

Below is a summary of the 17 standard responses to the Bail and Release from Custody public consultation where we were not given permission to publish by the respondent. Any identifiable information has been redacted under section 38 of FOI(S)A (2002), exemption from publishing personal information.

## 1. Which of the following best reflects your view on the changes proposed regarding when judges can refuse bail?

I agree with the proposed change, so that judges can only refuse bail if there are public safety reasons for doing so.	7
I am unsure	1
I disagree with the proposal, and think the system should stay the same as it is now, so that judges can refuse bail even if public safety is not one of their reasons for doing so	9

10 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*“Due to changes within Universal Credit – Housing Element was reduced from 12 months to 6 months when a customer is remanded. Therefore, if a customer is in remand for a period of 11 months this will result in a customer not receiving assistance towards their rent and could potential result in them being homeless. If the new proposals were in place a customer could be bailed pending Court Appearance and continue to receive Housing Element of Universal Credit during their bail period.”*

*“Change is needed whilst maintaining a focus on minimising harm to communities. The proposed change would increase decision making accountability of Sheriffs, providing greater transparency/clarity regarding the reasons for granting or refusing bail. The change, proposed in question 1, requires to be implemented and embedded to enable the other proposed changes in this consultation to be properly considered.*

*It is [redacted] that community intervention/community support is more appropriate than the use of remand for those who do not pose a risk/significant risk to the public.*

*We recommend that more consideration is given to the terminology used “public safety”. The list (link) giving a description of public safety is helpful, but overly lengthy, in describing harm.”*

*“-It was agreed that although this needs to be judged on a case by case basis, ensuring robust guidance is in place for judges around decision making would ensure consistency. It was felt this is a grey area which would require flexibility within the system.*

*-Would help avoid custodial options being used for eg: a place of safety or when engagement in the community is issue.*

*-More effective community support needs to be in place for individuals.*

*-A query was raised around how effective the feedback given in this consultation would be in influencing judges.*

*- Agree with the proposed change only if the bail address is checked out as being legitimate and suitable for electronic monitoring. However it is often the case especially where the client is homeless that the BA given is not their main residence and they have no right to be living there potentially jeopardising someone else’s tenancy or benefits and potentially exploiting a vulnerable friend or acquaintance.*

*There are other examples where the property identified as the bail address is not compatible with a tag e.g. where the person lives in accommodation with shared facilities at different parts of the building. “*

*“There are too few instances when alternatives to remand are being utilised and there is little to no feedback from the judiciary why these options are not been taken. Although I acknowledge there is limited community bail provision across Scotland, [redacted] have had a residential bail provision for women in [redacted] with full medical assessment, safety and compliance monitoring and robust partnership working which has only been used once in six months. Although the reasons for the lack of use of this provision is not clear I would imagine if there was more compulsion on sheriffs to use bail this would have a positive impact.”*

*"[REDACTED] supports this change in principle but would echo the comments and caveats highlighted by Social Work Scotland in their submission to the consultation, particularly around the need to clarify the definition of 'public safety', to ensure no negative consequences for victims."*

*"I think the question over whether judges should be able to refuse bail for reasons other than public safety depends on the nature/seriousness of the offence and what would be deemed a "significant risk" to public safety. For example, would victims of domestic violence be included in the definition of "public" safety. In addition, there may be some situations that may warrant bail being refused in my opinion: e.g. where an individual has a history of repeatedly failing to turn up for court and there may be a significant impact on victims who attend court, only to have to come back at a later date, leading to undue stress and anxiety, potential financial implications etc."*

*"Judicial independence"*

*"Judges should always have the discretion to refuse bail as there are other considerations such as absconding, interference with evidence/witnesses, etc to be taken into account."*

*"I think consideration does also need to be given to other factors. For example an accused's failure to attend at court impacts not only on the courts ability to respond in a timely way to other cases but can also be financially costly for example if witnesses attend. Further the impact of an accused failing to attend can also be significant for victims/ complainers stress / mental health."*

*"Judges are in their job as they are best placed to make difficult positions,"*

## 2. Which of the following best reflects your view on the changes proposed regarding how judges consider victim protection when making decisions about bail?

I agree with the proposed change, so judges should have to have particular regard to the aim of protecting the victim(s) when making bail decisions	11
I am unsure	1
I disagree with the proposal, and think the system should stay the same as it is now, where judges consider victim protection as part of the overall decision-making	5

9 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*"This isn't an area of expertise within [REDACTED]."*

*"This proposal requires the Sheriff and Prosecution to consider how victims may feel about the release of the perpetrator. It would be beneficial if the court was also required to consider risk management planning in relation to those releases."*

*The safety of the victim should be a matter for the court to consider when considering release. It is suggested that this consideration is wider than the arguments put forward by the defence.*

*It would be beneficial to look at the crime along with what can put in place to stop future offending, and look at rehabilitation and address the long-term futures of people in the justice system. We know that short custodial sentences are not sufficiently effective in supporting rehabilitation and changing offending behaviour.*

*Consideration is needed in terms of the impact on the victim and the impact on the person who has committed the crime. What services and supports are needed? Bail supervision would be able to offer relationship-based supports and reminders to people i.e., what they can and cannot do thereby effecting a change in behaviour through supportive challenge.*

*Going forward, electronic monitoring will enhance monitoring/compliance with bail conditions. Electronic monitoring will protect the victim and provide other opportunities for community supports to be provided to the perpetrator. Electronic monitoring will enable some individuals, who would otherwise be remanded, to remain within the community and engage with services/supports and provide more opportunities to change behaviour (opportunity to grow and develop, change behaviour) than would a short-term custodial sentence."*

*"-Victim centred approach is key.*

*-There should be a focus on helping communities understand the decision making processes, and a look at information sharing with victims.*

*- Often victim of the crime shares the same homeless accommodation address."*

*"I would agree that if the framework was clear and ensured safety for victims there should be a more directive and specific assessment when considering the impact on victims when someone is offered bail. Of course this will only be effective if any available information being supplied to the sheriff's is up to date and detailed."*

*"We support this proposed change and would agree with the comments from Social Work Scotland around the need for judges to have comprehensive information around the potential impact of bail decisions on victims of crime."*

*"I think judges being required to have particular regard to the aim of protecting victims emphasises that victims are being seen/heard, and could help victims feel safer. I also think this would increase transparency in decision making."*

*"Judicial discretion"*

*“victim protection should always be the number one consideration for judges.”*

*“I think this is particularly the case where the victim has been repeatedly victimised by the accused.”*

### 3. To what extent do you agree or disagree that the court should be empowered to make decisions on the question of bail in all cases using a simplified legal framework?

Strongly agree	3
Somewhat agree	6
Somewhat disagree	2
Strongly disagree	4
Not answered	2

10 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*"Not applicable this is not our area of expertise within the [REDACTED]."*

*"We see a simplified legal framework as an opportunity to streamline services; create more consistency across Local Authorities; reduce ambiguity; and help people in the justice system, victims, and professionals to understand the process."*

*"-We would need to know what the framework looks like and what the caveats would be in order to answer this clearly.*

*-It was felt that a simplified legal framework may not be able to capture the complexity of the decisions being made.*

*-Concerns were raised about the court having more decision making powers."*

*"I agree somewhat that the court should be empowered to make decisions on the question of bail in all cases using a simplified legal framework. However as above without information on what would influence and direct such a framework it is difficult to be confident that this is required or would be more effective than the current arrangements."*

*"[REDACTED] agrees that the Court should be empowered to make decisions on bail in all cases, using a simplified legal framework - but would echo the comments within the Social Work Scotland submission, around the need for further information regarding the proposed framework."*

*"I feel I am unable to answer this without further information on what the legal framework would look like. The proposal only states what the aims of the framework would be -which seem reasonable- but there is no clarity on what the framework is."*

*"Judicial discretion"*

*"bail conditions should be decided on the basis of the offence and not by some arbitrary legal 'framework'"*

*"None of the above - more information is required regarding the simplified legal framework being proposed."*

*"Current framework is adequate"*

#### 4. Judges must give reasons when they decide to refuse bail to an accused person. Which of the following best reflects your view on how those reasons should be communicated?

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I agree with the proposed change, so judges must give reasons both orally and in writing	8
I am unsure	1
I disagree with the proposal, and think judges should continue to give reasons orally only	7
Not Answered	1

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9 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*"This is not our area of expertise so cannot comment on the benefits of proposed changes or existing procedures."*

*"In taking a rights-based approach it is not unreasonable to ask a sheriff to record why they have taken the decision not to afford bail and remove an individual's liberty."*

*We see bail being the default position (only refused on grounds of risk of harm) as the gold standard. Requiring judges to record the reason for refusal will ensure systematic consideration of bail.*

*We believe that a written recording of the reasons would also be helpful for people in the justice system, especially those with cognitive impairments and speech and language issues. Some individuals do not retain the oral reason. A written reason would enable individuals to access support to understand the reason provided, gain a greater understanding of what is happening and why.*

*In addition to recording the reason to refuse bail, improved communication and documentation is proposed regarding conditions imposed. This is to ensure services supporting / supervising the individual have a clear understanding of the conditions imposed.*

*Provision of written communication, shared with bail services from the sheriff re: why bail refused, would allow services to better understand any gaps and develop services."*

*"I would agree that the decisions are recorded in writing to ensure clarity in the decision making process but also for reference to build an evidence base of why and how bail is being used or not used. The ultimate aim should be that we have evidence that community bail provision is needed/underused so there we can develop viable alternatives to remand right across Scotland."*

*"We support this proposed change and echo the comments made by Social Work Scotland in their submission to the consultation in response to this question."*

*"I think that any measure which increases transparency in decision making is positive."*

*"Excessive"*

*"i can see no reason for decisions to be communicated in writing as well. Surely this is already recorded in court proceedings"*

*"It seems reasonable to me that there is as much transparency as possible in this process."*

