

Consultation Response

A consultation on how Official Statistics present information on recorded crime and related topics

25 November 2019



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Criminal Law Committee welcomes the opportunity to consider and respond to the Scottish Government's Consultation on how Official Statistics present information on recorded crime and related topics (the consultation).

Our committee members include academics whose expertise includes research in the field of criminal law as well as those solicitor members who work for the Crown Office Procurator Fiscal Service and in the defence of those accused of crimes.

The committees in the Society are served by our in-house research team to ensure that the results of any research required is robust and can be relied upon to provide an evidence base for policy development which will bear scrutiny and have the best possible impact. The Society's research team welcomes the opportunity to meet with the Crime Board to discuss its work further if this would be helpful.

We note at paragraph 5 of the consultation that the process is guided by the Code of Practice for official statistics which underpins the production of high quality and trustworthy statistics that supports society's need for information¹. This is to be welcomed.

The committee has the following comments to put forward for consideration.

General Comments

The consultation outlines why it is so important how recorded crime statistics are collated. This ensures that they are of relevance for those that use them and their capacity to support the understanding of the important issues in relation to crime in Scotland. These statistics must be robust, of high quality and able to be trusted.² They need to cover the relevant topics too to underpin policy and other work for all not only the Scottish Government.

¹ <https://www.gov.scot/publications/consultation-official-statistics-present-information-recorded-crime-related-topics/pages/12/>

² Paragraph 5 of the Consultation

We read the section on Developing this consultation with interest. We would highlight the recent work undertaken by the Criminal Law Committee of the Society with our published report on the vulnerable accused person.³ Our Report made five recommendations; one of these is highly pertinent to the consultation where it recommends that:

“Review of the prevalence of individuals with vulnerabilities in the Scottish criminal justice system and the types of vulnerabilities most commonly encountered.”

We are aware that information exists regarding the prevalence of vulnerability but seldom is this relayed in a fashion which can be readily understood among all criminal justice organisations. We are not sure how that may be achieved but it would be useful to ascertain how many vulnerable persons are convicted of certain offences in Scotland. Though we appreciate that there is no universally understood definition of vulnerable, a starting point could include classification of the different “protected characteristics” under the Equality Act 2010. One category which may be of relevant is age – since we are aware that older⁴ persons are increasingly facing prosecution on account of the increased number of historic crimes being reported and the increasing demographic of our population. By way of the converse too, it would be good to be aware how many recorded crimes involve a complainer who is older.

International comparative work is of interest in seeking to ascertain how best to classify the recording of criminal statistics. It seems appropriate certainly in relation to England and Wales if the respective systems are compatible and understood since though criminal law is devolved to Scotland, there is a significant overlap with England and Wales in the fields of Intellectual Property, money laundering, serious organised crime and corporate crime where there needs to be a common understanding to identify relevant trends and allocate appropriate funding.

Consultation questions

Question One: Do you have any views or feedback on the purpose statement and supporting principles developed by the Crime Board for the production of recorded crime statistics? Should any changes be made to these?

We are not sure that we fully agree with the supporting principles outlined at paragraph 20 of the consultation that relates to consistency across the framework. We support the concept of consistency but consider that the proposed differentiation between the collation of “offences” and “crimes” would not be

³ <https://www.lawscot.org.uk/media/362501/vulnerable-accused-persons-report-final.pdf>

⁴ How too to define older is a matter of debate?

readily understood as one being more serious than the other. Classification of crime may be by common⁵ law crimes and statutory offences.

It would be beneficial to acknowledge not only this distinction but for each offence to list after its name the relevant statutory provision where it refers. There are a great number of offences covered by the production of these Official Statistics. It would be helpful for have them designated by relevant provisions where applicable. We make this point too in relation to the Sexual Offences (Scotland) Act 2009.

We recognise the reference to “victim- reported activity” but would sound a word of caution in that victim may be seen as a somewhat emotional context and the term “complainer” would adequately cover that position. Not all crimes which involve a victim are reported so this should be made clear.

The question of consideration of the views of who uses criminal statistics is important for the reasons highlighted above. These statistics are collated and should be available for the public in a readily accessible consistent local and relevant manner. They should be readily understandable.

Question Two: Do you have any views on using multiple groups, as outlined above, to present statistics on the general area of non-sexual violence in Scotland? (As an alternative to having one group with multiple subcategories)

If there are changes to be made, it is important that statistics continue to allow for effective comparison over the relative time periods. This is essential in order to understand and develop trends and make comparisons.

Any increase in the number of crime and offence groups for which statistics are obtained will help in the overall quality of the statistics which are being produced. What seemed to be unclear regarding the consultation was how the production of the Official Statistics are to be future proofed.

We welcome the updating of crime and offence groups too to reflect better on the changes being made with the introduction of new crimes and offences such as the Domestic Abuse (Scotland) Act 2018. As significant new crimes come into force, how are the Official Statistics to reflect that. It may be that these are reviewed annually but a regular commitment to an annual review would be good and also horizon scanning too about future changes.

