

# **Consultation – Transforming Parole in Scotland**

**December 2018**

# **CONSULTATION – TRANSFORMING PAROLE IN SCOTLAND**

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## MINISTERIAL FOREWORD



I am delighted to launch this consultation, which seeks your views on improving the parole process in Scotland.

Parole is a critical part of our criminal justice system - and probably one of the least understood. The Parole Board for Scotland members do a difficult and complex job. The decision whether to release an individual from custody and to consider the conditions they must abide by, requires careful judgement. The Parole Board's expertise and experience in assessing risk is essential.

Parole processes in Scotland are robust and fair, with a keen focus on public safety. As part of this Government's commitment to a progressive justice system, we want to explore what more we can do to make parole processes in Scotland the best they can be.

This consultation highlights areas for improvement and suggests some new ideas for a better system.

I have been clear that I want the needs of victims to be at the centre of the criminal justice system. That is why this consultation focuses on strengthening the voice of victims in the parole process. I believe that victims and their families should have the opportunity to make representations to the Parole Board, in whatever format they are most comfortable. It is vitally important that victims and their families have confidence that their safety and security are taken into account when the Parole Board makes its decisions, including in relation to licence conditions.

I also want to make sure that parole processes are as open and transparent as possible. Not only will this help victims, their families and the wider public to better understand the Parole Board's decisions and the reasons behind them, it should also help to maintain public confidence. This consultation seeks your views on how best we can do that.

It is important that everyone involved in the parole process has access to the information they need to participate fully. This includes Parole Board members, the organisations that support the Parole Board and victims and their families.

It is also important that prisoners have the information they need to participate in their parole hearings. This underpins a fair, just and proportionate system, which recognises the need to provide opportunities for rehabilitation and reintegration once an individual has served their sentence and is deemed not to pose an unacceptable risk. This consultation therefore, also seeks views on the information prisoners should be provided with, to enable them to understand what is required of them.

The Parole Board for Scotland is independent from Scottish Ministers. Ministers cannot interfere with, or influence, the Parole Board's decisions. That is entirely right and I want to make sure that we do all we can to underline and maintain the Parole Board's independence. This consultation therefore seeks views on options for doing that, including a proposal that the Parole Board transfers to the Scottish Tribunals.

This is your opportunity to shape the future of parole in Scotland. It is really important that we hear a wide range of views and I would encourage everyone to have their say.

Thank you for taking the time to respond. I look forward to hearing your views.

A handwritten signature in black ink, appearing to read 'H. Young', with a long vertical stroke extending downwards from the end of the signature.

**Cabinet Secretary for Justice**

## CONSULTATION – TRANSFORMING PAROLE IN SCOTLAND

### WHY ARE WE CONSULTING?

The Programme for Government 2018-2019<sup>1</sup> set out the Scottish Government's commitment to increase the openness and transparency of the parole system, and to consult on specific proposals.

The aim of this consultation is to seek your views on further reforms we are considering to improve the experience of victims in the parole process, increase openness and transparency of the Parole Board for Scotland (“the Parole Board”) and ensure the independence of the Parole Board is maintained.

We wish to make further improvements to the parole process and the way the Parole Board operates. In particular, this consultation seeks views on how we can give victims a stronger voice in the parole process, how we can better support the Parole Board’s decision-making and how to make the parole processes as open and transparent as possible. The consultation also seeks views on how we can further augment the Parole Board’s independence, including seeking views on the option of transferring the Parole Board to the Scottish Tribunals (as created by the Tribunals (Scotland) Act 2014).

The proposals in this consultation document are underpinned by a continuing commitment to the key statutory role of the Parole Board in considering the release of a prisoner to serve the remainder of their sentence in the community, subject to appropriate licence conditions. In making these decisions, the Parole Board is independent of Scottish Government and impartial in its duties.

Consultation is an essential part of the policy-making process. We will consider the views expressed in response to this consultation to help inform the Scottish Government’s decisions. An easy read summary of this consultation can be found at **Annex A**.

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<sup>1</sup> <https://www.gov.scot/publications/delivering-today-investing-tomorrow-governments-programme-scotland-2018-19/>

## 1. CURRENT ARRANGEMENTS

### Background to the Parole Board for Scotland

1.1 The Parole Board was first established by the Criminal Justice Act 1967. It is a tribunal Non Departmental Public Body that operates independently from the Scottish Ministers.

1.2 The Parole Board has a number of statutory functions, largely set out in the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”). As part of their role, the Parole Board aim to protect the public by considering if a prisoner can be released into the community on licence. The Parole Board will also consider any licence conditions that should be imposed on a person on their release into the community, to minimise any risk associated with that. The Parole Board undertake risk assessments which are evidence-based, rigorous, fair and timely and which can contribute to the rehabilitation of prisoners and ultimately reduce reoffending.

1.3 A prisoner does not apply for parole. The type of sentence imposed by the court determines the point in the sentence that the Parole Board will consider the prisoner’s release and the procedures that will be followed during that consideration. **Annex B** provides information on custodial sentence types.

1.4 There is no role for the Parole Board in sentencing a prisoner as that is a matter for the courts. Neither can the Parole Board decide whether a sentence was fair in a particular case.

1.5 Parole is a process that enables prisoners to be released on licence in the community under the supervision of a community-based social worker. If a prisoner is released on licence, they are liable to be recalled to prison at any time during the remainder of their sentence if they breach the terms of their licence. Parole is only granted if the evidence reviewed by the Parole Board demonstrates that the risk presented by the person concerned can be managed in the community.

1.6 It should be noted that those prisoners sentenced to a long-term determinate sentence (i.e. 4 years or more), prior to 1 February 2016, may remain in prison until they have served two-thirds of their sentence, at which point they are released automatically on licence. This would also apply to long-term determinate sentence prisoners subject to an extended sentence,<sup>2</sup> with a custodial term of 4 years or more.

1.7 For those sentenced on or after 1 February 2016, the Prisoners (Control of Release) (Scotland) Act 2015 ended the previous system of automatic early release. If not otherwise released by the Parole Board, long-term determinate sentence prisoners will be released automatically six months before the expiry of the sentence, provided that they are not subject to an extended sentence. In this instance, the prisoner is released into the community on a licence for the remaining six months of their sentence but is subject to be recalled to prison to serve the remaining term if they breach the terms of their licence.

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<sup>2</sup> Extended sentences are issued under section 210A of the Criminal Procedure (Scotland) Act 1995 (c46) consist of a custodial term and an extension period with the overall purpose of such a sentence to ensure a longer period of supervision in the community than otherwise would be the case.

1.8 Where an extended sentence has been imposed on a long-term prisoner, sentenced on or after 1 February 2016, they will serve their entire custodial term in custody, unless the Parole Board has authorised early release. When released at the end of their custodial term, they will be on licence for the whole of the extension period and will be subject to be recalled to prison to serve the remaining extension period, if they breach the terms of their licence.

Who sits on the Parole Board?

1.9 The Parole Board consists of members appointed by the Scottish Ministers and appointments are currently made under the auspices of the Commissioner for Ethical Standards in Public Life. This ensures the process for making appointments is independent and fair. There are currently 37 Parole Board members including the Chair of the Parole Board. Members are drawn mostly from the legal, social work, prisons, police, medical and mental health professions.

