day to day monitoring and evaluation of the administrative performance of the Court Service.

Scottish Government (Summary Justice Reform Monitoring and Evaluation (<http://www.scotland.gov.uk/Topics/Justice/legal/criminalprocedure/19008/monitoringandevaluation>))

**78) Are quality standards determined for the whole judicial system (are there quality systems for the judiciary and/or judicial quality policies)?**

- Yes
- No

If yes, please specify:

**79) Do you have specialised court staff that is entrusted with these quality standards?**

- Yes
- No

**80) Do you monitor backlogs and cases that are not processed within a reasonable timeframe for:**

- in civil law cases
- in criminal law cases
- in administrative law cases

**81) Do you monitor waiting time during court procedures?**

- Yes
- No

If yes, please specify:

Criminal summary – the number of weeks between a pleading diet and trial  
Civil proofs and debates – the number of weeks until a proof/debates can be offered

**82) Is there a system to evaluate the overall (smooth) functioning of courts on the basis of an evaluation plan (plan of visits) agreed beforehand?**

-----

**This question does not concern the specific evaluation of performance indicators.**

- Yes
- No

Please specify the frequency of the evaluation:

**83) Is there a system for monitoring and evaluating the performance of the public prosecution service?**

- Yes  
 No

If yes, please give further details:

There is a independent inspectorate of prosecution

**C.4**

**You can indicate below:**

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your court monitoring and evaluation systems



## 4. Fair trial

### 4. 1. Principles

#### 4. 1. 1. General information

**84) Percentage of first instance criminal in absentia judgments (cases in which the suspect is not attending the hearing in person nor represented by a legal professional)?**

NA

**85) Is there a procedure to effectively challenge a judge if a party considers that the judge is not impartial?**

Yes

No

If possible, number of successful challenges (in a year):

**86) Number of cases regarding Article 6 of the European Convention of Human Rights on duration and non-execution. If data is not available, please indicate NA.**

	Cases declared inadmissible by the Court	Friendly settlements	Judgements establishing a violation	Judgements establishing a non violation
Civil proceedings - Article 6§1 (duration)	NA	NA	NA	NA
Civil proceedings - Article 6§1 (non-execution)	NA	NA	NA	NA
Criminal proceedings - Article 6§1 (duration)	NA	NA	NA	NA

**Please indicate the sources:**

#### D.1

**You can indicate below any useful comments for interpreting the data mentioned in this chapter**

Q 84. Section 150A of the Criminal Procedure (Scotland) Act 1995 was introduced in December 2007 and enables the court to hear evidence at trial in the absence of the accused in summary criminal cases. There are requirements however to ensure that the accused is aware that this is likely to occur should he/she fail to attend at court at a given diet. In 2010, it is not known if any such instances of a trial in absence occurred.

### 4. 2. Timeframes of proceedings

#### 4. 2. 1. General information

**87) Are there specific procedures for urgent matters as regards:**

civil cases?

criminal cases?

administrative cases?

there is no specific procedure

If yes, please specify:

Civil - examples include; interdicts, urgent orders

Criminal - examples include; time limits for custody cases, priority for child witnesses

**88) Are there simplified procedures for:**

civil cases (small disputes)?

criminal cases (small offences)?

administrative cases?

there is no simplified procedure

If yes, please specify:

**89) Do courts and lawyers have the possibility to conclude agreements on arrangements for processing cases (presentation of files, decisions on timeframes for lawyers to submit their conclusions and on dates of hearings)?**

Yes

No

If yes, please specify:

For criminal cases

#### 4. 2. 2. Caseflow management and timeframes of judicial proceedings

**90) Comment:**

The national correspondents are invited to pay special attention to the quality of the answers to questions 91 to 102 regarding case flow management and timeframes of judicial proceedings. The CEPEJ agreed that the subsequent data would be processed and published only if answers from a significant number of member states – taking into account the data presented in the previous report – are given, enabling a useful comparison between the systems.

**91) First instance courts: number of other than criminal cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

**Note 1:** cases mentioned in categories 3 to 5 (enforcement, land registry, business register) should be presented separately in the table. Cases mentioned in category 6 (administrative law) should also be separately mentioned for the countries which have specialised administrative courts or separate administrative law procedures or are able to distinguish in another way between administrative law cases and civil law cases.

**Note 2:** check if the figures submitted are (horizontally and vertically) consistent. Horizontal consistent data means: "(pending cases on 1 January 2010 + incoming cases) – resolved cases" should give the correct number of pending cases on 31 December 2010. Vertical consistency of data means that the sum of the individual case categories 1 to 7 should reflect the total number of other than criminal law cases.

	Pending cases on 1 Jan. '10	Incoming cases	Resolved cases	Pending cases on 31 Dec. '10
Total of other than criminal law cases (1+2+3+4+5+6+7)*	NA	167 000	108 000	NA
1. Civil (and commercial) litigious cases (if feasible without administrative law cases, see category 6)*	NA	NA	NA	NA
2. Civil (and commercial) non-litigious cases, e.g. uncontested payment orders, request for a change of name, etc. (if feasible without administrative law cases; without enforcement cases, registration cases and other cases, see categories 3-7)*	NA	NA	NA	NA
3. Enforcement cases	NAP	NAP	NAP	NAP
4. Land registry cases**	NA	NA	NA	NA
5. Business register cases**	NAP	NAP	NAP	NAP
6. Administrative law cases (litigious and non-litigious)	NA	NA	NA	NA
7. Other cases (e.g. insolvency registry cases)	NA	5 700	5 100	NA

**92) If courts deal with "civil (and commercial) non-litigious cases", please indicate the case categories included:**

Figures in table at question 91 relate to Sheriff Court civil business

**93) If "other cases", please indicate the case categories included:**

Liquidations and sequestrations

**94) First instance courts: number of criminal law cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

**Note: please check if the figures submitted are (horizontally and vertically) consistent. Horizontal consistent data means that: "(pending cases on 1 January 2010 + incoming cases) – resolved cases" should give the correct number of pending cases on 31 December 2010. Vertical consistency of data means that the sum of the categories 8 and 9 for criminal cases should reflect the total number of criminal cases.**

