

The coalition years

Criminal justice in the United Kingdom: 2010 to 2015

by Richard Garside with Matt Ford

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**CENTRE FOR CRIME
AND JUSTICE STUDIES**

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Executive summary

Context

The Coalition Years seeks to explain criminal justice developments across the United Kingdom over the five years between 2010 and 2015. It also considers the challenges facing an incoming United Kingdom government after the May 2015 General Election. All three United Kingdom criminal justice jurisdictions are covered: England and Wales, Scotland and Northern Ireland.

Many different factors influenced the shape and progress of policy. This report focuses on the distinctive underlying drivers in each jurisdiction. It eschews detail for brevity and clarity, picking out certain developments to illustrate how criminal justice was reconfigured according to different underlying logics. It does not offer a comprehensive account of everything that happened during this period.

In each jurisdiction, there were significant changes to policing, punishment and legal aid. The shape these changes took differed in line with the underlying priorities of each administration. Developing markets in the operation and delivery of criminal justice services was central to policy in England and Wales. In Scotland the state, rather than the market, took precedence. Activities in Northern Ireland were guided by an ambition to build an inclusive society free from sectarian strife. Overlaying these local drivers of change, a United Kingdom-wide austerity agenda formed the common context within which distinctive criminal justice policies developed across the three jurisdictions.

Events

The United Kingdom coalition government's programme of public spending cuts, shored up by the political stability afforded by the *Fixed-Term*

Parliaments Act, set the context for criminal justice developments across the separate jurisdictions. Marketisation in England and Wales proceeded in contrasting ways and at different speeds. A range of local and central commissioning models were deployed. Some approaches were tried and tested, others were entirely new. The overarching aims were to introduce price-competitive tendering for criminal legal aid and to consolidate the market of providers; payment-by-results in prison- and probation-related work; and local Police and Crime Commissioners responsible for budget decisions and the procurement of a range of police- and crime-related services.

A new wave of centrally orchestrated prison privatisations failed. They were superseded by the selective outsourcing of estate management. The new national contract to deliver electronic monitoring was finally awarded after a protracted period of negotiation. The original plans for localised commissioning of probation work through the 35 Probation Trusts were rethought during 2013. The Trusts were abolished and contracts to supervise people convicted of breaking the law were awarded to 21 new Community Rehabilitation Companies. These contracts went live in early 2015.

In May 2011, the Scottish National Party became the majority party in Holyrood, enhancing its authority to deliver major reforms. The state would be in control of service operation and delivery, but the balance between localism and centralism varied. The eight regional police forces were merged into a national force, Police Scotland. The new arrangements faced criticism as loss of local control over policing did not seem to be matched by effective central oversight from the Scottish Police Authority.

During 2014, plans were made to abolish the

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eight regional Community Justice Authorities. Their responsibilities for coordinating local agencies involved in community supervision would be devolved to the 32 Community Planning Partnerships. Community Justice Scotland, accountable to the Scottish Government, would steer the overall direction of local arrangements through strategy and outcome setting. The centralised nature of the Scottish Prison Service created distinct barriers to local legitimacy and collaborative working.

Criminal justice powers, devolved in 2010 under the Hillsborough Castle Agreement, allowed the Northern Ireland Executive to begin the process of reforming policing and punishment, distinct from its past role in containing political violence. Central to the process of reform was an inclusive style of criminal justice decision-making, based on dialogue, collaboration and a consensus-building approach. However, the history of civil conflict frequently seeped into the present to influence developments.

Early on, the Executive consulted on the long-term policing objectives of the Police Service of Northern Ireland. Policing and Community Safety Partnerships, responsible for consulting with local communities and coordinating policing activity, were established in 2012. A review of prisons resulted in a major reform programme and plans to redevelop the prison estate. The ongoing challenge of confronting the past, and accounting for deaths during the years of civil conflict, continued to cast a shadow over the whole system, particularly the police.

In criminal legal aid there was a significant degree of convergence between the three jurisdictions. Every administration moved to reduce fees, limit eligibility, require defendants to contribute to their legal costs, and to introduce price-competitive

tendering. Cutting payments to lawyers proved much easier than complex reorganisations of public services.

Implications

With another parliament of austerity likely, whichever party or parties form the United Kingdom government following the May 2015 General Election, the role of the dull compulsion to cut and trim will continue to make itself felt across the three jurisdictions. The pattern of convergence and divergence in approaches to austerity, and to criminal justice more generally, is likely to continue.

Whether such convergences and divergences are a good or bad thing is not a judgement we seek to make in this report. There are certainly lessons, for all three jurisdictions, from the paths taken in each. But transfer of policy solutions from one jurisdiction to another – for instance, the adoption of a Police Scotland model in England and Wales, or the application of market processes to probation in Scotland or Northern Ireland – will always tend towards modification and adaptation at most. The distinctive approaches to criminal justice pursued in England and Wales, Scotland and Northern Ireland are a response to specific challenges in those jurisdictions. They also reflect underlying governing priorities, philosophies, ideologies and imperatives. Such specificities are not replicable across, what remain, very different jurisdictions.

The process of criminal justice reform is, at heart, a political project, shaped by, and shaping in its turn, a complex array of economic, cultural, historical and ideological influences. It is this articulation of the political and the criminal justice, during the period 2010 to 2015, that this report seeks to draw out.

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Criminal justice reform is a political project, shaped by economic, cultural, historical and ideological influences

Introduction

Change has swept the United Kingdom criminal justice systems over recent years. The election of the Conservative-Liberal Democrat coalition government in May 2010 drew a line under the generous budgets of the New Labour period. Austerity and cuts became the new reality. Across England and Wales, Scotland and Northern Ireland, different solutions to common criminal justice challenges emerged.

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Policy developments across any area of government and any given state do not follow a simple annual cycle

This report reviews criminal justice developments during the entire period of the Conservative-Liberal Democrat coalition government: May 2010 to May 2015. It also identifies the main challenges facing an incoming government in May 2015, regardless of which party or parties take power at the General Election. It complements the annual *UK Justice Policy Review* reports, published by the Centre for Crime and Justice Studies since the coalition government came to power in May 2010. To date, four of these reports have been published, covering the first, second, third and fourth years of the coalition government. They offer an annual assessment of what happened in criminal justice, across the United Kingdom, in the given year under review.

This report is different. It covers the full span of developments across the United Kingdom, seeking to explain *why* criminal justice developed in the way that it did, rather than dwelling on the detail of *what* happened. The narrow focus description of policy developments found in the annual reports is replaced, in this publication, by a wider focus examination of the reasons for these developments. As a result this report eschews detail for the big picture, dwelling on policy specifics only when they help to explain the underlying connections and dynamics. The reader seeking to understand in more detail the developments often covered in passing in this report is encouraged to refer to the relevant *UK Justice Policy Review* annual report.

The periods of government

Policy developments across any area of government and any given state do not follow a simple annual cycle. A certain rhythm characterises the ebb and flow of the policy-making process. To reflect and capture this, the report divides the five years from May 2010 to May 2015 into four periods. A 'signal' event marks the beginning of each period and its transition to the next.

- Period One - 6 May, 2010 to 20 June, 2011: The signal event that inaugurated this period was the General Election.
- Period Two - 21 June, 2011 to 3 September, 2012: This period was inaugurated by the Prime Minister's press conference on sentencing reform, which signalled the beginnings of a shift in law and order rhetoric and policy.
- Period Three - 4 September, 2012 to 14 July, 2014: The United Kingdom government reshuffle that inaugurated this period marked a further shift in tone and approach, particularly with the replacement of Ken Clarke by Chris Grayling as Justice Secretary.
- Period Four - 15 July, 2014 to 6 May, 2015: A further United Kingdom government reshuffle at the start of this period signalled the lead-in to the 2015 General Election.

This periodisation is a heuristic device to aid understanding, not a rigid set of sharply delineated historical silos. Understanding the continuities across these periods is as important as distinguishing the different phases of government the periods signify. The periodisation also cuts across important milestones in the other UK criminal justice jurisdictions, such as the May 2011 elections in Scotland, Wales and Northern

Ireland; the September 2014 independence referendum in Scotland and the December 2014 Stormont House Agreement in Northern Ireland. As we are here concerned with United Kingdom-wide developments, our periodisation follows the rhythm of developments at a United Kingdom government level.