How does the Parole Board for Scotland Currently Operate?

1.10 The way in which the Parole Board considers cases is determined by the Parole Board (Scotland) Rules 2001, as amended (“the 2001 Rules”)<sup>3</sup>. There are two main routes of consideration - either Part III cases (casework meetings) or Part IV cases (tribunal hearings). In certain circumstances, the Parole Board may decide to convene an oral hearing in a Part III case.

*Part III Cases (casework meeting/oral hearing)*

1.11 The following are the main cases regularly considered under Part III of the 2001 Rules: -

<b>Case type</b>	<b>Parole Board role</b>
Children & Young People serving less than 4 years	<ul style="list-style-type: none"> <li>• Make recommendations for release on licence up to half way point of sentence</li> <li>• Consideration of recall and rerelease</li> <li>• Recommend and consider amendment to licence conditions</li> </ul>
Children & Young People serving more than 4 years	<ul style="list-style-type: none"> <li>• Make recommendations for release on licence up to the two-thirds point</li> <li>• Consideration of recall and rerelease</li> <li>• Recommend and consider amendment to licence conditions</li> </ul>
Short-term Determinate Sentence Sex Offenders serving less than 4 years	<ul style="list-style-type: none"> <li>• Consideration of recall and rerelease</li> </ul>
Long-term Determinate Sentence serving more than 4 years	<ul style="list-style-type: none"> <li>• Make recommendations on release on licence at Parole Qualifying Date</li> </ul>

<sup>3</sup> Parole Board (Scotland) Rules 2001: <http://www.legislation.gov.uk/ssi/2001/315/contents/made>

	(PQD) and thereafter <ul style="list-style-type: none"> <li>• Recommend and consider amendment to licence conditions</li> <li>• Consideration of recall and rerelease</li> </ul>
Extended Sentence where custodial part is less than 4 years	<ul style="list-style-type: none"> <li>• Recommend and consider amendment to licence conditions</li> <li>• Consideration of recall and rerelease</li> </ul>
Extended Sentence where custodial part is more than 4 years	<ul style="list-style-type: none"> <li>• Make recommendations on release at PQD and thereafter</li> <li>• Recommend and consider amendment to licence conditions</li> <li>• Consideration of recall and rerelease</li> </ul>
Life Sentence (who are already in the community)	<ul style="list-style-type: none"> <li>• Consider variation of licence conditions</li> </ul>
Order for Lifelong Restriction (OLR) (who are already in the community)	<ul style="list-style-type: none"> <li>• Consider variation of licence conditions</li> </ul>

1.12 At a casework meeting Parole Board members assess cases in closed session on the basis of written material (in the form of a dossier) that is provided to them by the Scottish Ministers, in practice this is done by the Scottish Prison Service (SPS) in their role as an executive agency of the Scottish Government.

1.13 The prisoner can make written representations that are included in the material considered by the Parole Board but neither the prisoner nor their legal representative (if they have one) is present.

1.14 Rule 15A of the 2001 Rules provides that oral hearings can occur in certain Part III cases where the Parole Board consider it is within the interests of justice to do so, these are:

- In the case of a revocation of licence to which section 17 of the 1993 Act applies;
- In the case of a decision regarding the release of a person at the half way point of their long-term sentence under section 1(3) of the 1993 Act; and
- In the case of considering the release of a person subject to an extended sentence who has been recalled to custody and is serving the custodial part of that extended sentence.

Observers are not permitted to attend oral hearings.

*Part IV Cases (tribunal hearings)*

1.15 Part IV of the 2001 Rules detail the procedures for arranging and conducting tribunals, including the obligations on the parties. These are usually attended by the prisoner but they can waive their right to attend the hearing. Cases considered by the Parole Board sitting as a Tribunal include consideration of:

- recalled extended sentence prisoners (where the prisoner is serving their extension period); and
- life sentence and OLR prisoners (initial release, recall and re-release on licence).

1.16 For the purposes of the types of cases mentioned above, the Parole Board will only grant release where it is satisfied that it is no longer necessary for the protection of the public from serious harm that the prisoner should be confined (the former category); or that it is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined (the latter category). The point at which the Parole Board will consider release of a prisoner and the procedures for review are determined by the original sentence imposed. Further information about sentence types can be found in **Annex B**.

### *Decisions*

1.17 Currently, the Parole Board's decisions are not published and reasons for the decisions are not provided, except where the Chair of the Parole Board or the Chair of the Tribunal may allow or in connection with any court proceedings.

### *Licence conditions*

1.18 The purpose of licence conditions recommended by the Parole Board when a prisoner is approved for release are to protect the public, to prevent re-offending and to help secure successful re-integration back into the community. Licence conditions are intended to be preventative rather than punitive. If a person is released on licence, there are nine commonly used conditions which may be applied as follows:

The person:-

- shall report on the day of release to the officer in charge of the office at the address notified to the person at the time of release;
- shall be under the supervision of the officer nominated for the purpose of supervision and from time to time by the Head of Service with responsibility for criminal justice social work of the relevant local authority involved;
- shall comply with such requirements as the supervising officer may specify for the purposes of risk management;
- shall inform the supervising officer immediately if they are detained, arrested or questioned by the police;
- shall keep in touch with the supervising officer as instructed by that official;
- shall inform the supervising officer if they change their place of residence or gain employment or change or lose a job;
- shall be of good behaviour and shall keep the peace; and
- shall not travel outside the United Kingdom without the prior permission of the supervising officer and subject to any restrictions that the supervising officer may impose.
- shall reside only in suitable accommodation, supported or otherwise, as approved by the supervising office and subject to any restrictions that the supervising officer may impose.

1.19 Although these are the most common licence conditions, it is for the Parole Board to recommend whether all or some are applied. The Parole Board are not bound by these conditions and can recommend any condition they feel is appropriate.

1.20 In exercising their judgement, the Parole Board will also consider whether other licence conditions may be appropriate such as exclusion from a certain area, mandatory drug or alcohol treatment or restrictions on internet use. All recommendations are made on a case-by-case basis and the recommendations of the Parole Board are binding on the Scottish Ministers.

1.21 The supervising officer may also request an additional licence condition. In this case, evidence has to be provided as to why this is appropriate and why the additional condition is necessary.

### The role of the Scottish Ministers and the Scottish Prison Service

1.22 The Parole Board has no statutory powers to consider the case of a prisoner unless the case has been referred to it by the Scottish Ministers. In matters relating to Parole, this is done by the SPS, an executive agency of the Scottish Government. In practice, this means they refer a dossier of material containing information to enable the Parole Board to assess the risk the prisoner might pose if released into the community. These documents can include, a report from the judge who presided at the trial; details of any previous convictions; reports from prison staff; a psychologist or psychiatric report; and a report from the prison based social worker. The dossier should also include up-to-date reports on the individual's plans for release or re-release. The prisoner also has the right to make representations as a party to the proceedings.

### Parole Reform and the Management of Offenders (Scotland) Bill

In 2017, the Scottish Government consulted on changes to the parole system, which emerged from the Parole Reform Programme. These changes are being taken forward through the Management of Offenders (Scotland) Bill<sup>4</sup> which was introduced to the Scottish Parliament in February 2018. The provisions in the Bill make technical amendments to existing legislation, amend the tenure of Parole Board members, reinforce the independence of the Parole Board and provide for the administrative and accountability arrangements of the Parole Board to be set out in secondary legislation. The remainder of this document sets out the case for further reforms and seeks views on options for specific improvements to the parole process.