	Pending cases on 1 Jan. '10	Incoming cases	Resolved cases	Pending cases on 31 Dec. '10
Total criminal cases (8+9)	NA	152 500	NA	NA
8. Criminal cases (severe criminal offences)	NA	5 500	NA	NA
9. Misdemeanour and / or minor offences cases	NA	147 000	NA	NA

**95) The classification of cases between severe criminal cases and misdemeanour and/or minor criminal cases may be difficult. Some countries might have other ways of addressing misdemeanour offences (for example via administrative law procedures).**

-----

**Please indicate, if feasible, what case categories are included under "severe criminal cases" and the cases included under "misdemeanour and /or minor criminal cases".**

Severe – Serious assault, fraud, Assault and Robbery

Misdemeanour/Minor cases – Theft, assault, road traffic offences

**96) Comments on questions 91 to 95. You can indicate, for instance, the specific situation in your country, give explanations on NA or NAP answers or explain the calculation of the total number of other than criminal law cases or differences in horizontal consistency, etc.**

Figures relate to 2010-11 in Justice of the Peace and Sheriff Court

**97) Second instance courts: total number of "other than criminal law" cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

**Note: the total of "other than criminal" cases includes all of the following categories (categories 1 to 7).**

	Pending cases on 1 Jan. '10	Incoming cases	Resolved cases	Pending cases on 31 Dec. '10
Total of other than criminal law cases (1+2+3+4+5+6+7)	NA	5 700	4 300	NA
1. Civil (and commercial) litigious cases (if feasible without administrative law cases, see category 6)*	NA	4 300	3 170	NA
2. Civil (and commercial) non-litigious cases, e.g. uncontested payment orders, request for a change of name, etc. (if feasible without administrative law cases; without enforcement cases, registration cases and other cases, see categories 3-7)*	NAP	NAP	NAP	NAP
3. Enforcement cases	NAP	NAP	NAP	NAP
4. Land registry cases	NAP	NAP	NAP	NAP
5. Business register cases	NAP	NAP	NAP	NAP
6. Administrative law cases (litigious and non-litigious)	NA	1 400	1 130	NA
7. Other cases (e.g. insolvency registry cases)	NAP	NAP	NAP	NAP

**98) Second instance courts: total number of criminal law cases. If data is not available, please indicate NA.**

If the situation is not applicable in your country, please indicate NAP.

	Pending cases on 1 Jan. '10	Incoming cases	Resolved cases	Pending cases on 31 Dec. '10
Total criminal cases (8+9)	NA	750	600	NA
8. Criminal cases (Severe criminal offences)	NA	750	600	NA
9. Misdemeanour and/or minor offences cases	NAP	NAP	NAP	NAP

Comment :

Figures for second instance relate to new cases in the High Court and Court of Session for calendar year 2010

**99) Highest instance courts: total number of "other than criminal law" cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

**Note: the total of "other than criminal law cases" includes all of the following categories (categories 1 to 7).**

	Pending cases on 1 Jan. '10	Incoming cases	Resolved cases	Pending cases on 31 Dec. '10
Total of other than criminal law cases (1+2+3+4+5+6+7)	NA	224	238	NA
1. Civil (and commercial) litigious cases (if feasible without administrative law cases, see category 6)	NA	224	238	NA
2. Civil (and commercial) non-litigious cases, e.g. uncontested payment orders, request for a change of name, etc. (if feasible without administrative law cases; without enforcement cases, registration cases and other cases, see categories 3-7)	NAP	NAP	NAP	NAP
3. Enforcement cases	NA	NA	NA	NA
4. Land registry cases	NAP	NAP	NAP	NAP
5. Business register cases	NAP	NAP	NAP	NAP
6. Administrative law cases (litigious and non-litigious)	NA	NA	NA	NA
7. Other cases (e.g. insolvency registry cases)	NAP	NAP	NAP	NAP

**100) Highest instance courts: total number of criminal law cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

	Pending cases on 1 Jan. '10	Incoming cases	Resolved cases	Pending cases on 31 Dec. '10
Total criminal cases (8+9)	NA	2 260	1 930	NA
8. Criminal cases (severe criminal offences)	NA	830	760	NA
9. Misdemeanour cases (minor offences)	NA	1 430	1 170	NA

Comment :

Figures in tables 99 and 100 relate to processing of appeal cases in the High Court and Court of Session for 2010. In question 100 8 refers to solemn appeals and 9 relates to summary appeals.

**101) Number of litigious divorce cases, employment dismissal cases, robbery cases and intentional homicide cases received and processed by first instance courts. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

	Pending cases on 1 Jan. '10	Incoming cases	Resolved cases	Pending cases on 31 Jan. '10
Litigious divorce cases	NA	4 650	3 850	NA
Employment dismissal	NAP	NAP	NAP	NAP

cases				
Robbery cases	NA	NA	NA	NA
Intentional homicide	NA	NA	NA	NA

**102) Average length of proceedings, in days (from the date the application for judicial review is lodged). If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

-----  
**[The average length of proceedings has to be calculated from the date the application for judicial review is lodged to the date the judgment is made, without taking into account the enforcement procedure. New: the question concerns first, second and third instance proceedings.]**

	% of decisions subject to appeal	% pending cases more than 3 years	Average length in 1st instance (in days)	Average length in 2nd instance (in days)	Average length in 3rd instance (in days)	Average total length of the total procedure (in days)
Litigious divorce cases	NA	NA	NA	NA	NA	NA
Employment dismissal cases	NA	NA	NA	NA	NA	NA
Robbery cases	NA	NA	NA	NA	NA	NA
Intentional homicide	NA	NA	NA	NA	NA	NA

**103) Where appropriate, please inform about the specific procedure as regards divorce cases (litigious and non-litigious):**

**104) How is the length of proceedings calculated for the four case categories? Please give a description of the calculation method.**

**105) Role and powers of the public prosecutor in the criminal procedure (multiple options possible):**

- to conduct or supervise police investigation
- to conduct investigations
- when necessary, to demand investigation measures from the judge
- to charge
- to present the case in the court
- to propose a sentence to the judge
- to appeal
- to supervise enforcement procedure
- to discontinue a case without requiring a judicial decision (ensure consistency with question 36!)
- to end the case by imposing or negotiating a penalty or measure without requiring a judicial decision
- other significant powers

If "other significant powers", please specify:

To impose penalties (alternatives to prosecution) without requiring judicial input. to investigate all sudden, unexplained and suspicious deaths.