*"Current process is adequate"*

**5a. When a court is considering bail decisions, which of the following options do you consider preferable... ..in cases where the prosecution opposes bail?**

The court must ask for information from social work. Social work must provide it	8
The court must ask for information from social work. Social work may decide whether to provide it	2
The court may ask for information from social work but is not obligated to. Social work may decide whether to provide it.	5
Not Answered	2

10 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*“This would enable Social Work to provide vital information around the housing situation of this customer whether remand would have an impact on their housing and what the potential would be for the customer to become homeless.”*

*“It is not possible to answer this question without having more clarity regarding the information required from social work services. More explanation/clarity is needed re: what is meant by information. E.g., is it a framework of questions the court would want to ask or a background historical check?”*

*It may be the case that the social work service holds no records on an individual and cannot provide a report. Holding no information should not be a reason for the court to refuse bail. Lack of information would be more likely with a first-time offence where the aim is not to remand individuals. Equally, we would want to be sure that for example care experience is not missed and disadvantage the bail decision.*

*Within [REDACTED], we could foresee the information request being received in the same way as a Home Detention Curfew (HDC), via Safer Communities. The request would effectively be coming into the integrated services of Community Justice and Community Safety to assemble the response. The Justice Social Work Service could be the entry point to the information held across the different agencies. [REDACTED] could potentially manage requests because of integrated structures and case management system.*

*Are all people going to be considered for Bail Supervision? If so, this would require a more detailed social work report. Concerns that increased requests for information (increased volume of work) would lengthen the court process and time would be needed to collate information and assess risk. Likely to be resource intensive. However, there is an argument that time spent here will reduce time spent at a later stage. Effort to link people into appropriate support, addressing unmet need, following a first court appearance could reduce/prevent future court presentations for an individual. Argument for courts to consider more people for Bail Supervision.*

*Currently, social work reports for Bail Supervision are provided to the Procurator Fiscal, Sheriff and solicitor for individuals who meet the criteria for Bail supervision. Where that occurs, the Sheriff should work on the basis of the advice from the wider social worker assessment, risk assessment and identification of support services, not just the solicitor.*

*Will the court request a report from the Justice Social Work Service when electronic monitoring comes into play? If so, that will increase the volume of work further. More detail and guidance is needed. We recognise a need for the social work service to provide information to the Sheriff, but we need to know what would be requested and what the paperwork would look like. A more streamlined approach outlining clear expectations, roles and responsibilities would be helpful.*

*A suggested further option to the list of statements for selection under this question “The court may ask the community justice partners to support the court with any decision about bail and the community justice partners must respond”. The mechanisms of how that would be achieved would need to be worked out and the resourcing implication understood. As above, more details needed regarding the information request.”*

*“Although there will already be relevant information around risk/victim access in social work court reports, there should be a standardised way to request this information in all circumstances in order to allow bail to be granted safely and in line with professional opinion. However there may be issues with the ability for social work to provide information in quickly within current caseload pressures and the decision to grant bail is time pressured dictated by court business and the availability of provision especially out of hours. The court should not be requesting information that would add to the layers of complexity of the justice system and the court being able to act swiftly.”*

*“[REDACTED] supports the proposal that the court must ask for information from Social Work and that Social Work must provide it. We would also fully support the comments made in the Social Work Scotland submission in relation to this question.”*

*“The court may not be aware if relevant information exists and therefore, I think it would be helpful for courts to have to ask this question so that nothing important is missed - however, I think social work should be able to determine the relevance of the information that they have and be able to make decisions on whether to share information based on this (e.g. is the information risk relevant? are there any caring responsibilities that have to be considered? etc.)”*

*“Unsure under what timescales information would be requested from social work as bail is generally an immediate issue.”*

*“This is a ridiculous proposal”*

*“all relevant information must be available to the court if considered necessary”*

*“It should be for JSW to decide what and whether to share .  
Resources would also be necessary to enable JSW to provide this.”*

*“The right thing to do as all available information should be considered as part of decision making process”*



**5b. When a court is considering bail decisions, which of the following options do you consider preferable... ..in cases where the prosecution is not opposing bail?**

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The court must ask for information from social work. Social work must provide it	5
The court must ask for information from social work. Social work may decide whether to provide it	2
The court may ask for information from social work but is not obligated to. Social work may decide whether to provide it.	8
Not Answered	2

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8 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*"This would enable Social Work to provide vital information around the housing situation of this customer whether remand would have an impact on their housing and what the potential would be for the customer to become homeless."*

*"Response to 5a is applicable to 5 b."*

*"For the same reasons discussed in 5a and that Social Work may have information that could be relevant to public safety/victim access that is important in the decision making process and could actually influence a proper refusal of bail."*

*"We would support the option where the court may ask for information from Social Work, but is not obligated to, and Social Work may decide whether to provide it. We would also support the comments provided in the Social Work Scotland submission in relation to this question."*

*"It is possible that relevant information from social work may change this decision- therefore, I think the court should still have to ask for information and as previously, social work can then share information that may be relevant."*

*"This is a ridiculous proposal"*

*"additional information should be available to the court even if prosecution does not oppose bail"*

*"It should be for JSW to decide what and whether to share."*

*Resources would also be necessary to enable JSW to provide this."*

## 6. To what extent do you agree or disagree that courts should be required to consider electronic monitoring before deciding to refuse bail?

Strongly agree	6
Somewhat agree	4
Somewhat disagree	2
Strongly disagree	5

10 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*“Strongly agree as this could result in the customer remaining in their settled accommodation, with relevant support around them. This would lessen the need for homeless intervention and would be a cost saving in the long run.”*

*“We agree with the concept in principle, it will reduce remand and is cost effective. However, it would be beneficial to understand more about what the electronic monitoring paperwork would look like and the expected timeframe for completion.*

*It is understood that the paperwork is similar to a HDC assessment. It may be necessary for the court to recall the individual in the afternoon to allow more time for the assessment to be completed. Hopefully streamlining paperwork would reduce completion time. Understanding/having access to the updated electronic monitoring guidance would enable a more considered response to the question to be provided. Once we are clear on the roles and responsibilities, etc we can start to plan what the service will look like. We expect, even at this early stage, that an increase in funding and frontline staff will be required to ensure that electronic monitoring and bail is successful.”*

*“- Agree in principle, all options should be considered before deciding to refuse bail, using technology available when appropriate is seen as a positive.*

*-Concerns were raised about timescales. More resources would be required in order to meet the requirements for this. Without this it was felt that you would be setting individuals/agencies up to fail.*

*-Guidance around ,and use of, recovery oriented approaches is an important aspect.”*

*“Without consideration of this, alongside all other supportive considerations and factors, there is no way to come to a comprehensive assessment of risk and what Electronic Monitoring might provide to mitigate against such risks so it seem to be a vital part of the decision to grant or refuse bail.”*

*“[REDACTED] strongly agree with the proposal that the Courts should be required to consider electronic monitoring before deciding to refuse bail. We would also support the comments made in the Social Work Scotland response to this consultation question, notably that electronic monitoring should be used alongside support for the individual, and that this needs to be adequately resourced.”*

*“Electronic monitoring would be a less restrictive option than remand, and I think the least restrictive option should always be considered. Electronic monitoring could perhaps be useful in situations where the perpetrator has a history of failing to attend court, or where there are victim issues that could be managed in this way. However, I think questions remain over how electronic monitoring would be used to address risk/compliance- e.g. placing someone on electronic monitoring does not mean they will attend court/adhere to conditions not to approach victims.”*

*“Judicial discretion”*

*“electronic monitoring still leaves the possibility of witness/evidence interference”*

*“Least restrictive option should be considered. However, some thought would also need to given to how the EM would be used for example what is the purpose of it to be ? for example if it is to manage risk can it be clearly*

*demonstrated that EM can manage risk in the case being considered. It seems unlikely that EM would facilitate court attendance or risk of absconsion unless it is GPS which is yet to be introduced in Scotland. Resourcing will be required to support this."*

*"Unsure if electronic option actually works"*

**7. When a court decides to refuse bail, to what extent do you agree or disagree that they should have to record the reason they felt electronic monitoring was not adequate in this case?**

Strongly agree	7
Somewhat agree	6
Somewhat disagree	1
Strongly disagree	3

9 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*“Strongly agree as this could result in the customer remaining in their settled accommodation, with relevant support around them. This would lessen the need for homeless intervention and would be a cost saving in the long run.”*

*“The reason for refusing bail should be recorded and that should include reference to electronic monitoring.”*

*“-Important for transparency to set out why all options are not suitable. This would help services to understand decisions and respond more effectively.”*

*“If only for the transparency of why this was not adequate it seems like a sensible thing to require.”*

*“We strongly agree that the Court should have to record the reason they felt that electronic monitoring was not adequate in the circumstances, and echo the comments made in the submission from Social Work Scotland in response to this question.*

*Further, where a children's hearing is considering whether to place a child or young person in secure care, it must first consider whether electronic monitoring could be used as an alternative. The decision of the hearing and the reasons for it must be given in writing. The proposed change around requiring the Courts to record their reasons for not utilising electronic monitoring would also ensure consistency of approach across the child and adult systems.”*

*“As previously, I think any measure that increases transparency of decision making is positive.”*

*“Judicial discretion”*

*“i can see no objection to this”*

*“It seems reasonable to me that there is as much transparency as possible in this process.”*

## 8. To what extent do you agree or disagree that time spent on bail with electronic monitoring should be taken into account at sentencing?