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<sup>4</sup> Management of Offenders (Scotland) Bill:  
[http://www.parliament.scot/Management%20of%20Offenders%20\(Scotland\)%20Bill/SPBill27S052018.pdf](http://www.parliament.scot/Management%20of%20Offenders%20(Scotland)%20Bill/SPBill27S052018.pdf)

## 2. THE CASE FOR CHANGE

2.1 A robust, evidence-based parole process is an essential part of an effective, progressive justice system, which balances protecting public safety alongside providing opportunities for rehabilitation.

2.2 It is right that we continually review procedures to ensure that the parole process is fit for purpose. We must also ensure that the Parole Board has the tools it needs to continue to balance the interests of victims and prisoners and protect public safety. It is equally important that individuals who have served their sentence, who are assessed as no longer representing a risk to public safety, and are ready to make a positive contribution to their communities, be given the opportunity to do so.

2.3 This consultation focuses on four main areas where we feel that improvements can, and should, be made.

Firstly, we feel that the **voice of victims** should be strengthened in the parole process so that they can more directly inform the Parole Board's considerations. We also believe that victims have a right to have the reasons for parole decisions explained to them, so they can understand why the decision was reached.

Secondly, we consider that improvements should be made to better support the Parole Board's **decision-making and the transparency of those decisions**. This includes improving how the Parole Board's decisions are communicated to victims and the wider public. We also think that there should be improvements in the way information is provided to prisoners so they are prepared for parole hearings and understand the conditions of their parole (if granted) and what that will mean on release.

Thirdly, we believe that improvements can be made to the **supervision and recall of individuals**. We want to consider the wider parole procedures by looking at licence conditions that could improve the safety and security of victims, reviewing compliance with licence conditions and by speeding up processes for recall where a person has breached their licence. We want to continue to ensure there are clear and robust mechanisms to return individuals to custody quickly should they breach their licence conditions.

Finally, we want to strengthen the **independence, governance and accountability** arrangements of the Parole Board. We are proposing that this could be supported by transferring the Parole Board to the Scottish Tribunals (as created by the Tribunals (Scotland) Act 2014). It has been suggested that the Parole Board would benefit from being part of a structure that has clear lines of accountability and that this would further augment and underline the independence of the Parole Board.

### **3. STRENGTHENING THE VOICE OF VICTIMS IN THE PAROLE PROCESS**

#### **What we want to see?**

3.1 We believe victims should have more opportunity to be heard in the parole process. We also consider they should receive more information on how the parole process operates and about the parole decisions that affect them. We also believe victims should be given information so they understand the reasons behind Parole Board decisions.

3.2 We recognise that all cases are different and that not all victims are affected in the same way, or want to be involved in the parole process. We have listened to feedback from victims and their families and we understand that some find the fact that they cannot speak directly to Parole Board members at a tribunal hearing frustrating and upsetting. At the moment, it is only in the case of a prisoner serving a life sentence that victims and families can speak to a Parole Board member (although not a member directly involved in the case). We also understand that the lack of information provided about the parole process, the decisions and reasons behind them, can leave some victims and their families feeling as though their experience and views do not count sufficiently. We want to change that.

3.3 We want to implement improvements that provide a clearer route for victims and their families to be heard in the parole process – with access to the support and information they need to do that. We want the victim to feel there is an opportunity to give their views on matters of safety and security that affect them when a prisoner is released, including in the consideration of possible exclusion zones.

3.4 We also recognise the need to balance victim involvement with the need to ensure a fair, just and proportionate system. The parole process should also provide the opportunity for reintegration and rehabilitation, once a prisoner has served their sentence and no longer poses an unacceptable risk.

#### **Victims and Parole – what happens now?**

3.5 A central aim of the Parole Board is to protect public safety by making their decisions on the basis of risk.

3.6 In making those decisions, the Parole Board will consider the impact on the victim(s) in a particular case. However, there is currently no specific mechanism for victims and their families to speak directly to the Parole Board members who are deciding on parole in their particular case. In the case of a life prisoner, however, they can make oral representations to the Parole Board (although not to a member of the Parole Board that is considering their case).

3.7 It is important to recognise that not all prisoners are referred to the Parole Board for consideration of release. For example, prisoners sentenced to less than four years in prison will usually either be released at the half-way point of their sentence (known as the Earliest Date of Liberation or EDL) or some may be released up to six months earlier on Home Detention Curfew. This is managed by the Scottish Prison Service.

## Victim Notification Scheme

3.8 In all criminal cases where the offender has been sentenced to 18 months imprisonment or more, victims and, in certain circumstances, their family members have the right to receive certain information about the prisoner in their case through the Victim Notification Scheme (VNS)<sup>5</sup>. The VNS has two parts and victims and/or their families can sign up to one or both.

3.9 Part 1 gives the victim and/or their family the right to be informed of certain information about the offender. The information will only be provided where the recipient wants to receive it and has advised the Scottish Ministers accordingly. The victim and/or their family members will be told the following information:

- the date of the offender's release (other than temporary release) – (but not their location after release);
- if the offender dies before being released, the date of their death;
- if the offender is transferred out of Scotland;
- if the offender is for the first time entitled to be considered for temporary release – e.g. for training programmes or home leave;
- if the offender escapes or absconds (doesn't come back when recalled);
- if the offender, after having been released, returns to custody for any reason to continue serving their sentence;
- if a certificate has been granted giving the offender unescorted suspension of detention from hospital for the first time or where such a certificate has been granted and then revoked. (This certificate means they can leave hospital for specific periods of time, without an escort or supervision.)

3.10 Part 2 of the VNS gives victims and/or family members the right to make written representations to the SPS about the release of the prisoner on licence and any prospective licence conditions. This right applies where the prisoner is a short-term, long-term or life prisoner.

3.11 Support for victims and families is also available through Victim Support Scotland.

3.12 People must register with the VNS to receive information or make representations. If someone is eligible, it is up to them to decide whether to register for the Scheme.

3.13 Where the offender is sentenced to life imprisonment, victims and/or their families, who are registered with the VNS, have the right to make oral representations to the Parole Board when the prisoner becomes eligible for release on licence. The oral representations can only be made to a member of the Parole Board who is not dealing with the prisoner's case and can be related to the release of the prisoner or any prospective licence conditions.

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<sup>5</sup> Victim Notification Scheme (VNS) - <https://www.mygov.scot/after-the-verdict/victim-notification-schemes/>

3.14 In the case of the Parole Board, it will consider these representations along with other information on the offender's case before reaching a decision. If the Parole Board does decide to release, then representations from victims and/or their families may assist in deciding the licence conditions that will be imposed. This might include conditions which limit the prisoner contacting named individuals, or entering certain areas, so called 'exclusion zones'.

3.15 For victims of offenders sentenced to less than 18 months imprisonment they are entitled to know only the date of the release or escape of the offender and any licence conditions imposed on the offender following release. The victims can contact the SPS if they want to receive this information. This notification scheme does not extend to the victim's family members.