Question Three: Do you have any views on creating a ‘Homicide, attempted murder & serious assault’ group to cover the most serious acts of non-sexual violence in Scotland?

⁵ <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2019/09/recorded-crime-scotland-2018-19/documents/recorded-crime-scotland-2018-19/recorded-crime-scotland-2018-19/govscot%3Adocument/recorded-crime-scotland-2018-19.pdf>

We are content with the creation of that group provided what comprises “serious assault” is clearly understood by those consulting or referring to the Official Statistics.

There is a reference in paragraph 28 of the consultation to a reduction in recorded crime.

We understand that recent reporting of these Official Statistics has indicated an increase in violent crime with crimes recorded by the police in Scotland having increased by 1% from 244,504 to 246,480.⁶

Question Four: Would the reclassification of common assault from a recorded offence to a recorded crime add value to these statistics? If so, do you have any views on the proposal to have a ‘Common assault and other violence’ group’?

We refer to our earlier observations to Question one above regarding the definition of “offences” and “crimes.” We have no further comment to make other than there needs (as highlighted in our answer to Question Four) to be an explanation as to what types of offences or crimes may be included under the term “other violence.” This requires specification as we would surmise that not all looking or considering the Official Statistics necessarily understand what is meant by an assault.

Question Five: Would you favour splitting common assault in future years into ‘Common assault with injury’ and ‘Common assault without injury’?

Yes.

This seems a sensible approach if it is clearly understood what is meant by injury. This refers to the question of serious too referred to in Question Three. Serious as far as prosecution is concerned usually refers to a broken bone but not a nose. Presumably, the collation of these statistics will come from the convictions arising from the indictments or complaints in court rather than what was charged or reported by the police. Would injury include spitting? Does injury include any injury or injury only resulting following medical treatment?

Question Six: Do you favour the creation of a separate group to present statistics on crimes of robbery?

We have no comment to make.

⁶ <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2019/09/recorded-crime-scotland-2018-19/documents/recorded-crime-scotland-2018-19/recorded-crime-scotland-2018-19/govscot%3Adocument/recorded-crime-scotland-2018-19.pdf>

Question Seven: Do you have any views on the proposal to create a ‘Crimes of domestic abuse and other cruelty’ group? Is this the right place for the new crimes of domestic abuse and would you favour transferring cases of stalking into this group?

Yes.

This seems to be a sensible approach as there is much focus on these crimes and their incidence with many interested in tracking trends in domestic abuse as well as measuring the effect of the recently implemented legislation.

Stalking might be included but it is noted that it may not always arise in a domestic context as defined in the legislation such as the Domestic Abuse (Scotland) Act 2018 (2018 Act).⁷

There may also be merit in seeking clarity on what will be recorded as domestic abuse. According to the consultation, this will present statistics specifically in relation to crimes recorded under 2018 Act. The 2018 Act criminalises a course of conduct as regards the substantive offence. However, there may other types of crimes, most commonly we would suggest breach of the peace and assault where they may have a domestic abuse aggravator. Would these be recorded?

Question Eight: Do you have any views on using multiple groups, as outlined above, to present statistics on Sexual crime in Scotland? (As an alternative to having one group with multiple sub-categories)

We have no comment to make.

Question Nine: Should two groups be used to present sexual crime, do you have any views on the suggested split into ‘Sexual crimes with physical contact’ and ‘Sexual crimes without physical contact’?

We have no comment to make other than to suggest that there needs as highlighted above information which refers to specific sections of the relevant legislation such as the Sexual Offences (Scotland) Act 2009 for the purposes of clarity.

Question Ten: Should soliciting or loitering in a public place for the purposes of prostitution continue to be classified as a sexual crime? Do you have any other views on how police recorded crimes associated with prostitution could be

⁷ Section 11 of the Domestic Abuse (Scotland) Act 2018 sets out when the relevant offences arise with a definition of partner/ex-partner

presented?

There seems to be merit in continuing to record this information. This monitors the incidence of such conduct and though there may be a discretion as to any prosecution being instructed, we do not consider that the problem has necessarily disappeared with all the social ramifications which apply. These crimes are still being reported so they should be included within the Official Statistics.

Question Eleven: Do you have any other views on how sexual crimes could be presented in the recorded crime statistics?

We have no further comment to make.

Question Twelve: Do you have any views on how Crimes of dishonesty could be presented in the recorded crime statistics?

Yes.

The scope of crimes of dishonesty is very wide. There may be merit in breaking down such categories to ensure that the recording of fraud, IP crime and other forms of white-collar crime common law crimes can be shown individually. For instance, where would bogus workman fraud fall? If there is a general category of fraud, this may well be too wide to be meaningful. There may be merit in identifying trends in fraud as small scale taxi frauds should not equate with large scale fraud. Does this category include embezzlement of Department of Works and Pensions fraud?

Question Thirteen: Do you have any views on renaming the 'Fire raising, vandalism etc.' group to 'Crimes of damage and reckless behaviour' and the proposal to add an additional sub-category to show reckless conduct?