Strongly agree	4
Somewhat agree	4
Somewhat disagree	3
Strongly disagree	6

9 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*"This needs to be based on the customers behaviours during the electronic monitoring period."*

*"Electronic Monitoring is offered as a direct alternative to remand with the purpose of monitoring an individual's compliance within the community. We would oppose and believe Victim Groups would also likely to strongly oppose, any automatic reduction in custodial sentence linked to electronic monitoring alone."*

*"We do agree, for example, where an individual has complied with electronic monitoring, has sought help/engaged with services, has secured a job, got housing etc., then those achievements should be presented detailing the progress the individual has made. In these circumstances we agree that progress made should be considered at sentencing. For example, remaining in the community could have multiple benefits – reduced cost, improved outcomes for victims and perpetrators which we would support being considered at the sentencing stage."*

*"-It was felt that as there was a restriction placed on a person that it should be taken into account. However several factors should be taken into consideration eg; compliance, further offences etc."*

*"As periods on remand, periods of good behaviour and compliance on community orders are considered at sentencing, a period where your liberty is restricted and you are being required to be of good behaviour should be taken into account."*

*"[REDACTED] strongly agrees with this proposal and supports the comments made in the consultation response from Social Work Scotland in relation to this question."*

*"I think this should be decided on a case by case basis - for example, it depends on the offence itself and the underlying factors that led to offending - risk is not necessarily reduced, even if an individual has demonstrated compliance with electronic monitoring, and there is likely to be outstanding risk factors that require to be addressed."*

*"They are still at liberty"*

*"electronic monitoring is a soft touch restriction on freedoms (an inconvenience at best) which should play no part in sentencing consideration"*

*"This depends on the rationale for imposing EM . Further a successful period of EM may mean just that ie that they have complied with the EM . Consideration also needs to be given to the offence and risk factors in making a decision as to whether that compliance impacts on risk of reoffending ."*

**9. If time on electronic monitoring is to be taken into account at sentencing, to what extent do you agree or disagree that there should be legislation to ensure it is applied consistently?**

Strongly agree	3
Somewhat agree	8
Somewhat disagree	1
Strongly disagree	5

10 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*"Needs to be consistent for fairness and equality purposes."*

*"It should be in legislation and guidance. This would provide more structure. If electronic monitoring was going to be converted into time off a sentence, then it should be standardised within legislation. However, decisions should be person centred and any introduction of legislation would need to allow for this."*

*As above, we do not support any "automatic" link between electronic monitoring and sentencing, but we would support a change to legislation to allow for consideration of electronic monitoring AND other factors (i.e., progress made linked to engagement with services), on a person-to-person basis, being considered at sentencing."*

*"-Legislation would aid consistency of approach."*

*"This would hopefully ensure a level of consistency if used correctly."*

*"We strongly agree that there should be legislation to ensure a consistent approach in relation to time on electronic monitoring being taken into account at sentencing, and would echo the questions raised by Social Work Scotland in their consultation response to this question."*

*"I do not believe that it can or should be applied consistently, I think this has to be considered on a case by case basis."*

*"Ridiculous proposal"*

*"see answer 8."*

*"I do not agree that this should be applied consistently as the decision needs to consider the offence and should be on a case by case basis."*

*"Electronic monitoring is not something I agree with"*

**10. Please use this space if you would like to make any comments about the idea of a law in Scotland that would prevent courts from remanding someone if there is no real prospect that they will go on to receive a custodial sentence in the proceedings.**

9 respondents completed this question. Any identifiable information has been redacted. Please note, this is an open question only.

*"Not applicable – this is not our area of expertise within [REDACTED]."*

*"Courts need the latitude to make decisions regardless of the crime/s charged, as opposed to strict statutory interpretation of factors that are not flexible enough to deal with human nature."*

*"- It was felt that if there is no real prospect of this, that we should not take away an individual's liberty.*

*-There needs to be more effective community support.*

*-Holistic look at history of offending required and take accumulative into account."*

*"We fully support the comments provided by Social Work Scotland in their response to this question, particularly in relation to the disproportionate use of remand for women and young people who are involved in the criminal justice system."*

*"I would like to know how it would be determined that there is no prospect an individual will receive a custodial sentence - for example, is previous offending taken into account when making this decision?"*

*"This question proceeds on a ridiculous proposition"*

*"Depends on nature of crime .E. G . Physical violence. Attacks, Sex Crimes, Abuse should always put victims safety, mental health and well being as the priority."*

*"whether or not a custodial sentence will be appropriate is surely decided at the end of a trial therefore removing the courts discretion to remand would not be helpful"*

*"I think this depends on the information that the court can use to make a decision about sentence. While the offence the person is charged with may not have a likelihood of a custodial sentence, there may be other factors which are taken into account which mean a custodial sentence may be likely eg if the index offence represents a pattern of behaviour. Decisions about custody should be risk based taking all available information into account."*

**11. To what extent do you agree or disagree that legislation should explicitly require courts to take someone's age into account when deciding whether to grant them bail?**

Strongly agree	5
Somewhat agree	3
Somewhat disagree	3
Strongly disagree	6

9 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*"We should try to avoid the use of remand for young people where possible and we do that with our Bail Supervision service. Under the whole systems approach age is already considered and the appropriate route for disposal decided by the Procurator Fiscal and the Reporter.*

*However, we do not see age is as the primary factor. The primary factor is risk to the public, regardless of age. Consideration to grant bail should be made based on individual needs and capabilities as opposed to age. In the whole systems approach we focus on needs and not age. When we look at age alone, we miss opportunities.*

*We would not recommend going down a route of individuals receiving bail solely because of their age, but instead, decisions reached based on the needs, capabilities, capacity and risks. Can the community, external agencies, other partners meet those needs? If yes, then bail is granted. If no, then what else is needed?"*

*"-This fits with Scottish Sentencing Council approach. Taking into account both age and stage.*

*-Particularly important alongside 'The Promise'.*

*-Agree with principle but need to take into account severity of the crime and other factors.*

*-It was agreed that if the need for remand was not obvious then bail should be granted."*

*"I would agree that age should be taken into account alongside all the other factors Sheriffs are required to consider when coming to a conclusion around bail. There are considerations already made to age and risk levels and the specifically the detrimental impact that remand may have on younger people. I am not sure if legislation is required to ensure this happens as I am not sure to what extent this is already a consideration when these decisions are being made."*

*"[REDACTED] strongly agrees with the proposal for legislation to require Courts to take someone's age into account when deciding whether to grant them bail. We also strongly support the comments made by Social Work Scotland in their response to this consultation question, that the continuing brain development of young people up to the age of 25 years should be taken into account in decisions around remand as well as sentencing. We also support the comments around appropriate resourcing."*

*"I think age should be taken into account but I think it should be taken into account along with other factors (e.g. support around the young person) and not in isolation."*

*"Judicial independence and discretion"*

*"age is irrelevant"*

*"However, this isn't just about age - it should include developmental stage , the likely impact of remand on them, the nature of the offence, risk and the supports around the child/ young person."*

*"Age should not come into this as you may discriminate against other age groups"*



**12. In principle, to what extent do you agree or disagree that courts should be required to take any potential impact on children into account when deciding whether to grant bail to an accused person?**

Strongly agree	10
Somewhat agree	1
Somewhat disagree	0
Strongly disagree	6

10 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*"This needs to be taken into consideration as this would ensure families are not being split up or removed from family home. Also, this would lessen the likelihood of a family losing their home and impacting on the mental and emotional health of their children/families."*

*"Children's needs and rights need to be considered regardless of whether they have committed the offence, are the victim, or are affected by parental offending. Consideration of the child's safety and that of the wider public, requires a risk and needs led approach."*

*If people are being afforded bail because of their parenting commitments, then we need to have some form of checking mechanism regarding information provided by defence solicitors, to avoid returning individuals to a family when it is not safe for the children."*

*In the whole system approach we want to be able to stop the cycle of crime within families, community stigma, potential of disruption to employment, relationships within the family, impact on wider community because of the lasting impact parental imprisonment can have on children. Each case needs to be looked at individually and the impact on the children should be taken into consideration."*

*Ensuring children's views are heard is at the heart of legislation, policy and practice. Eliciting children's views is a skilful role and needs to be carried out by workers who are trained in communicating with children, and who can advocate and express those views. The translation of this to practice requires careful consideration – statutory or third sector. For example, services such as Crossreach (Perth Prison) have workers trained in working with children and seeking children's views."*

*"-Yes, in recognition of the huge impact on children. Particularly the impact of custodial sentences for women, who are often primary carers."*

*-Questions were raised around how this would be logistically managed."*

*- Parental responsibilities should be considered if proven that they are the main carer and support is in place to ensure client is able to care for dependents – parenting support etc."*

*"I would agree that any potential impact on children should be taken in to account. Children are often the unintended victims when someone is remanded into custody and their needs and wellbeing should not be lost in the assessment and decision making process."*

*"We strongly agree with this proposal and the comments made in the consultation submission from Social Work Scotland in relation to this question."*

*"I think the potential negative impact on children of having a parent in custody are great enough that they should be taken into account when deciding whether to grant bail. I think this could tie in with social work's role of providing information as proposed earlier in the document - social work would be able to provide relevant information such as whether the accused is a single parent, whether there are others around who could meet the child's needs (e.g. family member), the age of the children, the individual needs of the children etc."*

*I question whether this should be limited to children - I think there could be similar impacts in a situation where an individual has sole caring responsibilities for an adult child with a learning disability or an elderly parent with dementia for example."*

*"Judicial discretion"*

*"the responsibility for any impact on children while regrettable should not be allowed to influence the courts decision"*

*"If the accused has any caring responsibilities this should be considered eg this should be extended to other caring for example adult children with disabilities or elderly parents with dementia.*

*It should also consider the likelihood that the children would have continued and stable care in the light of the accused being remanded.*

*This could tie in with the role that JSW will have in providing information when such decisions are being made."*

*"If a child is at risk bail must be refused"*

**13. To what extent do you agree or disagree that, in general, enabling a prisoner to serve part of their sentence in the community can help their reintegration?**

Strongly agree	6
Somewhat agree	5
Somewhat disagree	1
Strongly disagree	5

10 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*"It can help and is a system we currently use with HDC's. It is a system that currently works. Where it does not work the individual can be breached and be returned to prison. The system is currently embedded in the framework.*