3.16 The 2001 Rules currently do not allow disclosure of information about a case to any person not involved in the proceedings or to the public, except where the Chair of the Parole Board or the Chair of the Tribunal direct otherwise or where it is in connection with any court case. Whilst such directions are rarely asked for and equally rarely given, they have been used previously to provide victims with a summary of the reasons for a decision.

3.17 Under Part 2 of the VNS, victims and in certain circumstances their family members have the right to be informed of any licence conditions which relate to contact with the victim or the victim's family. Under the notification scheme for victims of offenders sentenced to imprisonment for less than 18 months, the victim is entitled to be informed about licence conditions which have been imposed for the protection of the victim.

### **Options for Change**

3.18 We want to ensure victims and their families know what to expect during the parole process and that information is provided to them at the earliest opportunity in a clear and accessible format.

3.19 We want to seek views on how we can improve the current arrangements to make it easier for victims and their families to make representations to the Parole Board. For example, should there be a mechanism to allow victims and their families to attend hearings in person or via a live link? Alternatively, should victims and family members be able to give their statement to a Parole Board member who is directly involved in their case?

3.20 We also want to make sure we carefully consider the security, data protection and logistical arrangements, which would need to be put in place to support wider attendance at Parole hearings.

3.21 We recognise that victims do not always feel that their safety and security is taken into account in the decision to grant parole. We would therefore like to get views on whether the Parole Board should routinely impose conditions which specifically exclude prisoners from certain areas. If so, what would the implications of such a condition be and how this could be monitored and managed.

3.22 In addition, we would also like to consider mechanisms which may allow the Parole Board to communicate decisions, and the reasons behind them, to victims and their families (see Section 4) in addition to the information they can already receive around licence conditions.

## QUESTIONS ON STRENGTHENING THE VOICE OF VICTIMS IN THE PAROLE PROCESS

**Question 1:** Do you think victims and their families should have a greater voice in the parole process?

Yes  No

**If Yes,** what more could be done to help victims and their families be heard?

**If No,** why not?

**Question 2:** Do you think victims and their families should be entitled to attend parole hearings in person?

Yes  No

**If Yes,** what wider considerations would be necessary to manage this process, what support should be available and who should be responsible for providing that support? **If No,** why not?

**Question 3:** Do you think there should be clear criteria on the kinds of information the Parole Board should consider in relation to the safety and welfare of victims and their families?

Yes  No

**If Yes,** in your view what should that criteria be? **If No,** why not?

**Question 4:** Do you think more could be done to strengthen the Parole Board's current use of licence conditions (including conditions to exclude individuals from certain areas, or from certain individuals)?

Yes  No

**If Yes,** what would the implications be of extending this and how could this be managed in the community? **If No,** why not?

**Question 5:** Do you think that victims and their families should receive information on the reasons for the Parole Board's decisions in their case?

Yes  No

**If Yes**, what kind of information would be most helpful and how should that be provided? **If No**, why not?

## 4. ENSURING TRANSPARENCY AND IMPROVING SUPPORT FOR DECISION-MAKING

### Ensuring Transparency

#### What do we want to see?

4.1 We believe the parole process should be more open and transparent but this is not without difficulty. There is a delicate and important balance to be struck in ensuring all those with an interest in the decision receive the information they need, whilst also protecting their safety and security. We must also ensure that the independence of the Parole Board is maintained and protected.

4.2 This needs careful consideration, but we believe that implementing change, which will make the Parole Board and parole processes more open, will increase public confidence in the system.

#### What happens now?

4.3 Currently, the Parole Board's decision is informed by the evidence set out in a dossier provided to them by SPS and the representations by or on behalf of the prisoner or any persons attending the hearing, where applicable. Once they have considered all the evidence before them, the Parole Board will make a decision in private and relay that decision to the prisoner.

4.4 In Scotland, rule 9 of the 2001 Rules does not allow disclosure of information given to the Parole Board about a case to any person not involved in the proceedings, or to the public. Rule 9 does allow an exception to this where the Chair of the Parole Board or the Chair of the Tribunal directs otherwise or in relation to any court proceedings. Such directions have been used previously to provide victims with a summary of reasons for a decision, but they are not asked for or given often.

4.5 Following the case of *R. ex parte DSD and NBV and others versus The Parole Board of England and Wales and others [2018]* (otherwise known as the Worboys case)<sup>6</sup>, the rule in England (Rule 25 of the Parole Board Rules 2016 which absolutely barred any disclosure) was challenged in the High Court of Justice and was subsequently changed<sup>7</sup>.

4.6 Rule 25 of the Parole Board Rules 2016 now requires the Parole Board for England and Wales to provide decision summaries to victims who request it (unless it is considered that exceptional circumstances exist against the disclosure of such a summary) and to third parties who request one (e.g. public / media), where it is considered that disclosure is justified and in the interests of open justice.

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<sup>6</sup> Worboys case and the Parole Board – Lord Chancellors statement: <https://hansard.parliament.uk/commons/2018-03-28/debates/1CA8B88F-214F-4196-A98F-F9886BD82014/WorboysCaseAndTheParoleBoard>

<sup>7</sup> The Parole Board (Amendment) Rules 2018: <http://www.legislation.gov.uk/ukxi/2018/541/made>

## **Options for Change**

4.7 We would like to develop mechanisms which provide victims and their families with information on parole decisions relating to their case, and also provide the public with more information on how the Parole Board reach their decisions. These mechanisms would also need to take account of the need to protect the safety of the prisoner and their ability to reintegrate successfully in their local community, once the Parole Board have deemed them to be suitable for release. We will therefore also need to carefully consider the circumstances in which information should not be released to the victim or family, or to the wider public.

4.8 The Parole Board's role is not well understood and we recognise that a more transparent system would support greater public confidence in the process.

4.9 In the interests of openness and transparency, we could consider extending the option to attend a parole hearing to others, such as the media or general public. Other factors would need to be considered if doing so, such as prison accommodation, security, and imposition on Parole Board members, SPS and social work staff.

## QUESTIONS ON ENSURING TRANSPARENCY

**Question 6:** Should others be routinely entitled to attend parole hearings?

Yes  No

**If Yes**, who should be able to attend, in what circumstances and for what part of the proceedings? **If No**, why not?

**Question 7:** Should information be routinely shared with others?

Yes  No

**If Yes**, what level of information should be shared or what more could be done? **If No**, why not?

**Question 8:** Do you feel that some information regarding parole decisions should be published proactively?

Yes  No

**If Yes**, what level of information do you feel should be published? **If No**, why not?

**Question 9:** Do you think the work of the Parole Board is sufficiently visible?

Yes  No

**If Yes**, why do you think that? **If No**, what more could be done?

## Improving Support for Decision Making

### What do we want to see?

4.10 We want to make sure that the Parole Board has access to the most robust evidence possible to help inform their decisions. We also want to ensure that the organisations supporting the development of the parole dossier have access to the information they need, so that the Parole Board has this information in time for its consideration of the case to prevent avoidable delays in the system.

### What happens now?

4.11 Currently the Parole Board primarily relies on the parole dossier to provide sufficient information to inform its decisions.

4.12 Where more detailed information is required but is missing or inadequate in the dossier, the Parole Board may have to seek further information from different sources. This process can be time-consuming and may lead to delays in decisions being reached.

