

Parole Reform in Scotland

Analysis of responses

**A consultation on proposals
for legislative change**

December 2017

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1. EXECUTIVE SUMMARY

- 1.1 The proposals in the consultation support the ‘Vision for Justice in Scotland’ which is safe, just and resilient. The proposals were developed as part of the Governance and Legislation Project in the Scottish Government’s Parole Reform Programme in order to partially deliver the following manifesto commitment:-

“We will improve the effective rehabilitation and reintegration of people who have committed offences and complete the implementation of the parole reform project to modernise and improve support for the vital work of the Parole Board.”

- 1.2 The Scottish Government’s Parole Reform Programme aims to **clarify** the role and status of the Parole Board, **simplify** and **modernise** processes and **support consistency** of approach. Some of these changes can be addressed administratively through the review of existing processes and by better collaborative working with other bodies, but some of the proposed improvements require legislative change.
- 1.3 On 21 July 2017, the Scottish Government published a consultation on Parole Reform in Scotland. This consultation sought views within six distinct areas which covered proposals for both primary and secondary legislation. The consultation closed on 13 October 2017. A total of 23 responses were received comprising of 20 from organisations and three from individuals. Organisations representing the public, local authorities and the third sector provided 18 of the organisational responses with each of these sectors providing six responses. See table below:-

| Category of respondent | No. of respondents | % of all respondents* |
|---------------------------------|--------------------|-----------------------|
| Public Sector | 6 organisations | 26 |
| Local Authorities (LA) | 6 | 26 |
| Third Sector (3 rd) | 6 organisations | 26 |
| Individuals | 3 | 13 |
| Judiciary | 1 group | 4 |
| Legal | 1 organisation | 4 |

* Percentages do not total 100 exactly due to rounding

- 1.4 The consultation consisted of 21 closed questions with a follow-up comments section. When reporting the number of responses/comments received those who stated “no comment” have not been included. See **Annex A** for overall breakdown of closed questions and respondents.
- 1.5 There was no single question to which all 23 respondents answered. There were five questions to which every category of respondent answered. Two third sector organisations responded by letter. The content of their letters were considered as a response to the final question (Question 22 (Q22)). This executive summary focuses on the key findings in relation to proposals for legislative change.
- 1.6 Across every category of respondent, there was a varying degree of understanding around the parole process. It was clear however from the

comments that more clarity would be welcomed in relation to certain aspects of the Board's activities including the role of the Scottish Ministers, the role of the Parole Board, independence and the accountability and governance structure of the Parole Board.

- 1.7 Across every category of respondent there was agreement that the prescribed membership of the Parole Board should be reviewed.
- 1.8 All who responded agreed that the Scottish Ministers should be removed from the decision to release or not release for those prisoners liable to removal from the United Kingdom in deportation cases. The only category of respondent not to answer this question was the judiciary.
- 1.9 All who responded agreed that clarification was required to reinforce that the decisions of the Parole Board (other than in compassionate release cases) are binding on the Scottish Ministers. The only category of respondent not to answer this question was the judiciary.
- 1.10 Across the categories who responded there was an agreement that the release of a prisoner whose licence has been revoked should be as soon as practically possible (without undue delay). This would ensure equal treatment as in other cases involving the Parole Board. The current legislation terminology for this type of prisoner is different as it stipulates "immediate" release. All those who come before the Parole Board and are released following consideration are done so without undue delay. This particular process is one on which some public sector, local authorities and third sector organisations would benefit from clearer guidance and information as there was a misunderstanding in some of these categories as to how the actual process is dealt with by the Board. The only category of respondent not to answer this question was the judiciary.
- 1.11 Across every category of respondent there was agreement that tests for all release, release following recall, and recall considerations should be made clear. It was recognised that a single universal test may not be the most appropriate given the higher risk prisoner categories and that a balance must be struck in relation to risk and public safety. Again clarification and guidance on how the Parole Board approach these considerations was welcomed. Whilst the legal respondent was the only organisation who answered no, this was in respect of a single universal test, and application of different tests based on risk were not ruled out.
- 1.12 Across the categories who responded there was agreement that, following their initial consideration, life sentence prisoners and prisoners subject to an Order of Lifelong Restriction (OLR) should then be considered every two years. The only category of respondent not to answer this question was the judiciary. The follow-up question which sought an annual review period for all other prisoner categories was also agreed across the categories who responded. Again the only category who did not respond to the follow-up question was the judiciary.
- 1.13 Across the categories who responded there was agreement that in cases where an individual had breached their licence whilst in the community, the relevant organisations should submit a report directly to the Parole Board.

This included social work, police and the NHS. These would be reports in relation to consideration by the Parole Board of revocation of licence and return to custody, and the subsequent release following return to custody consideration. The only category who did not respond was the judiciary.

- 1.14 In terms of potential impacts (positive or negative) within these proposals it was widely recognised that any changes should take into account the needs of the most vulnerable individuals including those who are detained in a secure hospital as well as children and young people detained in secure accommodation.

Conclusion

- 1.15 The responses to this public consultation were low but they did represent a cross-section of organisations. The limited response numbers demonstrate that these are technical changes. With the exception of Q.2 (current terms for appointment and reappointment being fit for purpose) and Q.20 (oral hearings and tribunal considerations to mirror casework) there were no areas where responses indicated a clear disagreement with proposals as presented.

2. INTRODUCTION

Background

2.1 The proposals in the consultation support the Vision for Justice in Scotland which is safe, just and resilient. The proposals were developed as part of the Governance and Legislation Project in the Scottish Government's Parole Reform Programme in order to partially deliver the following manifesto commitment:-

“We will improve the effective rehabilitation and reintegration of people who have committed offences and complete the implementation of the parole reform project to modernise and improve support for the vital work of the Parole Board.”

2.2 The Scottish Government's Parole Reform Programme aims to **clarify** the role and status of the Parole Board, **simplify** and **modernise** processes and **support consistency** of approach. There are four projects within the Scottish Government's Parole Reform Programme, one of which is the Governance and Legislation project. The project's objectives include reviewing primary and secondary legislation to bring, where practical the Parole Board, into line with other tribunal organisations. There were a number of pre-consultation discussions prior to the public consultation in summer 2017 with the Scottish Ministers, Scottish Government officials, the Parole Board for Scotland Management Group and key stakeholders.

2.3 The consultation sought views on the six distinct areas which were identified by the project as needing to be reviewed:

- Governance of the Parole Board for Scotland;
- Involvement of the Scottish Ministers in the parole process;
- Tests that the Parole Board apply in determining whether to release;
- Timescales for subsequent reviews following initial consideration for parole;
- The way in which information is supplied to the Parole Board; and
- Administrative procedures for considering cases.

2.4 In addition to these areas, the consultation also provided the opportunity for respondents to submit views on any potential impact (positive or negative) that the proposals could have on any individual, or any organisation involved in, or affected by, the parole process including those in custody or community facing.

Consultation process

2.5 On 21 July 2017, the Scottish Government published a consultation on Parole Reform in Scotland. The consultation sought views within six distinct areas which covered proposals relating to both primary and secondary legislation. The consultation closed on 13 October 2017. A total of 23 responses were received comprising of 20 from organisations and three from individuals. Organisations representing the public, local authority and the third sector provided 18 of the organisational responses with each of these sectors providing six responses.