*Risk of serious harm should not be the only measure. The prisoner can present their information, and the Scottish Prison Service (SPS) can now share more details of the request with social work services. Social work services can notify the governor of any inaccuracies (outstanding matters, risks to the victim, risk to communities), reasons the individual should not be released. The current system has improved in recent years and is significantly better than previous systems.*

*We need to ensure that communities and services are ready to support an effective reintegration."*

*"-Questions were raised about what length of sentence would be required for this. If this would apply to shorter sentences, more resources would be needed.*

*-Better information flow between services needed.*

*-This would require a number of partners to be in place and coordinated, at present there is a lack of consistency in service availability 'postcode lottery'.*

*- Only if suitable housing and CJ support is available as less time in prison should mean less institutionalised, there is a need for more opportunities for skills development and reintegration."*

*"In general I would agree with this as long as the identified risks that exist in the community are mitigated against with the right supports and monitoring. Working with community supports and measuring progress with real life challenges and issues offers the best measure of how someone is able to reintegrate into the community. A custodial sentence or period on remand removes the person from a potential avenue of support and encouragement through community and family."*

*"We strongly agree that in general, enabling a prisoner to serve part of their sentence in the community can help their reintegration. We would also agree and support the comments and observations of Social Work Scotland as set out in their consultation response this question."*

*"I believe that serving part of their sentence in the community could help re-integration - provided the resources are available to support them with community integration (e.g. support with employment, housing, addictions, links to the local community, social groups etc.)."*

*"This is nonsensical"*

*"Depends on crime"*

*"i have seen no evidence that this is the case"*

*"This depends on risk and resources. The key here is on reintegration rather than release from custody. For this to be appropriate the resources need to be in place to ensure that the process of reintegration will be enhanced by being in the community - this will not be the case if the resources / services required to do that are unavailable."*

*"This would depend on the crime"*

#### **14. What mechanisms do you think should be in place to support a prisoner's successful reintegration in their community?**

12 respondents completed this question. Any identifiable information has been redacted. Please note, this is an open question only.

*"Throughcare Meetings and throughcare services being put back into place  
Partnership working with Scottish Prison Service, Addiction Services, NHS, Job Centre, Registered Social Landlords, Mental Health  
Pre liberation plans with the Prisoner"*

*"Preparatory work with communities and services to prepare/support reintegration. Capacity building in communities. Co-ordination of existing services to effectively support reintegration and identification of service gaps."*

*"-'Postcode lottery' noted in response to this question also. Services should be in place in time for people leaving custody.*

*-Partners must be actively involved and be appropriately resourced.*

*-Once essential support is in place, wider positive community connections and support should be encouraged.*

*-Work needs to be done around community attitudes to those returning to the community.*

*- There needs to be meaningful contact prior to release to ensure engagement and the development of skills to enable them to live in the community.*

*If the addiction and mental health issues could be addressed while in custody and life skills developed there would be more chance of integration. Often homeless clients are so entrenched in a cycle of prison and homelessness no one gets the chance to address any of the issues or support the person towards a better outcome. Housing/homeless staff working with prison to deliver skills and advice may help the transition. For many leaving prison being housed on their own is a scary prospect and social isolation from friends and family and having no place in the community is a big issue."*

*"Available community supports to deal with complex needs for example a process for ensuring they have accommodation when they leave prison.*

*Social Work/3rd Sector support to build/encourage community if there are no family supports available so these protective factors are not absent."*

*"As per the response from Social Work Scotland to this consultation question, we would agree that every short term prisoner (with noted exceptions) should have a community reintegration plan completed as part of their sentence planning, to be developed and delivered by both prison and community based workers. Appropriate support at points of transition remain crucial."*

*"The mechanisms required would depend on each individual case but would be led by the factors that reduce risk of re-offending - e.g. this may involve support with employment, housing, addictions and mental health."*

*"Jobs and education"*

*"The opportunities and structures are there however the majority of offenders do not seek out the help"*

*"same mechanisms as are available to the law abiding community"*

*"3 strike policy.*

*[REDACTED] up 3 times and lock them up for good"*

*"Whatever is required for that individual to reduce their risk of reoffending should be available to them. It also needs to be provided in a timely way and should be in place in advance of the person being released from custody."*

*“Support to move into employment ie retraining”*

**15a. Do you agree that through good behaviour, or completing education, training and rehabilitation programmes, prisoners should be able to demonstrate their suitability for...  
...early release?**

Yes	5
No	6
Unsure	6

11 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*"The premise of early release is understood but not supported in terms of short-term prisoners. Early release of short-term prisoners undermines the reason for imprisonment in the first instance. Short-term prison sentences tend to be given to individuals who will not manage a community disposal. It does not seem appropriate that the short-term prison sentence would be shortened further."*

*"As this is used in other areas of the criminal justice system to measure compliance and influencing sentencing I am not opposed to this in principle I am just not sure how this would be measured and if its about completing course is this a measure of rehabilitation or doing things because you know it will have a positive impact on sentence length? Without proper measuring and processes in place I am not sure how effective this would be."*

*"[REDACTED] agrees that prisoners should be able to demonstrate their suitability for early release through a mix of good behaviour, completing education, training and rehabilitation programmes. However, we would support the Social Work Scotland position in their response to this consultation question, that a reform of the way a prisoner is assessed during their sentence is required, and comments made in relation to this."*

*"I think suitability for early release should be based on whether risk has been reduced. Good behaviour and completing programmes does not necessarily mean that risk has been reduced - for example, some individuals may engage in these programmes in a superficial manner. Also the programmes completed would have to be related to the risk factors underlying the individual's offending."*

*"Maybe programmes to some extent but having worked in prisons for many years I know that some very dangerous criminals behave very well in custody"*

*"The sentence is a consequence and penalty.  
The rehabilitation happens thereafter"*

*"Not all prisoners have the same motivation for undertaking activities to improve chance of early release. Playing the system is not inconceivable."*

*"in some cases perhaps but do not think this should become the norm"*

*"when in prison or similar, what else are they going to do but try and learn. That should not factor in their release."*

*"This depends on whether the work completed has impacted on the risk of harm or reoffending. Good behaviour in prison or attendance at education / programmes etc does not necessarily mean that the risk has been reduced."*

*"They commit a crime and must accept the consequences"*

**15b. Do you agree that through good behaviour, or completing education, training and rehabilitation programmes, prisoners should be able to demonstrate their suitability for...  
...the ability to complete their sentence in the community?**

Yes	7
No	7
Unsure	3

11 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*"Need to look at the reasons why a individual is reoffending or committed and offence and ensure that the rehabilitation programmes are person centred and they link into the community services whilst the individual is in prison."*

*"Risk must be taken into account. Being compliant with programmes should not be the driver for consideration of change to custodial sentence, progress made by the individual is more relevant but how do we measure that progress? Prison and the community are two different worlds. How someone with a previously chaotic lifestyle has coped in prison will not necessarily give an indication of how they will cope in the community on release. Where the punishment part of the sentence has been completed a community sentence would provide opportunity for testing within the community, risk assessment within the community and an opportunity to link the individual into relevant supports."*

*Clarity is required for the public regarding the punishment part of the sentence. This may help to influence public attitudes regarding changes to the justice system and the notion of soft justice."*

*"-It was queried if this would be dependent on length of sentence and if this, or other criteria, limited capacity would mean some individuals would be at a disadvantage."*

*-Risk to community needs to be at the forefront of decisions, it was noted behaviour in community and prison can differ.*

*-The after care for those leaving custody is important.*

*-Need to help communities feel safe and to understand the decisions taken. This would help with the transition back into the community.*

*- Agree that if suitable training and support and a willingness sentences could be completed in community but unless everyone has suitable accommodation/housing situation this would be difficult to ensure fairness."*

*"As above in the answer to 15a. In addition there would be concerns that completing tasks and tick box exercises could confuse the professional risk assessment via SPS/Social Work on suitability for release/community sentence."*

*"[REDACTED] agrees that prisoners should be able to demonstrate their suitability to complete their sentence in the community through a mix of good behaviour, completing education, training and rehabilitation programmes."*

*"See above answer - the reasons are the same."*

*"As above."*

*"As above"*

*"see 15a above"*

*"As above - this depends on whether the work completed has impacted on the risk of harm or reoffending."*

*"They commit a crime and must accept the consequences"*



**16. Do you have any comments on how you envisage such processes operating in the Scottish justice system? Who should be able to earn opportunities in this way? What risks do you see with either of these approaches, or what safeguards do you feel would need to be in place?**

9 respondents completed this question. Any identifiable information has been redacted. Please note, question 16 this question is an open question only.