Similar priorities, different strategies

Three criminal justice jurisdictions currently cover the four United Kingdom regions of England, Scotland, Wales and Northern Ireland: the combined jurisdiction of England and Wales, and the separate jurisdictions in Scotland and Northern Ireland. Within these jurisdictions the institutions performing analogous functions – for instance on policing, prisons, community supervision, legal representation – are structured in different ways. This points to an obvious, though important, conclusion. Apart from at the level of highly abstract generality, no *single* explanation of criminal justice developments, or criminal justice institutions, across the United Kingdom is likely to be forthcoming. Moreover, a comprehensive account of a multiplicity of developments, in multiple criminal justice institutions, across three criminal justice jurisdictions, over a five year period, is a detailed task for the historian. This report does not attempt a detailed history, nor does it cover all areas of criminal justice. Instead, it simplifies a much more complex reality, foregoing a comprehensive account of all developments in the interests of gaining a general understanding of the underlying movements. It undertakes this simplification in two ways.

First, the report focuses on signal criminal justice developments in the areas of policing, punishment and legal aid. Across the three

criminal justice jurisdictions there was major activity in the areas of police reform, prisons and community supervision, and provision of criminal legal aid. This report examines how criminal justice in these three areas developed in sometimes convergent, often divergent ways.

Second, the report seeks to explain developments by reference to the distinctive underlying priorities in each jurisdiction. In England and Wales this was an approach that placed market forces at the centre of criminal justice delivery. In Scotland the state was seen as central to criminal justice delivery. In Northern Ireland, criminal justice developments were dominated by a political agenda to move from a divided society characterised by civil conflict to an inclusive society underpinned by the rule of law.

Inevitably, much detail worthy of inclusion in a more comprehensive account – the major reforms to courts during this period, for instance, or in youth justice – has been left out. It is for the reader to decide whether these simplifications, tested in their application in the pages that follow, offer a helpful framework for understanding the criminal justice developments described in this report.

A note on referencing

To avoid the unnecessary visual clutter of a detailed scholarly apparatus, this report contains no references or footnotes. Sufficient detail on the titles and publication dates has been included to enable most readers to track down publications referred to in the text. The reader keen to follow up the detail is also encouraged to refer to the relevant annual report in the *UK Justice Policy Review* series.

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The report focuses on signal criminal justice developments in the areas of policing, punishment and legal aid

Period one: 6 May, 2010 to 20 June, 2011

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A five-year
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Chief among
them was the
potential for
instability within
the governing
coalition

The United Kingdom coalition government formed in May 2010, shortly after a General Election that no single party won, had responsibility only for criminal justice in England and Wales. Criminal justice in Scotland was the purview of the Scottish Government, which at the time of the General Election was a minority Scottish National Party administration. Criminal justice in Northern Ireland had become the responsibility of the multi-party power-sharing Northern Ireland executive only the previous month, in April 2010. This followed the partial resolution of a number of contentious policing and justice matters through the signing of the Hillsborough Castle Agreement in February 2010.

During the five years covered by this review – May 2010 to May 2015 – three criminal justice jurisdictions therefore spanned the four United Kingdom regions. The Home Secretary and Secretary of State for Justice in the United Kingdom government for the most part held formal responsibility only for criminal justice across England and Wales. The Cabinet Secretary for Justice in Edinburgh and the Minister of Justice in Belfast were responsible for criminal justice in Scotland and Northern Ireland.

Economic austerity

The establishment of the United Kingdom coalition government, against the background of the global financial crisis, marked a decisive shift from a period of relative plenty under the outgoing Labour government. The *Programme for government*, published on 20 May 2010, which formed the basis of agreement between the Conservative and Liberal Democrat governing partners, described deficit reduction – closing the gap between higher government spending

and lower government income – as ‘the most urgent issue facing Britain’. The coalition’s chosen approach – often referred to as ‘austerity’ – involved reducing government spending, and doing so quickly. During his budget statement on 22 June 2010 the Chancellor, George Osborne, told the House of Commons that by the time of the 2015 General Election the coalition planned to have eliminated the ‘structural deficit’ (the estimated portion of the budget deficit that would remain even if the economy was operating at full capacity) and to have achieved falling debt (the money owed by the government) as a proportion of total economic output.

This meant swift and sharp cuts to public spending, set out in greater detail in the October 2010 *Spending Review*. In England and Wales the Home Office and Ministry of Justice faced cuts of 16 and 29 per cent respectively. The United Kingdom government exerted little formal direct influence over criminal justice developments in Scotland and Northern Ireland. Its indirect influence, through control of the public finances, was substantial. Expected cuts to Scottish and Northern Ireland justice department expenditure amounted to 19 and 15 per cent respectively.

Political stability

A five-year austerity programme faced many obstacles to implementation. Chief among them was the potential for instability within the governing coalition. The *Fixed-term Parliaments Act*, passed in September 2011, buttressed the coalition and reduced significantly the chances of its early demise. The next General Election would be held on 7 May 2015, except in the relatively unlikely event of two thirds of all MPs voting for an earlier date. The Act also shifted by one year,

to May 2016, the Scottish parliament and Welsh assembly elections. Further legislation in 2014 aligned the Northern Ireland assembly elections with those in Scotland and Wales.

These two United Kingdom-wide factors – austerity in economics and stability in politics – formed the overarching context within which criminal justice developments across the three jurisdictions unfolded. Austerity economics created the dull compulsion to cut and trim within which a number of organisational restructurings and policy innovations became thinkable and justifiable. The political stability created by the *Fixed-term Parliaments Act* offered the institutional glue that made it possible for a hastily stitched-together coalition to focus on medium- to long-term policy change, rather than be dominated by short-term squabbles.

We now turn to the main criminal justice developments during this first period, paying particular attention to three areas: policing, punishment and criminal legal aid.

England and Wales

On policing, the foundations were laid in this opening period for a reorganisation of police governance, complemented by moves to diminish the institutional power of the police as a political force. The key elements of this package of reforms were set out in a White Paper – *Policing in the 21st Century* – published in July 2010.

On police force governance, the White Paper proposed that the 41 English and Welsh police forces outside London would be overseen by directly-elected Police and Crime Commissioners, with responsibility for the commissioning of a range of services and for ensuring the effective delivery of local policing. These proposals formed

the main part of the *Police Reform and Social Responsibility Bill*. Introduced to parliament in November 2010, it became law the following September. The localism of the Police and Crime Commissioner proposals was matched by a centralising move. A new pan-United Kingdom policing body accountable to the Home Secretary – the National Crime Agency – would be established to coordinate national policing tasks.

Police and Crime Commissioners and the National Crime Agency had implications for the power of individual chief constables. The former could hire and fire them. The latter could deputise their officers. Three additional moves, proposed in the White Paper, targeted the institutional power of the police more systematically. First, a review of police officer terms and conditions of employment, under the former rail regulator Tom Winsor, put the coalition on a collision course with the powerful rank and file body: the Police Federation. Second, a review of police leadership and training, under the Chief Constable Peter Neyroud, posed a challenge to the Association of Chief Police Officers and the position it occupied at the apex of policing. Third, proposals for Her Majesty's Inspectorate of Constabulary to operate in a manner more independent of the police threatened the symbiotic relationship between that body and senior police officers.

The coalition's plans on punishment and legal aid were sketchy during this first period. On punishment, a Green Paper published in December 2010 – *Breaking the Cycle* – proposed a more integrated approach to the management of those under a court ordered sanction. Prisons and probation would work more effectively with other agencies to deliver improved outcomes. Under a 'rehabilitation revolution', organisations would be rewarded for their success in 'reducing

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reoffending', paid for by anticipated savings from a sharper focus on outcomes. This was the so-called 'payment-by-results' mechanism, which the Green Paper proposed would apply to most punishment-related interventions by 2015. On criminal legal aid, a consultation launched in November 2010 proposed the introduction of price competitive tendering from 2012.

Scotland

During period one, the Scottish National Party converted its minority administration status into a government with a working majority, following a successful campaign in the May 2011 Scottish elections. The implications of the United Kingdom government's austerity agenda also started to filter through, challenging the government in Scotland to rethink criminal justice policy-making across a number of areas.

First, it began a rethink of the operation and delivery of policing. A *Consultation on the Future of Policing in Scotland*, published in February 2011, proposed a reduction in the number of Scottish police forces to deliver financial savings while maintaining a strong and visible frontline presence. The final plans – a single Scottish force accountable to the Scottish Justice Secretary via an appointed police authority – emerged during period two and became operational in period three.

Second, it gave fresh impetus to the existing approach to punishment. A robust regime of community penalties for most, including those who would otherwise receive short prison sentences, would relieve pressure on Scotland's overcrowded prisons, so delivering long-term savings. Estate renewal and more integrated

sentence management – based on a strong public sector rather than privatisation – would deliver modern facilities better able to work with prisoners.