**106) Does the public prosecutor also have a role in civil and/or administrative cases?**

- Yes
- No

If yes, please specify:

The prosecutor has a role in forfeiture and civil recovery of assets presumed to have been acquired from criminal activity.

**107) Case proceedings managed by the public prosecutor: total number of 1st instance criminal cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

	Received by the public prosecutor	Cases discontinued by the public prosecutor (see 108 below)	Cases concluded by a penalty or a measure imposed or negotiated by the public prosecutor	Cases charged by the public prosecutor before the courts
Total number of 1st instance criminal cases	265 830	62 203	77 937	110 898

**108) Total cases which were discontinued by the public prosecutor. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

	Number
Total cases which were discontinued by the public prosecutor (1+2+3)	62 203
1. Discontinued by the public prosecutor because the offender could not be identified	NAP
2. Discontinued by the public prosecutor due to the lack of an established offence or a specific legal situation	19 917
3. Discontinued by the public prosecutor for reasons of opportunity	42 286

**109) Do the figures include traffic offence cases?**

Yes

No

## D.2

**You can indicate below:**

- any useful comments for interpreting the data mentioned in this chapter  
 the characteristics of your system concerning timeframes of proceedings and the main reforms that have been implemented over the last two years

Data for Q107 to Q109 relates to financial year 2010-11. Q107: Total disposals will not equal total criminal cases received as some cases against the same accused will be linked and taken forward as one case. There is also a time lag between receipt of a case and final disposal so that some cases received in 2010-2011 will not result in a disposal that year. Q108: In (1), cases where offender is not identified are not received by prosecutor. Figure for (2) includes cases where there is insufficient admissible evidence, cases which are time barred, cases which are not a crime and cases where the prosecutor has no jurisdiction. Figure for (3) includes all other reasons for discontinuing a case.

Q107#3#1 - The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 was passed in 2007. Among other changes, from March 2008, this legislation extended the range of alternatives to prosecution that can be offered. This has led to an increase in the number of cases concluded by a penalty or a measure imposed or negotiated by the public prosecutor.

**Please indicate the sources for answering the questions 91, 94, 97, 98, 99, 100, 101, 102, 107 and 108.**

Qs 91,94,97,98,99,100,101,102, - Scottish Court Service

Q107 and Q108 - Figures taken from Crown Office and Procurator Fiscal (COPFS) live operational case management system, specifically designed to receive criminal and death reports from the police and other specialist reporting agencies and to manage these cases for prosecution purposes. The information held on the system is structured for these operational needs, rather than for statistical reporting or research purposes.

## 5. Career of judges and public prosecutors

### 5. 1. Recrutement and promotion

#### 5. 1. 1. Recrutement and promotion

##### 110) How are judges recruited?

- Mainly through a competitive exam (for instance, following a university degree in law)
- Mainly through a recruitment procedure for legal professionals with long-time working experience in the legal field (for example lawyers)
- A combination of both (competitive exam and working experience)
- Other

If other, please specify:

##### 111) Authority(ies) in charge: are judges initially/at the beginning of their carrier recruited and nominated by:

[This question strictly concerns the authority entrusted with the decision to recruit (not the authority formally responsible for the nomination if different from the former)].

- An authority made up of judges only?
- An authority made up of non-judges only?
- An authority made up of judges and non-judges?

Please indicate the name of the authority(ies) involved in the whole procedure of recruitment and nomination of judges. If there are several authorities, please describe their respective roles:

Judicial Appointments Board for Scotland – appointment process  
Scottish Ministers and the First Minister make recommendations

##### 112) Is the same authority competent for the promotion of judges?

- Yes
- No

If no, which authority is competent for the promotion of judges ?

Senators who move from the Outer House to the Inner House are selected by the Lord President (head of profession). All other elevations are dealt with by the Judicial Appointments Board as a normal recruitment exercise.

##### 113) Which procedures and criteria are used for promoting judges? Please specify.

Normally seniority date

##### 114) Is there a system of qualitative individual assessment of the judges' activity?

- Yes
- No

##### 115) Is the status of prosecution services:

- Indépendant?
- Under the authority of the Minister of justice ?
- Other?

Please specify:

##### 116) How are public prosecutors recruited?

- Mainly through a competitive exam (for instance, following a university degree in law)
- Mainly through a recruitment procedure for legal professionals with long-time working experience in the legal field (for example lawyers)
- A combination of both (competitive exam and working experience)
- Other

If "other", please specify:

Through a recruitment process for legally qualified persons

**117) Authority(ies) in charge: are public prosecutors initially/at the beginning of their carrier recruited by:**

**[This question concerns the authority entrusted with the responsibility to recruit only (not the authority formally responsible for the nomination if different from the former).]**

- An authority composed of public prosecutors only?
- An authority composed of non-public prosecutors only?
- An authority composed of public prosecutors and non-public prosecutors?

Please indicate the name of the authority(ies) involved in the whole procedure of recruitment and nomination of public prosecutors. If there are several authorities, please describe their respective roles:

Crown Office and the Procurator Fiscal Service.