See table below:-

| Category of respondent | No. of respondents | % of all respondents* |
|---------------------------------|---------------------------|------------------------------|
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| Judiciary | 1 group | 4 |
| Legal | 1 organisation | 4 |

* Percentages do not total 100 exactly due to rounding

Analysis of responses

2.6 The 23 responses were received in a variety of ways, some came in hardcopy by post, some were emailed as a word document version of the respondent form, two were emailed by way of a letter and the remainder responded online via Citizens Space. Five of the respondents did not wish their responses to be published. The content of each response was reviewed by an official and it was agreed due to the small number of responses, that analysis would be conducted in-house.

2.7 There were 21 closed questions within the consultation with a follow-up comments section. When reporting the number of responses/comments received those who stated “no comment” have not been included. See **Annex A** for overall breakdown of closed questions and respondents.

2.8 In response to the final question (Q.22), which related to potential impacts, some of the comments received were directly related to earlier questions. This analysis took into account that certain comments provided at Q.22 should be associated with their relevant question to provide greater context. Two third sector organisations provided responses by letter, the content was transferred to formulate their answer to Q.22.

Structure of report

2.9 As the consultation was broken down into the six distinct areas, this report of the analysis of responses follows the same structure as the consultation document.

3. GOVERNANCE OF THE PAROLE BOARD

Overview

3.1 Current primary legislation says nothing about the independent status of the Parole Board for Scotland and the governance arrangements that apply to it. It is felt that it is important to reinforce and make clear that the Parole Board for Scotland is, and always has been, independent in terms of judicial decision-making and in terms of governance and management.

3.2 Under this section, views were sought on independence, revisions to the oversight of the appointment process, duration of the terms of office for those appointed to the Parole Board, the current prescribed membership of those appointed and whether there was a need to review the current upper-age restriction of those appointed.

Independence of the Parole Board

- **Q1. “Do you agree that there is a need to reinforce the independent nature of the Parole Board’s decision making and clarify accountability?”**

3.3 Sixteen of the 23 respondents answered the initial question. Responses were as follows:

| R = Total Responses Y = Yes N = No | Overall responses | | | Public Sector | | | LA | | | Individual | | | 3 rd sector | | | legal | | | Judiciary | | | |
|---|-------------------|----|---|---------------|---|---|----|---|---|------------|---|---|------------------------|---|---|-------|---|---|-----------|---|---|---|
| | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | |
| (Q1) Reinforce independence of the Parole Board | 16 | 14 | 2 | 5 | 4 | 1 | 5 | 5 | 0 | 1 | 1 | 0 | 3 | 3 | 0 | 1 | 0 | 1 | 1 | 1 | 1 | 0 |

Key themes from respondents in relation to the question “how do you believe this would be best achieved?” were:

For those who answered Yes:

- independence of the Parole Board both in terms of governance structure and judicial decision-making should be reinforced and clearly set out in legislation.
- a clear statement on the Parole Board’s status would reinforce public confidence.
- any actual or perceived involvement with the Scottish Ministers and their officials should be minimised. This includes appointments, Parole Board decisions which are binding and sponsorship of a non-departmental public body.
- lack of clarity on how the Parole Board operates, and this needs to be rectified including role or involvement (if any) of the Scottish Ministers.

- one respondent suggested the Parole Board could be transferred to the Scottish Tribunals as created by the Tribunals (Scotland) Act 2014, with administrative support provided by the Scottish Courts and Tribunals Service.

For those who answered No:

- no comments were provided from the public sector organisation.
- the legal organisation did not consider that a public statement on the Parole Board's independence and governance structures would provide any meaningful benefit as those with an interest in parole and parole related issues are likely to be aware without the requirement of a statement.

Appointment terms of duration

- **Q2. “Do you agree that the current provisions governing appointment and reappointment to the Parole Board remain fit for purpose?”**

3.4 Seventeen of the 23 respondents answered the initial question. Responses were as follows: -

| R = Total Responses Y = Yes N = No | Overall Responses | | | Public Sector | | | LA | | | Individual | | | 3 rd sector | | | legal | | | Judiciary | | |
|---|-------------------|---|----|---------------|---|---|----|---|---|------------|---|---|------------------------|---|---|-------|---|---|-----------|---|---|
| | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N |
| (Q2) Appointment duration terms fit for purpose | 17 | 5 | 12 | 5 | 2 | 3 | 5 | 2 | 3 | 2 | 1 | 1 | 3 | 0 | 3 | 1 | 0 | 1 | 1 | 0 | 1 |

Key themes from respondents in relation to their follow-up comments were:

For those who answered Yes: -

- five years may not be sufficient to build up the experience and knowledge required.
- limits opportunities for new appointees given proposed re-appointment process and membership may become stagnant.

For those who answered No: -

- whilst answering No, one of the public sector respondents acknowledged that aligning with other similar bodies may be appropriate.
- current term of appointment (six or seven years) is perceived as being out-of-step with other similar bodies. Re-aligning the Parole Board appointments with similar bodies would appear appropriate.
- proposal that if appointments were removed from Commissioner for Ethical Standards in Public Life in Scotland (CESPL) remit they should then replicate other tribunal bodies and have their appointments made by the Judicial Appointments Board for Scotland (JABS).

- it was acknowledged that re-appointment should be offered but with a caveat the person must still meet the required criteria needed by the Parole Board at that point.
- requirement for a process to remove an individual should be retained.
- whilst agreeing current provisions were not fit for purpose, there was a concern that a rolling re-appointment process may be restrictive in relation to having new appointees to the Parole Board.

Removal of upper age restriction on membership of the Parole Board

- **Q3. “Do you agree that the upper age restriction on membership of the Parole Board should be removed?” [currently a person must step down when they reach 75]**

3.5 Sixteen of the 23 respondents answered the initial question. Responses were as follows:

| R = Total Responses Y = Yes N = No | Overall Responses | | | Public Sector | | | LA | | | Individual | | | 3 rd sector | | | legal | | | Judiciary | | |
|---|-------------------|----|---|---------------|---|---|----|---|---|------------|---|---|------------------------|---|---|-------|---|---|-----------|---|---|
| | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N |
| (Q3) Removal/review upper age limit of 75 | 16 | 11 | 5 | 4 | 4 | 0 | 5 | 4 | 1 | 3 | 1 | 2 | 3 | 2 | 1 | 1 | 0 | 1 | 0 | 0 | 0 |

Key themes from respondents in relation to their follow-up comments were:

For those who answered No: -

- seems limited as to any benefit from appointments going beyond statutory and judicial retirement age.
- important decisions relating to individuals liberty. Age should be reflective of other judicial posts (sheriffs) who retire at 70.

Prescribed membership of the Parole Board

- **Q4. “Do you agree that the current requirements regarding the membership of the Parole Board should be removed?” [currently membership must include a Lord Commissioner of Judiciary, registered medical practitioner who is a psychiatrist and a person who appears to the Scottish Ministers to have knowledge and experience of the supervision or aftercare of discharged prisoners and a person appearing to have a study of the causes of delinquency or treatment of offenders]**

3.6 Eighteen of the 23 respondents answered the initial question. Responses were as follows: -

| R = Total Responses Y = Yes N = No | Overall Responses | | | Public Sector | | | LA | | | Individual | | | 3 rd sector | | | legal | | | Judiciary | | |
|---|-------------------|----|---|---------------|---|---|----|---|---|------------|---|---|------------------------|---|---|-------|---|---|-----------|---|---|
| | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N |
| (Q4) Review prescribed membership of Parole Board | 18 | 15 | 3 | 5 | 5 | 0 | 5 | 2 | 3 | 2 | 2 | 0 | 4 | 4 | 0 | 1 | 1 | 0 | 1 | 1 | 0 |

Key themes from respondents in relation to their follow-up comments were:

For those who answered Yes: -

- concern by individuals this is out of date.
- review required to ensure that correct fields of expertise and knowledge are represented this includes retaining a medical practitioner.
- whilst a review of prescribed membership was welcomed, concerns were raised in losing certain knowledge bases if prescription was removed all together. The Parole Board would need to ensure when seeking new appointees it broadens the criteria to include those with knowledge of mental health issues. It was felt the experience needed to be broader than a psychiatrist as it was felt that this area specifically was dated.
- ensure experience or knowledge of risks and post through-care is represented on the Board. This could be assisted through training.