Third, it took steps to control further the allocation of criminal legal aid and to reduce its cost. In a centralising move, the power to grant legal aid in the more serious criminal cases – the 'solemn' proceedings – was transferred from the courts to the Scottish Legal Aid Board, a government body. A consultation launched in March 2011 proposed that defendants deemed able to pay a contribution towards their legal costs should do so.

Northern Ireland

Devolution of criminal justice responsibilities to the Northern Ireland Executive was followed by an intense burst of activity in relation to policing, punishment and legal aid, much of it driven by undertakings contained in the Hillsborough Castle Agreement. At the heart of this activity lay the *Justice Act*, which came into law in May 2011. Three of its provisions are particularly noteworthy. First, the Act created new Policing and Community Safety Partnerships to drive forward local liaison and coordination of policing and related activity. Second, it introduced new alternatives to prosecution in the form of penalty notices and conditional cautions. Third, it made provision for the introduction of means-testing in relation to criminal legal aid.

Alongside these important legislative changes the executive launched a consultation on the development of new, long-term policing objectives for the Police Service of Northern Ireland, in January 2011. The five draft objectives covered the

centrality of human rights; police accountability to the wider community; policing as a shared responsibility; the role of policing in assisting Northern Ireland's transformation 'to a more normal society'; and the importance of the rule of law. On punishment, the Executive launched an independent review of Northern Ireland's prisons, in June 2010, under the direction of the former Chief Inspector of Prisons for England and Wales, Anne Owers. A consultation on community sentences, with a view to encouraging their greater use as an alternative to custody, was launched in February 2011. On legal aid, the Executive launched a wide ranging review, under the former Chairman of the Northern Ireland Legal Services Commission, Jim Daniell, in September 2010.

Three different jurisdictions. Three different paths

This lightning run through a complex policy landscape highlights an obvious point: across the United Kingdom's three jurisdictions, different approaches to common criminal justice challenges – in policing, punishment and legal aid – were pursued. There was no common pattern. Moving beyond this rather prosaic conclusion, what deeper themes emerged?

In England and Wales, the government signalled its intent to introduce and deepen market mechanisms in the operation and delivery of policing, punishment and criminal legal aid. It proposed price-competitive tendering for criminal legal aid; payment-by-results for prison- and probation-related work; local Police and Crime Commissioners responsible for decisions on police budgets and the procurement of a range

of police- and crime-related services. In its moves to diminish the institutional power of the police, the government also indicated a willingness to confront and, it hoped, defeat potential opposition from the existing criminal justice workforce.

In Scotland, the government signalled an approach that placed the state, rather than the market, at the centre of criminal justice changes, with a concomitant tendency towards centralisation. The regional police forces, accountable to Scotland's local authorities, were to be replaced with a national police force accountable to the Scottish Government. Rather than outsourcing the delivery of prison- and community-based punishment and supervision to private companies, we find a drive to coordinate delivery through public sector and local government institutions, overseen by the national government. There would be a greater centralisation of decisions over the granting of legal aid and a reduction of the state's exposure to its costs.

The history of direct rule by London, and the shadow cast by the history of civil conflict, are critical to an understanding of criminal justice developments in Northern Ireland. The 2008-2011 *Programme for Government* described the Executive's 'over-arching aim' as building 'a peaceful, fair and prosperous society... with respect for the rule of law'. Only in a society so marked by civil conflict, where the rule of law had in crucial respects been so absent, could such an aspiration make sense. The task facing the newly-formed Department of Justice was to continue the development of local criminal justice arrangements, less marked by their historic role in counter-terrorism, and relevant to the future that the people of Northern Ireland aspired to.

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Across the United Kingdom's three jurisdictions, different approaches to common criminal justice challenges – in policing, punishment and legal aid – were pursued

Period two: 21 June, 2011 to 3 September, 2012

A Downing Street press conference on 21 June 2011 marks the start of period two. Facing growing opposition to proposals to restrict the use of open-ended prison sentences and to offer reductions in sentences for defendants who pleaded guilty at the earliest opportunity, the Prime Minister David Cameron sought to defuse the row. He disavowed the government's policy of seeking modest reductions in the prison population to save money. The early guilty plea proposals were dropped. Open-ended prison sentences were abolished the following year, but at the cost of a tougher life sentence regime for those convicted of a second serious sexual or violent offence.

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Alongside centralised commissioning the coalition started experimenting with a more localised approach

Cameron's intervention marked a transition in the coalition government's approach to criminal justice reform. It became hesitant in relation to legal aid; stuttering in relation to punishment; more decisive in relation to policing. The start of this period also coincides with the May elections in Scotland and Northern Ireland. The Scottish National Party victory strengthened its political position, giving it a stronger mandate to introduce major changes, not least of all in relation to policing. A largely unchanged electoral map in Northern Ireland, and the continuation of the five-party power-sharing executive, resulted in a steady, but cumulative, set of changes.

England and Wales

Two contrasting approaches to the market in criminal justice delivery became evident during this period: a centralising one and a more localising approach.

First, the centralising approach. On prisons, the Ministry of Justice continued the policy of the former Labour government: inviting private companies and the public sector to bid against

each other to run selected prisons (so-called 'market testing'). Two prisons – Birmingham and Featherstone 2 – went to G4S through this process. Serco won a new contract to run Doncaster prison. A third prison, Buckley Hall, remained in the public sector. A fourth, Wellingborough, was withdrawn from market testing and closed in late 2012. A further market testing of nine prisons commenced in October 2011, to be concluded during period three. Another centrally-managed competition – a single national contract for the next generation of electronic monitoring – was launched in February 2012.

In probation, the Ministry of Justice announced a competition to deliver 'community payback': unpaid work undertaken by individuals as part of a court-ordered community sanction. The competition was managed centrally, with contracts divided into six regional lots covering multiple Probation Trust areas. This complex nesting of the existing Probation Trusts within the larger regional lots proved the competition's undoing. London, where the boundaries of the lot and of the London Probation Trust coincided, was the only contract to be awarded: in July 2012. The London contract was to be discontinued little over a year later as part of a rethink of probation-related commissioning.

Alongside centralised commissioning the coalition started experimenting with a more localised approach. A March 2012 consultation paper – *Punishment and Reform: Effective Probation Services* – proposed to devolve commissioning of day-to-day probation work to the locally-based and managed Probation Trusts, of which there were 35 at the time. The Trusts would retain some key functions: public interest decisions related to advice to courts, for instance, and the management of 'higher risk' clients. All other

probation-related activities would be put out to competition, with Probation Trusts increasingly acting as commissioners, rather than the default deliverers, of these services.

In a similar vein, the coalition developed its thinking on the commissioning potential of Police and Crime Commissioners. A Ministry of Justice consultation in January 2012 – *Getting it right for victims and witnesses* – proposed they should be responsible for commissioning the ‘bulk of victims’ services’ from 2014. The March 2012 *Punishment and Reform* consultation highlighted the potential for Police and Crime Commissioners to take responsibility for probation services. In July 2012, the *Swift and Sure Justice* White Paper added the commissioning of youth offending services to the list of potential responsibilities, along with driving improvements in the local administration of justice. The Police ICT Company, to coordinate the procurement of police IT, was also established in July 2012, with a view to being jointly-owned by the Home Office and Police and Crime Commissioners.

This localised approach sat squarely within the coalition’s broader vision of how the market for public services should operate. The *Open Public Services* White Paper, published in July 2011, stated that commissioning should be decentralised ‘to the lowest appropriate level’, such as community groups, neighbourhood councils, or ‘local authorities and other elected bodies such as Police and Crime Commissioners’.

In summary, during this second period, criminal justice became something of a laboratory. Different market models – some borrowed from the past; others newly minted – were tried out as the government sought to apply its commitment to market mechanisms.

The coalition government also continued

its reconfiguration of existing police power structures. The Winsor review proposals on police employment terms and conditions led to a bitter dispute between the Police Federation and the government. The Federation won some of these battles, but its position, overall, was weakened. The appointment of Tom Winsor as Chief Inspector of Police in July 2012 – the first non-police officer to occupy this role – was symptomatic of the declining influence of the Association of Chief Police Officers. The *Policing in the 21st Century* White Paper and Peter Neyroud’s review had both proposed that the Association should take the lead role on police leadership, national standards and best practice. However, when the Home Secretary, Theresa May, announced the government’s plans for a police professional body in December 2011 – what would become the College of Policing – she was vague on the Association’s role.

