Structured Deferred Sentences in Scotland: Guidance



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Section 1

Introduction, legislative basis and policy context

1.1 Introduction

This document provides a high-level guide to the purpose, policy rationale and operation of Structured Deferred Sentences (SDS) in Scotland, for local authority justice social work services, youth justice services, and relevant partners.

SDS aims to provide a structured intervention for individuals upon conviction and prior to final sentencing. They are generally used for people in the justice system with a range of complex needs that may be addressed through social work and/or multi-agency intervention, but without the need for a court order. SDS also offers the opportunity for justice social work services and key partners to directly provide and tailor interventions for individuals. This may include, for example, components on risk-taking behaviour, decision-making, and victim impact, as well as interventions to address identified need.

SDS is used in a variety of ways and can provide a flexible and effective intervention which can help prevent individuals who have offended becoming further drawn into the justice system, as well as address the underlying causes of offending and contribute to safer and fairer communities for all.

This guidance has been developed in collaboration with Social Work Scotland, Community Justice Scotland, local authorities, and other partners. Particular thanks are extended to practitioners with experience of delivering SDS who have contributed to this guidance. It is aimed primarily at those engaged in the delivery of justice social work services and specifically SDS, but should also be of assistance to other organisations involved in the delivery of SDS. While we would encourage justice social work services to continue to offer and/or develop SDS in their areas, judicial engagement at local levels, as well as partnership arrangements with key stakeholders, is crucial to the establishment and operation of any schemes. The use of SDS in any particular area is ultimately at the discretion of the court.

The guidance is not designed to provide detailed instructions on the operational delivery of SDS in Scotland, acknowledging that SDS currently operates in some form in several local authorities and will be tailored to local need and priorities. Rather, it seeks to highlight the context, purpose, principles, and some important considerations for SDS that should be common to all justice social work services and key partners whether they are currently delivering - or planning to deliver – SDS in Scotland. Services are therefore encouraged to use this guidance as a basis to develop and use SDS flexibly and innovatively in their local areas.

1.2 Legislative basis

Section 202 of the Criminal Procedure (Scotland) Act 1995 allows a court to "defer sentence after conviction for a period and on such conditions as the court may determine". In practice, this could mean the court may defer the case for technical reasons, or for an update on progress where the individual is engaging with a service. When such a deferment involves a structured intervention managed by justice social work services it is known as a Structured Deferred Sentence.

SDS is also referred to in the <u>Community Payback Order Practice Guidance</u> (2019) which highlights how it might be used.

In all cases, at the end of the period of intervention the court retains the discretion to pass sentence in any manner that would have been appropriate at the time of conviction

1.3 Policy context

The SDS model in Scotland was developed due to policy and practitioner perceptions that 'low tariff' individuals were presenting high levels of need when being sentenced at court; they were frequently viewed as being 'up-tariffed' to enable them to receive social work support that was otherwise unavailable to them. Three pilot schemes were thus introduced from 2005-2008 - please see Annex 1 for further information on these early pilot schemes¹.

Successive policy drivers have served to highlight the broader imperative for expansion of SDS in Scotland. The Scottish Government's <u>Vision and Priorities</u> for Justice in Scotland, which set out priorities for 2017-2020, had a focus on early intervention and responses which are proportionate, just, effective, and rehabilitative. This approach is complemented by the <u>National Strategy for Community Justice</u> which emphasises the growing need to shift criminal justice interventions upstream, based on the premise of the least intrusive intervention at the earliest possible time.

Community Justice Scotland's Community Justice Outcome Activity <u>annual report</u> for 2019 highlighted good practice in SDS and recommended that Community Justice Partnerships should ensure that early opportunities to address needs within the justice system are maximised through the increased use of SDS, amongst other related measures such as Bail Supervision and Diversion from Prosecution.

SDS also fits in with wider evidence drawing attention to the 'stickability' of justice social work services, with the <u>Hard Edges</u> (2019) report highlighting that justice social work are frequently the main gateway to the co-ordination of support for people facing severe and multiple disadvantage, and offer proactive engagement – these are some of the core elements of SDS.

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¹ As of mid-2020, SDS was operating in some form across 15 local authorities in Scotland. <u>Information</u> from Justice Analytical Services (Scottish Government) indicates that 820 SDS were commenced in all 15 of those local authorities in 2018-19, 70% of which were for males

² Due to be reviewed in 2021

SDS has significant potential as an effective intervention which may serve to prevent individuals being further drawn into the justice system. This complements the range of credible community disposals available across Scotland, as well as the implementation of the extension of the presumption against short sentences and wider efforts by a range of stakeholders to address the causes of offending, prevent re-offending, and improve life chances.

While further research on the operation and effectiveness of SDS in Scotland would be welcome, the evaluations to date alongside stakeholder feedback offer encouraging indications that SDS can be an effective intervention if resourced sufficiently and used in a proportionate and targeted way.

SDS, in some cases, could be more appropriate than the imposition of a longer-term disposal such as a Community Payback Order (CPO), particularly for those where a short-term intervention would more appropriately address areas of risk and need. It could also be of benefit to those who may find it more difficult to manage the requirements of a CPO or Drug Treatment and Testing Order (DTTO), and reduce the risk, and associated impact of, non-compliance and breach associated with statutory orders.

It may also provide an opportunity for individuals to stabilise their circumstances and assess their motivation and ability to comply with a period of statutory supervision, again potentially reducing the risk of future breach and providing an alternative to short periods of custody.

Please also see Annex 1 for a brief summary of the SDS evaluations thus far.

Section 2

Developing and implementing a Structured Deferred Sentence scheme

This section is not intended to be prescriptive; rather, it outlines the key considerations for developing and operating SDS in Scotland and areas of best practice. Services are encouraged to adopt a flexible, innovative approach in developing an SDS scheme that is commensurate with their priorities, capacity, local need, and evidence-based practice.

