

Independent Sentencing and Penal Policy Commission: Call for Evidence

April 2025

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Foreword

Scotland's justice system plays a crucial role in keeping us safe, providing us all with a sense of security, ensuring fairness, and upholding the rule of law. Sentencing and penal policy are key components of this system, shaping how we address crime, punish criminality, deliver justice to victims, and manage people who have offended both in the community and in prison.

However, our system is facing a substantial challenge. Despite a significant drop in recorded crime—down 40 percent since 2006-07— in Scotland we have one of the highest rates of imprisonment in Western Europe. This has several significant and detrimental impacts. It leads to overcrowding in our prisons. It reduces the effectiveness of reoffending programmes and therefore rehabilitation. It results in an unnecessarily negative experience for too many of those that work there. It also has wider effects on the rest of the justice system, such as our courts, and ultimately our communities.

The Sentencing and Penal Policy Commission has been established to independently review Scotland's current approach to sentencing and penal policy and provide recommendations to inform action and change. The Commission offers a chance to build on previous work and rethink our justice system – a considerable and necessary task.

We are calling for evidence to gather the widest range of perspectives and innovative ideas with a focus on key parts of our remit: community sentencing, bail and remand, and release from custody. The evidence you provide will play a pivotal role in considering how Scotland can achieve an effective, rehabilitative justice system, meaning less crime and fewer victims in future.

Thank you for your time and contributions to this vital Commission. Your insights will be instrumental in shaping our recommendations and achieving lasting change.

Martyn Evans
Chair of the Sentencing and Penal Policy Commission

Overview

This Call for Evidence aims to gather written evidence and views to inform the work of the independent Sentencing and Penal Policy Commission. The Call for Evidence is open for 6 weeks, from 15 April until 25 May 2025.

The [Sentencing and Penal Policy Commission](#) was established in February 2025 to consider how imprisonment and community-based interventions are used in Scotland and ensure that it has a sustainable prison population. The Commission will make recommendations for improvements in how offending behaviour can be dealt with the underlying aim of ensuring less crime, fewer victims, and safer communities.

In order to support the Commission we are launching a Call for Evidence where you can share written evidence on the Commission's initial areas of focus in line with the [Terms of Reference](#):

- Theme 1: Community sentencing
- Theme 2: Bail and remand
- Theme 3: Release from prison custody
- Theme 4: Making progress on past recommendations and implementation

The evidence provided will be considered and used to assist the Chair and Commissioners in developing recommendations. The Commission will present a final report and recommendations to the Scottish Government before the end of 2025 and any evidence submitted to this call may be referenced in a final report unless individuals indicate they do not wish their response to be made public. A summary of the responses to this Call for Evidence will be published separately.

Please note that the Commission cannot address specific cases and individual concerns and comments about these should be directed to the relevant public body.

Guidance on how to complete this Call for Evidence

This Call for Evidence is primarily intended for individuals with direct experience; practitioners and organisations with knowledge and experience of the criminal justice system in Scotland; and academics, although views are welcomed from all who have an interest in this area.

Respondents are asked to answer some or all of the questions asked. It is okay to only respond to one or two questions if that is all that is relevant to you or your organisation.

Evidence can take many forms and your submission is not limited to published academic evidence. Submissions may range from research and data analysis, policy ideas, to trends in practice or relaying of personal experience and expert opinion. Please provide complete references to any sources.

We recognise the importance of place and local context. There will be geographic differences in delivery and experience. Submissions may wish to briefly contextualise where evidence and insights are coming from – across Scotland, or from other places and nations internationally. Please indicate clearly in each answer which jurisdiction your sources/evidence relates to.

Community sentencing

Question 1 - What changes could be made to community sentences and other alternatives to prison to reduce crime, protect victims, and create safer communities?

When answering this question, you may find it useful to reflect on one or more of the following:

Community justice

- Key issues and influences affecting uses of community sentences and community justice
- Whether community sentences are responsive to different needs or vulnerabilities (e.g., mental health, neurodivergence and learning disability, substance use and addiction, homelessness, prior victimisation, or conditions and care needs associated with older age)

Victim support

- Victim support and advocacy perspectives on community sentences, including promoting victim safety and trauma-informed communication

Sentencing

- Trends in sentencing, public and professional perceptions of sentencing and key factors which influence this
- Whether or not more sentencing options should be introduced

- Whether or not specific crime types should only receive community sentences, meaning not be eligible for a custodial sentence

Community Payback Orders

- Strengths and good practices or challenges and limitations of Community Payback Orders (CPOs)
- Experiences of being on a CPO
- Availability and range of local options, uses (or lack thereof) of review hearings in court
- The proportionality and intensity of requirements and restrictions imposed within CPOs

Reducing the prison population

- Evidence and ideas for effectively reducing the prison population ('decarceration') while promoting public safety and public trust
- Whether or not restriction of liberty might be achieved in ways which differ from being held in traditional prisons

Rehabilitation

- How rehabilitation and desistance (how people change and leave crime behind) could be better supported
- How violence reduction and prevention could be improved within community sentences and community justice contexts