### Options for Change

4.13 We want to make sure that the Parole Board and the organisations supporting them have access to all the information they need to make robust and evidence-based decisions. We also want to make sure this process is as streamlined as possible to prevent delays in the process.

4.14 We would welcome views on whether the role of the Parole Board and other organisations involved in compiling information for the parole dossier could be widened. This might, for example, entail investigating and collating information from other bodies such as the NHS, the Crown or the police.

## QUESTIONS ON IMPROVING SUPPORT FOR DECISION-MAKING

**Question 10:** Do you think that consideration should be given to widening the information available to the Parole Board by establishing a function to investigate and collate information from other bodies?

Yes  No

**If Yes**, who should provide that function and in what circumstances? **If No**, what other options are there to improve information gathering?

## **5. INFORMATION FOR PRISONERS ON THE PAROLE PROCESS**

### **What do we want to see?**

5.1 If the parole process is to be robust and effective, it is essential that all those affected know what to expect from it and are kept informed. That includes the prisoner who, at present, is likely to be the only party appearing before the Parole Board. Ill-prepared prisoners can lead to adjournments of hearings at a cost to the public purse.

5.2 We would like to bring about changes which ensure prisoners know what to expect at a parole hearing. These measures should help to prevent undue delays in the process. Further measures to explain conditions of release to prisoners could also ensure that prisoners are aware of the licence conditions of their parole and the consequences for breaching these.

### **What happens now?**

5.3 Currently, the prisoner is provided with the parole dossier. The dossier can include a report from the judge who presided at the trial; details of any previous convictions; reports from prison staff; a report from those involved in providing any counselling in custody; a report from the prison-based social worker; and a report from a community based social worker or any other relevant information or documents. The information should be up to date and accurate so as a complete picture is provided covering the prisoners background and journey through prison which helps inform the Parole Board's assessment of risk.

5.4 Rule 6<sup>8</sup> of the 2001 Rules makes provision where the Scottish Ministers or, as the case may be, the Parole Board, consider that any written information or a document contains "damaging information" that should not be sent or disclosed to the prisoner. Where such information is identified, the Scottish Ministers or, as the case may be, the Parole Board are not required to send a copy of the damaging information to the prisoner. Where any information or documentation is withheld from a prisoner, they must be informed that this has occurred by way of written notice. The non-disclosure of any information or document does not impact the ability of the Parole Board to take the damaging information into account when considering the prisoner's case.

5.5 When the decision to release is made, the prisoner is given a copy of the decision letter along with the relevant licence conditions imposed.

5.6 Some support for prisoners is available from the Lifer Liaison Officers (LLO) (role may be combined with role of Early Release Liaison Officers (ERLO)) who is appointed at establishments holding life sentence prisoners. The duties include management of prisoners and their progression, and submitting an overview report that is included in dossiers for consideration at a Tribunal. The ERLO is appointed at establishments with long-term determinate sentence prisoners and is responsible for overseeing the preparation of dossiers and associated matters.

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<sup>8</sup> Rule 6(1)(i) – (v) contains the grounds in which information may be damaging.

## Options for Change

5.7 We want to make sure that the parole system is more open and transparent for everyone. That includes prisoners whose cases are considered by the Parole Board. We are therefore considering whether changes should be made to the information that is provided to prisoners in relation to the parole process.

5.8 The Parole Board makes binding recommendations on an individual's licence conditions and also considers whether the person should be recalled for breaching those conditions. It may be appropriate for the Parole Board to explain the conditions of release to the person concerned. This additional measure could help to ensure that prisoners clearly understand their licence conditions and the consequences of breaching them. It could be that a meeting with a Parole Board member would help to ensure that prisoners fully understand the detail of their licence conditions. The meeting could take place after the hearing which directed release and could focus on ensuring that the person has clearly understood what is expected of them.

5.9 It also may be possible to do more to explain the detail of licence conditions and implications of breach through the LLO or ERLO role.

5.10 Alternatively, an official could be appointed under section 21 of the 1993 Act, which allows the Scottish Ministers to appoint people to give information to prisoners or former prisoners about their release on licence under Part 1 of the 1993 Act or their return to prison under the Act. These provisions are not currently used, but the appointment of an official may help to prepare a prisoner for release and could help to ensure they fully understand the licence conditions recommended by the Parole Board and what it means if they are recalled to custody.

## QUESTIONS ON INFORMATION FOR PRISONERS ON THE PAROLE PROCESS

**Question 11:** Do you think that prisoners currently receive the information they need to enable them to participate in the parole process?

Yes  No

**If Yes**, why do you think that? **If No**, what information or help do you consider should be provided to help prisoners understand the parole process and their licence conditions?

**Question 12:** Do you think that more could be done to make sure that prisoners understand their licence conditions and the consequences of breaching them?

Yes  No

**If Yes**, what do consider is the best approach to ensure prisoners understand the terms of their licence and who is best placed to provide information? **If No**, why not?

## **6. SUPERVISION, REVIEW AND RECALL**

### **What we want to see?**

6.1 Parole licence conditions are intended to protect public safety. It is therefore very important that there is a high compliance rate with these conditions and that there are robust mechanisms in place to ensure that is the case. Where individuals do not comply, it is critical that there are streamlined and fast-moving procedures to recall them to custody.

### **What happens now?**

6.2 Supervision to ensure compliance with licence conditions is carried out by criminal justice social workers in accordance with the National Outcomes and Standards for Social Work Services in the Criminal Justice System<sup>9</sup>. The Parole Board currently has no role in supervision after release and nor would it be appropriate for it to be involved directly in supervision. This function is carried out by supervising officers who can make recommendations for variation or amendment of licence conditions as appropriate.

6.3 In relation to recall, the supervising officer prepares a licence breach report and submits it to the Scottish Ministers. A judgement is made on whether the need for recall requires an immediate decision by the Scottish Ministers or whether the report should be referred to the Parole Board for a decision.

6.4 There is potential for delay in the current system between the supervising officer concluding that the risks posed by the individual on licence have become unacceptable, a decision being made to recall the individual and the recall order being prepared and provided to police.

### **Options for Change**

6.5 Emerging evidence from problem solving approaches in court<sup>10</sup> and the children's hearings system suggest that regular reviews help improve outcomes as progress is reported and views are expressed. Early compliance is likely to lead to longer-term success in relation to adherence to licence conditions.

6.6 We would like you to consider whether measures should be introduced to regularly, and formally, review individuals on parole licence to ensure compliance with conditions. An additional review hearing, carried out by the Parole Board, may help ensure compliance with licence conditions in the initial months following release. Following the review, the Parole Board could consider adjusting the licence conditions accordingly, based on evidence of risk posed.

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<sup>9</sup> National Outcomes and Standards for Social Work Services in the Criminal Justice Social Work System: <https://www2.gov.scot/resource/doc/925/0103556.pdf>

<sup>10</sup> Problem Solving Approach review report: <https://www.gov.scot/publications/review-aberdeen-problem-solving-approach-report/>

6.7 Regular reviews may also support criminal justice social work supervision as it would provide an opportunity for developing difficulties to be dealt with before they escalate, potentially helping to avoid recall to custody. It would also provide the opportunity for good conduct to be recognised and supported.