<u>Developing and implementing an SDS scheme - summary of key considerations for</u> justice social work services and partners

- Have you identified a target group/criteria based on local area need and/or service priorities which complements your area's Community Justice Outcomes Improvement Plan? (sections <u>2.1</u>; <u>2.4</u>)
- Have you engaged with the local judiciary to determine how SDS might be used? (sections 2.1; 2.2)
- Will your SDS scheme begin as a pilot scheme, with a view to broader roll-out? (section 2.1)
- What resources and staffing do you have? Will you create a specific SDS team, or place SDS within the remit of existing teams/services? (section <u>2.3</u>)
- Will further training for staff be required e.g. to raise awareness of SDS, or other key areas? (section 2.3)
- Have you engaged with partner organisations, including the third sector, to identify local needs and capacity for delivering services that could form part of SDS in your area? (sections 2.2; 2.3; 2.5)
- Will you need to develop a bespoke SDS intervention programme, or do you have existing 1:1 or groupwork programmes that can be utilised or adapted?
- How will you raise awareness of/promote SDS? (e.g. consider developing information leaflets for service users, staff, and other stakeholders, and local procedural guidance/flowcharts) (section 2.3)
- Do you have appropriate templates? (e.g. SDS action plans; review reports; outcome measures) (section 2.3)
- How will you structure and manage engagement, compliance, and any escalation in risk within your particular SDS scheme? (section 2.7)
- Do you have appropriate SDS data collection processes in place? (section 2.9)
- Do you have an outcome measure by which to evaluate the SDS intervention? (section 2.9 and Annex 9)

2.1 Determining the purpose and use of Structured Deferred Sentences

2.1.1 Purpose and use

SDS aims and practical use can differ across areas, with local demographics and priority areas of need often being determining factors. These priorities and needs may link with strategic planning and local Community Justice Outcomes and Improvement Plans.

It will also be important for services to engage with local judiciary when determining the criteria, purpose, and target groups of the SDS, particularly when implementing a new scheme.

There are some commonalities of SDS purpose and use, which this guidance highlights.

SDS are generally utilised post-conviction and prior to final sentencing as part of a deferred sentence to provide a relatively short period of focused intervention with the specific objectives of:

- Meeting assessed criminogenic and non-criminogenic needs and building an individual's motivation and capacity for positive change;
- Reducing the frequency or seriousness of offending behaviour; and
- Avoiding premature or unnecessarily intensive periods of supervision in the community

SDS might therefore be, for example, specifically aimed at certain individuals such as women in the justice system³, young people who have offended⁴, those with lower-level substance use, people experiencing poor mental health, and those with a limited offending history who may pose a low/medium risk of re-offending (sometimes referred to as 'low tariff' SDS). The purpose of SDS in such cases would be to reduce the number of individuals made subject to supervision who could be more appropriately dealt with through the provision of a structured programme of support addressing identified areas of need. The SDS period would serve to furnish the court with information on the individual's progress during this time, with the optimum outcome being a less intensive disposal at the end of the deferment period

³ <u>https://www.gov.scot/publications/evaluation-sixteen-womens-community-justice-services-scotland-research-findings/pages/1/</u>

⁴ There is potential to promote SDS linked to the <u>Whole System Approach</u> (WSA) for young people in the justice system, especially where areas are expanding this to 21-year-olds (or up to 25/26 years in some instances). While SDS does involve court time - and the aim of the WSA is to keep under-18s out of the formal justice system as far as possible - it can serve to avoid young people being further drawn into the justice system as well as prevent re-offending.

Further, The Promise, arising from the Independent Care Review (2020: 40), highlights that children who are involved in offending need protection and care, and that the criminalisation of children should be avoided, intervention should be early, minimal, and as destigmatising as possible, and all decisions made by professionals should be centred on the child's best interest.

Getting it Right for Every Child (GIRFEC) principles should also be taken into account when working with children/young people in the justice system

such as an admonition. It should be noted that these are only examples and any individual who has been assessed as suitable – irrespective of offence type⁵ – can be considered for SDS.

In addition, SDS can also be used as a means of assessing suitability for a Community Payback Order (CPO) or Drug Treatment and Testing Order (DTTO), potentially to allow an individual the opportunity to achieve stability in a certain aspect of their circumstances, and/or to gauge their ability to comply with supervision in the community (sometimes referred to as 'high tariff' SDS). SDS in this context might be more commonly used for individuals with more persistent offending, those who may also be at a higher risk of receiving a short custodial sentence, those who have struggled to comply with community orders, and/or those who pose a higher risk of re-offending⁶. Individuals are thus provided with the opportunity to demonstrate their motivation to engage with supervision and support, and address offending behaviour. A shorter community-based disposal could then be imposed on their return to court, should satisfactory progress be made. It is important to carefully consider timescales should services target SDS use in this way, paying due regard to the length of time that an individual may be subject to an SDS and any subsequent period of supervision.

As stated, in all cases, at the end of the period of intervention the court retains the discretion to pass sentence in any manner that would have been appropriate at the time of conviction, with the additional benefit of information from justice social work and partner services on the individual's response to a structured intervention during the deferment period.

2.1.2 SDS interventions

Some areas have developed specific SDS intervention programmes, including one-to-one and groupwork schemes for people subject to SDS. These may be designed to focus on specific areas of need, such as alcohol-related offending, or form part of a more general approach to addressing need and risk.

The following areas are likely to be covered as part of an SDS intervention (this is not exhaustive):

- Motivation and capacity-building
- Substance use
- Health and wellbeing
- Mental health
- Accommodation
- Employability, education, and training
- Relationships
- Decision-making, risk-taking, and offending behaviour

⁵ See section 2.4.1 for specific considerations regarding domestic offences. It is also noted that SDS is unlikely to be suitable for offences involving serious harm. In all cases, the needs, rights and safety of any direct or indirect victims should be taken into account

⁶ Again, those posing a higher risk of harm to specific victims, groups, and/or the general public are unlikely to be assessed as suitable for SDS

This can be achieved through a variety of methods such as:

- One-to-one (or 2:1) meetings and interventions
- Specific groupwork programmes
- Referrals, signposting, and partnership working with relevant agencies⁷

As stated, SDS can be aimed for use with specific groups where there may be local need and/or a gap in provision. Areas currently operating SDS often first trialled its use as a small-scale, pilot scheme for specific groups, subsequently rolling it out for broader use.

2.1.3 Engagement with and support from the local judiciary

Support from the local judiciary will be crucial in establishing and running a successful SDS scheme. Justice social work services should seek to engage with the judiciary as early as possible both to determine how SDS can best be used locally, and to ensure that sheriffs are aware of what interventions and support can be offered by justice social work and other local partners as part of an SDS. This engagement should not be limited to the set-up phase of any new SDS scheme – ongoing, meaningful communication between justice social work and the courts is an important part of ensuring that SDS works well, is evaluated, and retains the confidence of the judiciary, allowing feedback to be provided by all parties and the services offered to be refined over time.

2.1.4 Practice examples

For specific practice examples of how SDS is used in a selection of local authorities across Scotland, please refer to Annex 2.

2.2 Principles of service provision

The majority of these principles reflect the underpinning practice and ethos of all of the interventions provided by justice social work services and partners and are not intended to be an exhaustive list; rather, the key principles for SDS are highlighted for the purposes of the guidance.