Reoffending

- How non-compliance and/or breach are handled and whether issues in this area contribute to pressures on the courts and the prison population
- Evidence and ideas for how to better address prolific offending

Ways of working

- How technology could be used wisely and well, where appropriate, within community sentences (including different technologies or different uses for different purposes)
- Workforce, workload, and multi-agency working considerations affecting community sentences and community justice contexts
- Approaches which are before the sentencing stage and may, in some cases, prevent the need for further action: specialist problem-solving approaches and deferred sentencing in courts and communities, as well as early intervention, direct measures and diversion approaches

Existing recommendations

- Previous recommendations in this area made by other bodies or groups which, in your view, should be prioritised for implementation

Bail and remand

Question 2 - In your view, what are the priority issues affecting bail and remand? In Scotland, what needs to change and why?

When answering this question, you may find it useful to reflect on one or more of the following:

Decision-making on bail and remand

- Key issues and influences affecting uses of bail and remand
- Trends in prosecutorial and judicial decision-making on bail and remand
- Amount, type and quality of information available in the Sheriff Courts to help inform judicial decision-making on bail and remand
- Views on implementation of penal policy in this area (e.g., key sections in the Bail and Release from Custody (Scotland) Act 2023, or throughcare provision for people on remand)

Victim support

- Victim support and advocacy perspectives on uses of bail and remand, including promoting victim safety, perceptions of procedural fairness, and trauma-informed communication

Justice

- Whether different needs and vulnerabilities are considered at the bail and pre-trial stage (e.g., mental health, neurodivergence and learning disability, substance use and addiction, homelessness, prior victimisation, or conditions and care needs associated with older age)
- Whether or not the parental status of an accused person and rights of the child (UNCRC) are considered in bail and remand decision-making
- Human rights considerations of access to justice for all affected

People on bail

- Evidence and ideas for better supporting and supervising people on bail (including, for example, good practice in bail supervision, mentoring, custody navigator or link worker approaches with custody suites)
- Experiences of accused people remanded in custody and the impact of prison conditions, staffing, overcrowding, and legal status of remand

- How non-compliance and/or breach of bail are handled and whether this contributes to pressures on courts and the prison population
- How uses of remand may affect subsequent sentencing

Ways of working

- How to reduce backlogs and delays at the bail and remand stage
- How technology could be used wisely and well, where appropriate
- Workforce, workload, and multi-agency working considerations

Existing recommendations

- Previous recommendations in this area made by other bodies or groups which, in your view, should be prioritised for implementation

Release from prison custody

Question 3 - In your view, what are the priority issues affecting release from prison custody? In Scotland, what needs to change and why?

When answering this question, you may find it useful to reflect on one or more of the following:

Progress to release

- Key issues and influences in prisons affecting release from custody
- How progression and barriers to progression in prisons affect release, and what needs to be done to help improve this and reduce delays
- Whether or not incentivising participation in activities and programmes could be recognised through reductions in time served
- How non-compliance and/or breach and recall to custody are handled

Preparing for release

- Experiences of being in prison preparing for release and insights on how rehabilitation and community reintegration can be supported
- Evidence of good practice in release planning and throughcare, including tailoring to support different demographics or groups
- Whether different needs and vulnerabilities are responded to in prisons and on release (e.g., mental health, neurodivergence and learning disability, substance use and addiction, homelessness, or conditions and care needs associated with older age)

Victim Support

- Victim support and advocacy perspectives, including the information and support needs of victims and families in this process

Families affected by imprisonment and release

- The needs and views of families affected by imprisonment and release

Ways of working

- Workforce and workload considerations, in particular for Justice Social Work, local authorities, and charities supporting people being released
- How technology could be used wisely and well, where appropriate

Existing recommendations

- Previous recommendations in this area made by other bodies or groups which, in your view, should be prioritised for implementation

Making progress on past recommendations and implementation

In 2008 the McLeish Commission published its report, [Scotland's Choice: The Report of the Scottish Prisons Commission](#). This was a landmark moment in Scottish justice. The report contained 23 recommendations for reform to penal policy and practice, covering a range of criminal justice issues from community sentences to decisions about parole and release (Annex A). Most of the recommendations have been accepted and taken forward to some degree by the Scottish Government and partners. Since then, there have been changes and shifts in the criminal justice system and society more broadly.

In addition to the McLeish Commission, there have been many other recommendations in these areas since 2008 by a range of different bodies or groups. This independent Commission on Sentencing and Penal Policy seeks to build on previous work, to consider why particular recommendations were not taken forward as far as they could have been, or may not have been sufficiently impactful, and take account of new developments in legislation and practice.

Question 4 - Are there any recommendations from the McLeish Commission or subsequent reports by other bodies that haven't been put into action yet but could still be beneficial?

When answering this question, you may find it useful to reflect on one or more of the following:

- Why should this new Commission consider them as priorities now?
- Where recommendations have been taken forward, is there more that could be done in these areas?
- Is there any new evidence in the 16 years since, supporting the need to implement these recommendations?
- What holds back substantial and sustained change in Scotland?