For those who answered No: -

- number of members may have increased but that does not necessarily mean increase in diversity of skills, knowledge and experience.
- important current knowledge and experience of these areas is retained.

Removal from remit of CESPL for Parole Board recruitment

3.7 Appointments to the Parole Board for Scotland (Chair and Members) currently fall under the remit of the Commissioner for Ethical Standards in Public Life in Scotland (CESPL).

- **Q5. “Do you agree that the Parole Board should be removed from the remit of CESPL?”**

3.8 Fourteen of the 23 respondents answered the initial question. Responses were as follows:

| R = Total Responses Y = Yes N = No | Overall Responses | | | Public Sector | | | LA | | | Individual | | | 3 rd sector | | | legal | | | Judiciary | | |
|---|-------------------|---|---|---------------|---|---|----|---|---|------------|---|---|------------------------|---|---|-------|---|---|-----------|---|---|
| | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N |
| (Q5) Removal of appointments to Parole Board from CESPL | 14 | 7 | 7 | 4 | 2 | 2 | 5 | 1 | 4 | 2 | 2 | 0 | 2 | 2 | 0 | 0 | 0 | 0 | 1 | 0 | 1 |

Key themes from respondents in relation to their follow-up comments were:

For those who answered Yes:

- appears to be a misunderstanding by some respondents about the role of CESPL in the appointments to the Parole Board.
- any alternative needs to be a transparent and open process. Suggestion that Judicial Appointments Board for Scotland may be an appropriate alternative.

For those who answered No:

- concern if removed from remit there would be a lack of transparency and no safeguard in place in the standards/framework for appointing and re-appointing. Suggestion that the Judicial Appointments Board for Scotland could take on the recruitment for the Parole Board members as they currently do this for other tribunal bodies not under the remit of CESPL.
- appears to be a misunderstanding by some respondents about the role of CESPL in the appointments to the Parole Board.

4. INVOLVEMENT OF THE SCOTTISH MINISTERS IN THE PAROLE PROCESS

Overview

4.1 The Parole Board’s recommendations and directions are binding in relation to all cases except deportation and compassionate release cases, where the Scottish Ministers currently make the final decision about release. We sought views on whether the Scottish Ministers should continue to make the final decision to release in deportation cases.

4.2 We also sought views on who should set licence conditions for extended sentence prisoners who have a total sentence of four years or more where the custodial sentence is less than four years. Currently the Parole Board sets licence conditions in such cases.

4.3 Legislation currently makes various references to “recommendations” and “directions”, and to “release” and “immediate release”. We sought views on the terminology and any need to clarify responsibility on who is making the final decision as to whether to release or recall to custody. We also sought views on applicable timescales for the Scottish Ministers to release a prisoner following a direction to do so by the Parole Board.

4.4 Where a prisoner has been released by the Scottish Ministers on a Home Detention Curfew (HDC) licence and this licence has then been revoked, the Scottish Ministers are currently required to refer to the Parole Board the case of any person who makes representations to them about the revocation. The Parole Board may direct, or decline to direct the Scottish Ministers to cancel that revocation. The consultation asked for views on whether a time limit should be introduced by which a prisoner needs to make representation about the revocation of the licence.

Decision to release or not release in deportation cases

- **Q6. “Do you agree that Scottish Ministers should not be involved in the decision to release or not to release prisoners who are liable to removal from the United Kingdom in deportation cases?”**

4.5 Thirteen of the 23 respondents answered the initial question. Responses were as follows (100% of those responding answered Yes): -

| R = Total Responses Y = Yes N = No | Overall Responses | | | Public Sector | | | LA | | | Individual | | | 3 rd sector | | | legal | | | Judiciary | | |
|--|-------------------|----|---|---------------|---|---|----|---|---|------------|---|---|------------------------|---|---|-------|---|---|-----------|---|---|
| | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N |
| (Q6) SMs removed from decision to release or not prisoners liable to removal from UK deportation cases | 13 | 13 | 0 | 2 | 2 | 0 | 5 | 5 | 0 | 2 | 2 | 0 | 3 | 3 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |

Key themes from respondents in relation to their follow-up comments were:

- there is inconsistency of approach by having the Scottish Ministers involved in decision-making.
- ensures clarity as confusion arises amid roles of the Parole Board and the Scottish Ministers. Perception which leads to independence from the Scottish Ministers being questioned.
- concern these decisions as they currently stand could be construed as politically motivated or have political influence if the Scottish Ministers are involved.
- there is some misunderstanding of the role of the Parole Board across a couple of categories in particular relating to decision-making.

Setting licence conditions for extended sentence prisoners

- **Q7. “Do you agree that for extended sentence prisoners where the custodial part is less than four years, the Parole Board no longer recommends licence conditions and that Scottish Ministers should set licence conditions for those prisoners?”**

4.6 Sixteen of the 23 respondents answered the initial question. Responses were as follows: -

| R = Total Responses Y = Yes N = No | Overall Responses | | | Public Sector | | | LA | | | Individual | | | 3 rd sector | | | legal | | | Judiciary | | |
|--|-------------------|---|---|---------------|---|---|----|---|---|------------|---|---|------------------------|---|---|-------|---|---|-----------|---|---|
| | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N |
| (Q7) SMs to set licence conditions for extended sentence prisoners | 16 | 8 | 8 | 4 | 2 | 2 | 5 | 2 | 3 | 1 | 1 | 0 | 4 | 3 | 1 | 1 | 0 | 1 | 1 | 0 | 1 |

Key themes from respondents in relation to their follow-up comments were:

For those who answered Yes: -

- a consistent approach would be met by this as the Scottish Ministers currently set licence conditions for short-term offenders (less than four years).
- clarification required on any implications for the breach of licence process and where the Parole Board sit within that.

For those who answered No: -

- the imposition of licence conditions by the Scottish Ministers would directly conflict with the independence of the Parole Board, these are judicial decisions.
- licence conditions should be set by the same body who takes the release decision.

- ensure all extended sentence prisoners (irrespective of length of custodial part of their sentence) are treated consistently.
- risk of licence conditions losing weight and effectiveness if removed from Parole Board.

Recommendations and direction of Parole Board decisions

- **Q8. “Do you agree that it should be clarified that decisions of the Parole Board (other than in compassionate release cases) are binding on Scottish Ministers?”**

4.7 Sixteen of the 23 respondents answered the initial question. Responses were as follows (100% of those responding answered Yes): -

| R = Total Responses Y = Yes N = No | Overall Responses | | | Public Sector | | | LA | | | Individual | | | 3 rd sector | | | legal | | | Judiciary | | |
|--|-------------------|----|---|---------------|---|---|----|---|---|------------|---|---|------------------------|---|---|-------|---|---|-----------|---|---|
| | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N |
| (Q8) Clarifying decisions of Parole Board are binding on SMs | 16 | 16 | 0 | 4 | 4 | 0 | 5 | 5 | 0 | 3 | 3 | 0 | 3 | 3 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |

Key themes from all who commented were:

- provide clarity of process and decision-making for all involved.
- clarify the independence of the Parole Board and give transparency on accountability.
- language should be clear and unambiguous.
- provide clear separation of role and functions from the Scottish Ministers.
- clarification may increase public confidence and reassurance that the independence of the Parole Board and their decision-making, remain free from political intrusion and interference.