2.2.1 Participation with consent

Given the nature of SDS in seeking to work closely with individuals to provide a targeted and/or early intervention to address needs and avoid further offending behaviour, a willingness to engage with the scheme is critical. Once an individual has agreed to participate, they will be expected to show commitment to the SDS. It will therefore be important to seek the consent of the individual to engage with SDS at the Criminal Justice Social Work Report stage and in co-producing the action plan. In addition, when assessing for SDS suitability, schemes will wish to consider whether individuals are currently subject to concurrent statutory supervision, as this

⁷ See <u>here</u> for the ALISS (A Local Information System for Scotland) directory of services in local areas, as well as <u>here</u> for a range of NHS services

can be perceived as incompatible with the ethos of SDS and may serve to duplicate work undertaken as part of statutory supervision.

Nonetheless, SDS should be offered as a credible, effective, and proportionate alternative or precursor to community sentences, or, in some cases, as an alternative to short periods of custody. Courts will have expectations of the work to be undertaken as well as the needs that require to be addressed during the deferment period. The expectations of engagement with the SDS, and the potential consequences of non-engagement, should therefore be clearly agreed and communicated with all parties.

2.2.2 Effective, evidence-based interventions

SDS will involve working with partners and reporting on actions to ensure delivery of an effective, evidence-based intervention proportionate to the identified needs and risks⁸, which improves outcomes for individuals and communities and maintains stakeholder confidence in community interventions.

Generic, one-size-fits-all interventions are ineffective. The quality of an intervention can impact on its effectiveness, and SDS allows for a flexible and innovative approach in response to complex and varied needs.

2.2.3 Needs-led, strengths-based and outcomes focused

SDS should be needs-led and the intervention should focus on the areas of need identified by the individual in collaboration with the SDS worker – these may be dynamic and any intervention plan should be responsive to emerging needs.

An SDS intervention should also focus on identifying and building upon the strengths and resiliencies of the individual, with a focus on developing autonomy, self-efficacy, and achieving positive outcomes.

2.2.4 Individualised, responsive and flexible

As stated, it is important for SDS action plans and interventions to be individualised and person-centred, with no 'one size fits all' approach. Action plans should be coproduced with the person subject to SDS.

SDS interventions should be flexible and innovative, and responsive to the needs of individuals subject to SDS. Any bespoke SDS programmes should be adapted to take account of responsivity considerations such as gender, age, ethnicity, mental health needs, learning disability, communication and literacy needs, learning styles, and so on.

Relationship-based practice will be key – SDS workers should build relationships with individuals based on a person-centred, pro-social modelling approach, engendering trust, an open dialogue, and supporting the desistance process.

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⁸ See also the <u>Framework for Risk Assessment, Management, and Evaluation</u> (FRAME) – a shared consistent framework which promotes proportionate, purposeful and defensible risk assessment and management practice for justice social work services and key partners

2.2.5 Trauma-informed

The Scottish Government's National Strategy for Community Justice (2017) highlights that people in contact with the criminal justice system often have vulnerabilities in relation to their health and well-being, with people experiencing high levels of mental health difficulties, trauma, and adversity. The Scottish Government's Mental Health Strategy (2017-2027) therefore acknowledges the need to ensure that interventions for people who commit offences are informed by an understanding of the impact of trauma. Consideration should be given to this both in relation to perpetrators and victims. The perspectives of, and any impacts on, victims should be taken into account where relevant in delivering SDS.

NHS Education Scotland have produced the <u>Transforming Psychological Trauma framework</u> which aims to ensure that the Scottish workforce, including justice social work services, have the necessary level of knowledge and skills to meet the needs of people affected by trauma. This framework should be taken into account when designing and delivering SDS interventions.

2.2.6 Proactive engagement

SDS should operate on the principle of proactive engagement – SDS staff are required to proactively make contact with the individual, encouraging and supporting engagement wherever possible through the use of meetings, telephone contact, digital engagement where appropriate, home visits, letters, and partnership working with other agencies.

2.2.7 Partnership working

As well as partnership working with the individual subject to the SDS, working with other services offered by the local authority, the third sector (including consultation with victims organisations where relevant), health, and other statutory partners as appropriate is integral to the operation of SDS. It may be, in some cases, that one or more third sector service will be the most appropriate agency in meeting the identified needs and risks, with justice social work serving to facilitate access to such services and monitoring the overall SDS.

Third sector partners working in justice and other sectors may be able to provide a range of services or interventions that could be used as part of SDS to help people address their offending behaviour and to resolve other issues such as health or housing needs.

Many justice social work services will already have strong links with local third sector organisations, however local Community Justice Partnerships and Third Sector Interfaces should be able to help identify potential third sector delivery partners where this is not the case⁹. Some local areas also have established networks of third sector services that could provide support.

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⁹ The Criminal Justice Voluntary Sector Forum have created the 'Beyond Consultation' toolkit to support third sector participation in local community justice processes, which services may find useful

The scheme should also complement the Community Justice Outcomes Improvement Plan in your area (or at least the anticipated direction of the plan) and members of the Community Justice Partnership should be aware of the scheme and who is involved, with opportunities to collaborate and support delivery. Community Justice Partnership Co-ordinators should be aware of SDS plans and will be able to facilitate engagement with the Partnership as appropriate.

As stated, buy-in from the local judiciary will be imperative when setting up new schemes.

2.2.8 Time-limited

SDS should also be time-limited – interventions should generally not be continued beyond six months, although some caveats may apply when working with individuals with more complex needs and desistance journeys.

2.3 Resource considerations

2.3.1 Assessments, reports and interventions

The Criminal Justice Social Work Report (CJSWR) author will usually assess for SDS suitability at the CJSWR/pre-sentence stage in conjunction with an SDS worker, where available, with some schemes employing or utilising either paraprofessionals (such as social work or community justice assistants), justice social workers (or social workers within young people's justice services), and/or partner agencies such as the third sector to undertake SDS interventions.

Paraprofessionals can also complete SDS review reports, which may require sign-off by a staff member with a social work qualification as per commensurate justice social work services practice guidance.

In cases where there are perhaps higher levels of risk, areas may wish to consider whether these are most appropriately directly managed, including the delivery of core offence-focused interventions, by a justice social worker.

As stated, partnership working with third sector agencies is also key to the success of SDS schemes, in order to address the range of needs that individuals may have.