The government’s confrontation with the legal profession was more inconclusive. On legal aid, the government reaffirmed its commitment to price competitive tendering in its response to the November 2010 consultation, published on the same day as Cameron’s press conference in June 2011. Implementation was hesitant, in good part due to sustained opposition from the legal profession. In December 2011, the Justice Secretary Ken Clarke announced an extended consultation timetable, with price competition not starting before the autumn of 2014.

Scotland

While the coalition government was placing markets at the heart of public service delivery, the Scottish Government was inserting the state. Its September 2011 publication, *Renewing Scotland’s Public Services* – the government’s response to the

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While proposing to tighten its grip on the payment of legal aid, the Scottish Government proposed to loosen it on the collection of contributions

recommendations of the independent *Commission on the Future Delivery of Public Services* – placed the Scottish Government front and centre as the enabler of improved, more cost-effective public services. The delivery engine would be the 32 local authorities and public bodies, grounded in a social partnership with local communities. The Scottish Government would keep its hands firmly on the steering wheel.

An early example of this approach, and of the tensions it raised between national and local accountabilities, was the Police Scotland reforms. According to *Renewing Scotland's Public Services*, Police Scotland would 'establish strong, formal relationships' with local authorities, working with them and other partners 'to meet local priorities'. In this new partnership, though, the local authorities had a diminished formal role. The existing governance structure, through which local authorities exercised budgetary and strategic oversight over the eight Scottish police forces, was swept away. It would be replaced by a single Scottish Police Authority, its members agreed by the Scottish Justice Secretary. The Police Scotland reforms therefore represented a dual movement: from local to central control, from democratic to bureaucratic oversight. Such a policy would have made little sense in market-building England and Wales, while making much sense in state-building Scotland.

Criminal legal aid presented a different challenge. A public service for sure, but one largely delivered by an array of private firms and charitable bodies, large and small, rather than public sector agencies or local government. A government paper published in September 2011 – *A Sustainable Future for Legal Aid* – proposed that Scotland

should 'move closer to a system in which legal aid is seen as "funder of last resort"'. Part of this involved the government getting a tighter grip on the management of legal aid payments through the introduction of contracts with legal aid providers. These would define the deliverables more clearly, improve efficiencies and deliver 'substantial savings of in excess of £3 million by 2014-2015'. When more detail emerged during the third period it included the option of price-competitive tendering.

While proposing to tighten its grip on the payment of legal aid, the government proposed to loosen it on the collection of contributions by defendants towards the cost of their legal representation. Provisions in the *Scottish Civil Justice and Criminal Legal Assistance Bill*, introduced to parliament in May 2012, proposed to widen the scope for defendants' contribution to their legal aid bill. It also proposed leaving it to solicitors, rather than the Scottish Legal Aid Board, to collect their clients' contributions in most cases. An effective way to shift risk from the state to legal aid providers, the provisions were unpopular with the legal profession. In a briefing to the Scottish parliament in July 2012, the Law Society of Scotland described them as 'impractical, unworkable and unsustainable'.

Northern Ireland

In November 2011, Northern Ireland's First Minister, Peter Robinson, threatened to bring down the power-sharing executive following news that the Northern Ireland Prison Service might remove the crown and other British symbols from its emblems. Coming to terms with the legacy

of civil conflict and building a 'shared and better future for all', in the words of the *Programme for Government 2011-15*, remained highly fraught and contested.

The possibility of a change in prison service emblems had emerged during a debate in the Northern Ireland assembly over the report of the prison review team under Anne Owers, published in October 2011. The prison system of Northern Ireland was 'intimately connected to its history', the report argued. The opportunity was there to create a public sector prison system that was 'a model of excellence rather than a source of embarrassment'. Failure to seize this opportunity would raise 'the possibility of a strengthened role for the private sector'. The market could not, however, resolve problems that at heart were political. This goes some way to explaining why the market-based approach to criminal justice championed by the United Kingdom government in England and Wales was so absent in the case of Northern Ireland. 'Northern Ireland will no longer copy and paste what has been introduced in England and Wales without any assessment of its suitability here', the Justice Minister David Ford had remarked in July 2012. In relation to resolving the historical legacy and present day dysfunctions of the prison service, this pointed to a politically-driven, not market-based, approach. With this in mind, a Prison Reform Oversight Group, comprising ministers, Department of Justice officials, criminal justice and civil society representation was established in December 2011 to steer the reform process.

The finalised long-term policing objectives, published in February 2012, were unchanged from the draft objectives, apart from a reference

to local accountability via the newly-established Policing and Community Safety Partnerships. The Partnerships, a merger of the District Policing Partnerships and the Community Safety Partnerships, were composed of local councillors, representatives of the Northern Ireland Policing Board and of other criminal justice and social agencies and began work in April 2012. They are another example of an inclusive style of criminal justice decision-making, based on dialogue, collaboration and a consensus-building approach. Given the legacy of civil conflict, and the historically politicised nature of most criminal justice agencies in Northern Ireland, this inclusive approach is one of the most remarkable features of criminal justice in Northern Ireland across the years covered by this review.

Conflict with the legal profession, including a solicitors' strike between March and August 2011, was one sign that legal aid developments in Northern Ireland resembled developments in other parts of the United Kingdom. The July 2012 action plan, in response to the review led by Jim Daniell, which had been published the previous September, listed a range of tasks – reducing delay; alternative dispute resolution; a review of governance, for instance – that would not have been out of place in the other criminal justice jurisdictions. Cutting legal aid was generally easier than laying off staff or closing institutions. The dull compulsion of austerity resulted in a certain policy convergence across the United Kingdom's jurisdictions in relation to legal aid, although in Northern Ireland during this period the cuts were achieved solely by reductions in fees paid, rather than by limiting the scope of legal aid availability.

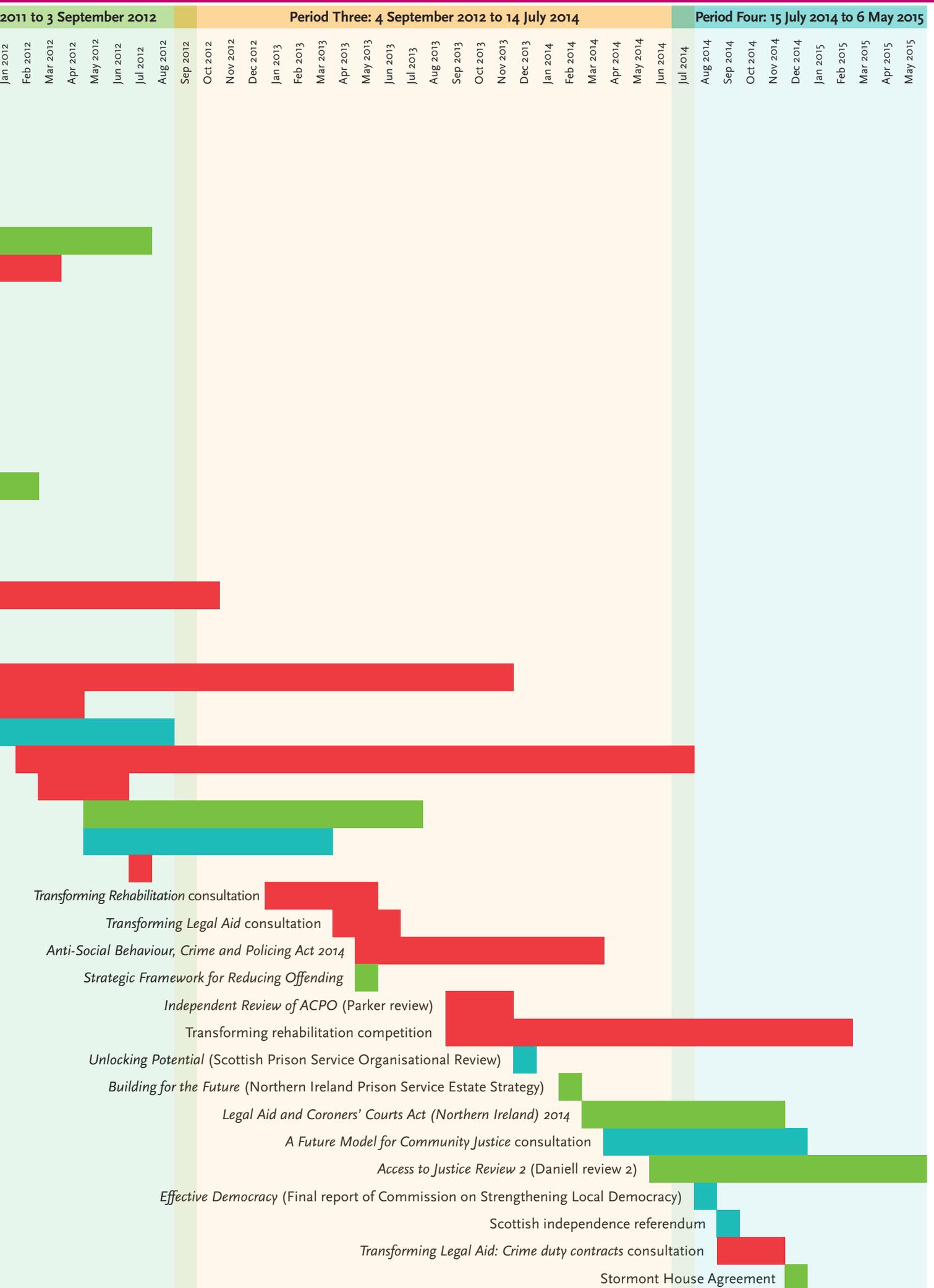
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'Northern Ireland will no longer copy and paste what has been introduced in England and Wales without any assessment of its suitability here'
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Timeline of key developments