Responding to this Call For Evidence

We are inviting responses to this Call for Evidence by 25 May 2025.

Please respond to this Call for Evidence using the Scottish Government's consultation hub, Citizen Space. You can access and respond to this Call for Evidence online at <https://consult.gov.scot/sentencing-and-penal-policy-commission/sentencing-and-penal-policy-call-for-evidence/>

You can save and return to your responses while the Call for Evidence is still open.

Please ensure that Call for Evidence responses are submitted before the closing date of 25 May 2025.

If you are unable to respond using our consultation hub, please complete and return the Respondent Information Form and send by email to ScottishSentencingCommission@gov.scot or by post to:

Sentencing And Penal Policy Commission Secretariat
Area GWR
St Andrews House
Regent Road
Edinburgh
EH1 3DG

If you would like to submit your response in a different format or require any materials in an alternative format please get in touch with us at ScottishSentencingCommission@gov.scot.

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

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 Commission 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 Call for Evidence exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form.

To find out how we handle your personal data, please see our [privacy policy](#).

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 [Citizen Space](#). If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the Call for Evidence closing date, all responses will be analysed and considered along with any other available evidence. Responses will be published where we have been given permission to do so. A summary report will be published.

Comments and complaints

If you have any comments about how this Call for Evidence has been conducted, please send them to ScottishSentencingCommission@gov.scot

Annex A: McLeish Commission (2008)

Scotland's Choice: The Report of the Scottish Prisons Commission – summary of recommendations

1. Imprisonment should be reserved for people whose offences are so serious that no other form of punishment will do and for those who pose a threat of serious harm to the public.
2. Paying back in the community should become the default position in dealing with less serious offenders.
3. The Scottish Government to extend the types and availability of effective alternatives to prosecution coordinated by enhanced court-based social work units.
4. The Scottish Government to legislate to place an onus on the Crown to seek to roll-up outstanding matters.
5. The Scottish Government to extend the types of and availability of bail-related information and supervision services across Scotland, including electronically monitored bail conditions, operated through enhanced court-based social work.
6. The Scottish Government to explore options for detaining 16/17 year olds in secure youth facilities separate from older offenders and those under the age of 16.
7. The Scottish Government re-examine the case for diverting 16/17 year olds to Specialist Youth Hearings with a wider range of options than are presently available in the Children's Hearing System.
8. The Scottish Government establish an independent National Sentencing Council (NSC) to develop clear sentencing guidelines that can be applied nationwide.
9. The establishment of a National Community Justice Council (NCJC).
10. The National Sentencing Council and the National Community Justice Council should be jointly charged with enhancing public understanding of, and confidence in, the credibility of both sentencing and the management of

community sentences. The NCJC should work with SPS and the Parole Board for Scotland to enhance public understanding of and confidence in the credibility of release and resettlement arrangements.

11. Where sentences involving supervision are imposed, there should be one single Community Supervision Sentence (CSS) with a wide range of possible conditions and measures.
12. The development of a 3-stage approach to sentencing and managing community sentences: 1) How much payback? 2) What kind of payback? 3) Checking progress and payback?
13. Establishment of progress courts that enable sift and regular review of progress and compliance with community sentences- and deal robustly with offenders who do not pay back.
14. The Scottish Government to bring forward legislation to require a sentencing judge, who would otherwise have imposed a sentence of 6 months imprisonment or less, to impose a Community Supervision Sentence instead, except in particular circumstances.
15. The Scottish Government bring forward legislation to enable a sentencing judge who has formed the view that a custodial sentence is appropriate, to consider whether it should be served as a conditional sentence. A conditional sentence means that the period of custody is imposed but suspended subject to the offender keeping to a strict set of conditions.
16. Subject to the full implementation of other recommendations, the current Home Detention Curfew scheme should be terminated.
17. The National Community Justice Council to provide leadership for Criminal Justice Social Work nationwide.
18. The Scottish Government to promote recognition across all Government departments, all public services, all sectors and all communities of a duty to reintegrate both those who have paid back in the community and those who have served their time in prison.
19. A more restricted and rational use of imprisonment to enable SPS to better regulate prisons and prisoners, using accommodation and resources intelligently to incentivise prisoners to come off and stay off drugs (for example by providing drug free wings) and at providing and prioritising rehabilitation.
20. The Parole Board should be provided with additional options to better manage release and compliance with licence conditions, including drug treatment and testing services and extending electronically-monitored home detention.

21. If the Custodial Sentence and Weapons (Scotland) Act 2007 is to be implemented, it must follow the implementation of this Commission's other recommendations and the achievement of reductions in the short sentence prison population. Thereafter, the provisions around risk assessment, conditional release and compulsory post-release supervision arrangements should be reserved for those serving 2 years or more. Those serving shorter sentences should be released under licence conditions and directed to support services.
22. Preparing for release and training for freedom should be retained and reinforced as the proper purposes of the Open Estate - not to ease overcrowding.
23. The Scottish Government should pursue a target of reducing the prison population to an average daily population of 5,000, guiding and supporting the efforts of relevant statutory bodies in achieving it.



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