It will be for local areas to determine which staff groups are involved in SDS. Some areas have specific SDS teams, but this is not compulsory – nonetheless, staff should be appropriately trained in working with the needs of specific groups and/or appropriate interventions for that group, as well as SDS awareness training and standard training and guidance such as risk assessment and management (including Care and Risk Management (CARM) for young people), domestic abuse awareness, child and adult protection, and trauma-informed practice. Multi-agency training with partner agencies should also be facilitated where possible.

Other areas place SDS teams or workers within Diversion from Prosecution and Bail Supervision teams, specific teams such as women's services and drug/alcohol court services, and some within generic justice social work teams.

2.3.2 Resource materials

Services should develop resource materials which explain the operation of SDS in their local areas and promote awareness, such as:

- Information leaflets for service users, professionals, and other agencies
- Local procedures for staff outlining the criteria, assessment, and operation of SDS, such as a flowchart or localised guidance document
- Key templates such as SDS action plans, review reports, and outcome measures

Please see Annex 3 for a sample SDS information leaflet and Annex 4 for an example of a process flowchart.

2.4 Assessing suitability for a Structured Deferred Sentence

Assessment of suitability for an SDS should be undertaken by a justice social worker (or other relevant professional, such as a social worker within young people's justice services) at the CJSWR stage, where the individual would appear to meet the criteria for SDS (in accordance with the criteria set by that particular scheme). Some areas include an assessment of suitability for an SDS in all CJSWRs as standard, and where appropriate.

2.4.1 SDS criteria

This is not an exhaustive list; rather, it draws together the commonalities in SDS criteria amongst schemes and is offered as a guide to assist in the establishment and operation of an SDS scheme. Services should adopt a flexible and innovative approach to developing criteria for their own SDS schemes, and be guided by local area need and service priorities as well as engagement with local judiciary.

Broadly, SDS may be considered for those who:

- Are age 16 (or 18) years and over¹⁰
- Pose a low to medium risk of re-offending and have less serious offending
- Are at a lower risk of custody
- Have identified need(s) related to offending behaviour¹¹ as identified by LSIR:SV (or an appropriate risk assessment for young people)
- Have a less entrenched pattern of offending¹²
- Are not currently subject to a statutory order
- Are motivated to engage with a short structured intervention

Schemes should consider at the assessment stage whether individuals with significant substance dependency or severe and enduring mental health conditions will be able to engage with an SDS.

Schemes will wish to determine whether SDS is made available for a broad range of offence types, which will inform the development of their own criteria for the scheme.

It must be noted that should schemes wish to offer SDS to individuals who have been convicted of a domestic offence for the first time, it is vital that local information-sharing processes are in place and followed to enable CJSWR authors to request police call-out information (as well as obtain information from specific domestic abuse advocacy services who may be supporting victims) in order to ensure there is no pattern of incidents and to formulate an informed assessment. It is best practice that CJSWRs undertaken for domestic offences involve the completion of an initial Spousal Assault Risk Assessment (SARA); CJSWR authors will adhere to all relevant guidance and protocols when undertaking this assessment and in considering appropriate disposal options in reports for domestic offences. Should there be any indication of a pattern of domestic offending¹³, it is unlikely that SDS will be suitable.

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¹⁰ Also consider remittal to the Children's Hearing System where appropriate for those aged under 18. There may also be circumstances whereby SDS could be suitable for those under 16 e.g. a 15½-year-old jointly reported to the Children's Hearing and Procurator Fiscal and dealt with by the court

¹¹ It may also be that an individual has very limited or no offending-related needs and a short period of SDS, where appropriate, may serve to encourage desistance and divert them from further involvement in the justice system

system

12 Some schemes place a limit on the amount of previous convictions that an individual can have in order to be suitable for a general SDS, such as 10 or less; this will be based on particular schemes' priorities and criteria
13 CJSWR authors should take into consideration that, due to the nature of domestic abuse, the offending behaviour coming to the attention of the police and/or the courts may only represent a very small part of the abuse experienced by the victim. Coercive and controlling behaviours which can characterise domestic abuse are intentional, targeted and repeated patterns, designed to restrict victims' agency and control, and may not necessarily be evident or reported to others

Should services wish to broaden the purposes and priorities of their SDS scheme, they may wish to consider offering SDS to individuals who:

- Pose a medium to high risk of re-offending
- Have a high level of offending behaviour-related need as identified by LSIR:SV (or an appropriate risk assessment for young people)
- May have had previous or recent non-compliance or difficulties engaging with statutory orders
- Are motivated to engage with SDS to achieve a period of stability in e.g. substance use or accommodation, and to demonstrate their ability to comply with/engage with a structured intervention in the community as a precursor to a community order

Please see Annex 5 for an example of an SDS suitability screening form template.

2.4.2 SDS assessment and CJSWRs

Consideration for an SDS will usually occur post-conviction and prior to sentencing. CJSWR authors will assess an individual's suitability for an SDS by discussing this with them at the CJSWR interview, obtaining their consent to engage with an SDS should this be given at court, and formulating the initial areas of risk/need for inclusion in the report. They should also discuss the person's suitability with the SDS team/worker(s) where available/appropriate, complete an SDS suitability screening form (where available), and utilise the initial Level of Service/Case Management Inventory (LS/CMI) Screening Version assessment (or the commensurate risk assessment tool for 16-18 year olds used by areas)¹⁴ to assess risk and need.

The risk/needs assessment, in collaboration with the individual will form the basis of the initial SDS action plan, an outline of which should be detailed in the CJSWR where an SDS has been assessed as suitable and is the preferred option of the report author.

Where possible, the date, time, and venue of the first SDS appointment should be detailed within the CJSWR if this is the preferred option.

Please see Annex 6 for example standard paragraphs for inclusion in CJSWRs should an individual be assessed as suitable for SDS.

2.5 Action plans

SDS interventions should be informed by a clear action plan. Action plans will outline the expectations of the court and the areas of risk and need identified for the individual, as well as contact and attendance requirements during the deferment period.

¹⁴ Services may wish to refer to the Risk Management Authority's <u>Risk Assessment Tools Evaluation Directory</u> (RATED) for information on appropriate risk assessment tools

As stated, an initial SDS action plan will be outlined in the CJSWR, with the full action plan to be agreed by the SDS worker in conjunction with the individual during the early stages of the deferment period.

2.5.1 Format of action plans

Schemes will wish to determine the format of the action plan they use¹⁵. Although the initial action plan is based on the risk/needs identified by the LS/CMI: Screening Version (or other appropriate risk assessment tool), areas may wish to use locally-developed action plan templates rather than the full LS/CMI Case Management Plan template as this is typically used in cases post-conviction and involving a period of statutory supervision, and usually cannot be accessed or used by paraprofessionals.