Key

- England and Wales
- Scotland
- Northern Ireland



Period three: 4 September, 2012 to 14 July, 2014

The United Kingdom government reshuffle on 4 September, 2012 marks the start of the third period. The eve of the 15 July 2014 reshuffle marks its end. During the 22 months bookended by the September and July reshuffles, the pace of criminal justice change quickened across England and Wales. Conflict over the necessity of change sharpened. The replacement of Ken Clarke by Chris Grayling as Justice Secretary was seen by many – supporters and antagonists alike – as instrumental in this shift. Grayling’s appointment, and the September reshuffle more generally, had no direct bearing on criminal justice developments in Scotland and Northern Ireland. Policies in those jurisdictions continued to develop and modulate in ways both influenced by decisions taken in London – notably on public spending – and by factors and features distinctive to them.

through the launch of a new market-testing programme in October 2011. The programme failed. Of the nine prisons subject to market-testing, eight were under public sector management. One – HMP The Wolds – was managed by G4S. After a process that lasted over two years the final tally, in November 2013, was one prison – HMP Northumberland – under private sector control (Sodexo) and eight prisons under the public sector. This included HMP The Wolds, the contract for which G4S lost. An alternative approach, announced in November 2012, split off estate management and maintenance work from the ‘core’ custodial functions. The former would be put out to competition. The latter would be retained by the public sector, its costs ‘benchmarked’ against the private sector.

The government could claim greater success with the contract to deliver the new generation of satellite tracking of those under a community-based punishment. It was awarded to a consortium of new market entrants, led by Capita, in July 2014. The frontrunners for the new contract – G4S and Serco – had been excluded from bidding after they had been found to have overcharged the government under the existing tagging contracts. The government had achieved a diversification of the electronic monitoring market, though not in circumstances of its own choosing. Progress on these two centrally-run market-building initiatives – prisons and electronic monitoring – was therefore uneven. It was also combined. Serco had been favourite to run three prisons in South Yorkshire as part of the nine-prison market-testing. The ongoing uncertainty caused by the electronic tagging overcharging scandal forced the government to discontinue negotiations with Serco.

On probation the challenge was not, as in prisons,

England and Wales

During period three, a patchwork of market-based approaches – some familiar, others innovative; here more centralised in approach, there more localised in intention – progressed in a way that was both uneven and combined. It was uneven in the sense that market-building in each area under review – policing, punishment, legal aid – unfolded at different speeds and in different ways. It was combined in the sense that success or failure in one area tended to impact on success or failure in another area. Criminal justice market-building unfolded in a series of discrete, but interconnected, movements.

The market in private prisons was well-established, though dominated by a handful of multinational companies that had some scope to set monopoly prices. The government sought to achieve a greater diversity of suppliers by encouraging new market entrants, notably

The market in private prisons was dominated by a handful of multinational companies that had some scope to set monopoly prices

one of market diversification. It was one of market *creation*. By the start of period three, the Ministry of Justice had launched a handful of pilot projects testing a payment-by-results approach. But no plan to scale-up delivery across England and Wales was forthcoming. The Ministry appeared overwhelmed by the complexity of the task. The September reshuffle was a watershed. The revised plan, *Transforming Rehabilitation*, published in January 2013, retained the *Breaking the Cycle* split between the national management of 'higher risk' probation clients and the local delivery of routine probation-related activities. But in a move from localised to centralised commissioning, the Probation Trusts were to be scrapped, with commissioning responsibility shifting to the Ministry of Justice. Routine probation activity would be delivered through 21 Community Rehabilitation Companies, run by successful bidders following competitive tender. The Prime Minister had called for 'rocket boosters' to be put on plans for payment-by-results for punishment-related activities, in a crime and justice speech on 22 October 2012. The application of the rocket boosters had required a major redesign of the rocket.

In contrast to prisons, probation and electronic monitoring, the criminal legal aid market was well developed and highly diversified. This, paradoxically, was a problem in the view of government. It wished to *reduce*, rather than expand, the number of market providers in order to achieve savings through greater economies of scale and a simplification of administration. To achieve this, the *Transforming Legal Aid* consultation, published in April 2013, proposed that a limited number of criminal legal aid contracts would be offered to a relatively small number of firms and consortia, awarded on the basis of price. The winners would have the exclusive right to deliver criminal legal aid in a given geographical area.

During the course of 2013 and 2014, in the face of concerted legal opposition, the government narrowed proposals for price competitive tendering to apply only to defence work in relation to clients who did not choose their own representative: so called 'duty provider work'. Providers who could demonstrate the requisite capacity and quality could apply for a contract to deliver so-called 'own client' work, where the defendant chose their own representative.

The dual strategy of reorganising police governance structures while displacing traditional police power bases continued during period three. The College of Policing became operational in December 2012. The National Crime Agency followed suit in October 2013. The newly-elected Police and Crime Commissioners gained enhanced powers to commission local services under provisions in the *Anti-Social Behaviour, Crime and Policing Act*, which became law in March 2014. These developments posed a threat to the Association of Chief Police Officers. But that was partly the point of the reforms. As the Home Secretary, Theresa May, told the Police Federation annual conference in May 2014, 'If we hadn't introduced Police and Crime Commissioners and established the College of Policing, we wouldn't have been able to break the unaccountable ACPO monopoly at the head of policing in this country'.

Following a series of draining negotiations on implementation of the Winsor review reforms, the government also brought an end to collective bargaining over police pay. In a move supported by the Association of Chief Police Officers, and bitterly opposed by the Police Federation, the government established the Police Remuneration Review Board to advise ministers on police pay and conditions.

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The Prime Minister called for 'rocket boosters' to be put on plans for payment-by-results. Their application had required a major redesign of the rocket
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The complex movement between centralism and localism, between the Scottish Government's state-building reflex and the interests of Scotland's traditionally powerful local authorities continued

Scotland

During period three, the complex movement between centralism and localism, between the Scottish Government's state-building reflex and the interests of Scotland's traditionally powerful local authorities continued.

Police Scotland, the first case of local authority responsibilities being transferred to central government since devolution, was the best example of a centralist move. Local authorities had 'lost meaningful local control' over the police, found a survey by the Convention of Scottish Local Authorities, conducted in December 2013. This apparent hollowing out of local accountability appeared matched by a lack of control at the centre. Throughout the third period, the Scottish Police Authority faced criticism for failing to exercise effective oversight of this new and powerful police force. Police Scotland had concentrated significant power in the hands of the Chief Constable and his senior colleagues. Whether this was complemented by effective political oversight remained an open question.

Plans to scrap the regional Community Justice Authorities, published in April 2014, offered a good example of the move towards greater localism, though one tempered by central oversight. The Authorities had been established in 2006 to coordinate the work of local authorities, the Scottish Prison Service and other local agencies in managing those under a court sanction in the community. The government had centralised policing, merging the eight Scottish police forces into one single national force. In the case of the eight Community Justice Authorities, it proposed to decentralise them. The Authorities would be dissolved into the 32 Community Planning Partnerships; the multi-agency bodies coordinating the planning and delivery of public services at a local authority level. A new national

body accountable to the Scottish Government – Community Justice Improvement Scotland – would take the lead in embedding national standards.

The December 2013 Scottish Prison Service organisational review – *Unlocking Potential* – also sought to balance off local delivery and central oversight. Strengthening its linkages with Community Planning Partnerships was important. The Scottish Government's national outcomes and criminal justice priorities underpinned the Service's future direction.