*"Not applicable as we are not experts on this process."*

*"Those eligible should be people who have engaged in rehabilitation and addressed some of their criminogenic needs. We need to ensure, however, that it is not a universal right. A recommendation that an individual is eligible, as opposed to a set of criteria that an individual could try to skilfully address without addressing offending needs."*

*The management of transitions are key to success. What do transitions look like – prison to the community? Is there still a level of monitoring, level of support required? It would be beneficial if the prison service could provide a clear picture regarding the work undertaken within prison and details of the individual's transition from the community to the prison (did behaviour deteriorate whilst in custody). This would help support the transition back into the community to better understand the rehabilitation/reform. Is there a framework for SPS liaising with the community?*

*Clarification required from SPS regarding assess and how the assessment would be completed. Building into HDC/Integrated Case Management (ICM) process would be one option. Prison based social workers may not have the capacity to take on this work."*

*"- The person entering prison especially where there is a history of homelessness a prisoner needs a plan from the outset of the sentence as to where they are going to live on release, how they will obtain housing and sustain a tenancy. This could be achieved by more joint working with agencies out with the prison. There is a need for suitable accommodation that is jointly managed and funded to enable the reintegration to the community in a supported setting."*

*It should be a homeless prevention duty that prison service and other agencies are aware of a prisoners housing situation and work to flag this up and link into services in the community at the outset. Housing providers must become receptive to this information and work with prisons and other partners to find meaningful solutions."*

*"Covered in the answer to question 15a."*

*"See responses to question 15 a and b for risks - in my opinion, it should not be presumed that risk has been impacted because an individual has participated in programmes in prison and demonstrated good behaviour. This decision would have to be made based on evidence-based, individual risk assessment to determine whether the risk factors underlying offending have been addressed and risk of re-offending has reduced."*

*"No"*

*"Gives wrong message to offenders and potential offenders. If a sentence was given in a court and deemed appropriate for the crime committed it should be served in full. For many victims and their families there is no early release for them for their loss and pain."*

*"It seems to me as though this should remain something that can be considered but that it should not be automatic in any way. It should be risk dependent . It also needs to be considered the degree to which the stability and structure of custody has facilitated engagement /compliance and whether this is likely to be replicated in the community. For example many people with addictions issues may manage more successfully in custody but relapse once on the community."*

*"If you commit a crime you must accept the consequences."*

## 17. Which of the following options in relation to automatic early release for short term prisoners would you say you most prefer?

Automatic early release changes to earlier in the sentence, but the individual is initially subject to conditions and monitoring, until the half-way point	7
No change: automatic early release remains half-way through the sentence	6
Not Answered	4

11 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*"No preference however, as long as Housing/Homeless Services are involved in their release plans."*

*"No selection made above as we do not support any form of automatic early release. Further shortening of sentences on an automatic basis is also likely to also be unappealing to victims' groups and the public. We would support release earlier in the sentence by recommendation, with that recommendation from within the SPS."*

*We have some concern that more onus is going to be put on community-based workers without there being clarity regarding the roles and responsibilities of statutory and third sector. If people are being released on supervision where they are required to comply for a portion of their sentence, who will be responsible, who will have the authority to deal with non-compliance and how will that be dealt with, SPS or court? Difficult to answer when there is no process in place.*

*There is not enough information to agree or disagree. Would there be an assessment? The assessment would sit with the prison. Would it be prison based social work staff? Who would monitor in the community - Justice Social Work Service? If monitoring is via Third Sector what would that look like? What resources would be allocated?*

*Too many variables, too many unanswered issues, unclear who would be responsible."*

*"-Significant changes to the sentencing profile would require release planning, and resourcing for partners.  
-There were concerns that this may reduce opportunities for engagement in things suggested in question 15.  
-A question was raised around the need for automatic early release, suggested that proportionate sentencing would be more effective."*

*"I would agree with this as long as people are given the right support and structures to encourage compliance with the conditions and monitoring. It is important that any new process/system does not set people up to fail."*

*"We support the option for automatic early release to change to earlier in the sentence, but that the individual is initially subject to conditions and monitoring until the half-way point - as per the caveat contained within the Social Work Scotland response, that the prisoner is assessed as not posing any risk of serious harm to the public and that they are subject to robust conditions and monitoring. We also fully support the other comments from Social Work Scotland in relation to this question, particularly as to how this change could be perceived by victims (and also the wider community) and the potential impact of this on their wellbeing, and the potential resource implications for justice services / agencies. Consideration would also be given to how the judiciary would approach this in practice, and whether an earlier automatic release could lead to individuals being sentenced to lengthier periods in custody to circumvent this."*

*"None of the above - I don't agree with automatic early release. I think that early release should depend on whether the risk of re-offending has reduced, based on individual risk assessment."*

*"I don't understand who thinks it's a good idea to sentence prisoners to prison time and then release them. It just encourages people to offend. If you speak to short term prisoners they see prisons as a holiday camp."*

*Because a 12 week sentence is not a deterrent, it's an opportunity to get a bit healthier and fitter away from drugs and old associates!"*

*"They are already not serving their full sentence. It should not be watered down even further by politicians"*

*"Why give a sentence and then offer automatic early release at any stage."*

*"i reluctantly choose this option however i am not in favour of early release at all. What is the point of a court passing a sentence for X years when the accused knows that in reality it is only for half that."*

*"None of the above - I do not think we should have automatic early release. Release should be a risk informed process."*

**18. Currently long-term prisoners can be considered for release by the Parole Board for Scotland once they have completed half of their sentence. Which of the following options would you most prefer?**

Change to allow some long-term prisoners to be considered by the Parole Board earlier if they are assessed as low risk	3
Change to automatic consideration by the Parole Board once one third of the sentence is served for all long-term prisoners	3
No change: automatic consideration by Parole Board once half of the sentence is served for all long-term prisoners	7
Not Answered	4

12 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*"No preference however, as long as Housing/Homeless Services are involved in their release plans."*

*"Reducing the automatic release/consideration for release undermines the sentence allocated for the crime. We understand the drive to reduce prison populations but do not agree with releasing people involved in serious crimes earlier."*

*We discussed reference to "low risk" made in option one and queried, low risk of what? All offending is harmful to someone, in some way and the feeling of harm is personal to the individual.*

*If many of the other changes in the consultation are applied (greater focus on ensuring that only those who require remand or custodial sentence become part of the prison population) the argument against opportunities for earlier release increase."*

*"-Suggested that trial community time prior to release would be beneficial."*

*"Having worked with LTP's within social work I fell on balance that the current process works well and any perceived 'leniency' of such measures would undermine the experience of victims."*

*"We would support the change to automatic consideration by the Parole Board once one third of the sentence has been served for long term prisoners, but please see our response to Q17 above, which mirrors that of Social Work Scotland in relation to potential public and victim perceptions. We also fully support the comments and observations from Social Work Scotland in their consultation response to Q18."*

*"In principle, I agree that long-term prisoners should be considered by the parole board earlier if they are assessed as low risk - but there is an important caveat to this. I would like to know how it is proposed that risk would be assessed to determine whether it is low or not - the risk assessment this conclusion is based on should be evidence based (e.g. using an appropriate structured professional judgement tool rather than an actuarial risk assessment tool).*

*I think it should also be highlighted that this proposed change may lead to resource issues and result in lengthy time delays, causing difficulties in the system."*

*"If someone commits a crime why should they be released half way through their sentence? Most people can't access programmes so the parole board tend not to release them anyway. So having those extra hearings would be a waste of resources"*

*"As above"*

*"Would prefer no automatic consideration before sentence served."*

*"long-term prisoners must be presumed to be serious offenders therefore i am not in favour of any 'automatic' consideration"*

*"None of the above -this would raise questions for me about how the risk would be assessed and the degree to which community manageability contributed to this. ."*

*"I don't agree with any of the above full sentence must be served"*

**19. Do you agree that the Scottish Government should ban all prison releases on a Friday (or the day before a public holiday) so people leaving prison have greater opportunity to access support?**

Yes	12
No	3
Unsure	2

11 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*"This has always been an issue for housing/homeless and support services as it is difficult to integrate a customer back into the community when their release date is a Friday. Sometimes this can result in customer reoffending and being back in custody by the Monday, if they failed to turn up for appointments on the Friday with homeless/housing or support providers."*

*"Release on a Friday or public holiday limits immediate access to community support/community response."*

*"-Complete agreement, it was suggested that Monday release would allow for more time.*

*-Also noted that a minimum window of 48 hours following a parole hearing before release. It was highlighted that this is still a challenge for non-statutory support services.*

*- Where possible a release plan including appointments with support agencies and services including housing needs to be in place. If it is feasible need to have named accommodation even if this is B&B.*

*-Reintroduction of throughcare/transport and prison support to initial appointments*

*-Location of services in one hub type environment so that all services are available in same building."*

*"I agree because one of the greatest risks of people returning to custody is the inability to access services on the day of release and being unnecessarily exposed to risk that support services, which may be closed over a weekend, can mitigate against.*

*However in individual cases the risk may be low and the requirement for support services or a mid week release may not exist so it may be that guidance to avoid a Friday release would be sufficient if the risk suggested this should be in place."*

*"We agree that prison releases on a Friday, or the day before a public holiday, should be banned, to enable people leaving custody to have greater opportunities to access support. We know that this can be problematic, particularly in a large, rural area such as Aberdeenshire, where weekend public transport arrangements can differ from during the week, and when many services are either closed or operating reduced hours. This has been even more challenging during the pandemic. As such, we fully support the comments provided from Social Work Scotland in the response to this question."*

*"Communication between agencies involved to support the individual's transition to the community would be key (e.g. so services are aware of release date in advance and can plan for this)"*

*"It's not helpful to release people on a Friday because they might struggle to access help"*

*"Nonsense"*

*"If there is doubt that they need support that would be inaccessible it would surely be unsafe to release"*

*"Release on a Friday / day before PH impacts significantly on the supports a person has access to . However, with improved release planning it may be possible to ensure that the required supports are in place regardless of the day the person is released."*

*"Just ensure the support is in place,"*

**20a. Prisoners must actively apply for Home Detention Curfew (HDC). Should HDC be considered automatically for some categories of prisoners instead?**

Yes	3
No	6
Unsure	7
Not answered	1

7 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*“People actively applying for HDC arguably discriminates against individuals who are not able to read or write, or who are not as assertive. We believe HDC should be considered for all before concluding if HDC is the right way to manage an individual’s sentence.”*

*“If the current system and requirements of HDC are being adequately presented and discussed with those eligible it would seem appropriate that they would decide if this should be considered. However, there may be some additional measures needed to make sure no one is not given the option or the right information about the requirements of and HDC.”*

*“[REDACTED] support this proposal and the reference from Social Work Scotland to a potential 'opt out' system. We also support Social Work Scotland's observations around the need for support alongside electronic monitoring as part of Home Detention Curfew, and the need for good quality risk and need assessments, both of the individual and the circumstances of any family members already residing at the proposed HDC address.”*