Some areas may wish to make use of the <u>Justice Outcomes Star</u> to co-produce an SDS action plan with individuals, ensuring areas of risk are identified and addressed.

Please see Annex 7 for an example of a generic action plan template.

2.5.2 Producing the action plan

In all cases, an SDS action plan should be completed by the four-week stage of the deferment period and could include the following headings:

- Level of agreed contact and expectations for engagement, as well as arrangements should there be non-compliance
- Priorities for the intervention such as:
 - Accommodation
 - Relationships
 - Health and wellbeing
 - Substance use
 - Employment/training
 - Use of time
 - Offending behaviour (which may incorporate attitudes towards offending, decision-making, anger, victim empathy/awareness, and so on)

Any specific areas of risk to victims or the public should be identified in the action plan, with interventions tailored accordingly and partnership working with relevant agencies.

Action plans should also take any responsivity issues into account (such as age, gender, health, mental health, communication needs and so on), which will inform the implementation of the plan.

¹⁵ Services working with children/young people should also incorporate the <u>GIRFEC wellbeing indicators</u> as part of any action planning

It will be important for the action plan to be co-produced with the individual, communicated in a way that is commensurate with their learning style or needs, and agreed and signed to ensure their buy-in and understanding of the SDS.

An SDS action plan should be dynamic to allow for further information or needs that may emerge during the relationship-building and intervention, which can be added to the plan.

Progress during the SDS will be measured by the factors in the action plan (i.e. positive change in the identified needs/risk associated with their offending behaviour) and set out in SDS progress/review reports to the court (please see section <u>2.8</u>, and <u>Annex 8</u> for an example of an SDS progress report template).

Along with the individual and the SDS worker/justice social worker, the following types of services are likely to be involved in achieving SDS action plans:

- Drug and alcohol services
- Health
- Mental health
- Accommodation services
- Employability, education, and training services
- Specific projects or services for e.g. women, or young people
- Specific groupwork or one-to-one interventions

Where an individual will have an ongoing need for support or other services beyond the SDS period, every effort should be made to ensure continuation of support. This could involve signposting or referrals to appropriate services and, where appropriate, facilitating engagement with these services and supporting the individual during the transition period as the SDS comes to an end.

2.6 Timescales and reviews

The deferment period for an SDS is determined by the court, and is usually three or six months; SDS is generally set at a maximum of six months with a court review at the three-month stage¹⁶.

SDS set at three months may serve as the initial review period to report on progress on the SDS. An SDS report or supplementary CJSWR is usually requested at this stage. A further three-month deferment period may be set by the court should there be outstanding needs to address.

An SDS period of 9 or 12 months will usually not be appropriate given the aims and purpose of SDS. Such longer periods of intervention would perhaps require consideration of a CPO or DTTO rather than SDS.

¹⁶ There is no minimum length arising from the legislative provision at Section 202 of the 1995 Act; however, as SDS requires intervention as well as deferral, it is unusual for SDS to be shorter than 4-6 weeks and an SDS of three months duration is typical

However, services may identify the necessity for more than one or two SDS periods for people with a higher level of need (such as young people or women), in order to more appropriately reflect and support the desistance process for these groups.

Where resource and judicial agreement allows, services may find it useful and appropriate for social work staff to attend SDS court reviews alongside the individual, for example with young people.

Schemes may also wish to incorporate internal SDS case management review processes involving the individual, the SDS worker/supervising officer, and a line manager in order to monitor progress on the action plan during the course of the deferment; this may be particularly beneficial where there are issues with engagement or compliance.

2.7 Engagement and compliance

2.7.1 Levels and nature of contact

Weekly contact should be the minimum expectation during an SDS, with some schemes stipulating contacts of up to three times per week where assessed as necessary (for example, where there are higher levels of risk/need). In all schemes, these should also include appropriate contacts such as attendance at groupwork programmes, and appointments with partner agencies involved in supporting the individual.

In addition to face-to-face meetings, regular contact by telephone or other appropriate platforms could be highly beneficial to support broader engagement and compliance, particularly for certain groups such as young people.

As stated, SDS schemes tend to operate on the principle of proactive and flexible engagement – SDS staff will be required to proactively make contact with the individual, encouraging and supporting engagement wherever possible through the use of meetings, telephone contact, digital engagement, home visits (where assessed as safe and appropriate), letters, and contact with other agencies involved with the individual.

Where resources allow, SDS workers should support individuals to attend key events (whether through in-person support, or reminders), such as meetings with other services and court appearances. This support could also be arranged with partner agencies working with the individual where appropriate.

Contact can be reduced as appropriate should progress be made on the action plan during the deferment period.

2.7.2 Compliance

Flexible and proactive engagement does not equate to a lenient approach – in situations of non-attendance at SDS appointments or contacts, it is expected that

follow-up telephone calls, letters, or home visits will occur. This could be in conjunction with other support services working with the individual.

Should individuals consistently fail to engage during the deferment period, services may wish to leave the offer of engagement open until the court review, and report on their compliance at that stage.

It may be possible or necessary¹⁷ in some cases to request an early SDS review from the court; services are encouraged to engage with local judiciary on this and ensure all parties are clear on how non-engagement with SDS is managed in their area.

SDS schemes where individuals are being assessed for their suitability for community orders may have specific standards relating to engagement and non-compliance. Such schemes may wish to use formal letters and suspension/early court review processes to emphasise and manage the consequences of non-engagement with the SDS.

2.8 Structured Deferred Sentence progress/completion reports

Courts will expect an SDS progress report at the initial review stage (if set), and the final disposal stage. Schemes may wish to use supplementary CJSWRs to report on progress, or develop a local SDS report template.

The SDS report should include the following headings:

- Basis of report
- Action plan
- Response to action plan/progress (including attendance/engagement and quality of engagement, and factors included in the action plan such as substance use, housing, relationships, employment, and so on)
- Any outstanding areas of risk/need
- Conclusion/disposal options (where relevant)
- Sign-off (either by the justice social worker, or the SDS worker and relevant social work qualified staff member)

Report writers should ensure they gather information from a range of sources to inform the SDS report, including partner agencies involved with the individual and information from victim support agencies, in relevant cases.

Please see Annex 8 for an example of an SDS progress report template.