**118) Is the same authority formally responsible for the promotion of public prosecutors?**

- Yes
- No

If no, please specify which authority is competent for promoting public prosecutors:

**119) Which procedures and criteria are used for promoting public prosecutors? Please specify:**

Interview procedure and performance appraisal reports

**120) Is there a system of qualitative individual assessment of the public prosecutors' activity?**

- Yes
- No

**121) Are judges appointed to office for an undetermined period (i.e. "for life" = until the official age of retirement)?**

- Yes
- No

If yes, are there exceptions? (e.g. dismissal as a disciplinary sanction)? Please specify:

Judges may be removed following disciplinary action. Part time sheriffs are appointed for 5 year terms and may also be removed in certain circumstances at the end of each term

**122) If there is a probation period for judges (e.g. before being appointed "for life"), how long is this period? If the situation is not applicable in your country, please indicate NAP.**

	Duration of probation period (in years)
	NAP

**123) Are public prosecutors appointed to office for an undetermined period (i.e. "for life" = until the official age of retirement)?**

- Yes



No

If yes, are there exceptions (e.g. dismissal as a disciplinary sanction)? Please specify:

**124) If there is a probation period for public prosecutors, how long is this period? If the situation is not applicable in your country, please indicate NAP.**

	Duration of the probation period (in years)
	1

**125) If the mandate for judges is not for an undetermined period (see question 121), is it renewable? What is the length of the mandate (in years)?**

NAP

**126) If the mandate for public prosecutors is not for an undetermined period (see question 123), is it renewable? What is the length of the mandate (in years)?**

NA

### E.1

**You can indicate below:**

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of the selection and nomination procedure of judges and prosecutors and the main reforms that have been implemented over the last two years

## 5. 2. Training

### 5. 2. 1. Training

**127) Training of judges**

Initial training (e.g. attend a judicial school, traineeship in the court)	Compulsory
General in-service training	Compulsory
In-service training for specialised judicial functions (e.g. judge for economic or administrative issues)	Compulsory
In-service training for management functions of the court (e.g. court president)	Compulsory
In-service training for the use of computer facilities in courts	Compulsory

**128) Frequency of the in-service training of judges:**

General in-service training	Annual
In-service training for specialised judicial functions (e.g. judge for economic or administrative issues)	Annual
In-service training for management functions of the court (e.g. court president)	Annual
In-service training for the use of computer facilities in courts	Annual

**129) Training of public prosecutors**

Initial training	Compulsory
General in-service training	Compulsory
In-service training for specialised functions (e.g. public prosecutor specialised on organised crime)	Compulsory
In-service training for management functions of the court (e.g. Head of prosecution office, manager)	Compulsory
In-service training for the use of computer facilities in office	Compulsory

### 130) Frequency of the in-service training of public prosecutors

General in-service training	Annual
In-service training for specialised functions (e.g. public prosecutor specialised on organised crime)	Occasional (e.g. at times)
In-service training for management functions of the court (e.g. Head of prosecution office, manager)	Occasional (e.g. at times)
In-service training for the use of computer facilities in office	Occasional (e.g. at times)

### 131) Do you have public training institutions for judges and / or prosecutors? If yes, please indicate in the "comment" box below the budget of such institution(s). If your judicial training institutions do not correspond to these criteria, please specify it.

	Initial training only	Continuous training only	Initial and continuous training
One institution for judges	No	No	Yes
One institution for prosecutors	No	No	No
One single institution for both judges and prosecutors	No	No	No

Comment :

The Judicial Studies Committee is part of the Judicial Office within the Scottish Court Service

## E.2

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- comments regarding the attention given in the curricula to the European Convention on Human Rights and the case law of the Court
- the characteristics of your training system for judges and prosecutors and the main reforms that has been implemented over the last two years

### 5. 3. Practice of the profession

#### 5. 3. 1. Practice of the profession

### 132) Salaries of judges and public prosecutors.

	Gross annual salary in €, on 31 December 2010	Net annual salary in €, on 31 December 2010
First instance professional judge at the beginning of his/her career	150 106	
Judge of the Supreme Court or the Highest Appellate Court (please indicate the average salary of a	230 147	

judge at this level, and not the salary of the Court President)		
Public prosecutor at the beginning of his/her career	35 154	26 009
Public prosecutor of the Supreme Court or the Highest Appellate Instance (please indicate the average salary of a public prosecutor at this level, and not the salary of the Public prosecutor General)		

**Comment :**

These are the salaries at 31 December 2010 however they have been converted to euros using the exchange rate £1 = 1.17 euros as at 1 January 2011

Sheriff 150 106

Sheriff Principal 162 101

Outer House Senator 202 121

Inner House Senator 230 147

Lord Justice Clerk 242 022

Lord President 250 573

**133) Do judges and public prosecutors have the following additional benefits?**

	Judges	Public prosecutors
Reduced taxation	No	No
Special pension	Yes	No
Housing	No	No
Other financial benefit	No	No

**134) If other financial benefit, please specify:****135) Can judges combine their work with any of the following other functions ?**

	With remuneration	Without remuneration
Teaching	No	No
Research and publication	Yes	Yes
Arbitrator	No	Yes
Consultant	No	No
Cultural function	No	No
Political function	No	No
Other function	No	No

**136) If rules exist in your country (e.g. authorisation needed to perform these activities), please specify. If "other function", please specify.****137) Can public prosecutors combine their work with any of the following other functions ?**

	With remuneration	Without remuneration
Teaching	No	No
Research and publication	No	No
Arbitrator	No	No
Consultant	No	No
Cultural function	No	No
Political function	No	No

Other function	No	No
----------------	----	----

**138) Please specify existing rules (e.g. authorisation to perform the whole or a part of these activities). If "other function", please specify:**

**139) Productivity bonuses: do judges receive bonuses based on the fulfilment of quantitative objectives in relation to the delivery of judgments (e.g. number of judgments delivered over a given period of time)?**

- Yes  
 No

If yes, please specify the conditions and possibly the amounts:

## 5. 4. Disciplinary procedures

### 5. 4. 1. Disciplinary procedures

**140) Who is authorised to initiate disciplinary proceedings against judges (multiple options possible)?**

- Citizens  
 Relevant Court or hierarchical superior  
 High Court / Supreme Court  
 High Judicial Council  
 Disciplinary court or body  
 Ombudsman  
 Parliament  
 Executive power  
 Other?  
 This is not possible

If "executive power" and/or "other", please specify:

Disciplinary proceedings may be commenced by the First Minister independently or at the request of the Lord President who is head of the profession

**141) Who has been authorised to initiate disciplinary proceedings against public prosecutors: (multiple options possible):**

- Citizens  
 Head of the organisational unit or hierarchical superior public prosecutor  
 Prosecutor General /State public prosecutor  
 Public prosecutorial Council (and Judicial Council)  
 Disciplinary court or body  
 Ombudsman  
 Professional body  
 Executive power  
 Other?  
 This is not possible

If "executive power" and/or "other", please specify:

**142) Which authority has disciplinary power on judges? (multiple options possible):**

- Court  
 Higher Court / Supreme Court  
 Judicial Council

- Disciplinary court or body
- Ombudsman
- Parliament
- Executive power
- Other?