*“In principle, I think it seems reasonable that HDC could be considered automatically. However, I would like to know why so few prisoners apply for HDC - is it an issue with the difficulty of the process or is it that remaining in custody is preferable to them? I also think safeguards would have to be built into this process to ensure that risk is being appropriately assessed.*

*I'm unsure as to which categories of prisoners should be considered automatically.”*

*“They need to take on responsibility”*

*“Possibly - this will depend on what categories are to be included and how this decision about which categories should or should not be included. Further, it seems reasonable that it may be appropriate for this to be considered but again this should not be automatic.”*

*“Would need to ensure that members of society are safe before considering this approach.”*

**20b. The maximum length of time allowed on Home Detention Curfew (HDC) is 6 months (or one quarter of the sentence). Do you think this should...**

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Be made longer	7
Not change	9
Not answered	1

5 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*"The status quo is proportionate and gives sufficient time for community-based assessment to be completed."*

*"As long as support is provided alongside it the HDC can be an effective way to reintegrate people back into communities and this can be longer than 6 months and should be reflected in the provision of HDC."*

*"We would support Social Work Scotland's proposal around increasing the maximum length of time allowed on Home Detention Curfew to one third."*

*"I'm unsure about the rationale for it being changed - I don't think this has been fully explained."*

*"No rationale has been shared as to why changing this would be a reasonable course of action."*



**20c. The minimum sentence for which Home Detention Curfew (HDC) can be considered is 3 months. Should this limitation be removed?**

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Yes	3
No	7
Unsure	6
Not answered	1

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3 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*“If the minimum sentence is removed the HDC almost becomes a Community Payback Order, which would have been considered at the point of sentencing.*

*With Presumption Against Short-term Sentences, we would not expect to see individuals receiving three-month sentences.”*

*“I’m unsure what the rationale is for the minimum sentence being 3 months and therefore, unsure as to why it would be changed.”*

*“No rationale has been shared as to why changing this would be a reasonable course of action.”*

**20d. There is currently a list of exclusions that make someone ineligible for Home Detention Curfew. Should this list be reviewed with the intention of expanding eligibility for HDC?**

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Yes	4
No	7
Unsure	5
Not answered	1

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5 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*“We recommend adding Domestic Violence Offenders to the ineligible list as opposed to expanding eligibility for HDC.”*

*“There is a narrowness to the eligibility of the HDC that should be reviewed as long as appropriate risk assessments are being carried out and the criteria does not become too wide that exclusions that were put in place for good reasons are removed which increases the risk of HDC's becoming less effective or increasing risk to those in the community.”*

*“We support the proposal from Social Work Scotland around adding a risk of serious harm consideration, should this list be expanded.”*

*“I would need to see the list of exclusions to make a judgement on this.”*

*“Not possible to say without further information on what the list of exclusions is.”*

**20e. Currently, the Scottish Prison Service make decisions to release prisoners on Home Detention Curfew (HDC) following a risk assessment and engagement with community partners. Do you think this responsibility should remain with SPS?**

Yes	7
No	7
Unsure	2
Not answered	1

9 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*"This needs to remain with SPS as there needs to be a lead to get the relevant partners around the table. Continue to keep all partners informed prior to making a decision."*

*"We recommend this remain with SPS, but we believe engagement with community partners could be better. Perth and Kinross have a framework for ensuring all relevant information is sought. There is appropriate information sharing between Safer Communities Service and Justice Social Work Service, allowing robust community assessments to be completed by the Justice Social Work Service. It would be helpful to have more of an opportunity to comment within the HDC documentation regarding suitability. Justice Social Work are not notified that the HDC has been granted until the prisoner is released currently. It would be helpful to receive this information when the decision is made, in advance of release."*

*"A more robust assessment process should be undertaken by the parole board taking into account the views of SPS but also community partners."*

*"We support Social Work Scotland's comments around the consideration of risk assessments and who should conduct these, should the eligibility criteria for Home Detention Curfew be expanded, and the associated resource implications of this."*

*"When an individual is not deemed a risk in prison, this does not necessarily translate to the community (e.g. there are potentially more access to de-stabilisers such as negative peer influence, substances etc.). Also there is a risk that the resources SPS determine are required to manage the risk may not be available. I think this should be a joint decision between SPS and services that would be required to manage the risk in the community."*

*"There should be more partnership working though, for example with the Police"*

*"There seems to be problems with offending while on HDC under the present system, changing responsibility may make this problem worse"*

*"I think this should be joint decision making process with partners. I think it also needs to consider the method by which this risk will be assessed. Further community partners are more aware of what resources / systems are in place to manage the HDC."*

*"Social work, victim groups, victim should be involved in the decision."*

**20f. Do you think decisions on whether to release prisoners on Home Detention Curfew (or similar) should be taken by the Parole Board for Scotland in the future - even for those prisoners serving less than 4 years?**

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Yes	7
No	5
Unsure	3
Not answered	2

---

7 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*"Cannot comment as unsure what the impact on the Parole Board would be if this was implemented."*

*"As per above."*

*"As above."*

*"We support the view of Social Work Scotland in response to this consultation question, that the Parole Board for Scotland should be responsible for the decision to release long-term prisoners on Home Detention Curfew, and that the Scottish Prison Service should remain responsible for decisions around short-term prisoners."*

*"This may provide a solution to the above problem to a degree - however this would put pressures on resources."*

*"Whoever makes the decision should also responsible and accountable if the prisoner breaches conditions or reoffends."*

*"I think this would provide a safeguard in relation to ensuring that community agencies can provide what is required to make HDT a reasonable alternative to custody."*

**20g. Do you think decisions about the length of time an individual would serve in the community at the end of their custodial sentence should instead be set by the court at time of sentencing?**

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Yes	4
No	10
Unsure	2
Not answered	1

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5 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*“No, on the basis we support responsibility remaining with the SPS. We believe this would be impractical.”*

*“[REDACTED] agrees with the position of Social Work Scotland, as set out in their consultation response to this question, that decisions about the length of time an individual should serve in the community at the end of their custodial sentence should not be taken by a Court. This should instead be informed by risk and needs assessments taking into account information and evidence as to the progress the individual has made during their time in prison.”*

*“This decision should be based on whether the factors underlying offending have been addressed and risk has been reduced - it is not possible to determine this at the time of sentencing.”*

*“They have more information on the crime committed at the time, not the subsequent behaviour of the offender. Victim protection should always be the priority.”*

*“This decision should be risk led and informed by the persons behaviour during the custodial sentence.”*

**21. To what extent do you agree or disagree that the Scottish Government should consider whether information on individuals being released from custody can be shared with third sector victim support organisations, for example, to enable them to provide proactive support to victims and carry out safety planning?**

Strongly agree	10
Somewhat agree	7
Somewhat disagree	0
Strongly disagree	0

7 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*“Agree that information should be shared that would ensure the victim was kept safe. However, the amount details of the information would have to be minimal to avoid potential repercussion towards the accused.”*

*“We recommend a partnership approach as opposed to delegating responsibilities to the third sector. A partnership approach would allow oversight and the monitoring of responsibilities.”*

*The inclusion of third sector victim organisations provides the opportunity to better support victims at the right time. We recognise that some people do not want to engage/be involved with statutory organisations. The third sector provides an alternative engagement opportunity.”*

*“-Victim needs to be taken into account, however there were concerns around unintended consequences of this.”*

*-Noted the differences in information shared between statutory and third sector organisations.*

*-MAPP and voluntary throughcare suggested as examples where proportionate sharing can work effectively.”*

*“In principle I would agree that this is good idea for safety planning however the risk of information being inadvertently shared with the press or those outside the victims family presents a real risk to community integration a safe monitoring of those in the community. As long as robust processes are in place and there is recorded justification for sharing information appropriately.”*

*“We fully support this proposal and echo the comments of Social Work Scotland in their response to this consultation question, that victim support agencies should be able to receive information about individuals being released from custody, to enable them to effectively support victims of crime. Locally, victim support agencies have highlighted the challenges that they have experienced in obtaining referrals to their services, due to changes in data protection legislation, and we would wish to see these issues addressed.”*

*“I think this would be appropriate in cases where third sector victim support organisations are actively involved in supporting the victim, if this information would help with safety planning. I think whether this would be appropriate or not also depends on the type of case (e.g. domestic violence/stalking cases, it may be appropriate but in a case where a victim has been mugged, it may be less appropriate). There would have to be guidance around in which circumstances it would be appropriate to share this information. I think there would also have to be guidance around which third sector organisations can have access to this information and what they do with this information.”*

*“Information sharing is a significant challenge at present within this field even when there is a legal basis for it to be shared.”*

*In this case it would need to be done on a case by case basis as it would not be appropriate in all cases eg thefts but would very very helpful especially in cases of domestic violence or stalking. There would also need to be very clear guidance on what could / couldn't be shared and for what purpose.*

*Perhaps revision to the existing VNS and how that operates currently would be useful.”*

**22. In addition to information on individuals being released, to what extent do you agree or disagree that victims and victim support organisations should be able to access further information?**

Strongly agree	7
Somewhat agree	4
Somewhat disagree	4
Strongly disagree	0
Not answered	2

7 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*“Agree that information should be shared that would ensure the victim was kept safe. However, the amount details of the information would have to be minimal to avoid potential repercussion towards the accused.”*

*“We are unable to provide a definitive answer to the above question. The consultation provides very brief detail regarding the purpose of victims and victim organisations being able to access further information. More information is required from victim organisations regarding the “further information” that would be useful and what they would do with that information, along with details re: who they might potentially want to share the information with.”*

*“As above there is a risk from wide access to information and this should only be shared when appropriate and necessary. I would consider that basic knowledge that keeps victims safe and able to make decisions on their own safety is sufficient. Any additional risk and information should be managed by CJ SW and the police.”*

*“We strongly agree that victims and victim support organisations should be able to access further information, but agree with the Social Work Scotland submission in response to this consultation, that any information sharing would need to be carefully managed, and should be proportionate and only used for the intended, specific purpose.”*

*“I think that if the services supporting the offender have a robust management plan in place that includes victim safety planning, then this information does not need to be shared. I think sharing information on for example, where an offender has been released to, could create other problems (e.g. vigilante justice).”*

*“The sentence on victims and their families can be lifelong and they should be offered as much support as possible.”*

*“If the management plan around the perpetrator is appropriate and working as it should then there should be no need for other information to be shared with organisations supporting victims.”*

### 23. Which of the following best reflects your view on public service's engagement with pre-release planning for prisoners?