6.8 A post-release review process may lead to fewer recalls if issues could be addressed quickly and appropriately. Currently, when an individual has been released on licence, and is not detained in custody for any other matter, their licence may be revoked and they may be recalled to prison. This process does not give them the opportunity to make representation or present their case, even when there could be mitigating circumstances.

6.9 In relation to revocation of licence and recall to custody, we would like you to consider whether there is a more effective way to speed up the process of identifying when the risk becomes unacceptable and expediting the return of the person concerned to prison (if required).

6.10 One option could be to give the Supervising Officer the power to refer cases directly to the Parole Board for consideration, without necessarily needing to revoke the licence. This approach may improve the process by bringing individuals back quicker before the Parole Board.

6.11 This proposed approach would reduce the period of time an individual deemed to be at increased risk was at large in the community.

## **QUESTIONS ON SUPERVISION, REVIEW AND RECALL**

**Question 13:** Is there a requirement for an additional review process (at least initially)?

Yes  No

**If Yes**, who should carry out that review and what would you see as the advantages or disadvantages of an additional review? **If No**, why not?

**Question 14:** In relation to revocation of licence and recall to custody. Do you consider social workers should be able to refer directly to the Parole Board?

Yes  No

**If Yes**, what are the implications of this change and how could this be managed?  
**If No**, why not?

## **7. INDEPENDENCE AND GOVERNANCE**

### **Transfer of Parole Board for Scotland to the Scottish Tribunals**

#### **What do we want to see?**

7.1 The Parole Board is a tribunal Non Departmental Public Body (NDPB) and, as such is independent of Scottish Ministers. It is essential that this independence is maintained and supported in order that the Parole Board can discharge its judicial functions.

7.2 A possible option to further enhance the independence of the Parole Board could be for it to transfer to the Scottish Tribunals, as established by the Tribunals (Scotland) Act 2014 (“the 2014 Act”).

#### **What happens now?**

7.3 Article 5(4) of the European Convention of Human Rights provides that: “Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by ‘a court’ and his release ordered if the detention is not lawful.”

7.4 The criteria for ‘a court’ are independence of government and the parties, impartiality and a power to give a legally binding judgement concerning release. There is no doubt the Parole Board satisfies the criteria of ‘a court’.

7.5 However, the Scottish Government currently sponsors the Parole Board and this may give the impression of influence over the Parole Board’s decisions. That is not the case, but to put that perception beyond any doubt, a solution which removes the Parole Board from any appearance of interference or influence is sought.

7.6 As mentioned before, the Parole Board is already a tribunal NDPB which carries out functions of a judicial nature and as such, it has much in common with the Scottish Tribunals. Currently the functions of the Parole Board are mostly set out in the 1993 Act and the procedure it follows are governed by the 2001 Rules. The Parole Board is supported by dedicated staff who have built up expertise in the area.

7.7 There is currently no route to appeal a Parole Board decision and the only type of review available is that of judicial review.

7.8 The Parole Board’s primary function is to decide, based on risk, whether to release prisoners to be supervised in the community for the remainder of their sentence and these decisions have always been made independently of Government.

#### **Options for Change**

7.9 If the Parole Board were to transfer to the Scottish Tribunals, the functions, as set out in the 1993 Act, would largely remain the same. There would require to be some changes to fit in with the Scottish Tribunals structure and the Parole Board as

it is currently known would be abolished. The parole jurisdiction may become part of an existing Chamber or alternatively form a dedicated Chamber within the Scottish Tribunals led by a Chamber President.

7.10 The Parole Board would continue to follow its own rules of procedure although these would need to be re-drafted to reflect the move to the Scottish Tribunals and change in the Parole Board's name.

7.11 In addition, the Parole Board jurisdiction could continue to receive the same dedicated expert support from staff who could transfer over to the Scottish Courts and Tribunals Service (SCTS) under the Transfer of Undertakings (Protection of Employment) Regulations 2006 or the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector, as appropriate and applicable.

7.12 It has been proposed that transferring the Parole Board to the Scottish Tribunals would help to underline the Parole Board's independence as a quasi-judicial body<sup>11</sup>. Such a move would also provide clearer lines of accountability. The Lord President, as head of the Scottish Tribunals and as the most senior judge in Scotland, would bring a wide breadth of experience to the leadership of the parole jurisdiction and to its members. Risk assessment and protection of the public are already an integral part of the court structure and being part of that would bring the advantage of mutual training and development opportunities.

7.13 Furthermore, there would be a wider pool of judiciary to provide support to members and a vast array of experience to call upon. In addition, existing (suitably qualified) members of the Scottish Tribunals, who meet the criteria for appointment, could be assigned to the 'Parole Chamber' (see para 7.9 and Annex C), with the approval of, the President of Tribunals, the receiving Chamber President and the individual concerned, negating the need to go through a separate recruitment round. There may even be the possibility of utilising court judiciary.

7.14 There would also be a wider pool of non-legal members within the Tribunal structure, including those with medical expertise such as psychiatrists and mental health specialists.

7.15 There are wider possible practical benefits with the possibility that the Parole Board could make use of the SCTS's venues, technology and infrastructure which could make attendance at hearings more accessible, including for victims and their families.

### Appeal Mechanism

7.16 Importantly, transferring the Parole Board to the Scottish Tribunals could also allow for a new review process and a new appeal procedure, which does not currently exist. The provisions in the 2014 Act allow the tribunal to review a decision made by it where for example, an administrative error has occurred, the tribunal has erred in law or the tribunal has erred in fact. A review avoids the need to appeal the

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<sup>11</sup> [http://www.parliament.scot/S5\\_JusticeCommittee/Inquiries/MO-SheriffsAssociation.pdf](http://www.parliament.scot/S5_JusticeCommittee/Inquiries/MO-SheriffsAssociation.pdf)

decision as the tribunal may correct any accidental errors and issue a fresh decision notice. Although the Parole Board can currently regulate its own procedure, the 2014 Act's review process would allow a party in the case to request a review. In reaching a decision on whether to grant a review the tribunal may also decide to take no action or set aside the original decision.

7.17 The review process could consider errors of fact but it would not be a mechanism to appeal the decision as such, but rather an opportunity to correct mistakes and quickly remedy them. If the Parole Board were to transfer to the Scottish Tribunals it would be able to utilise this review process.

7.18 Currently there is no route to appeal a Parole Board decision, although a judicial review of a decision may be possible. If the Parole Board were to transfer to the Scottish Tribunals decisions could be appealed. The 2014 Act provides that any appeal would be on a point of law only. The First-tier Tribunal can consider whether an appeal to the Upper Tribunal on a point of law is justified and may give approval to proceed or refuse that application. If the First-tier Tribunal refuse, an application can be made directly to the Upper Tribunal. A decision of the Upper Tribunal may be appealed to the Court of Session on a point of law only if it raises an important point of principle or practice or if there is some other compelling reason for allowing the appeal to proceed.

7.19 The concept of transferring the Parole Board to the Scottish Tribunals is not a new one. The proposal had been considered as part of the consultation on tribunal reform in 2012<sup>12</sup> and the Parole Board was included in that consultation as a tribunal that would be considered for transfer at a future date. This proposal also fits in with the Scottish Government's policy for a unified tribunal system in Scotland.