Reference to ‘immediate release’ - initial consideration of release following recall

- **Q9. “Do you agree that the release of a prisoner, whose licence has been revoked, should be as soon as practically possible as in other cases involving the Parole Board?”**

4.8 Eighteen of the 23 respondents answered the initial question. Responses were as follows: -

| R = Total Responses Y = Yes N = No | Overall Responses | | | Public Sector | | | LA | | | Individual | | | 3 rd sector | | | legal | | | Judiciary | | |
|---|-------------------|----|---|---------------|---|---|----|---|---|------------|---|---|------------------------|---|---|-------|---|---|-----------|---|---|
| | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N |
| (Q9) Re-release of a prisoner following recall to custody should be as soon as practically possible | 18 | 16 | 2 | 4 | 4 | 0 | 6 | 6 | 0 | 3 | 3 | 0 | 4 | 2 | 2 | 1 | 1 | 0 | 0 | 0 | 0 |

Key themes from respondents in relation to their follow-up comments were:

For those who answered Yes:

- all those within the local authority category agreed there was a need to maintain consistency with other release decisions by the Parole Board, the person should not be detained any longer than is practically necessary e.g. no undue delay. This enables public safety to be properly considered and arrangements progressed to prepare for a person’s release and return to the community.
- this would be in the interest of fairness.
- concern around the word ‘immediate’ and the expectation that this sets unrealistic timescales for social work, police, housing colleagues to put things in place for the person’s release.
- ensure families of those being considered for release, as well as victims and their families, are included/advised of the decision.
- releasing an individual prior to everything being in place is effectively setting someone up to “fail” and may even result in a breach through no actual fault of the individual who is released.

For those who answered No:

- Breach, recall and release process is not readily understood based on comments as a person who has had their licence revoked and recalled to custody and then is released following consideration after initial recall does not mean a person has been wrongly recalled. The release consideration is not a re-examination of the recall decision.
- a maximum time limit should be set so a person is not held unnecessarily.

Referrals to the Parole Board regarding the revocation of Home Detention Curfew (HDC) licences

- **Q10. “Do you agree with the introduction of a time limit of six months from the point that the person is returned to custody, for the submission of representations to be made concerning the revocation of the HDC licence?”**

4.9 Fourteen of the 23 respondents answered the initial question. Responses were as follows:

| R = Total Responses Y = Yes N = No | Overall Responses | | | Public Sector | | | LA | | | Individual | | | 3 rd sector | | | legal | | | Judiciary | | |
|--|-------------------|----|---|---------------|---|---|----|---|---|------------|---|---|------------------------|---|---|-------|---|---|-----------|---|---|
| | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N |
| (Q10) Time limit for prisoner reps on HDC revocation referrals to Parole Board | 14 | 11 | 3 | 3 | 3 | 0 | 5 | 4 | 1 | 2 | 1 | 1 | 3 | 3 | 0 | 1 | 0 | 1 | 0 | 0 | 0 |

Key themes from respondents in relation to their follow-up comments were:

For those who answered Yes:

- all categories felt there should be a time bar.
- it was noted some respondents felt that six months was too long and the time bar should be shorter.

It was clear that the process for HDC, the revocation of, and consideration of, prisoners representations was not fully understood by some categories of respondents.

For those who answered No:

- principle of time limit supported but six months is too long.
- the process for when a person is returned following revocation of HDC was not fully understood in particular the fact they are already informed of their right to appeal at point of return to custody.

5. TESTS THAT THE PAROLE BOARD APPLY IN DETERMINING WHETHER TO RELEASE

Overview

5.1 There are currently two tests which the Parole Board is required to use before releasing or re-releasing certain categories of prisoners.

5.2 One of these tests is in relation to the release of life and Order of Lifelong Restriction (OLR) prisoners and provides that a direction to release cannot be made unless the Parole Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined. The second test is concerned with the re-release of extended sentence prisoners and provides that a direction to re-release cannot be made unless the Parole Board is satisfied that it is no longer necessary, for the protection of the public from serious harm, that the prisoner should be confined.

5.3 There are no specific tests concerning decisions to be made by the Parole Board for the release, re-release or recall of other types of prisoners. The consultation proposed that there should be a common test applied in all release, re-release and recall cases considered by the Parole Board.

Tests for release

- **Q11. “Do you agree that a common test should be applied in all release, re-release and recall cases considered by the Parole Board?”**

5.4 Sixteen of the 23 respondents answered the initial question. Responses were as follows:

| R = Total Responses Y = Yes N = No | Overall Responses | | | Public Sector | | | LA | | | Individual | | | 3 rd sector | | | legal | | | Judiciary | | |
|--|-------------------|----|---|---------------|---|---|----|---|---|------------|---|---|------------------------|---|---|-------|---|---|-----------|---|---|
| | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N |
| (Q11) Common test(s) for all release, re-release and recall considerations | 16 | 15 | 1 | 4 | 4 | 0 | 5 | 5 | 0 | 2 | 2 | 0 | 3 | 3 | 0 | 1 | 0 | 1 | 1 | 1 | 0 |

Key themes from respondents in relation to their follow-up comments were:

For those who answered Yes:

- whilst answering yes, it should be tests as opposed to a single test, which should be set out clearly in legislation.
- would provide clarity, tests should reflect risk. Different prisoner categories reflect and are perceived to be a higher risk than others.
- would aid consistency and transparency of decision-making.

For those who answered No:

- a universal test would not be appropriate for certain categories of prisoners for example, those with an extended sentence.
- a balance must be struck for a test(s) in relation to risk and public safety.

5.5 A further follow-up question was asked, “Do you have views on what the common test to be applied should be?” Sixteen of the 23 respondents answered this. Twelve answered Yes and four answered No.

Key themes from respondents in relation to their follow-up comments were:

For those who answered Yes:

- the one local authority who did not answer the initial question did provide reasoning on what the tests should be, again flagging up a universal test may not be the most appropriate but any tests should be in statute and ensure risk is detailed in terms of the test.
- public safety must be at the centre of any test e.g. “risk posed by the individual can be managed in the community”.
- need to recognise the varying risks posed by certain prisoner categories such as those who have an OLR.
- interested parties would welcome further discussion where appropriate to input on what these new tests may be, this would support multi-agency working.
- opportunities for prisoners to reduce risk, a balance needs to be struck to enable this to happen.

For those who answered No:

- not in position to comment as creation of new or single test(s) is a matter for Parliament.

6. TIMESCALES FOR SUBSEQUENT REVIEWS FOLLOWING INITIAL CONSIDERATION FOR PAROLE

Overview

6.1 Currently life and OLR prisoners, who are refused release on parole licence at first consideration, are subsequently considered for release on parole licence no later than every two years. Recalled prisoners serving extended sentences are entitled to require the Scottish Ministers to refer their case for consideration by the Parole Board, initially at any time upon the revocations, and thereafter annually during the currency of the recall. In practice, such prisoners are considered annually. There are no specific parole review periods set out for other relevant categories of prisoners. In practice these prisoner's cases are currently reviewed on an annual basis.

6.2 It is thought that it may be helpful to specify clear timescales for further reviews following initial consideration. Given the length of sentences involved, the current two year review timescale for life and OLR prisoners may be appropriate. For all other types of prisoner a one year timescale may be appropriate.