Existing duties are not sufficient; public services should have a specific duty to engage with pre-release planning	8
Existing duties on public services to give all people access to essential services are sufficient to meet prison leavers' needs	8
Not answered	1

6 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*"Agree that all public services should have a specific duty to engage to ensure that the pre release plan was successful and the customer was successfully reintegrated into the community. This would also limit duplication of work across services which is a saving to the public purse string."*

*"If it becomes a duty that will bring the additional funding / resources required to carry out that duty."*

*We recommend a partnership approach – duty placed on the Partnership and not an individual service. Clarity regarding roles and responsibilities would be helpful."*

*"-Public services need to have a specific duty to be involved in pre-release planning. From a housing perspective suitable accommodation is in short supply in many areas and housing providers and agencies require support and resources to ensure safe and suitable housing solutions."*

*"[REDACTED] support the proposal that public services should have a specific duty to engage with pre-release planning. We note the Social Work Scotland response to this consultation question and would agree that while local community justice partnerships are now well established and are working well, there is more that could be done to improve engagement from some public services. The 'duty to cooperate' within the Community Justice (Scotland) Act 2016 has helped to support local planning arrangements, however a duty to engage may take this one step further in terms of involvement and support for pre-release planning. We support the Social Work Scotland position that more could be done to encourage other partners to take responsibility for ensuring that appropriate services and supports are in place for people leaving custody, and that this responsibility should not always rest with Justice Social Work."*

*"It should be noted that lack of resources is a huge problem in this area. Other issues include for example, prisoners being unable to register with a GP in advance of their release - which stops them from being referred into other NHS services that may be required for support on release (e.g. addictions, mental health). However, even if prisoners could register with a GP, some of these services will have considerable waiting lists etc. Communication is key as there is no resilience in the current system to respond to unexpected changes (e.g. release date being brought forward)."*

*"Resources do not allow this to operate as services would like . Most services are not in a position to be able to engage with the planning or to pick up referrals until individuals are in the community. Often by then it is too late and the opportunity to engage the person has been missed."*

*Further - the change which meant prisoners can no longer register for GP's while in custody has had a significant impact on throughcare access to services especially mental health provision."*



## 24. If public services had an additional duty to engage in pre-release planning for prisoners, which services should that duty cover?

8 respondents completed this question. Any identifiable information has been redacted. Please note, question 24 is an open question only.

*“Addiction Services  
Job Centre  
NHS  
Homeless Services  
Housing  
Mental Health Team  
Housing Support Services  
Employability Services  
Housing First”*

*“We recommend the Multi Agency Public Protection Arrangement (MAPPA) partners plus Department of Work and Pensions (DWP). A working group would be required to agree the roles and responsibilities of the partners.”*

*“- Housing/Homelessness – consider accommodation needs, offer range of solutions, housing options advice, skills training  
-Mental Health Services – offer opportunity to seek support for MH even if not registered with a GP, to obtain MH support even with addiction issues  
-Addiction Services – allow seamless move back into community services, know the person, being released, proactive in encouraging people to engage  
-Employability Services – meaningful activity would resolve some of the main barriers to reintegration.”*

*“We would suggest that this should include the Scottish Prison Service, NHS, Health and Social Care Partnerships (including Mental Health Services, Substance Misuse Services, and Criminal Justice Social Work Services), Children's Services Social Work, Housing Services, and ideally some way of incorporating Third Sector Services (including National PSPs).”*

*“GPs - prisoners should be allowed to register with a GP in advance of release - even if this is temporary until they have an address  
MH services, addictions etc. - In reach work to prisons to increase chances of engagement and develop relationships prior to coming into the community would be ideal (however, it must be noted that it is unlikely services would have the resources to do this currently)  
Housing - processes of applying for housing/sourcing accommodation for release could be started earlier to determine where the person is likely to be living so support can be organised in that area  
Third sector organisations - e.g. supported employment - make links to organisations in the community in advance of release so placements etc. are set up*

*Communication between all of these services mentioned would be essential.”*

*“They already have ample opportunities”*

*“GP's, Mental Health Services , Community Addictions, Housing. Also third sector eg APEX / SACRO.*

*However, all of these agencies need to be resourced to allow them to engage with people while they are still in custody doing so will maximise the chance of them engaging.”*

*“N/A”*

**25. To what extent do you agree or disagree that support should be available to enable prisoners released direct from court to access local support services in their community?**

Strongly agree	8
Somewhat agree	5
Somewhat disagree	1
Strongly disagree	2
Not answered	1

8 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*"Failure to engage in this can result in customers rough sleeping as there is no plan in place."*

*"We strongly agree in principle. Consideration should be given to the risk posed by the individual from the point of charge, along with the supports required to prevent reoffending. The approach should be integrated. However, how this would be done is complicated and would require an in-depth review of how we organise services locally."*

*"-Up to date and relevant information to enable someone to obtain the services they need quickly*

*Pharmacy*

*Housing*

*Job Centre/Benefits Advice*

*Addiction Services*

*Although these agencies couldn't necessarily be present at the court signposting and information should be available and services aware if potential court dates and releases in an attempt to ensure appointments available etc."*

*"I would agree this is vital for early intervention and prevention approaches. This early access to support should be a statutory responsibility and delegated to 3rd sector organisations who can provide support service feed into future bail/good behaviour reports."*

*"We strongly agree that support should be available to enable prisoners released direct from Court to access local support services in their community. In [REDACTED] we are proactive in offering voluntary throughcare services to all those leaving custody, however there remains a challenge around how we access those who are released direct from Court on an unplanned basis. On this basis, we agree with the proposal and support the response from Social Work Scotland in relation to this consultation question."*

*"Support direct from court should be provided on a needs led basis. There should be links between services in the area (including those previously mentioned) and courts, so people can be signposted towards the support that they need and make it easier for them to access this. There would have to be adequate resources for services to be responsive to the needs of individuals being released from court, and I think it would be difficult for services to respond in this way in the current system."*

*"Already able to access"*

*"Depends what the person needs but likely to be the same services as q24. May include someone to signpost the person to these services . Also the capacity within these services to be responsive to people when they need help is essential."*

**26. To what extent do you agree or disagree that revised minimum standards for throughcare should incorporate a wider range of services?**

Strongly agree	8
Somewhat agree	5
Somewhat disagree	0
Strongly disagree	2
Not answered	2

7 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*"All estates across Scotland need to be proactive with this particularly since the introduction of the SHORE standards. There appears to be no consistency in relation to the service you receive from one prison estate to the next."*

*"We believe the revision of throughcare standards is long overdue. We recommend that minimum standards should be Partnership standards and should not sit with one agency."*

*"I think the standards should be reviewed and consideration should be given to a wider range of services. There should be particular focus on the availability, consistency and delivery of voluntary throughcare which if available and delivered well can have a significant positive effect on people remaining in the community and not returning to custody."*

*"We agree with the Social Work Scotland position that the minimum standards for throughcare should be revised and expanded to encompass a broader range of services."*

*"The current standards have too narrow a focus - throughcare should include social work, NHS and third sector organisations and should be led by the needs of the individual. Additional resources would be required to allow this to happen."*

*"Room there for improvement"*

*"I think the current arrangements have too narrow a focus and that many other services should be included as required eg third sector, NHS, Housing etc. Services will require to be adequately resourced."*

**27. To what extent do you agree or disagree that revised minimum standards for throughcare should differentiate between remand, short-term and long-term prisoners?**

Strongly agree	4
Somewhat agree	4
Somewhat disagree	3
Strongly disagree	4
Not answered	2

6 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*“From a homeless / housing perspective these should be the same to enable pre planning for the customer.”*

*“We believe that differentiating would overly complicate matters. A principle-based approach where people are treated well, and the public are kept safe. These are the principles; these are the standards. Risk and need should continue to be the focus, the approach should be person centred. We will require clarity re: if remand and short-term are going to be included and, if so, confirmation of the responsible agency.”*

*“Agree for clarity on specific options for those on remand and the provision of service that support community re-entry.”*

*“We agree with the proposal that revised minimum standards for throughcare should differentiate between remand, short-term and long-term prisoners and support the Social Work Scotland submission in relation to this consultation question.”*

*“I don't believe the standards should need to differentiate between prisoners in this way - remand, short term and long term prisoners will likely have different needs to each other anyway. Throughcare should be led by need and the expectations on services should be the same regardless of time in custody.”*

*“I do not think the standards should differentiate - this should be led by the needs of the individual*

*if it is needs led there should be no reason to differentiate this - it should be case by case and will be dependent on what the individual . Services should be available to all in the same way to access what is needed.”*

**28. To what extent do you agree or disagree that revised minimum standards for throughcare should be statutory?**

Strongly agree	5
Somewhat agree	5
Somewhat disagree	1
Strongly disagree	4
Not answered	2

5 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*“All service need to work together and be aware of what an individual customer is receiving throughcare support for.”*

*“We do not believe the codifying of standards would be helpful.”*

*“We strongly agree that the revised minimum standards for throughcare should be statutory and support the Social Work Scotland submission in response to this consultation question, particularly the reference to the need to ensure a change in culture and practice which will be necessary to support the application of minimum standards.”*

*“I think standards being statutory would ensure consistently - however, the services would have to be properly resourced so they are able to achieve the standards.”*

*“However adequate resourcing is required.”*

**29. Do you think other changes should be made to the way throughcare support is provided to people leaving remand/short-term/long-term prison sentences?**

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Yes	4
No	6
Unsure	4
Not answered	3

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5 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*“There needs to be more integrated working with partners the moment a customer enters custody.”*

*“As per response to question 27 – we believe differentiating would overly complicate matters. We need a principle-based approach where people are treated well, and the public are kept safe. These are the principles; these are the standards. Risk and need should continue to be the focus, the approach should be person centred. We will require clarity re: if remand and short-term are going to be included and, if so, confirmation of the responsible agency.”*

*“Yes as in the answer to question 26 - voluntary throughcare provision and a consideration of community reintegration support should be considered.”*

*“We agree with the Social Work Scotland submission in response to this consultation question, in relation to the proposed changes to the provision of throughcare support to people leaving remand and short term prison sentences. We support the concept of a consistent community integration planning process for all remand and short-term prisoners leaving custody, with an identified lead professional with responsibility for ensuring that the identified supports and services are in place for people on release.”*

*“If the things I have mentioned in the previous few questions were put into place, then it may be that no further changes are required. However, these changes would have to put in place to identify any gaps and whether other support would be required.”*

### 30. Should other support mechanisms be introduced/formalised to better enable reintegration of those leaving custody?