7.20 Further information about the Scottish Tribunals can be found in **Annex C**, along with a diagram of the current structure (proposed and actual transferred jurisdictions) illustrating where the Parole Board might fit in (it should be noted that no decision has been taken on this and no decision will be taken without discussion with the Lord President, the SCTS and the Parole Board itself).

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<sup>12</sup> Consultation - Scottish Government's Proposals for a New Tribunal System for Scotland - <https://www1.bps.org.uk/sites/www1.bps.org.uk/files/New Tribunal System for Scotland %28S%29 - cons paper.pdf>

## QUESTIONS ON INDEPENDENCE AND GOVERNANCE

**Question 15:** Do you agree that a transfer to the Scottish Tribunals would enhance the independence of the Parole Board?

Yes  No

**If Yes**, what do you consider the advantages and disadvantages would be with such a transfer? **If No**, Why not?

**Question 16:** A review and appeal are available in the Scottish Tribunals. Do you consider these processes should be available for the Parole Board?

Yes  No

**If Yes**, what are the benefits of having these processes available? **If No**, why should these processes not be made available in the case of the Parole Board?

## EASY READ SUMMARY OF CONSULTATION

This paper sets out the Scottish Government's ideas to make the **parole process in Scotland** easier to understand.

This paper also has ideas to make it **easier for victims and their families to have their say**.

Some of the ideas in the paper are about **doing some things better** and others are about **finding new ways of doing things** and **sharing information**.



This paper is a **consultation**. That means that the Scottish Government wants to know what you think about its ideas. They also want to know if you have other ideas that will make things better.



When a person commits a crime, they are sometimes sent to **prison**.



A **victim** is a person who has had a crime committed against them. This can mean someone harmed them, attacked them or stole from them. This can also affect the **victim's family**.



Parole Board for Scotland

The Parole Board for Scotland is a **tribunal**.

As a tribunal, the **Parole Board makes decisions** about people who are sent to prison.



In the case of the Parole Board, **they decide if a person who is in prison is ready to leave prison and go home**.

The Parole Board will not let anyone go home until it is safe for them to do so. This means that the Parole Board has to be sure that the person will not harm anyone else or do anything that would make them go back to prison.

The Scottish Government has some **ideas to improve the parole process** for victims, their families and prisoners.

This paper gives you information about the Parole Board and asks some **questions**.

There are four areas the Scottish Government are thinking of changing. These are:

## 1. How to make it easier for victims and their families to be part of the parole process.



We want to make sure that victims and their families are **listened to** and they are able to give their views to the Parole Board in new ways. We are asking how they can do that.

### **This is what we want to know:**

- **Do you think victims and their families should always be able to tell the Parole Board how they feel?**
- **Should victims and their families be able to go to a parole hearing?**
- **How can we do things better to protect victims and their families?**
- **What more could be done to keep people who are released from prison out of certain areas or away from certain people?**
- **Should victims and their families be told why a person has been released from prison?**

## **2. Making it easier for people to understand the decisions the Parole Board make.**



We want to make sure everyone understands about parole and that people have the information they need.

### **This is what we want to know:**

- **Other than victims and their families, who else should be able to go to a parole hearing?**
- **Should information be shared with other people?**
- **Should information be made public for anyone to see?**
- **Do you feel you know enough about the Parole Board?**

## **3. Changing the way the Parole Board does things to make them better.**



We are looking for better ways of doing things to help people.

**This is what we want to know:**

- **How can we help prisoners understand parole?**
- **How can we help people understand what will happen if they do something wrong once they are home?**
- **Would a meeting with someone who knows how parole works help people understand?**
- **Is there another way to stop people returning to prison?**

**4. Moving the Parole Board to sit with other tribunals who also make decisions about people's lives.**



We want to make sure the Parole Board can decide what to do **freely**.

One way is to move them to sit with other tribunals who also make decisions.

When a person thinks something is wrong with a decision we want to make sure people can do something to fix it. This is called an **appeal**.

## What we want to know?

- **Do you think it is a good idea to move the Parole Board to sit with other tribunals?**
- **Do you think people should be able to fix things when they are wrong?**

## What can you do to help?

The Scottish Government would like to hear your views on these things.

You can tell us what you think by responding to the consultation through **Citizen Space**. **Annex E**, tells you how to do this.

If you cannot respond through Citizen Space, **you can email** your views with the form in **Annex F** to [ParoleConsultation@gov.scot](mailto:ParoleConsultation@gov.scot)

If you have any questions, you can email [ParoleConsultation@gov.scot](mailto:ParoleConsultation@gov.scot) or write to us at:

Reintegration and Rehabilitation Team  
Community Justice Division  
Scottish Government  
GW.R  
St Andrew's House  
EDINBURGH, EH1 3DG

**Please send us your views before FRIDAY, 27 MARCH 2019**

## PRISON SENTENCES

The following information<sup>13</sup> is provided to explain how prison sentences work and to provide background information on the different types of prison sentence available in Scotland.

### How prison sentences work

A custodial sentence means more than just time in prison. In most cases, people will serve part of their sentence in the community. If they commit an offence while serving their sentence in the community, the court can order their return to prison. If they spent any time in custody while their case went through the court process, the judge must take this into account. The judge can backdate their sentence to start from the time they first went into custody or any time after that.

### Determinate and indeterminate sentences

Sentences that are set for a certain length of time are called determinate sentences. Sentences that do not have an end point, such as a life sentence, are called indeterminate sentences.

### Determinate Sentences

Determinate prison sentences are split into two kinds:

- Short term - less than four years
- Long term – four years or more.

- Short term sentences

People given a short term sentence will normally be automatically released from prison into the community after serving half the time in prison. For example, offenders sentenced to two years' imprisonment will be released to serve the rest of their sentence in the community after one year. The person isn't normally supervised by a social worker unless they are a sex offender convicted on indictment (more serious crime), or is placed on a supervised release order.

- Long term sentences

A person given a long term sentence can serve all but the final 6 months of the sentence in prison, unless the Parole Board for Scotland recommends that they should be released earlier into the community. The Parole Board will only start to consider whether or not to release the person into the community as they approach the halfway point of their sentence - the earliest point at which they can normally be

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<sup>13</sup> Information courtesy of the Scottish Sentencing Council. Further information about sentencing is available at: [www.scottishsentencingcouncil.org.uk](http://www.scottishsentencingcouncil.org.uk)

released. If an offender is not released, the Board will re-consider parole within 16 months.

When people serving a long term sentence (and people sentenced for sexual offences to a period of six months or more) are released into the community, they will be 'on licence' until their sentence finishes. They can be recalled to prison if they commit an offence or otherwise breach the terms of this licence.

### Indeterminate sentences

These are sentences that do not have a set end point, such as a life sentence. However, the judge will set a punishment part for such sentences which is the minimum time an offender must spend in prison. After that time, they can be considered for release on licence by the Parole Board for Scotland. Each time release from prison is not recommended, it will be reconsidered within two years.

- Life sentences

Life sentences must be given for murder under the law, but they can also be given for other extremely serious offences such as repeated rape. If a person is sentenced to life imprisonment, the judge must, by law, set a punishment part of the sentence. This is the minimum time the person must spend in prison before they can be considered for release into the community by the Parole Board for Scotland. Depending on the circumstances of the case, the punishment part can be lengthy. To date, the longest punishment part given in Scotland is 37 years. If a person sentenced to life imprisonment is released into the community, they will be on licence for the rest of their life and can be recalled to prison if they breach the terms of their licence.