If "executive power" and/or "other", please specify:

Disciplinary powers are set out in legislation and rules made by the Lord President

**143) Which authority has the disciplinary power on public prosecutors? (multiple options possible):**

- Supreme Court
- Head of the organisational unit or hierarchical superior public prosecutor
- Prosecutor General /State public prosecutor
- Public prosecutorial Council (and Judicial Council)
- Disciplinary court or body
- Ombudsman
- Professional body
- Executive power
- Other?

If "executive power" and/or "other", please specify:

**144) Number of disciplinary proceedings initiated against judges and public prosecutors. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP. If "other", please specify it in the "comment" box below.**

**[If disciplinary proceedings are undertaken because of several mistakes, please count the proceedings only once and for the main mistake.]**

	Judges	Public prosecutors
Total number (1+2+3+4)	NA	2
1. Breach of professional ethics	NA	NA
2. Professional inadequacy	NA	1
3. Criminal offence	NA	1
4. Other	NA	NA

Comment :

**145) Number of sanctions pronounced against judges and public prosecutors. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

**If "other", please specify it in the "comment" box below. If a significant difference between the number of disciplinary proceedings and the number of sanctions exists, please indicate the reasons in the "comment" box below.**

	Judges	Public prosecutors
Total number (total 1 to 9)	NA	2
1. Reprimand	NA	NA
2. Suspension	NA	NA
3. Removal of cases	NA	NA
4. Fine	NA	NA
5. Temporary reduction of salary	NA	NA
6. Position downgrade	NA	NA
7. Transfer to another geographical (court) location	NA	NA
8. Resignation		

	NA	NA
9. Other	NA	2

Comment :

other = dismissal

### E.3

**You can indicate below:**

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your system concerning disciplinary procedures for judges and prosecutors and the main reforms that have been implemented over the last two years

**Please indicate the sources for answering questions 144 and 145**

Crown Office and Procurators Fiscal Service

## 6. Lawyers

### 6. 1. Status of the profession and training

#### 6. 1. 1. Status of the profession and training

**146) Total number of lawyers practising in your country.**

10 732

**147) Does this figure include "legal advisors" who cannot represent their clients in court (for example, some solicitors or in-house counsellors)?**

Yes

No

**148) Number of legal advisors who cannot represent their clients in court:**

NA

**149) Do lawyers have a monopoly on legal representation in (multiple options are possible):**

Civil cases?

Criminal cases - Defendant?

Criminal cases - Victim?

Administrative cases?

There is no monopoly

If there is no monopoly, please specify the organisations or persons that may represent a client before a court (for example a NGO, a family member, a trade union, etc) and for which types of cases:

Only advocates and solicitor-advocates can conduct cases in the Court of Session (civil) and in the High Court (criminal). In the Sheriff Court, representation of third parties is generally restricted to solicitors and advocates.

Under section 32 of the Solicitors (Scotland) Act 1980, it is an offence for unqualified persons to prepare writs relating to court proceedings. However, sections 25-29 of the 1990 Act provide for professional or other bodies to apply to Scottish Ministers and the Lord President of the Court of Session for approval of a draft scheme which would enable their members to acquire rights of audience and rights to conduct litigation in Scottish courts. Sections 126 and 127 of the Legal Services (Scotland) Act 2010 amend the Court of Session's rulemaking powers so as to enable rules to be made permitting a lay representative to make oral submissions to the court on behalf of a party to the cause in any proceedings in the civil courts. These powers have not yet been exercised.

Lay representatives are permitted to conduct litigation, including appearing, in summary causes and small claims in the Sheriff Court; and in addition, section 7 of the Home Owner and Debtor Protection (Scotland) Act 2010 makes provision for approved lay representatives to represent debtors in repossession cases in the Sheriff Court.

Otherwise, lay representation is limited to the various tribunals that consider matters relating to employment, mental health, land disputes, etc.

**150) Is the lawyer profession organised through? (multiple options possible)**

a national bar?

a regional bar?

a local bar?

**151) Is there a specific initial training and/or examination to enter the profession of lawyer?**

Yes

No

If not, please indicate if there are other specific requirements as regards diplomas or

university degrees :

The first step of the route to qualification can be achieved by one of two ways: either by completing a Bachelor of Laws undergraduate degree or by sitting a series of Law Society examinations. Thereafter individuals must obtain a post-graduate diploma in Professional Legal Practice and carry out two years of post-diploma practical training.

**152) Is there a mandatory general system for lawyers requiring in-service professional training?**

Yes

No

**153) Is the specialisation in some legal fields tied with specific training, levels of qualification, specific diploma or specific authorisations?**

Yes

No

If yes, please specify:

Solicitor Advocates

Solicitors were first given the right to apply to appear in the highest courts in Scotland in 1992 following a change in the law in 1990. They have equal rights to advocates in the court in which they have the right to appear.

To become a solicitor advocate, a solicitor must demonstrate competence in pleading in court, must have relevant experience and must pass an exam. As part of the route to qualification they must attend a practical training course, at the end of which their competence is assessed by external assessors, chaired by a Judge, to ensure they have attained high standards of expertise and professionalism.

The Law Society of Scotland's specialist accreditation scheme

A suitably qualified Accreditation Panel confers specialist status on solicitors who can demonstrate expertise gained from practising in the specialism and can show significant experience in that specialism. The Panel is made up of solicitor members experienced in this area of the law who are drawn from a range of government, public sector and other relevant organisations.

An applicant should have held an unrestricted Practising Certificate for seven years and should be able to demonstrate significant experience in the specialism during each of the five years preceding the application.

**F.1**

**Please indicate the sources for answering questions 146 and 148:**

-----

**Comments for interpreting the data mentioned in this chapter:**

The Law Society of Scotland is the source for question 146.