Review Periods

- **Q12. "Do you agree that the current provisions whereby Life and OLR prisoners, following initial consideration, are considered for release on parole licence every two years are appropriate?"**

6.3 Eighteen of the 23 respondents answered the initial question. Responses were as follows:

| R = Total Responses Y = Yes N = No | Overall Responses | | | Public Sector | | | LA | | | Individual | | | 3 rd sector | | | legal | | | Judiciary | | |
|---|-------------------|----|---|---------------|---|---|----|---|---|------------|---|---|------------------------|---|---|-------|---|---|-----------|---|---|
| | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N |
| (Q12) Review periods for Life and OLR prisoners | 18 | 16 | 2 | 5 | 4 | 1 | 6 | 5 | 1 | 2 | 2 | 0 | 4 | 4 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |

Key themes from respondents in relation to their follow-up comments were:

For those who answered Yes:

- the review period should be up to/within two years to enable an earlier review/greater flexibility to be given, if appropriate.
- clear timescales would be beneficial to all involved in the parole process.
- in certain cases it was recognised that two years may not be sufficient for a prisoner to complete relevant courses dependant on availability, participation etc.

For those who answered No:

- lesser review period perhaps 18 months would enable appropriate interventions.

6.4 A further follow-up question was asked “Do you agree that all prisoners, apart from life and OLR prisoners, should be considered annually for parole following a first decision not to release on parole licence?” Nineteen of the 23 respondents answered this follow-up question. Sixteen answered Yes and three answered No.

Key themes from respondents in relation to their follow-up comments were:

For those who answered Yes:

- this may assist those being considered for parole to engage more positively in the process as the annual review could be an incentive.
- the review period should be up to/within a year to enable an earlier review/greater flexibility to be given, if appropriate.

For those who answered No:

- they also felt that the review period should be up to/within a year to enable an earlier review/greater flexibility to be given, if appropriate.
- annual review may not be sufficient to enable appropriate interventions.
- annual review may be too ambitious for certain categories of prisoners such as sex offenders.

7. WAY IN WHICH INFORMATION IS SUPPLIED TO THE PAROLE BOARD

Overview

7.1 Currently where the Parole Board is to consider revocation of a licence, following a reported breach of licence conditions, the breach report is submitted by the supervising officer (social worker) to the Scottish Ministers, who then refer this on to the Parole Board.

7.2 It is important that potential breaches of licence conditions by prisoners who are serving the end of their sentence in the community are considered quickly as there may be a risk to public safety. The process could be streamlined, and therefore risk to public safety reduced, by allowing local authority social workers to report licence breaches directly to the Parole Board for consideration and for suitably qualified professionals such as, officers from Police Scotland and NHS medical staff, to also provide any additional papers requested directly to the Parole Board.

7.3 The proposal is that, for cases where revocation of a licence or re-release of a prisoner is being considered by the Parole Board, local authority social workers may report licence breaches directly to the Parole Board for consideration, and that suitably qualified professionals such as local authority social workers, officers from Police Scotland and NHS medical staff, may also directly provide any additional papers requested to the Parole Board.

Referring Bodies

- **Q13. “Do you agree that, for cases where revocation of a licence or re-release of a prisoner is being considered by the Parole Board, local authority social workers should be able to report licence breaches directly to the Parole Board for consideration and for suitably qualified professionals such as local authority social workers, officers from Police Scotland and NHS medical staff may also directly provide any additional papers requested to the Parole Board?”**

7.4 Eighteen of the 23 respondents answered the initial question, Responses were as follows:

| R = Total Responses Y = Yes N = No | Overall Responses | | | Public Sector | | | LA | | | Individual | | | 3 rd sector | | | legal | | | Judiciary | | |
|---|-------------------|----|---|---------------|---|---|----|---|---|------------|---|---|------------------------|---|---|-------|---|---|-----------|---|---|
| | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N |
| (Q13) Ability for bodies to send reports for revocation and re-release directly to the Parole Board | 18 | 16 | 2 | 5 | 5 | 0 | 6 | 6 | 0 | 3 | 2 | 1 | 3 | 2 | 1 | 1 | 1 | 0 | 0 | 0 | 0 |

Key themes from respondents in relation to their follow-up comments were:

For those who answered Yes:

- this would remove any perceived interference by the Scottish Ministers and reinforce the independence of the Parole Board and retain public confidence.
- would assist in reducing timescale of information getting to the Parole Board especially in cases where recall is being recommended by the report writer.
- improve and provide better multi-organisational communication.
- role of the Scottish Ministers is currently confusing to some of the report writers and appears to them to add an unnecessary administrative layer.
- organisations involved in providing reports in these circumstances would welcome further discussion to take this forward and understand expectations which may be placed on them in terms of resourcing.
- clarity on process would be beneficial.

8. ADMINISTRATIVE PROCEDURES FOR CONSIDERING CASES

Overview

8.1 The proposals consulted on from question fourteen onwards are ones which can be made by way of secondary legislation (Scottish Statutory Instrument). A description of each of the procedures is provided under the relevant heading.

Use of live link

8.2 Currently the chairing member of the tribunal or the chairing member of the oral hearing may allow the use of a live link (such as a video link) in the taking of evidence from the prisoner concerned, or from a witness. In order for the live link to be used it must be considered by the Parole Board, to be in the interests of justice to do so. Use of a live link results in significant administrative efficiencies for the Parole Board, although there may be occasions, for example where a prisoner has communication difficulties, where it is recognised that using a live link may impact on the fairness of the proceedings. It is proposed that a live link cannot be used where it would be unfair on the prisoner concerned, or on the witness, to do so.

- **Q14. “Do you agree that a live link cannot be used where it would be unfair on the prisoner concerned, or the witness, to do so?”**

8.3 Eighteen of the 23 respondents answered the initial question. Responses were as follows (100% of those responding answered Yes):

| R = Total Responses Y = Yes N = No | Overall Responses | | | Public Sector | | | LA | | | Individual | | | 3 rd sector | | | legal | | | Judiciary | | |
|---|-------------------|----|---|---------------|---|---|----|---|---|------------|---|---|------------------------|---|---|-------|---|---|-----------|---|---|
| | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N |
| (Q14) Live link not to be used if unfair on prisoner or witness | 18 | 18 | 0 | 5 | 5 | 0 | 6 | 6 | 0 | 2 | 2 | 0 | 4 | 4 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |

Key themes from respondents in relation to their follow-up comments were:

- concerns around quality of equipment which may impact on key information being relayed to and by the Parole Board.
- concerns that use of a live link brings additional stress to the person being considered for release and/or witnesses.
- concerns this removes the personal interaction element of a formal face-to-face tribunal or oral hearing.
- the “interest of fairness” must be at the centre of this.
- some respondents felt the decision on usage or not of a live link should rest with the person being considered for release.

Removal of prescribed dossier contents

8.4 The Scottish Ministers currently submit a dossier to the Parole Board containing any information they consider to be relevant to the case, including wherever practicable, the information and documents specified in the Parole Board (Scotland) Rules 2001 (“the Rules”). It is proposed that, the prescribed set of documents is no longer necessary. Instead the general requirement that the Scottish Ministers should submit a dossier to the Parole Board containing any information the Scottish Ministers consider to be relevant to the case, is sufficient.