¹⁷ This may be where non-engagement is a persistent issue, or where there are any concerns regarding an escalation of risk. Again, engagement and communication with relevant agencies will be necessary should there be any safety concerns in relation to specific victims or groups

It is also noted that the Care Inspectorate's guidance on Serious Incident Reviews relates to CPOs, DTTOs, and statutory throughcare licences. Where an individual subject to SDS is alleged to have committed, or is subsequently convicted of, an offence which meets the FRAME definition of Serious Harm, the SIR guidance and templates can be utilised by justice social work services to support learning and continuous improvement without the expectation of submitting a notification to the Care Inspectorate

If the work required to address the risk/need factors has been successfully completed, this should be reflected in the report. For many SDS schemes, this would possibly result in an admonishment as a final disposal. However, where sufficient progress has not been made, or there are outstanding needs that may be address by way of a further SDS period, it may be appropriate to recommend a further period of SDS (within appropriate timescales), or request a deferment for the completion of a full CJSWR to assess the suitability of other community disposals.

SDS reports whereby the SDS was utilised as a 'testing' period in the community will update on engagement and compliance with the SDS and in addition provide an assessment of the suitability of a community order such as a CPO or DTTO following the SDS period.

An updated Criminal History System check for SDS reports should be obtained to determine whether the individual has been charged or convicted of any new offences during the deferment period.

2.9 Monitoring

It is recommended that SDS be included within local Community Justice Outcome Improvement Plans (CJOIPs) and, where relevant, subject to CJOIP reporting and monitoring.

Arrangements should be put in place for the collection of relevant statistical data, so that the schemes' effectiveness and efficiency can be monitored. If not already in place, services should add a specific 'Structured Deferred Sentences' category to their data recording systems.

The data to be collected will include:

- Number of cases where SDS was identified as the preferred option by CJSWR authors
- Number of SDS cases commenced
- Length of SDS deferment period, defined by the categories '0-3 months', '4-6 months', and 'more than 6 months'
- Number of SDS deferral periods
- The final sentencing outcome following the deferment period(s)

Sentencing outcomes should fall into the following categories:

- Admonishment
- Further SDS period (the final outcome of this must also be logged when relevant)
- Community order e.g. CPO, DTTO
- Custody
- Other e.g. financial penalty

All of this data should be able to be categorised by age, gender, ethnicity, and employment status.

Additional data may be required for local management purposes, and areas may wish to measure outcomes related to health, mental health, substance use, attitudes towards offending, education and employment, and so on. As stated, some areas use the <u>Justice Outcomes Star</u> to measure outcomes as part of the action plan, or have created their own templates. Consideration should also be given to evaluation, drawing on evidence captured around the use of SDS, resourcing, outcomes, and impact, including in preventing people being drawn further into the justice system.

Please see Annex 9 for an example of an SDS outcomes measure.

Annex 1 – summary of the SDS pilot schemes and evaluations in Scotland

The SDS model in Scotland was developed due to policy and practitioner perceptions that 'low tariff' individuals were presenting high levels of need when being sentenced at court; they were frequently viewed as being 'up-tariffed' to enable them to receive social work support that was otherwise unavailable to them¹⁸. As such, the Scottish Government implemented SDS pilot schemes from 2005 to 2008 in three local authorities and five Sheriff Courts: Ayrshire (Ayr and Kilmarnock Sheriff Courts); Angus (Arbroath and Forfar Sheriff Courts); and Highland (Inverness Sheriff Court).

The <u>evaluation report</u>, which considered the operation of the pilots from early 2005 to December 2006, reported on the benefits of SDS to both individuals and practitioners:

- Almost all individuals interviewed described benefiting in some way from SDS, including learning to evaluate actions, changing attitudes or behaviour, receiving support, and gaining structure/stability
- Justice services' practitioners perceived SDS as offering individuals the opportunity to change behaviour, to avoid up-tariffing, and to obtain support.
- The majority of practitioners interviewed were positive about SDS. They felt that it filled a gap in the options available to the courts, by providing a means of addressing the needs of 'low tariff' individuals in the justice system.

In 2019, an evaluation 19 took place of the SDS pilot scheme offered in South Lanarkshire. The main aim of this scheme was to provide support through courts and an alternative community disposal (SDS) to sixty 16-21 year olds which included an individual intensive support package to support the individual to progress through the employability pipeline. Through a whole systems approach, the intervention was designed to provide opportunities for meaningful reintegration and community involvement in a pro-social manner, as well as improving sentencing outcomes and reducing (re)offending rates for young people. A key aspect of the scheme was the strong partnership working embedded in the service with local third sector organisations that were able to provide support with education and employability, housing and community support, and social and wellbeing services. The evaluation highlighted the success of this pilot, emphasising the SDS completion rate of 84%, when compared to national deferred sentence statistics of 77% and 40% completion rates for CPOs imposed on those under 18, as well as the positive outcomes for the young people in relation to employment pathways and desistance.

-

¹⁸ MacDivett, K (2008) An Evaluation of the Structured Deferred Sentence Pilots. Scottish Government: Edinburgh. Available at: www.scotland.gov.uk/socialresearch

¹⁹ Miller, J, Abercrombie, B & McLellan, G, (2019) Evaluation of South Lanarkshire structured deferred sentencing for young people: end of project report September 2019. University of the West of Scotland.

Annex 2 - examples of SDS use across Scotland²⁰

Aberdeen

Individuals appearing before Aberdeen's Problem Solving Court are made subject to an SDS, with the expectation that this will last for six months. They are required to attend weekly appointments with justice social work and engage with an intensive personalised treatment package. Their progress is reviewed in court every four weeks. If individuals successfully complete the SDS they can expect to receive an admonition.

Angus

In Forfar Sheriff Court, hearings are presided over by two sheriffs who each sit fortnightly, creating a regular four-week schedule in which individuals can be scheduled to return and be reviewed by their original sentencer. Individuals can be placed on a short high tariff SDS which expires at each review date. This offers the sheriff the option to either extend the SDS, sentence the person, or admonish. Reviews are attended by the individual and their solicitor, as well as a justice social worker who provides feedback on the individual's progress.

Ayrshire

Ayrshire justice social work services run an Alcohol-Related Offending Programme offered to courts as an option within an SDS. Courts defer sentence for six months with an interim review date set at the three-month stage. The programme now also includes those for whom alcohol is not the prime factor in their offending behaviour, but could benefit from a period of voluntary support. The intervention is tailored to the needs of the individual and includes offence-focused work. SDS staff respond flexibly to emerging issues as the assessment and intervention progresses, and may signpost service users to other agencies.