The appropriate balance between localism and centralism, in relation to key criminal justice institutions, was one set of important issues. Another was the relationship between the Scottish state and professional bodies delivering criminal justice services. On legal aid, the government reached stalemate with the legal profession on two key reforms. The Scottish Legal Aid Board had consulted on proposals for the contracting of criminal legal aid in the summer and autumn of 2013, delivering its report to the government in October. Following this, and in the face of concerted opposition from the legal profession, the process hit the buffers. By the close of period three no further proposals from the government had been forthcoming. Provisions for solicitors to collect their client's contributions to the costs of their defence became law in March 2013. Following the threat of a lawyers' boycott of the collection regime, the government postponed the planned implementation in early 2014. By the close of the third period the dispute had not been resolved.

Northern Ireland

Developments during the third period in Northern Ireland were characterised by a complex interplay

of forward-looking reforms and an ongoing confrontation with the historic legacy of conflict that continued to shape and influence these reforms.

Towards the end of 2012 and into 2013, a series of street conflicts related to parade routes and flag flying roiled Northern Ireland. The Justice Minister, David Ford, argued in a speech to the Police Federation in June 2013 that it was for communities and politicians to resolve outstanding disputes, rather than expect the police to 'fill the void' created by the failure to agree. The Police Service of Northern Ireland itself faced scrutiny over its failure properly to investigate deaths related to the civil conflict. The July 2013 report of an Inspectorate of Constabulary review of the Historical Enquiries Team – a special unit within the police service tasked with re-examining deaths attributable to the conflict – identified a catalogue of poor systems, procedural breaches, legal error in investigations and incompetence. There followed a Northern Ireland Policing Board declaration of 'no confidence' in the Team's leadership and a review of its arrangements. This controversy served as a stark reminder of the difficulties faced by the police service, and other justice institutions, of simultaneously policing the past and the present, and the potential for tensions over the former to damage confidence in the latter.

Talks between the main political parties on a way forward on flags, parades and dealing with the past, facilitated by the American diplomats Richard Haass and Meghan O'Sullivan, broke down without agreement in late 2013. That the parties sought to resolve differences through dialogue, rather than violence, was illustrative of the ongoing evolution of Northern Ireland's political institutions and their capacity to contain conflicts.

On punishment, plans to redevelop the prison estate, announced in February 2014, were but the most high-profile feature of a series of initiatives developed in response to the Owers review. The long-term aim was to move the prison system away from its historic role in warehousing those engaged in political violence to a more conventional, correctional model. The May 2013 *Strategic Framework for Reducing Reoffending* sought to connect up the discrete programmes of reform in prisons, community supervision and youth justice, among others. The challenge of effective reform was a cross-governmental one, drawing on expertise and examples from across the United Kingdom and internationally.

On legal aid, there was further evidence of policy convergence with the other United Kingdom jurisdictions. The review by Jim Daniell, published during period two, had recommended that Northern Ireland followed the lead of England and Wales, replacing the Legal Services Commission – an arms-length body responsible for the administration of civil and criminal legal aid – by an agency within the Department of Justice. Such a reform, the review concluded, would enable the more cost-effective management and delivery of legal aid. Legislation to make this change was introduced in the *Legal Aid and Coroners' Courts Bill* in March 2014.

The historic role of criminal justice in Northern Ireland had been one of containing political violence rather than managing more conventional problems of crime. By the close of period three, the cumulative effect of a number of discrete initiatives since the devolution of powers in 2010 had started to give criminal justice in Northern Ireland the characteristics of a more conventional criminal justice jurisdiction.

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It was for communities and politicians to resolve outstanding disputes, rather than expect the police to 'fill the void' created by the failure to agree

Period four: 15 July, 2014 to 6 May, 2015

As the government eased off on police reform, the rocket boosters on its probation reforms were burning at full power

The ten months stretching from the United Kingdom government reshuffle in July 2014 to the eve of the May 2015 General Election were punctuated by affairs of high drama, and moments of low farce.

The momentous events surrounding the independence referendum in September dominated politics in Scotland. The election in November of Nicola Sturgeon as new leader of the Scottish National Party and First Minister occasioned the departure of Kenny MacAskill from his post of Justice Secretary. He was replaced by Michael Matheson. Political deadlock over the implementation of Universal Credit, combined with ongoing disagreement over how to deal with the past, tipped the Northern Ireland Executive into political and financial crisis. The Stormont House Agreement in December 2014 represented an important next step in the ongoing process of reconciliation. In England and Wales, the Justice Secretary faced a series of humiliating legal defeats. Grayling's decision to restrict prisoners' access to books was described by a judge as 'absurd' and 'strange'. His process for competing the provision of duty provider criminal legal aid work was ruled as 'so unfair as to result in illegality' by the judge in another adjudication.

As our account of criminal justice in the United Kingdom between 2010 and 2015 draws to a close, the past meets the present on the cusp of the future. Written in early 2015 this section cannot offer a complete explanation of developments during this period, even within the parameters of its three areas of particular focus: policing, punishment and legal aid. As a result this section is more discursive in nature, drawing out the implications of the notable changes that unfolded over the five years covered in this report.

England and Wales

The tapering of government activity on police reform as the General Election approached was testament to the far-reaching changes across England and Wales in the first three periods. Notable initiatives continued during this period: plans to reform the use of police bail and stop and search for instance; reviews of police leadership and the police disciplinary and complaints system. But these were incremental reforms, small in comparison to the upheavals of earlier periods. The announcement by the Home Secretary of an inquiry into police spying activities against campaigners and activists was a further sign of a willingness to take on police interests.

The announcement by the Association of Chief Police Officers in July 2014 that it would disband was something of a coda to these big changes; symptomatic of the shift in the balance of forces between senior police officers and politicians. Whether the successor body, the National Police Chiefs' Council, will operate merely as a rebadged version of the Association seems unlikely. The potential for senior officers to regroup and regain the initiative should also not be underestimated.

As the government eased off on police reform in the run-up to the General Election, the rocket boosters on its probation reforms were burning at full power. The June 2014 split into a National Probation Service managing 'higher risk' clients and advising the courts, and 21 Community Rehabilitation Companies undertaking day-to-day supervision of most clients made little sense to those familiar with probation. But it was a necessary step to making probation market-ready. For ministers and their advisors that was what mattered. With contracts signed in December 2014 the successful bidders took over running the

Community Rehabilitation Companies in February 2015. The Justice Secretary could claim that the government had made good on its pledge to have applied payment-by-results principles to all providers by the time of the 2015 General Election.

But consider how they got there. In a speech to the Social Market Foundation in March 2012 the then prisons and probation minister, Crispin Blunt, remarked that payment-by results was 'absolutely the right approach, but I accept that we do not yet know how best to make this happen'. The twists and turns of plan followed by plan, first *Breaking the Cycle*, later *Transforming Rehabilitation*, is testament to the power ideas play in politics, even in the absence of a clear plan for implementation. So it was, that having first sought to adapt the market to existing probation structures, the government found the solution in adapting probation to suit the market.

The tenacity of the government in its attempts to introduce price competitive tendering for criminal legal aid speaks volumes about its general commitment to market processes as a means of pricing and assigning the delivery of key public services. It also says much about its particular interest in forcing a major consolidation of the existing legal aid market. The government's final plans, published in November 2014, proposed to put 527 contracts out to tender to deliver duty provider work in given areas, with the new contracts going live in October 2015. With some 1,400 firms providing duty solicitor work at the end of 2014, this implied a dramatic, and very fast, market consolidation. If fully implemented it will likely result in the closure of a large number of, mostly small, legal firms.

Scotland

In August 2014, the final report by the Commission on Strengthening Local Democracy – a body set up by the influential Convention of Scottish Local Authorities to map out a vision for renewed local democratic institutions – highlighted a central dilemma posed by the establishment of Police Scotland. On the one hand it was 'a striking expression of the centralist mindset'. On the other hand, there was little appetite for further upheaval and reform, even were this to be an option. Instead, the Commission called for the same level of local control and choice over Police Scotland as should apply to any public service, with a key role for local authorities to scrutinise and, if need be, veto local policing plans.

During this period, the debate in good part moved on from the rights and wrongs of the Police Scotland reforms to discussion of how to improve governance and accountability. In his *Annual Report* published in December 2014, the Inspector of Constabulary in Scotland, Derek Penman, urged local authorities to champion local concerns. Penman also looked to the Scottish Police Authority to take the lead in reinvigorating local scrutiny structures. The Authority itself recognised this challenge. It also worked to improve its national oversight of the force. Good oversight, the Authority's Chair Vic Emery observed in October, 'should involve us having our noses in, but our fingers out'.