- **Q15. “Do you agree that the current list of prescribed documents required for the dossier in the Rules, is no longer relevant and the general requirement that the dossier contain all the information that Scottish Ministers consider to be relevant to the case is sufficient?”**

8.5 Fourteen of the 23 respondents answered the initial question. Responses were as follows:

| R = Total Responses Y = Yes N = No | Overall Responses | | | Public Sector | | | LA | | | Individual | | | 3 rd sector | | | legal | | | Judiciary | | |
|---|-------------------|----|---|---------------|---|---|----|---|---|------------|---|---|------------------------|---|---|-------|---|---|-----------|---|---|
| | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N |
| (Q15) Removal of prescribed dossier content | 14 | 10 | 4 | 3 | 2 | 1 | 5 | 4 | 1 | 2 | 2 | 0 | 3 | 2 | 1 | 1 | 0 | 1 | 0 | 0 | 0 |

Key themes from respondents in relation to their follow-up comments were:

For those who answered Yes:

- the Parole Board are the experts and are ultimately responsible for their decisions. They are best placed to know what information is required in order to make those decisions.
- a minimum set of core documents could be agreed but needs to be offset against those which may be irrelevant or erroneous for certain prisoner categories/cases.
- reduce administration by removal of reports no longer relevant in terms of review period being considered, streamline process.
- information should be focussed and relevant.

For those who answered No:

- there needs to be a core set of documents which still enables the Parole Board to request other reports, if required. This needs to be communicated clearly to all involved in providing information which forms part of a dossier for the Parole Board.
- any list must take account of the various types of people detained. This will include being in prison custody, secure accommodation (children and young people) and also secure hospitals.

- there should be greater flexibility on report requirements on a case by case basis.
- there should be centralised paperwork – templates, guidance and advice for the core set of documents and the parole process, where practical.
- collaboration with relevant organisations would be welcomed when determining a core set of documents.

Issue of Guidance by the Chair of the Parole Board

8.6 To improve consistency of approach and ensure common understanding it is proposed to enable the Chair of the Parole Board to issue guidance in relation to the procedure to be adopted in dealing with any case, and a requirement that all members of the Parole Board and all parties must have regard to this guidance.

- **Q16. “Do you agree that the chairman of the Parole Board should be able to issue guidance in relation to the procedure to be adopted in dealing with any case and that all members of the Parole Board and all parties must have regard to this guidance?”**

8.7 Fifteen of the 23 respondents answered the initial question. Responses were as follows:

| R = Total Responses Y = Yes N = No | Overall Responses | | | Public Sector | | | LA | | | Individual | | | 3 rd sector | | | legal | | | Judiciary | | |
|--|-------------------|----|---|---------------|---|---|----|---|---|------------|---|---|------------------------|---|---|-------|---|---|-----------|---|---|
| | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N |
| (Q16) Ability for Chair of Parole Board to issue procedural guidance | 15 | 11 | 4 | 4 | 3 | 1 | 5 | 3 | 2 | 2 | 2 | 0 | 3 | 3 | 0 | 1 | 0 | 1 | 0 | 0 | 0 |

Key themes from respondents in relation to their follow-up comments were:

For those who answered Yes:

- improvements in consistency would be welcomed.
- whilst answering yes, the respondent noted that it may be perceived as interference with independence of members judicial decision-making.
- greater clarity on what is required and why, would be welcomed.
- for transparency any guidance should be placed on Parole Board’s external website.

For those who answered No:

- might be perceived as interference with independence of the members.
- any guidance needs to set out clearly this is not interfering with the judicial decision-making of those Parole Board members conducting tribunals, oral hearings and casework meetings.

Some responses show a misunderstanding of how the Parole Board operates and it appears it is being interpreted as a management board

who collectively (e.g. as a group of 30+) take decisions on procedural matters etc.

There is also a misunderstanding that the guidance which is being proposed is to be issued by person 'chairing' the consideration and not the 'Chair of the Parole Board' which is the actual proposal.

Authorisation to attend hearings

8.8 Cases are currently considered by the Parole Board in three ways, casework meetings, tribunals and oral hearings. Observers may currently attend tribunal hearings with the authorisation of the person chairing the consideration, for example, for training purposes.

8.9 It is proposed to enable the person chairing any consideration (casework meeting, tribunal or oral hearing) to be able to authorise any person to attend.

- **Q17. "Do you agree that the chairman of any consideration (casework meeting, tribunal and oral hearing) should be able to authorise any person (for example, observers) to attend?"**

8.10 Sixteen of the 23 respondents answered the initial question. Responses were as follows:

| R = Total Responses Y = Yes N = No | Overall Responses | | | Public Sector | | | LA | | | Individual | | | 3 rd sector | | | legal | | | Judiciary | | |
|--|-------------------|----|---|---------------|---|---|----|---|---|------------|---|---|------------------------|---|---|-------|---|---|-----------|---|---|
| | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N |
| (Q17) Authorisation of any person to attend hearings (e.g. as an observer) | 16 | 14 | 2 | 4 | 4 | 0 | 5 | 4 | 1 | 3 | 2 | 1 | 3 | 3 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |

Key themes from respondents in relation to their follow-up comments were:

For those who answered Yes:

- this would enable a better understanding of the parole process and could be an appropriate platform to aid training for those involved in parole. This is all with the understanding that agreement would be sought from the person being considered for release.
- this provides additional transparency of the process.

For those who answered No:

- content insofar as there needs to be a legitimate reason for observation.

For some of those who answered 'yes' and one who answered 'no', it was clear that not everyone was aware of the current policy process for tribunals where a silent observer has been requested. This includes a letter going to the person being considered for release asking them if they have any concerns or objections. Any

concerns/objections are taken into account by the tribunal chair, who has the final decision on silent observers. There was also a clear misunderstanding of role of the Parole Board and their powers in relation to citation of witnesses for tribunals.

Written record of state of preparation

8.11 The consultation proposed that, before consideration of their case, the prisoner (or their representative) must submit a written record of their state of preparation to the Parole Board. This record of the state of preparation could include such matters as: confirmation of receipt of dossier; confirmation of representative (if any); confirmation that they wish to participate in the parole process; confirmation of intention to seek release or otherwise (and review period if not); and, notification of any witnesses. This requirement would reduce unnecessary postponements and adjournments, help the prisoner to be fully prepared, and offer the opportunity for them to raise any issues of concern in advance.

- **Q18. “Do you agree that before consideration of their case the prisoner (or their representative) must submit a written record of their state of preparation to the Parole Board?”**

8.12 Seventeen of the 23 respondents answered the initial question. Responses were as follows:

| R = Total Responses Y = Yes N = No | Overall Responses | | | Public Sector | | | LA | | | Individual | | | 3 rd sector | | | legal | | | Judiciary | | |
|---|-------------------|----|---|---------------|---|---|----|---|---|------------|---|---|------------------------|---|---|-------|---|---|-----------|---|---|
| | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N |
| (Q18) Prisoner to submit written record of state of preparation | 17 | 12 | 5 | 4 | 3 | 1 | 6 | 3 | 3 | 3 | 3 | 0 | 3 | 3 | 0 | 1 | 0 | 1 | 0 | 0 | 0 |

Key themes from respondents in relation to their follow-up comments were:

For those who answered Yes:

- any changes had to take account of those individuals who are among the most vulnerable or disadvantaged, examples being in relation to individuals who are detained in a secure hospital who may not be in a position to provide a written statement of preparation or, children and young people who may have limited capacity in terms of reading and writing.
- this may help speed up the process.
- a template may be helpful.
- this may assist in reducing the number of postponements and adjournments due to the person being considered as not being ready.
- there should be sufficient support in place to assist individuals in their preparation for parole consideration.