- Order for Lifelong Restriction (OLR)

An OLR is a lifelong sentence put in place to protect the public. It is a sentence of imprisonment which can be imposed on people convicted of serious violent or sexual offences, other than murder, at the High Court. The judge must set a 'punishment part' of the OLR which is the minimum time the offender must spend in prison before being considered by the Parole Board for Scotland for release into the community. If offenders are considered to be safe to serve the rest of their sentence in the community, they will remain under the intensive supervision of a criminal justice social worker. If the person commits another crime, they can be sent back to prison.

### Supervised Release Order (SRO)

A judge can impose a SRO on people convicted of an offence on indictment (more serious crime) to come into force once they have been released from prison. It is put in place in order to protect the public and can last up to 12 months. It orders the offender to be under the supervision of a criminal justice social worker and follow any conditions that have been set, such as a requirement to attend drug counselling. Offenders who breach a SRO can be returned to prison. A judge can only use the Order if an offender is sentenced to a short term sentence (less than four years in custody) and the offence is not a sexual one.

## Extended sentence

An extended sentence combines a period in prison with a further set time of supervision in the community (the extension part). It is used to protect the public and can be given to offenders who have been convicted, on indictment (more serious crime), of a sexual or violent crime, or abduction. For a violent crime or abduction, the custodial term of the sentence must be four years or more. The person serves the full prison part of the sentence unless the Parole Board for Scotland recommends early release. When released they are on licence until the end of the extension part of the sentence and can be recalled to prison if they breach the terms of their licence. The extension period of the sentence in the community can be up to 5 years for sheriff court cases and up to 10 years for High Court cases.

## MORE ABOUT THE SCOTTISH TRIBUNALS

### AIM OF THE TRIBUNALS (SCOTLAND) ACT 2014

The main aim of the Tribunals (Scotland) Act 2014 ('the Act') is to create a simplified framework that provides coherence across the disparate tribunals' landscape. It brings improvements to the structure, management and organisation of tribunals.

In particular, the Act creates a simple two-tier structure and introduces a common system of appointments, practices and procedures, bringing judicial leadership under the Lord President. (See illustration below showing where the Parole Board might fit within the Chamber structure. Red indicating tribunals that have already transferred)

### OVERVIEW

The Act:

- Creates two new tribunals – the First-tier Tribunal for Scotland (which, generally speaking, will hear cases at first instance) and the Upper Tribunal for Scotland (primarily for appeals) – to be known collectively as the Scottish Tribunals.
- Allows, through regulations, for the creation of 'Chambers' to house the tribunals in the First-tier – grouped by similar subject jurisdiction and led by Chamber Presidents, who will have responsibility for business within their Chamber. The Chamber Presidents' role will be filled by the existing judicial heads who will transfer-in to the new structure. Chamber Presidents may also be assisted by a Deputy Chamber President, if required.
- Allows, through regulations, for the creation of 'divisions' in the Upper Tribunal. The functions of the Upper Tribunal will be allocated between divisions in a similar manner as the First-tier is organised into Chambers.
- Makes the Lord President of the Court Session, Head of the Scottish Tribunals, bringing judicial leadership of the Scottish Tribunals within his remit.
- The Lord President is directly responsible for representing the views of the members of the Scottish Tribunals to the Scottish Ministers and the Scottish Parliament. He is also responsible for producing rules on conduct and discipline.
- The Lord President may delegate some of his functions to the President of the Scottish Tribunals (e.g. making arrangements to secure the efficient disposal of business and ensuring the welfare of members). The Lord President has assigned the Right Honourable Lady Smith to the role.
- Brings tribunal appointments under the remit of the Judicial Appointments Board for Scotland (only for tribunals within the new structure).
- Gives responsibility for making tribunal rules to the Scottish Civil Justice Council (to be commenced when the Lord President feels the Council is ready to take on this additional work).

Scottish Tribunals Chamber Structure

The Lord President

The Court of Session

President of Scottish Tribunals

Upper Tribunal

Composite Division  
Appeals from the First-tier Tribunal

Upper Tribunal Land Division  
Land Tribunal for Scotland

First-tier Tribunal

(possible)  
Parole  
Chamber

Mental Health  
Chamber

Housing and  
Property Chamber

Health and  
Education  
Chamber

General  
Regulatory  
Chamber

Tax  
Chamber

Social  
Security  
Chamber

Parole  
hearings

Mental Health

Private Rented  
Sector  
December 16

Additional  
Support Needs  
January 18

Charity Appeals  
January 18

Tax Appeals  
April 17

Social  
Security  
Benefits  
November 18

Homeowner  
Housing  
December 16

Education  
Appeals

Parking and Bus  
Lane Appeals

Valuation  
Appeals

Pharmaceutical  
Lists Appeals

Police Appeals

NHS Appeals

## HANDLING OF PERSONAL DATA

### Data Protection Act 2018

The data protection legislation has changed and the Data Protection Act 2018 gives you greater powers to protect your own privacy, and place greater responsibility on those processing your data for any purpose. The following is to explain your rights and give you the information you will be entitled to under the new legislation. Please note that this section only refers to your personal data (your name, address and anything that could be used to identify you personally) not the content of your response to the consultation.

#### ***The identity of the data controller and contact details of our Data Protection Officer***

The Scottish Government is the data controller. The Data Protection Officer for the Scottish Government can be contacted at [dataprotectionofficer@gov.scot](mailto:dataprotectionofficer@gov.scot).

#### ***Why we are collecting the data***

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

#### ***Legal basis for processing the data***

Part 2 of the Data Protection Act 2018 (previously Data Protection Bill) provides that as a government department, the Scottish Government may process personal data as necessary for the effective performance of a task carried out in the public interest e.g. a consultation.

#### ***With whom we will be sharing the data***

We will not be sharing personal data outside of the Scottish Government.

#### ***Your rights, e.g. access, rectification, erasure***

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right:

- a) To see what data we have about you
- b) To ask us to stop using your data, but keep it on record
- c) To have all or some of your data deleted or corrected
- d) To lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

**The Scottish Government will not send your personal data out with the European Economic Area. This data will not be used for any automated Decision-making. This data will be stored in a secure government IT system.**

## RESPONDING TO THIS CONSULTATION

We are inviting responses to this consultation by **Friday 27 March 2019**

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/justice/transforming-parole-in-scotland>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of **Friday 27 March 2019**.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form to:

Reintegration and Rehabilitation Team  
Community Justice Division  
Scottish Government  
GW.R  
St Andrew's House  
EDINBURGH, EH1 3DG

### Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document (**Annex F**).

To find out how we handle your personal data, please see our privacy policy: <https://beta.gov.scot/privacy/>

### Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

### **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at [ParoleConsultation@gov.scot](mailto:ParoleConsultation@gov.scot).

### **Scottish Government consultation process**

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



## CONSULTATION: TRANSFORMING PAROLE IN SCOTLAND

### RESPONDENT INFORMATION FORM

**Please Note** this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:

<https://beta.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)

#### Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

No



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Riaghaltas na h-Alba  
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