On punishment the government's finalised plans for community justice, published in December 2014, offered a different solution to the centralism –localism quandary. The delivery and local planning functions of the eight regional Criminal Justice Authorities would devolve downwards into the 32 Community Planning Partnerships. The

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The tenacity of the government in its attempts to introduce price competitive tendering for criminal legal aid speaks volumes about its general commitment to market processes
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role of strategic leadership, quality assurance, national commissioning and oversight would concentrate upwards in the form of a new national body, Community Justice Scotland, accountable to the Scottish Government. National criminal justice bodies, such as the Scottish Prison Service and Police Scotland, would also be expected to collaborate locally with the Partnerships.

These proposals sat within the broader vision for Community Planning Partnerships set out, in June 2014, in the *Community Empowerment (Scotland) Bill*. On becoming law, this legislation would codify the distinction between the role of central government in setting national outcomes for Scotland and the local Partnerships in planning and delivering local services, guided by the national outcomes.

The government's plans for community justice therefore combine a movement towards the local planning and delivery of interventions with a movement towards the central direction of outcomes and strategy. Local authorities, whose councillors alone comprise the membership of the eight Community Justice Authorities, will become, under the new arrangements, but one partner among many involved in planning local delivery. The role and presence of the Scottish state, in relation to local democratic institutions, is therefore enhanced, rather than diminished, by these proposals.

By early 2015, there were no further developments on either the contracting of criminal legal aid or on the implementation of the provisions on client contributions. It seems likely that the former will be dropped or modified, the better to focus on

implementing the latter. In the struggle between the government and the legal profession over the implementation of these highly controversial reforms, it appears, for now at least, that the legal profession has the upper hand.

Northern Ireland

The executive entered period four under a cloud of uncertainty. Escalating fines, imposed on it by the United Kingdom Treasury from early 2014, following the failure of the parties to agree on the implementation of welfare reform, contributed to a burgeoning budget crisis and raised the spectre of a collapse of power-sharing arrangements and a return to direct rule from London.

The September 2014 announcement by the Police Service of Northern Ireland that, due to budget cuts, the Historical Enquiries Team would be closed and replaced by 'a much smaller Legacy Investigations Branch' was highly controversial. Though the Team had long-since lost the confidence of many in Northern Ireland, the decision to downgrade the investigation of deaths related to the civil conflict, while retaining it within the control of the Police Service, had wider political ramifications. The decision could not be dismissed as a mere operational matter for the Chief Constable.

The Stormont House Agreement between the Northern Ireland parties, finalised on 23 December 2014, mapped out a route back from budget crisis. It also went some way to resolving the question of legacy investigations, and to offer a route by which the Police Service, and the Police Ombudsman's Office, could be freed from their

responsibilities regarding the past, and become future focused. A new Historical Investigations Unit, underpinned by legislation and outwith the control of the Police Service of Northern Ireland, was to be established. The timetable for implementation, however, was vague. In the meantime, the Legacy Investigations Branch formally began work in January 2015.

By period four, ambitious plans for a shake-up of community sentencing, including emulating Scotland by introducing a statutory presumption against short prison sentences, had foundered on the rocks of political deadlock. Provisions to encourage the greater use of community sentences, originally intended for inclusion in the *Justice Bill*, were therefore not included when the *Bill* was published in June 2014. In the absence of a clear legislative option the Department of Justice was left exploring approaches more commonly found in the England and Wales jurisdiction: raising awareness of community sentences among the judiciary, and promoting public confidence in them as a 'tough' alternative to custody. As for prisons, they remained the most stubbornly unreformed of the Northern Ireland criminal justice institutions considered in this review. Five years on from devolution of justice powers, and more than 15 years on from the Good Friday Agreement, the work of creating a prison system for the society Northern Ireland was becoming, rather than the society it used to be, had in crucial respects only just begun.

A second review of legal aid by Jim Daniell, launched towards the end of the third period, published a consultation document in September

2014. It floated a number of proposals that pointed again to a certain convergence of thinking over the appropriate means of controlling and reducing the costs of criminal legal aid. These included the recovery of legal aid costs from convicted defendants and transferring decisions over the granting of legal aid from judges to the Legal Services Commission. The option of contractual arrangements and the use of price competitive tendering 'as a means of encouraging efficiencies and economies of scale' also featured.

The politics of criminal justice

Across the United Kingdom's three criminal justice jurisdictions the dull compulsion of austerity was a common theme under which a number of policy variations unfolded. Many factors influenced these variations, not least of all the distinctive cultures, histories, political arrangements and balance of forces within the different jurisdictions. This review has focused in particular on the different approaches to policy implementation. In England and Wales the government saw the *market* as key to achieving a more efficient and effective criminal justice system, working with a range of commercial organisations to deliver criminal justice interventions. In Scotland the government pursued reforms that placed the national *state* centre stage, working in partnership with public sector agencies and local authorities. In Northern Ireland the executive placed an onus on *civil society* approaches, based on inclusive and collaborative working.

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The work of creating a prison system for the society Northern Ireland was becoming, rather than the society it used to be, had in crucial respects only just begun

Implications and prospects

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There never has been a United Kingdom-wide criminal justice system. Over the past five years the local distinctiveness of the three jurisdictions has, in general, become more pronounced

Five years on from the 2010 General Election, the casual observer surveying the landscape of criminal justice will encounter a familiar prospect. The main institutions – the police, prisons and community supervision, the courts and the legal process – appear largely unchanged. This review has demonstrated that, on a closer look, there is much evidence of substantial redesign and of significant reengineering. First, *within* each of the three jurisdictions, criminal justice has undergone significant change. In general this change has not been at the same speed nor in the same direction. This means that, second, criminal justice policy *across* the three jurisdictions is generally more divergent than was the case five years ago. There never has been a United Kingdom-wide criminal justice system. Over the past five years the local distinctiveness of the three jurisdictions has, in general, become more pronounced.

In this final section, we draw out the implications of criminal justice developments in the five years to 2015 and consider the prospects for criminal justice developments following the May 2015 General Election. A strong influence will be the available financial resources. For this reason we start with an assessment of the United Kingdom government's progress against the austerity targets it set on entering office in May 2010. We then take stock of the criminal justice developments described in this review, drawing out their implications.

The theme: austerity

Back in June 2010 the Chancellor, George Osborne, told the House of Commons that the coalition would eliminate the 'structural deficit' and deliver falling debt by the time of the 2015 General Election. The government has failed in both these objectives, while having some success

in imposing the public spending cuts it claimed were necessary to achieve them. Total public expenditure across the United Kingdom grew, in real terms, by only six per cent between 2010 and 2014, according to the *Public Expenditure Statistical Analyses*. This compares with a 28 per cent real terms growth in the four years to 2010.

Across the United Kingdom, spending on the public order and safety category – which largely comprises criminal justice – grew by 17 per cent in the four years to 2010. In the four years to 2014 it fell by 12 per cent. The cuts were greatest in England and Wales, where the United Kingdom government had direct political control over criminal justice. In Scotland, where the United Kingdom government's control was the most qualified, the cuts were the slightest. In England and Wales, Home Office and Ministry of Justice budgets will have fallen by 19 per cent and 29 per cent respectively between 2010 and 2015, according to the Institute for Fiscal Studies 2015 *Green Budget*. The Institute estimates that the Home Office and Ministry of Justice could face even larger real terms cuts in the next parliament: up to 46 and 45 per cent respectively by 2020. The *Scottish Spending Review 2011* set out real terms cuts to the Scottish Justice department budget of nine per cent by 2015. The Northern Ireland *Budget 2011-15* proposed real terms cuts of some 13 per cent in Justice department spending between 2010 and 2015. Looking ahead, the Scottish Justice department faces a small real terms cut, of less than one per cent, according to the 2015-16 *Scottish Budget*. The Northern Ireland *Budget 2015-16* sets out plans for a cash terms cut in the Justice budget of some 11 per cent between 2015 and 2016.

All the political parties in the running to form the next United Kingdom government are committed

to ongoing austerity during the next parliament. As we look towards the 2015 General Election, and beyond to the May 2016 elections in Scotland, Wales and Northern Ireland, the dull compulsion to cut and trim will continue to be felt across all three criminal justice jurisdictions. Ongoing variation in policy-making and expenditure, within and across the three criminal justice jurisdictions, will continue. It will, though, be variation on the underlying theme of austerity.

The first variation: the market

In England and Wales, the dominant variation on the theme of austerity has been the application of market approaches to the delivery of criminal justice services. Implementation has been variable; the implications for the future, various.