There is no information on numbers of non-solicitor legal advisers

**6. 2. Practising the profession**

**6. 2. 1. Practising the profession**

**154) Can court users establish easily what the lawyers' fees will be (i.e. do users have easy access to prior information on the foreseeable amount of fees, is the information transparent and accountable)?**

Yes

No

**155) Are lawyers' fees freely negotiated?**

Yes

No

**156) Do laws or bar association standards provide any rules on lawyers' fees (including those freely negotiated)?**

Yes laws provide rules



- Yes standards of the bar association provide rules  
 No, neither laws nor bar association standards provide rules

## F.2

### Useful comments for interpreting the data mentioned in this chapter:

In relation to fees, the Law Society of Scotland Practice Rules 2011 provide the following:

- fees must be fair and reasonable and where work is to be charged at an hourly rate, the solicitor must inform the client what that hourly rate will be and of any change to the hourly rate.
  - When tendering for business or at the earliest practical opportunity upon receiving instructions to undertake any work on behalf of a client, the solicitor must provide an estimate of the total fee to be charged for the work, including VAT and outlays which may be incurred in the course of the work; or the basis upon which a fee will be charged for the work, including VAT and outlays which may be incurred in the course of the work.
- Otherwise, solicitors can agree fee rates with clients at the level both feel is appropriate.

## 6. 3. Quality standards and disciplinary proceedings

### 6. 3. 1. Quality standards and disciplinary proceedings

#### 157) Have quality standards been determined for lawyers?

- Yes  
 No

If yes, what are the quality criteria used?

The Law Society of Scotland Practice Rules 2011 and related guidance contain a number of quality assurance requirements.

#### 158) If yes, who is responsible for formulating these quality standards:

- the bar association?  
 the Parliament?  
 other?

If "other", please specify:

#### 159) Is it possible to file a complaint about :

- the performance of lawyers?  
 the amount of fees?

Please specify:

Complaints about either the service received from a Scottish solicitor or the conduct of a Scottish solicitor can be investigated. Complaints about fees will not be investigated. The only course of action if a client is unhappy with fees charged is to have the solicitor's account independently scrutinised. This is called the 'taxation' of the account and is carried out by the auditor of court.

#### 160) Which authority is responsible for disciplinary procedures?

- the judge  
 the Ministry of justice  
 a professional authority  
 other

If other, please specify:

The Scottish Legal Complaints Commission (SLCC) is a neutral body and operates independently of the legal profession. It has a legal status but is not a servant or agent of the Crown nor does it have any status, immunity or privilege of the Crown. It is also independent of Government. The SLCC receives all complaints about Scottish solicitors in the first instance but it only investigates complaints relating to the service provided by a solicitor.

Complaints relating to the conduct of a solicitor are referred to the Law Society of Scotland for investigation. The Society can then decide to prosecute more serious cases before the Scottish Solicitors Discipline Tribunal. The Tribunal is an independent body that normally sits with 2 solicitor members and 2 lay members. The most severe sanction available to the Tribunal is to strike an individual off the Roll of Solicitors, which effectively removes the individual's right to practise as a solicitor in Scotland.

**161) Disciplinary proceedings initiated against lawyers. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP. If "other", please specify it in the "comment" box below.**

**[If disciplinary proceedings are undertaken because of several mistakes, please count the proceedings only once and for the main mistake.]**

	Total number of disciplinary proceedings initiated (1 + 2 + 3 + 4)	1. Breach of professional ethics	2. Professional inadequacy	3. Criminal offence	4. Other
Number	NA	NA	NA	NA	NA

Comment :

The options above do not correspond with our disciplinary system. The principle grounds on which misconduct was established between 1 November 2009 and 31 October 2010 were:

Failure to reply to Law Society and/or clients. 4  
 Conflict of interest 4  
 Failure to deal with trust/executory in a proper manner. 1  
 Failure to deal with court proceedings and prosecuting claims in a proper manner 1  
 Failure to complete conveyancing procedures in a proper manner 4  
 Excessive delay 2  
 Failure to implement mandates 2  
 Misleading the Law Society and/or other parties 1  
 Failure to comply with the accounts rules 7  
 Failure to comply with other professional obligations 5  
 Other conduct unbecoming a solicitor 0  
 Dishonesty 2  
 Money Laundering 4

**162) Sanctions pronounced against lawyers. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.**

**If "other", please specify it in the "comment" box below. If a significant difference between the number of disciplinary proceedings and the number of sanctions exists, please indicate the reasons in the "comment" box below.**

	Total number of sanctions (1 + 2 + 3 + 4 + 5)	1.Reprimand	2. Suspension	3. Removal	4. Fine	5. Other (e.g. disbarment)
Number	13	5	1	3	3	1

Comment :

Censure and Restriction (i.e. imposing conditions on practice) 1

The number of cases heard and decisions issued is higher than the number of sanctions because in some cases there was no finding of professional misconduct; in some cases complaints were withdrawn; and in other cases complaints were dismissed or there were procedural findings issued.

### F.3

**You can indicate below any useful comments for interpreting the data mentioned in this chapter**

The information provided in response to questions 161 and 162 is taken from the Scottish Solicitors Discipline Tribunal

Annual Report 2010.

## 7. Alternative Dispute Resolution

### 7. 1. Alternative Dispute Resolution

#### 7. 1. 1. Alternative Dispute Resolution

**163) Does the legal system provide for mediation procedures? If no skip to question 168**

-----

**[Judicial mediation: in this type of mediation, there is always the intervention of a judge or a public prosecutor who facilitates, advises on, decides on or/and approves the procedure. For example, in civil disputes or divorce cases, judges may refer parties to a mediator if they believe that more satisfactory results can be achieved for both parties. In criminal law cases, a public prosecutor can propose that he/she mediates a case between an offender and a victim (for example to establish a compensation agreement).]**

Yes

No

**164) Please specify, by type of cases, the organisation of judicial mediation:**

	Court annexed mediation	Private mediator	Public authority (other than the court)	Judge	Public prosecutor
Civil and commercial cases	No	No	No	No	No
Family law cases (ex. Divorce)	No	No	No	No	No
Administrative cases	No	No	No	No	No
Employment dismissals	No	No	No	No	No
Criminal cases	No	No	No	No	No

**165) Is there a possibility to receive legal aid for mediation procedures?**

Yes

No

If yes, please specify:

However the definition of mediation in Scotland differs from that at 163 above, it is not carried out by a judge or prosecutor but rather by a qualifeid lay person. for more information see <http://www.scottishmediation.org.uk/>

**166) Number of accredited or registered mediators who practice judicial mediation:**

NAP

**167) Number of judicial mediation procedures.**

-----

**Please indicate the source in the "comment" box below:**

Total number of cases (total 1+2+3+4+5)	NAP
1. civil cases	NAP
2. family cases	NAP
3. administrative cases	NAP
4. employment dismissals cases	NAP
5. criminal cases	NAP

Comment :

**168) Does the legal system provide for the following ADR.**

**If "other", please specify it in the "comment" box below:**

Mediation other than judicial mediation?	Yes
--	-----

Arbitration?	Yes
Conciliation?	Yes
Other alternative dispute resolution?	Yes

Comment :

Expert determination, neutral evaluation, ombudsman and regulators

### G.1

**- any useful comments for interpreting the data mentioned in this chapter  
- the characteristics of your system concerning ADR and the main reforms that have been implemented over the last two years**

We do not have judicial mediation where a judge facilitates, advises on, decides on and/or approves the procedure. But judges and particularly sheriffs may refer parties to a mediator if they think that a more satisfactory result can be achieved. In Scotland the only specific power given to sheriffs to refer parties to mediation relates to family cases. There is nothing to stop judges referring cases to mediation in other kinds of cases, but the lack of a specific power to do so leads some sheriffs to decline to refer cases.

The decision to use any form of ADR will be made by the parties to a dispute on the advice of their legal representatives.

The Arbitration (Scotland) Act 2010 has come into force and a Scottish Arbitration Centre established.

The Cross Border Mediation (Scotland) Regulations 2011 implement Directive 2008/52/EC of the European Parliament on certain aspects of mediation in civil and commercial matters. The Regulations apply to "cross-border disputes" about such matters.

**Please indicate the source for answering question 166:**

## 8. Enforcement of court decisions

### 8. 1. Execution of decisions in civil matters

#### 8. 1. 1. Functioning

**169) Do you have enforcement agents in your judicial system?**

- Yes  
 No

**170) Number of enforcement agents**

25

**171) Are enforcement agents (multiple options are possible):**

- judges?  
 bailiffs practising as private professionals under the authority (control) of public authorities?  
 bailiff working in a public institution?  
 other enforcement agents?

Please specify their status and powers:

Officers of Court hold a commission in terms of their enforcement duties but may also carry out private work.

**172) Is there a specific initial training or examination to become an enforcement agent?**

- Yes  
 No

**173) Is the profession of enforcement agents organised by?**

- a national body?  
 a regional body?  
 a local body?  
 NAP (the profession is not organised)

**174) Are enforcement fees easily established and transparent for the court users?**

- Yes  
 No

**175) Are enforcement fees freely negotiated?**

- Yes  
 No

**176) Do laws provide any rules on enforcement fees (including those freely negotiated)?**

- Yes  
 No

**Please indicate the source for answering question 170:**

Jill Clark, Scottish Government, St Andrew's House, Regent Road, Edinburgh, EH1 3DG

## 8. 1. 2. Efficiency of enforcement services

**177) Is there a body entrusted with supervising and monitoring the enforcement agents' activity?**

- Yes  
 No

**178) Which authority is responsible for supervising and monitoring enforcement agents?**

- a professional body?  
 the judge?  
 the Ministry of justice?  
 the public prosecutor?  
 other?

If other, please specify:

**179) Have quality standards been determined for enforcement agents?**

- Yes  
 No

If yes, what are the quality criteria used?

**180) If yes, who is responsible for establishing these quality standards?**

- a professional body  
 the judge  
 the Ministry of Justice  
 other

If "other", please specify:

**181) Is there a specific mechanism for executing court decisions rendered against public authorities, including for supervising such execution?**

- Yes  
 No

if yes, please specify

**182) Is there a system for monitoring the execution?**

- Yes  
 No

If yes, please specify

**183) What are the main complaints made by users concerning the enforcement procedure? Please indicate a maximum of 3.**

- no execution at all?  
 non execution of court decisions against public authorities?

- lack of information?
- excessive length?
- unlawful practices?
- insufficient supervision?
- excessive cost?
- other?

If other, please specify:

Complaints are seldom received in the above categories

**184) Has your country prepared or has established concrete measures to change the situation concerning the enforcement of court decisions – in particular as regards decisions against public authorities?**

- Yes
- No

If yes, please specify:

**185) Is there a system measuring the timeframes of the enforcement procedures:**

- for civil cases?
- for administrative cases?

**186) As regards a decision on debts collection, please estimate the average timeframe to notify the decision to the parties who live in the city where the court sits:**

- between 1 and 5 days
- between 6 and 10 days
- between 11 and 30 days
- more

If more, please specify

**187) Number of disciplinary proceedings initiated against enforcement agents. If other, please specify it in the "comment" box below.**

**[If disciplinary proceedings are undertaken because of several mistakes, please count the proceedings only once and for the main mistake.]**

Total number of disciplinary proceedings (1+2+3+4)	NA
1. for breach of professional ethics	NA
2. for professional inadequacy	NA
3. for criminal offence	NA
4. Other	NA

Comment :

There is only one known case and that relates to professional misconduct

**188) Number of sanctions pronounced against enforcement agents.**

**If "other", please specify it in the "comment" box below. If a significant difference between the number of disciplinary proceedings and the number of sanctions exists, please indicate the reasons in the "comment" box below.**

Total number of sanctions (1+2+3+4+5)	<input checked="" type="checkbox"/> number:	1
1. Reprimand		NA
2. Suspension		NA



3. Dismissal		NA
4. Fine		NA
5. Other	<input checked="" type="checkbox"/> number:	1

Comment :

the outcome for the case at Q187 was censure but this is currently being appealed

### H.1

**You can indicate below:**

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your enforcement system of decisions in civil matters and the main reforms that has been implemented over the last two years

**Please indicate the source for answering the questions 186, 187 and 188:**

Jill Clark, Team Leader, Scottish Government, St Andrew's House, Regent Road, Edinburgh EH1 3DG

## 8. 2. Execution of decisions in criminal matters

### 8. 2. 1. Execution of decisions in criminal matters

**189) Which authority is in charge of the enforcement of judgments in criminal matters? (multiple options possible)**

- Judge
- Public prosecutor
- Prison and Probation Services
- Other authority

Please specify his/her functions and duties (initiative or monitoring functions). If "other authority", please specify:

In Scotland Local Authority Criminal Justice Social Work Departments are tasked with managing those offenders who are given a community sentence by the Court.