Falkirk

Falkirk offers both low and high tariff options. For a low tariff SDS, CJSWR authors might identify the need for a short-term focused intervention to address issues, but recommend an SDS as they do not feel that a CPO would be appropriate due to the nature of the offence or limited previous offending. Paraprofessional staff are allocated to the case, and the individual may undertake one-to-one work or be referred to in-house groupwork programmes, as well as other relevant agencies to address needs such as health, mental health, and substance use. With high tariff SDS, CJSWR authors will have assessed that the individual is unable to comply with the requirements of a CPO (for example, the person's level of alcohol use may limit their ability to comply with Supervision and Programme Requirements), and the SDS would provide a period of time to address the substance use and prepare them to engage with a CPO.

²⁰ This information describes SDS schemes operating as at mid-2020

Glasgow

In Glasgow the problem solving approach is implemented in the specialist drug and alcohol courts. An SDS is given by sheriffs in these specialist courts where further assessment is required, or the individual is deemed too chaotic or unstable to comply with a statutory order such as a DTTO or CPO at that point, with a view to this being imposed in the future. Glasgow also offer SDS to individuals with complex needs, such as women in the justice system and people with mental health difficulties.

Perth

Perth's SDS scheme, Right Track, is aimed at people aged 16-26 where the persistence and/or seriousness of their offending places them at immediate risk of custody, or that the young person has, or is likely to, fail to comply with a CPO due to their chaotic lifestyle. It is designed to be a six-month programme, with court reviews scheduled by the sheriff where appropriate. A further period on Right Track beyond six months is not uncommon, given the complex needs of the young people engaging with the service. It involves weekly one-to-one appointments with the Right Track Community Justice Assistant, with each session focusing on an agreed life domain requiring improvement. Weekly attendance at a Work Party is offered, to prepare for an unpaid work order (hours will be credited and reported back to Court at completion stage), as well as engagement in focused small groupwork if assessed as beneficial.

Annex 3 – example of SDS information leaflet

INTERVENTION

It is anticipated that intervention in some cases will be short term.

A more detailed needs assessment will be undertaken in order to identify and prioritise support and welfare needs. As a result of what is highlighted in the assessment a support/action plan will be formulated which will be broken down into weekly tasks with aims and objectives.

This will include areas such as:

- Housing
- Lifestyle
- · Emotional health
- Sexual health
- · Substance use
- Personal safety/risk
- Finances
- · Reducing re-offending
- · Engagement with support agencies
- Relationships
- Training/employment/motivation
- Positive relationships
- · Emotion management
- Problem solving
- Peer pressure
- · Managing anger
- Future options

PROGRESS REPORTS

Progress reports will provide detailed information about:

- Engagement
- Compliance
- · Areas targeted for intervention
- · Progress made in these areas
- Outstanding needs
- Any new offences
- · Recommendation for disposal

Structured

Deferred

Sentences

CONTACT DETAILS

[insert details]

Structured Deferred Sentences (SDS)

is an option available to sheriffs where there are recognised areas for structured intervention that may lower the risk of reoffending or risk of harm.

The risks will be identified at the point of assessment and level of contact and areas to be targeted will be detailed within the Criminal Justice Social Work Report (CJSWR).

SDS can be used for those who present a low/medium risk of re-offending or of harm, and who are identified as requiring support to address social and welfare needs that are linked to their offending. It can also be used for those have complex issues, such as substance use or mental health issues which impacts on their ability to desist from offending. Structured intervention which addresses key areas particular to the individual is a compulsory element of the SDS. In all cases structured intervention may include up to three contacts per week, which may include contact with 3rd sector partner agencies and will be monitored by Justice Social Work services.

Process/Responsibilities

COURT: Sheriff requests CJSWR as per current procedures.

SOCIAL WORKER: Will assess and prepare the initial CJSWR. This will include a SDS assessment. Where SDS is deemed appropriate, the CJSWR will detail the areas for intervention, proposed level of contact and agencies to be involved.

COURT: Sheriff will defer sentence for a period of SDS. Sheriff will call for an initial review and Progress Report within 4 weeks. Assuming compliance, Sheriff will move to further defer sentence for a period of 12 weeks and the preparation of an SDS Progress Report. Thereafter, depending on progress, Sheriff can either further defer sentence or conclude SDS.

SOCIAL WORK ASSISTANT: Will manage the SDS and will provide progress reports as requested.

Requirements

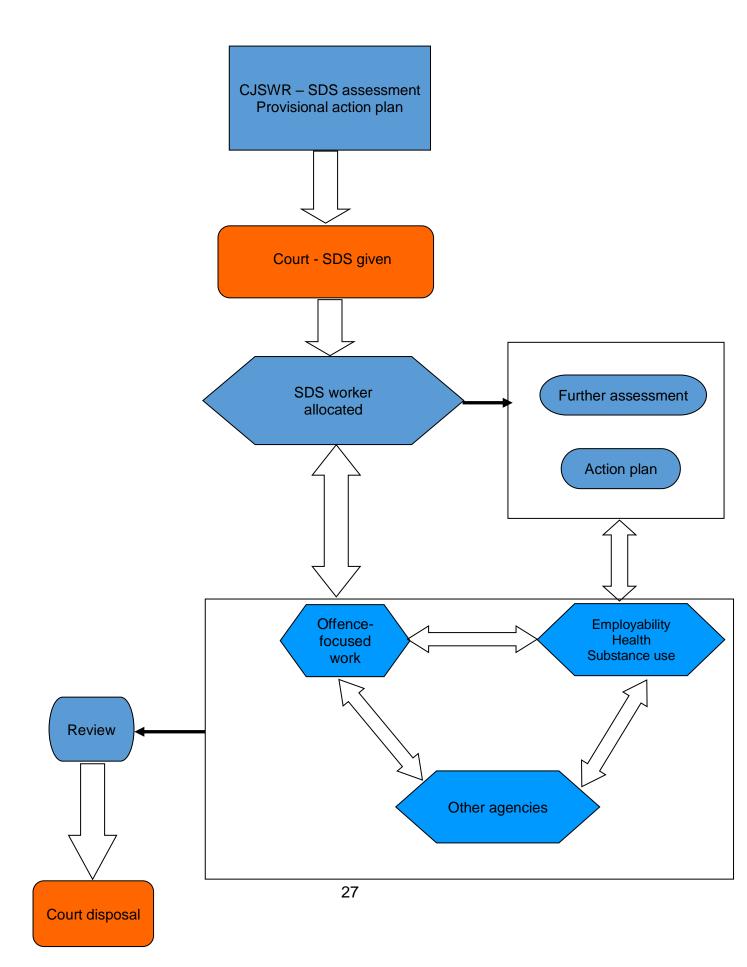
Pre-Sentence – consent to participate with the agreed structured intervention will be required.