The market in probation services was a late developer in the coalition's period in office. It is also the criminal justice service where a market approach has been applied most systematically. Twenty one Community Rehabilitation Companies, owned by private sector-dominated consortia, now deliver the majority of probation services under contract with the Ministry of Justice. A publicly-run National Probation Service, organised centrally, holds responsibility for difficult-to-cost interventions and public interest activities. The concern to create a viable probation market has driven this public-private split. The practical challenges involved in integrating service delivery through parallel probation systems operating to very different logics make a post-election review of the new arrangements highly likely.

The coalition's current approach to the prison's market has involved a strategic adaptation to the failure of market-testing to deliver savings. The new approach of benchmarking public sector

prison costs against the lowest costs prevailing in the private prison sector has introduced new competitive pressures into public sector prisons that, in the longer-term, have the potential to create new market opportunities. Splitting off ancillary activities such as building and estate management from the core custodial functions – the latter remaining in the public sector, the former put out to competition – is the prison version of the public-private split implemented in probation. Looking ahead, this move from 'vertical' to 'horizontal' commissioning – from market-testing *individual* prisons to developing a market in *whole* service categories – has created a much greater range of opportunities for private sector involvement.

The coalition government's current approach to the prison and probation markets has placed a premium on expanding market opportunities and increasing the number of providers. Markets do not arise naturally. They are created and maintained through political action. That the coalition government has adopted different approaches to criminal justice markets reflects the different priorities it identified. The creation of Police and Crime Commissioners offers the closest fit with the coalition's vision of local commissioning of public services. The market for police-related services is also emergent, rather than developed, at this stage.

The second variation: the state

In Scotland, the government has sought to harness the organising capacity of the state, rather than the market, in response to the challenge of austerity. The underlying financial context of implementation has also differed. The justice budget has avoided the sharp cuts imposed south of the border. Whether the Scottish Government

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All the political parties in the running to form the next United Kingdom government are committed to ongoing austerity during the next parliament

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The lack of formal accountability to local government or other representative bodies has undermined Police Scotland's mandate in the communities it ostensibly serves

will be able to avoid steeper cuts to the justice budget in the future will depend on long-run decisions on overall public spending, and the proportion the government allocates to justice.

In keeping with the Scottish National Party's long-term opposition to prison privatisation, the Scottish Prison Service remains a predominantly public sector operation. The Service commissions from private contractors, including two private prisons and prisoner escort services. But the market mechanisms that now characterise the core operations of the prison service in England and Wales are absent in Scotland. With the Chief Executive accountable directly to the Scottish Justice Secretary, the government can maintain strong political control over the Service. The Service's centralised nature does create distinct barriers to local legitimacy and collaborative working, as the organisational review recognises.

Police Scotland occupies an ambiguous position within Scottish criminal justice. The merger of the regional police forces into a single national organisation was undeniably a centralising move that enhanced the power and authority of the Scottish state. But the Scottish Government does not exercise direct control over Police Scotland. Such an arrangement, after all, is characteristic of a police state. The Scottish Police Authority has struggled to exercise effective oversight over Police Scotland. The lack of formal accountability to local government or other representative bodies has undermined Police Scotland's mandate in the communities it ostensibly serves.

If Police Scotland and the Scottish Prison Service represent centralised approaches to the assertion

of state authority, the planned community justice reforms represent a decentralised one. Devolving community justice down to the Community Planning Partnerships builds on their role as the local delivery units of national government priorities. Community Justice Scotland implies a lighter touch steering of policy than would be offered by a centralised national delivery body

The third variation: civil society

The distinctiveness of criminal justice developments in Northern Ireland is conditioned by many factors, two of which are of particular note. First, reform of criminal justice in Northern Ireland has involved a downsizing and repositioning of criminal justice, as part of the process of moving on from the period of civil conflict. More than £600 per head was spent on criminal justice in Northern Ireland during the mid-1990s. In England, Wales and Scotland the equivalent figure was under £250 per head. By the time policing and justice were devolved to Northern Ireland in April 2010, criminal justice spending was still nearly 1.5 times more per head than England, Wales and Scotland.

The second factor relates to Northern Ireland's distinctive power-sharing arrangements. All the main parties have a share in administering Northern Ireland, while no one party, or coalition of parties representing one side of the unionist-nationalist divide, is able to exercise unqualified power. Contentious reforms, among which justice and policing have been some of the most contentious, are implemented through an often

protracted process of negotiation and consensus-building involving a broad range of interests. These interests are only partly mediated through the formal institutions of the executive and assembly. This means that a wider range of civil society and representative bodies and individuals tend to be involved in the development and implementation of criminal justice policy and practice than is often the case in England, Wales and Scotland.

Policing in Northern Ireland remains deeply marked by the ongoing failure to address the legacy of the conflict. The plans to establish a Historical Investigations Unit is ostensibly about detoxifying the process of historical investigations by hiving the work off into a body separate from the Police Service of Northern Ireland. Implemented successfully, it would also leave the Police Service free to focus on routine policing matters. The likely protracted timeframe to reach agreement on the required legislation to establish the Historical Investigations Unit, and concerns about whether the Unit will have a realistic budget, means the legacy of the past will continue to mark policing in Northern Ireland for some years to come.

The glacial speed of progress in reforming Northern Ireland's prison system is partly a reflection of how much needs to be done. It also reflects the compromises of power-sharing. With such differing and contradictory views on the past conflict, the challenge of reforming the prison system – an institution so haunted by the ghosts of the past – will remain a deeply divisive and conflictual journey. The probation service

in Northern Ireland, in contrast, has not faced the same challenges to reform, in part because it never formed a central part of the institutions of containment during the civil conflict. As Nicola Carr and Shadd Maruna pointed out in the *Howard Journal of Criminal Justice* in 2012, the Northern Ireland probation service adopted a stance of neutrality during the period of civil conflict, with a strong commitment to community engagement. As a result the service has managed the transition to the new political settlement far more easily than most other parts of the Northern Ireland criminal justice system.

Reprise of the theme: legal aid

In this review we have tended towards drawing out the distinctiveness of the United Kingdom's different criminal justice jurisdictions and their divergent approaches to criminal justice policy between 2010 and 2015. We conclude on a note of convergence. During the years under review, the three jurisdictions developed similar approaches to criminal legal aid. These included steps to reduce fees, limit eligibility, require defendants to contribute to the costs of representation, along with moves in the direction of price-competitive tendering. In all three jurisdictions, legal aid was and is delivered largely by self-employed practitioners and legal companies. Cutting payments to external bodies such as these is generally much easier than complex reorganisations of public services. This is a key reason why, under the dull compulsion of austerity, similar approaches were adopted to criminal legal aid.

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Policing in Northern Ireland remains deeply marked by the ongoing failure to address the legacy of the conflict

Conclusion

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The process of criminal justice reform is shaped by a complex array of economic, cultural, historical and ideological influences

This review of criminal justice over five years, across the United Kingdom's three criminal justice jurisdictions, has eschewed detail for the big picture. It has narrowed its focus on three particular areas of criminal justice reform – policing, punishment and legal aid – the better to draw out the broad, underlying themes. It does not claim to offer the final word on what was a very dynamic, often unpredictable, sometimes confusing and at times bemusing time of change. It has sought to situate the changes that were wrought on criminal justice institutions, in different parts of the United Kingdom, within the context of the respective political priorities and policy agendas of the different administrations.

With another parliament of austerity likely, whichever party or parties form the United Kingdom government following the May 2015 General Election, the role of the dull compulsion to cut and trim will continue to make itself felt across the United Kingdom's three jurisdictions. The pattern of convergence and divergence in approaches to austerity, and to criminal justice more generally, is likely to continue.

Whether such convergences and divergences are a good or bad thing is not a judgement we have sought to make in this report. There are certainly lessons, for all three jurisdictions, from the paths taken in each. But transfer of policy solutions from one jurisdiction to another – for instance, the adoption of a Police Scotland model in England and Wales, or the application of market processes to probation in Scotland or Northern Ireland – will always tend towards modification and adaptation at most. The distinctive approaches to criminal justice pursued in England and Wales, Scotland and Northern Ireland are a response to specific challenges in those jurisdiction. They also reflect underlying governing priorities, philosophies, ideologies and imperatives. Such specificities are not replicable across what remain very different jurisdictions.

The process of criminal justice reform is, at heart, a political project, shaped by, and shaping in its turn, a complex array of economic, cultural, historical and ideological influences. It is this articulation of the political and the criminal justice, during the period 2010 to 2015, that this report has sought to draw out.

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