For those who answered No:

- concern this may cause an increase in persons withdrawing from the parole process (Rule 20).
- this may have an impact on prisoners with literacy issues.
- who would provide the support for those prisoners who may need it to complete this written record.
- concern a prisoner could not confirm their intention to seek release or otherwise if they have not seen their dossier.
- this may actually delay the process.

Considerations for recalled extended sentence prisoners

8.13 Currently in the majority of cases where an individual has been recalled to custody by the Parole Board (or in some cases where the risk of serious harm is imminent to the public, recalled by the Scottish Ministers) their consideration for release or not to release is generally considered at a casework meeting (paper-based with the individual concerned not present). One of the exceptions to this is individuals who are subject to an extended sentence, who have been recalled and are in their extension part of their sentence.

8.14 To ensure a more timeous decision it is proposed that those individuals who are subject to an extended sentence, have been recalled and are in their extension part of their sentence, they are also considered at a casework meeting.

- **Q19. “Do you agree that those individuals who have been recalled and are in their extension part of their sentence are generally considered at casework meetings?”**

8.15 Sixteen of the 23 respondents answered the initial question. Responses were as follows:

| R = Total Responses Y = Yes N = No | Overall Responses | | | Public Sector | | | LA | | | Individual | | | 3 rd sector | | | legal | | | Judiciary | | |
|--|-------------------|----|---|---------------|---|---|----|---|---|------------|---|---|------------------------|---|---|-------|---|---|-----------|---|---|
| | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N |
| (Q19) Considerations for recalled extended sentence prisoners to be at casework meetings | 16 | 11 | 5 | 5 | 4 | 1 | 6 | 3 | 3 | 1 | 1 | 0 | 3 | 3 | 0 | 1 | 0 | 1 | 0 | 0 | 0 |

Key themes from respondents in relation to their follow-up comments were:

For those who answered Yes:

- would support a consistent approach and level of fairness for all those people who have been recalled to custody.
- if changed to casework consideration, there should still be an opportunity for an oral hearing, if appropriate.
- may speed up the decision-making process.
- if oral hearing required, there should be a clear timescale for this.

For those who answered No:

- given the nature of risk posed by those with an extended sentence, a tribunal should continue to be the forum for re-release consideration.
- perceived lack of transparency and less robust process if changed to casework decision as opposed to face-to-face at a tribunal.

Composition of Parole Board members for oral hearings and tribunals

8.16 Currently a casework meeting can sit with a minimum of two Parole Board members but oral hearings and tribunals are required at the outset to sit with three Parole Board members (this can be reduced to two in certain circumstances, such as in the event of the death or incapacity or unavailability of a member appointed to the tribunal or oral hearing). The consultation sought views on whether the minimum number of members required for oral hearings and tribunals should be changed to two members.

- **Q20. “Do you agree that oral hearing and tribunal considerations should mirror that of casework meetings, so that they could be conducted with two Parole Board members?”**

8.17 Fifteen of the 23 respondents answered the initial question. Responses were as follows:

| R = Total Responses Y = Yes N = No | Overall Responses | | | Public Sector | | | LA | | | Individual | | | 3 rd sector | | | legal | | | Judiciary | | |
|---|-------------------|---|----|---------------|---|---|----|---|---|------------|---|---|------------------------|---|---|-------|---|---|-----------|---|---|
| | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N |
| (Q20) Composition for oral hearings and tribunals to mirror casework meetings | 15 | 5 | 10 | 4 | 1 | 3 | 5 | 1 | 4 | 1 | 0 | 1 | 4 | 3 | 1 | 1 | 0 | 1 | 0 | 0 | 0 |

Key themes from respondents in relation to their follow-up comments were:

For those who answered Yes:

- though respondents answered yes, there were concerns that reducing to two members may impact on the breadth of knowledge and experience of those considering the case.
- though respondents answered yes, there were concerns that reducing to two members raised the possibility of no consensus and therefore no majority decision.
- though respondents answered yes, there were concerns that reducing to two members may result in an increase of deferrals due to no consensus being reached.

- needs to be clear mechanism in place to support decision-making if not all in agreement.
- if reduced this may expedite the process.

For those who answered No:

- fairer to the prisoner if there are three members.
- concern if reduced to two members, the rigour of decision-making is reduced in cases where consideration of the balance of rights is more heightened.
- if reduced to two members, there needs to be a transparent and clear mechanism in place to support decision-making if there is a disagreement.
- the default position should be three but in exceptional circumstances (such as illness) the tribunal or oral hearing could sit with two.
- there is far greater flexibility time wise for a casework consideration than there is for an oral hearing or tribunal.
- three members ensures a better breadth of knowledge and enables a majority decision if required.

Breach Considerations - Imminent Risk of Serious Harm to the Public

8.18 Where a supervising officer (local authority social worker) believes an individual who has been released on licence has breached the conditions of their licence and that the Parole Board should consider recalling them to custody the officer submits a breach report to the Scottish Ministers. A decision to recall that individual in such a case requires two members of the Parole Board (in exceptional circumstances these two members may decide an oral hearing is required, requiring three members).

8.19 The proposal is that if there is an imminent risk of serious harm to the public a single Parole Board member can take a decision to recall. In exceptional circumstances this single member may still decide that an oral hearing requiring three members is required.

- **Q21. “Do you agree that a single Parole Board member could take a decision on a recall consideration?”**

8.20 Eighteen of the 23 respondents answered the initial question. Responses were as follows:

| R = Total Responses Y = Yes N = No | Overall Responses | | | Public Sector | | | LA | | | Individual | | | 3 rd sector | | | legal | | | Judiciary | | |
|--|-------------------|----|---|---------------|---|---|----|---|---|------------|---|---|------------------------|---|---|-------|---|---|-----------|---|---|
| | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N |
| (Q21) Breach considerations – imminent risk of serious harm – single PB Member to consider | 18 | 11 | 7 | 5 | 4 | 1 | 6 | 4 | 2 | 3 | 1 | 2 | 5 | 4 | 1 | 1 | 0 | 1 | 0 | 0 | 0 |

Key themes from respondents in relation to their follow-up comments were:

- collective/collaborative decision making removes perceived influence.
- given this decision is in relation to someone's liberty, in the interests of fairness there should be more than one person taking this decision.
- efficiency and expediency should never be at the expense of due process.
- clearer guidance on structuring an opinion in relation to imminence of risk of serious harm within the report for the Parole Board to consider would be welcomed.

Some respondents did not fully understand the recall process and this was reflected in their comments.

9. POTENTIAL IMPACTS OF CONSULTATION PROPOSALS

- **Q22. “Please tell us about any potential impacts, either positive or negative, that you consider any of the proposals in this consultation may have on anyone (including custody or community facing) or any organisation affected by the parole process.”**

9.1 Seventeen of the 23 respondents commented on this question.

Key themes from respondents in relation to the overall proposals were:

- Any changes would have to take account of those individuals who are among the most vulnerable or disadvantaged, examples being in relation to individuals who are detained in a secure hospital who may not be in a position to provide a written statement of preparation, or children and young people who may have limited capacity in terms of reading and writing (Q18).
- Any changes to processes would have to consider if there was any impact on victims or witnesses.
- Removal of gender specific language, an example being ‘chairman of the Parole Board’ as opposed to ‘chair’. Prisoners in general are referred to as ‘his’ or ‘he’.
- Those being considered for release who may have literacy, learning difficulties, language or other capacity issues must have access to independent support to assist with any written work required to go to the Parole Board.
- Any changes to processes may wish to include (where appropriate) the views of families of the individuals in custody both in terms of potential support for the person due to be released, but also as individuals in their own right.
- Any new or revised guidance, or information which sets out clearly and concisely the parole process including decision-making and what is required from all those involved including the person being considered for release, their families, victims and organisations, who provide reports to the Parole Board, would be welcomed.
- Removal of “immediate” from re-release following recall considerations would be welcomed. For certain categories of prisoner it poses significant difficulty and expenditure to put in place provisions for release. An example being approved housing. If this is part of their licence conditions and on release they are unable to stay at an approved address, they have effectively been set up to fail, as this will be a breach of licence.
- Any decision to remove the appointments process from the remit of CESPL needs to be supported by a robust alternative.