Post-sentence – everyone who is given an SDS will attend for a post sentence interview with a Criminal Justice member of staff and will be informed of the requirements of the SDS

All contacts with CJS and partner agencies will be recorded.

Annex 4 – example of SDS flowchart

Structured Deferred Sentence Flowchart



Annex 5 – example of optional SDS suitability screening form

[insert local authority name] JUSTICE SOCIAL WORK SERVICES

STRUCTURED DEFERRED SENTENCE - SCREENING FORM

				Screening Number	er		
Nar	ne:			Date of Birth:		1	
Add	lress:			Employment			
				status:			
				Ethnicity:			
Cou	ırt:			Date of Court:			
Offe	ence:						
CJ S	Social Worker:			Area Team:			
1) 2) 3)	A permanent	<i>ing on sch</i> resident v	er - neme e.g. 18+, within <i>[insert a</i> ased appointme	area]?		Yes	No
Rec	uirements:					Yes	No
1)	The individual LSIR:SV or ed		ave Low/Medi	um risk/needs rating on			
2)		•	/must be a co	ntributory factor in the			
2)	offence [usef	<i>s]</i>					
3)	Service user s	snould no	t nave a severe	e alcohol dependency			Ш
Add	litional conside	erations:	(affecting ability	to attend/participate):		Yes	No
1)		•	ntal health diffi				
2)		_		nostel accommodation?	Γ		
3)	•		drug depender	-			
4)	•		may affect abil iibilities, emplo	lity to engage e.g. literac vment etc?	У		
Cur		•	•	,		Yes	No
1)	urrent engagement with other agencies: Is service user currently receiving a service?						
2)							
-,	- ,,	· -					
Cor	Contact with social services (Children & Families/Criminal Justice)						No
			ent with social		•	Yes	
	If yes, which Team?						
	ıт yes, wnich	ream?					
	• •	involveme	ent with Crimin	al Justice Services i.e.			

	Yes	No
SDS to be recommended?		
If so, proposed Action Plan:		
•		
•		
•		
Screening completed by:	Date:	

Annex 6 – example standard paragraphs for Criminal Justice Social Work Reports if assessed as suitable for SDS

Example 1

Mr [insert name] has had the terms of the Structured Deferred Sentence (SDS) explained to him by the author of this report and has been assessed as suitable for an SDS. He has agreed to commit to a regime of up to three appointments per week with both Criminal Justice Services and third sector partner agencies. Mr [insert name] has been advised that sentence will be deferred for a period of time in order for him to engage fully with these services with a view to addressing the identified issues. He understands that failure to comply during the period of deferment will result in the case being returned to court for consideration of other disposals. Mr [insert name] has given his consent to the Structured Deferred Sentence being put in place.

Example 2

Ms [insert name] has had the terms of the Structured Deferred Sentence (SDS) explained to her by the author of this report and she has been assessed as suitable for an SDS. Ms [insert name] would benefit from working with the Women's Justice Team [or insert relevant service] on her coping strategies, as well as accessing support with her mental health [change wording as appropriate depending on needs identified].

Ms [insert name] has agreed to commit to a regime of up to three appointments per week with the Women's Justice Team, one of which will be attendance at the [insert groupwork programme name] if deemed suitable. Ms [insert name] has been advised that sentence will be deferred for a period of time in order for her to engage fully with these services with a view to addressing the identified issues. Ms [insert name] understands that failure to comply during the period of deferment will result in the case being returned to court for consideration of other disposals

Example 3

Mr [insert name] is assessed as suitable for a Structured Deferred Sentence for a suggested period of three months. The action plan agreed with Mr [insert name]'s initial assessment is as follow:

- Mr [insert name] has agreed to work with the [eg substance use service] to explore relapse prevention; the links between his substance use and offending; management of high risk situations; and harm reduction.
- Mr [insert name] has agreed to undertake the [insert programme name] with the aim of developing the skills to recognise risky thoughts, feelings and behaviours in order to improve emotion management, his ability to manage stress, and address his mental health.

Annex 7 – example of SDS action plan

Structured Deferred Sentence Risk/Needs Matrix Action Plan

Name: Date:

Score	5 (Crisis)	4 (At Risk)	3 (Stable)	2 (Safe)	1 (Doing Well)	Comments
Accommodation						
Food/ clothing						
Physical health						
Emotional health						
Sexual health						
Drug use						

Alcohol use			
Personal safety/risk			
Finances			
Risk of re- offending			
Engagement with support services			
Relationships			
Training/ employment			
Anger			

Problem solving			
Peer pressure			
Future options			

Name: Date:

Risk/need	What will be done/by who	By when	Progress

I agree that I will:

- Attend appointmentsEngage with the above support plan

Service User: SDS worker:

Date:

Annex 8 – example of SDS progress report template

STRUCTURED DEFERRED SENTENCE (SDS) PROGRESS REPORT

	- 1100112001121 O111						
Client Name							
Address							
Date of Birth							
COURT DETAILS							
Court							
Court Date							
Date of SDS /duration							
Offence(s)							
Court Reference							
Outstanding matters							
Comments							
BASIS OF REPORT							
SDS ATTENDANCE							
Level of contact							
No. of appointments off	ered						
No. of appointments att							
No. of acceptable failure	e to attend						
No. of unacceptable fail	ure to attend						
	-						
ACTION PLAN							
PROGRESS							
(include bendings from action plan and any other relevant areas)							
(include headings from action plan and any other relevant areas)							

CONCLUSION/RECOMMENDATION				
Request further period of SDS?	Yes	No)	
REPORT WRITER DETAILS				
Name:				
Position:				
Signed:				
Date:				
CO-SIGNATORY [if necessary]				
CO-SIGNATORT [II flecessary]				
Name:				
Position:				

Annex 9 – example of SDS outcomes measure

[insert areas of change as necessary]

Structured Deferred Sentence Outcomes Measure

Pre / Post SDS (circle as required)									
Name:											
Date:	; 										
document (on a s	nrough this period scale of 1-5) wher eas noted. This w	e you feel that yo	ou are currently p	laced in relation							
1	2	3	4	5							
Substance use											
1	2	3	4	5							
Family/Social											
1	2	3	4	5							
Health											
1	2	3	4	5							
Lifestyle/Financia	al										
1	2	3	4	5							

(1=poor 5=positive)

This should be completed before and after the SDS intervention



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This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government St Andrew's House Edinburgh EH1 3DG

ISBN: 978-1-80004-612-2 (web only)

Published by The Scottish Government, February 2021

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA PPDAS926646 (08/21)

www.gov.scot