We have no comment other than to query the inclusion of reckless conduct. Does this equate in all circumstances with fire-raising etc? Is that not culpable and reckless conduct?

Question Fourteen: Do you have any other views on how crimes of Fire-raising, vandalism etc. are presented in the National Statistics on Recorded Crime?

We have no comment to make.

Question Fifteen: Would ‘Crimes against society’ be a better name for the ‘Other crimes’ Group?

We would support this name.

Question Sixteen: Do you have any views on how police recorded drug possession for personal use should be presented in the statistics? Should it continue to be presented in the National Statistics as a crime (i.e. included in the national totals for recorded crime) or should it be moved to become an offence, and be included in the national total for recorded offences instead?

We refer to our comments in relation to Question one on the definition of “offences” and “crimes.” Possession of drugs are still subject to prosecution. These still provide meaningful information that needs to be recorded.

Question Seventeen: Do you have any other views on how other crimes are presented in the National Statistics on recorded crime?

We have no comment to make.

Question Eighteen: Should the ‘Miscellaneous offences’ group be split into two groups - ‘Anti-social offences’ and ‘Miscellaneous offences’? Do you have any other views on how ‘Miscellaneous offences’ are presented in the National Statistics on recorded crime?

Apparently, this includes “Children & young person offences (not elsewhere classified).” We wonder what particular offences this is to refer to as this seems vague. Could this be made clearer?

Question Nineteen: Do you have any views on renaming the ‘Offences relating to motor vehicles’ group to ‘Road traffic offences’? Do you have any other views on how ‘offences relating to motor vehicles’ are presented in the National Statistics on recorded crime?

That seems a sensible approach as that is what they are.

Question Twenty: Would a dedicated chapter on cyber-enabled crime within the

National Statistics bulletin be useful? Do you have any other views or suggestions as to how crimes or offences involving a cyber-element should be presented within the statistics?

Is the term “cyber-enabled crimes” is understandable by the public? There may be merit in including a footnote so that there is clarity possibly by using the Home Office Report⁸ though within COPFS, we did not find a definition to indicate what crimes would be included under this category.⁹

We understand that these include traditional crimes, which can be increased in their scale or reach by use of computers, computer networks or other forms of information communications technology. They are differentiated from cyber-dependent crimes which can be used without technology.

It is important for these to be recorded though there are a range of offences where there is an inevitable overlap with fraud. Victims too may be businesses or individuals.

We understand that the incidence of these type of offences is increasing¹⁰ as outlined by Police Scotland stating at:

“Online credit card fraud and other cyber-enabled crimes continue to be an increasing threat, according to the latest figures issued by Police Scotland. The Quarter 4 Management Information Report provides in-depth information about the service and recorded crime across the country. The data, while not official statistics, relates mainly to crime recorded by Police Scotland but some information about incidents and some survey data are also included. It covers the period from April 1, 2017 to March 31, 2018.”

Question Twenty-One: Based on the discussion above and the purpose statement and supporting principles proposed in Part one, do you have any additional views regarding how data on police recorded crimes and offences should be categorised and presented in the National Statistics?

According to the consultation, the approach taken currently to the grouping and presentation of police recorded crime statistics is also used in other publications on related topics such as the National Statistics

⁸ Cyber crime: A review

of the evidence Research Report 75

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/248621/horr75-chap2.pdf

⁹ <https://www.copfs.gov.uk/images/Documents/Publications/COPFS%20Fact%20Sheets/COPFS%20Fact%20Sheet%203%20-%20COPFS%20RESPONSES%20TO%20THE%20EVOLVING%20NATURE%20OF%20CRIME%20October%202016.pdf>

¹⁰ <https://www.scotland.police.uk/whats-happening/news/2018/may/police-scotland-publishes-q4-management-information>

on Criminal Proceedings in Scotland¹¹ (which presents information on the outcome of court proceedings). The consultation also states that to:

“ensure the existing level of continuity between these different statistics is maintained, it is very likely that any changes made to how criminal activity is presented within the police recorded crime bulletin will also be fully reflected within the other statistical bulletins. Statisticians responsible for those other products have contributed to the production of this consultation and would like to invite their own users to respond if they have any views.”¹²

We would be interested in these views and how they are factored in at the conclusion of this consultation.

Separately, the Criminal Appeals Statistics publication was previously also available. This was however discontinued after a stakeholder consultation in May 2009 due to a lack of demand. It is suggested that it might be useful to organise another consultation on whether it may be of interest to re-introduce such a publication in order to present a fuller statistical picture across Scotland. This information is of considerable use and interest to researchers and professionals including academics working in the criminal law and justice areas.

¹¹ <https://www2.gov.scot/Topics/Statistics/Browse/Crime-Justice/PubCriminalProceedings>

¹² Paragraph 16 of the consultation



Law Society
of Scotland

For further information, please contact:

Gillian Mawdsley

Policy Executive

Law Society of Scotland

DD: 0131476 8206

gillianmawdsley@lawscot.org.uk