- Any changes should not cause any unnecessary delay to the release of anyone.
- Concern that whilst in custody prisoners are not able to access the appropriate programmes required for them to progress and this may impact on the decision to release.
- Clear guidance on practices and processes would be welcomed by those directly involved in the parole process. This includes report writers, prisoners, victims, witnesses and families.

Conclusion

The responses to this public consultation were low but they did represent a cross-section of organisations. The limited response numbers demonstrate that these are technical changes. With the exception of Q.2 (current terms for appointment and reappointment being fit for purpose) and Q.20 (oral hearings and tribunal considerations to mirror casework) there were no areas where responses indicated a clear disagreement with proposals as presented.

Breakdown of closed questions – 23 respondents

| Initial question theme | Total responded (R) (from 23) | | | Response by respondent category | | | | | | | | | | | | | | | | | |
|--|----------------------------------|----|----|---------------------------------|---|---|----|---|---|------------|---|---|------------------------|---|---|-------|---|---|-----------|---|---|
| | | | | Public | | | LA | | | Individual | | | 3 rd sector | | | legal | | | Judiciary | | |
| | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N |
| (Q1) Reinforce independence of the Parole Board | 16 | 14 | 2 | 5 | 4 | 1 | 5 | 5 | 0 | 1 | 1 | 0 | 3 | 3 | 0 | 1 | 0 | 1 | 1 | 1 | 0 |
| (Q2) Appointment duration terms fit for purpose | 17 | 5 | 12 | 5 | 2 | 3 | 5 | 2 | 3 | 2 | 1 | 1 | 3 | 0 | 3 | 1 | 0 | 1 | 1 | 0 | 1 |
| (Q3) Removal/review upper age limit of 75 | 16 | 11 | 5 | 4 | 4 | 0 | 5 | 4 | 1 | 3 | 1 | 2 | 3 | 2 | 1 | 1 | 0 | 1 | 0 | 0 | 0 |
| (Q4) Review prescribed membership of Parole Board | 18 | 15 | 3 | 5 | 5 | 0 | 5 | 2 | 3 | 2 | 2 | 0 | 4 | 4 | 0 | 1 | 1 | 0 | 1 | 1 | 0 |
| (Q5) Removal of appointments to Parole Board from CESPL | 14 | 7 | 7 | 4 | 2 | 2 | 5 | 1 | 4 | 2 | 2 | 0 | 2 | 2 | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| (Q6) SMs removed from decision to release or not prisoners liable to removal from UK deportation cases | 13 | 13 | 0 | 2 | 2 | 0 | 5 | 5 | 0 | 2 | 2 | 0 | 3 | 3 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |
| (Q7) SMs to set licence conditions for extended sentence prisoners | 16 | 8 | 8 | 4 | 2 | 2 | 5 | 2 | 3 | 1 | 1 | 0 | 4 | 3 | 1 | 1 | 0 | 1 | 1 | 0 | 1 |
| (Q8) Clarifying decisions of Parole Board are binding on SMs | 16 | 16 | 0 | 4 | 4 | 0 | 5 | 5 | 0 | 3 | 3 | 0 | 3 | 3 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |
| (Q9) Re-release of a prisoner following recall to custody should be as soon as practically possible | 18 | 16 | 2 | 4 | 4 | 0 | 6 | 6 | 0 | 3 | 3 | 0 | 4 | 2 | 2 | 1 | 1 | 0 | 0 | 0 | 0 |
| (Q10) Time limit for prisoner reps on HDC revocation referrals to Parole Board | 14 | 11 | 3 | 3 | 3 | 0 | 5 | 4 | 1 | 2 | 1 | 1 | 3 | 3 | 0 | 1 | 0 | 1 | 0 | 0 | 0 |
| (Q11) Common test(s) for all release, re-release and recall considerations | 16 | 15 | 1 | 4 | 4 | 0 | 5 | 5 | 0 | 2 | 2 | 0 | 3 | 3 | 0 | 1 | 0 | 1 | 1 | 1 | 0 |
| (Q12) Review periods for Life and OLR prisoners | 18 | 16 | 2 | 5 | 4 | 1 | 6 | 5 | 1 | 2 | 2 | 0 | 4 | 4 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |
| (Q13) Ability for bodies to send reports for revocation and re-release directly to the Parole Board | 18 | 16 | 2 | 5 | 5 | 0 | 6 | 6 | 0 | 3 | 2 | 1 | 3 | 2 | 1 | 1 | 1 | 0 | 0 | 0 | 0 |
| (Q14) Live link not to be used if unfair on prisoner or witness | 18 | 18 | 0 | 5 | 5 | 0 | 6 | 6 | 0 | 2 | 2 | 0 | 4 | 4 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |
| (Q15) Removal of prescribed dossier content | 14 | 10 | 4 | 3 | 2 | 1 | 5 | 4 | 1 | 2 | 2 | 0 | 3 | 2 | 1 | 1 | 0 | 1 | 0 | 0 | 0 |
| (Q16) Ability for Chair of | 15 | 11 | 4 | 4 | 3 | 1 | 5 | 3 | 2 | 2 | 2 | 0 | 3 | 3 | 0 | 1 | 0 | 1 | 0 | 0 | 0 |

ANNEX A

| Initial question theme | Total responded (R) (from 23) | | | Response by respondent category | | | | | | | | | | | | | | | | | | |
|--|----------------------------------|----|----|---------------------------------|---|---|----|---|---|------------|---|---|------------------------|---|---|-------|---|---|-----------|---|---|---|
| | | | | Public | | | LA | | | Individual | | | 3 rd sector | | | legal | | | Judiciary | | | |
| | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | R | Y | N | |
| Parole Board to issue procedural guidance | | | | | | | | | | | | | | | | | | | | | | |
| (Q17) Authorisation of any person to attend hearings (e.g. as an observer) | 16 | 14 | 2 | 4 | 4 | 0 | 5 | 4 | 1 | 3 | 2 | 1 | 3 | 3 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 |
| (Q18) Prisoner to submit written record of state of preparation | 17 | 12 | 5 | 4 | 3 | 1 | 6 | 3 | 3 | 3 | 3 | 0 | 3 | 3 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 |
| (Q19) Considerations for recalled extended sentence prisoners to be at casework meetings | 16 | 11 | 5 | 5 | 4 | 1 | 6 | 3 | 3 | 1 | 1 | 0 | 3 | 3 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 |
| (Q20) Composition for oral hearings and tribunals to mirror casework meetings | 15 | 5 | 10 | 4 | 1 | 3 | 5 | 1 | 4 | 1 | 0 | 1 | 4 | 3 | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 0 |
| (Q21) Breach considerations – imminent risk of serious harm – single PB Member to consider | 18 | 11 | 7 | 5 | 4 | 1 | 6 | 4 | 2 | 3 | 1 | 2 | 5 | 4 | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 0 |



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