They have a statutory duty to supervise and care for those on community sentences by virtue of section 27 of the Social Work (Scotland) Act 1968; they must also put in place arrangements to provide a scheme to support community sentences e.g. make unpaid work and related programmes available so that the court order can be serviced.

**190) Are the effective recovery rates of fines decided by a criminal court evaluated by studies?**

- Yes
- No

**191) If yes, what is the recovery rate?**

- 80-100%
- 50-79%
- less than 50%
- it cannot be estimated

Please indicate the source for answering this question:

Scottish Court Service quarterly fines report.

[http://www.scotcourts.gov.uk/courtsadmin/fineStats/QFR10\\_2011/Quarterly%20Fines%20Publication%20-%20Q1%20201112%20-%20Final.doc](http://www.scotcourts.gov.uk/courtsadmin/fineStats/QFR10_2011/Quarterly%20Fines%20Publication%20-%20Q1%20201112%20-%20Final.doc)

Please note the recovery rate of over 80% can take up to 3 years to achieve from the time the fine is imposed.

### H.2

**You can indicate below:**

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your enforcement system of decisions in criminal matters and the main reforms

**that have been implemented over the last two years**

## 9. Notaries

### 9. 1. Notaries

#### 9. 1. 1. Notaries

**192) Do you have notaries in your country? If no go to question 197**

- Yes  
 No

**193) Are notaries:**

-----

**If other, please specify it in the "comment" box below.**

- private professionals (without control from public authorities)?  number  
private professionals under the authority (control) of public authorities?  number  
public agents?  number  
other?  number

Comment :

**194) Do notaries have duties (multiple options possible):**

- within the framework of civil procedure?  
 in the field of legal advice?  
 to certify the authenticity of legal deeds and certificates?  
 other?

If "other", please specify:

**195) Is there an authority entrusted with supervising and monitoring the the notaries' activity?**

- Yes  
 No

**196) Which authority is responsible for supervising and monitoring notaries:**

- a professional body?  
 the judge?  
 the Ministry of justice?  
 the public prosecutor?  
 other?

If other, please specify:

### I.1

**You can indicate below:**

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your system of notaries and the main reforms that have been implemented over the last two years

## 10. Court interpreters

### 10. 1. Court interpreters

#### 10. 1. 1. Court interpreters

**197) Is the title of court interpreters protected?**

Yes

No

**198) Is the function of court interpreters regulated by legal norms?**

Yes

No

**199) Number of accredited or registered court interpreters:**

NA

**200) Are there binding provisions regarding the quality of court interpretation within judicial proceedings?**

Yes

No

If yes, please specify (e.g. having passed a specific exam):

**201) Are the courts responsible for selecting court interpreters? If no, please indicate in the "comment" box below which authority selects court interpreters.**

Yes  for recruitment and/or appointment for a specific term of office

Yes  for recruitment and/or appointment on an ad hoc basis, according to the specific needs of given proceedings

-  No

Comment :

### J.1

**You can indicate below any useful comments for interpreting the data mentioned in this chapter:**

**Please indicate the sources for answering question 199:**

## 11. Judicial experts

### 11. 1. Judicial experts

#### 11. 1. 1. Judicial experts

**202) In your system, what type of experts can be requested to participate in judicial procedures (multiple choice possible):**

- "expert witnesses", who are requested by the parties to bring their expertise to support their argumentation
- "technical experts" who put their scientific and technical knowledge on issues of fact at the court's disposal
- "law experts" who might be consulted by the judge on specific legal issues or requested to support the judge in preparing the judicial work (but do not take part in the decision)

**203) Is the title of judicial experts protected?**

- Yes
- No

**204) Is the function of judicial experts regulated by legal norms?**

- Yes
- No

**205) Number of accredited or registered judicial experts (technical experts)**

NA

**206) Are there binding provisions regarding the exercise of the function of judicial expert within judicial proceedings?**

- Yes
- No

If yes, please specify, in particular the given time to provide a technical report to the judge:

**207) Are the courts responsible for selecting judicial experts?**

-----  
**If no, please indicate in the "comment" box below which authority selects judicial experts?**

- Yes  for recruitment and/or appointment for a specific term of office
- Yes  for recruitment and/or appointment on an ad hoc basis, according to the specific needs of given proceedings
- No .

Comment :

### K.1

**You can indicate below any useful comments for interpreting the data mentioned in this chapter:**

**Please indicate the sources for answering question 205:**

## 12. Foreseen reforms

### 12. 1. Foreseen reforms

#### 12. 1. 1. Reforms

**208) Can you provide information on the current debate in your country regarding the functioning of justice? Are there foreseen reforms? Please inform whether these reforms are under preparation or have only been envisaged. If possible, please observe the following categories:**

- 1. (Comprehensive) reform plans**
- 2. Budget**
- 3. Courts and public prosecution services (e.g. powers and organisation, structural changes - e.g. reduction of the number of courts -, management and working methods, information technologies, backlogs and efficiency, court fees, renovations and construction of new buildings)**
- 4. High Judicial Council**
- 5. Legal professionals (judges, public prosecutors, lawyers, notaries, enforcement agents, etc.): organisation, education, etc.**
- 6. Reforms regarding civil, criminal and administrative laws, international conventions and cooperation activities**
- 7. Enforcement of court decisions**
- 8. Mediation and other ADR**
- 9. Fight against crime and prison system**
- 10. Other**

The Scottish Government is currently developing extensive reforms to criminal, civil and administrative justice. Many are taking place under a four year change programme entitled Making Justice Work. For further information please see <http://www.scotland.gov.uk/Topics/Justice/legal/mjw> or contact Katy McNeil, Programme Manager - Making Justice Work, St Andrew's house, Regent Road, Edinburgh EH1 3DG.