Yes	8
No	3
Unsure	4
Not answered	2

7 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*"This needs to be look at as a National throughcare working group with all estates so that you can look at individual customers and what partners need to be accessed to provide the appropriate throughcare support."*

*"As per response to question 25 - we strongly agree in principle. Consideration should be given to the risk posed by the individual from the point of charge, along with the supports required to prevent reoffending. The approach should be integrated. However, how this would be done is complicated and would require an in-depth review of how we organise services locally."*

*"Not sure how these options might be formalised? Who would deliver them and how would they be funded if they are not a statutory requirement of CJ Social Work?"*

*"Please see answer to question 29 above."*

*"Again, I find it difficult to answer this - I think proposed changes would have to be put in place first and then any gaps can be identified."*

*"Compulsory work schemes"*

*"It is not possible to answer this until the above changes are implemented. Its only then we would know whether other support is required ."*

### 31. To what extent do you agree or disagree with the introduction of an executive power of release, for use in exceptional circumstances?

Strongly agree	2
Somewhat agree	3
Somewhat disagree	3
Strongly disagree	9

7 respondents also responded to the open part of this question. Any identifiable information has been redacted.

*“Parliamentary decision and not an executive decision. Particularly as some existing estates are seriously overcrowded.”*

*“We do not support the premise of an introduction of executive powers to release prisoners.”*

*“-Questions raised around what the purpose of this would be, when temporary legislations eg: for covid-19 could be used, and what the appropriate checks and balances would be.”*

*“We agree with the Social Work Scotland submission in response to this consultation question, that the introduction of an executive power of release is not critical at this time, given the exceptional circumstances in which it would be used (such as the Coronavirus pandemic). The consultation refers to ‘exceptional circumstances which put the security and good order of a prison or prisons at risk (such as another public health emergency, or catastrophic damage to a prison due to fire or flooding, resulting in it being unsafe for habitation or overcrowding)’. With regard to the reference to ‘overcrowding’, given the ever increasing prison population, we would be concerned that the executive power of release may have the potential to be used for population management - which does nothing to address the ongoing imbalance of use of custodial versus community-based disposals.”*

*“I would like examples of what would be deemed “exceptional circumstances”. There is already provision to allow this if needs be as it has been used during the pandemic - therefore I question whether we need anything beyond this. I would be concerned that an executive power of release would be used inappropriately, for example, to reduce pressures on the system (eg. in the case of overcrowding).”*

*“How would we define “exceptional” circumstances ...this could be used in a range of ways that may not be appropriate. It would be wrong for it to be used to, for example, address overcrowding . Further the power already exists (eg as was apparent by the release of prisoners during covid) therefore an additional power is not required.”*

*“Scottish ministers should not be involved - it is not their job.”*



**32. If an executive power of prisoner release was introduced for use in exceptional circumstances, what circumstances do you consider that would cover?**

7 respondents completed this question. Any identifiable information has been redacted. Please note, this question is an open question only.

*"Not applicable as this decision should remain as a parliamentary decision and not an executive decision."*

*"As per response to 31 - We do not support the premise of an introduction of executive powers to release prisoners."*

*If an executive power of prisoner release was to be introduced clarity regarding necessity, justification and proportionality would be beneficial alongside a clear expectation that all alternatives are explored in the first instance."*

*"We support the Social Work Scotland submission in relation to this consultation question."*

*"I think the circumstances would have to be so exceptional that it would be difficult to imagine. I do not believe overcrowding should be deemed an exceptional circumstance."*

*"Imminent death"*

*"See above - I do not think this is appropriate ."*

*Its likely to be events that are unprecedented and cannot therefore be predicted.,"*

*"I do not agree with this proposal"*

Below is a non-standard response received to the Bail and Release from Custody public consultation where we were not given permission to publish by the respondent. Any identifiable information has been redacted under section 38 of FOI(S)A (2002), exemption from publishing personal information.

## **Bail and Release from Custody Consultation**

### **Response from [REDACTED]**

You may be aware that we have engaged extensively with your colleagues in Scottish Government over the past few years on a range of issues within the criminal and civil justice systems with particular focus on children and young people deprived of their liberty in situations of detention across several settings, including in the prison estate.

Having also engaged with other public bodies, the third sector, civil society and children and young people and their families, we have expressed informed calls and recommendations to Scottish Government for reforms and amendments to criminal law and procedure, to ensure that all Scots law and policy is compatible with international, human rights law and standards. This is now an imperative in light of the welcomed incorporation bill for the UNCRC and the wider commitment to human rights in Scotland.

Therefore, on behalf of [REDACTED], I can confirm that for the purposes of Scottish Government's consultation and proposed legislation to and legislative changes regarding Bail and Release **we concur with the collective response of the membership of the NPM Scottish Sub-Group.**

In addition, I have briefly outlined some observations and comments below that we would ask you consider in preparation for any proposed amendments under Scots law, and we welcome the opportunity to discuss the [REDACTED] concerns in more detail in the next few weeks. The [REDACTED] position has been well documented, and [REDACTED] has given evidence in the Justice Committee outlining [REDACTED] overarching concern that our law policies and practices fall short of the required standards to ensure compatibility with the UNCRC.

- Firstly, we would urge you to undertake a Child Rights Impact Assessment (CRIA) if you have not already done so and consider the substantial evidence of the disproportionate and adverse impacts on the rights of children who are prosecuted in the adult criminal justice system and deprived of their liberty for any reason.
- Across all legislation and policy, the definition of a child must be amended to include all people under the age of 18.
- No child should be deprived of their liberty in a YOI under any circumstances. Therefore no child should be remanded pre-trial and against a presumption of innocence.
- In light of Scotland's commitment to incorporate the UNCRC as well as other human rights treaties into Scots law, we trust that an assessment of compatibility with international human rights law and standards will inform any legislative proposals. Fundamental to any decisions in the criminal justice system, from police to the Crown to social workers to the Courts, the child's best interests and views must be taken into account and given due weight. Compliance with a child-friendly justice system means that all children of all ages must have their rights protected through the judicial process.
- For children and young people, we urge you to consider the new Scottish Sentencing Guidelines as informed by the research study on brain development and the impact of childhood trauma on human behaviour. All bail or sentencing decisions for under 18s must take account of the child's views under article 12 UNCRC and their best interest under article 3. Any additional factors such as protected characteristics, whether the child has additional support for learning needs, or is disabled, whether the child's parents and family are able to support them and whether they have experienced adverse childhood experiences or trauma must all be taken into account against a presumption that depriving a child of their liberty inherently inhibits their wellbeing health and development.

- [REDACTED] has repeatedly called for the necessary amendments to Scots law policy and practice to prevent any child under the age of 18 being prosecuted in the adult criminal justice system or deprived of their liberty in a YOI, and for this to be done on an emergency basis through the Coronavirus legislation. It is of significant concern that children, particularly those on remand were excluded from particular consideration, under the emergency provisions, and against a grave warning to all States that they should release children in detention who were most at risk of long term damaging consequences, let alone risk of contagion including risk to life. We would urge Scottish Government again to urgently take the necessary practical steps required for these vital amendments to be made.
- The impact of detention and deprivation of liberty on the lives, wellbeing, mental health, and rights is well documented across the world, including in the 2019, [UN Global Study on Children Deprived of their liberty, Nowac M.](#), and trust you will refer to the international caselaw, treaties, Concluding Observations, General Comments- particularly UN Committee on the Rights of the Child General Comment 24 and Council of Europe Guidelines, all governing the detention, particularly pre-trial detention, and the human rights of children young people.
- We are happy to engage more fully on this and in the meantime refer you to [REDACTED] legal research paper [Older children in conflict with the law in Scotland: A legal analysis of Scots law compliance with the United Nations Convention on the Rights of the Child, for children aged 16 and 17 years](#) and the findings of the [HMIPS Pre-Inspection Health and Wellbeing Survey](#) [REDACTED] last year and [REDACTED].
- As regards the policy incentives of the Promise , GIRFEC, Whole Systems Approach, Early and Effective Intervention and Prevention, and Child Protection, we would urge consistent and monitored implementation to ensure a human rights based approach as outlined in the Scottish Government's Justice for children and young people - a rights-respecting approach: vision and priorities.(2021) This requires that ALL decisions (from initial police engagement, to charge, to prosecution or referral to the Principal Reporter, and to a Children's Hearing or to Court, to decisions on bail, remand, release, restrictions on movement or liberty, community based alternatives to custody, to trial and sentencing, including detention in custody,) all require careful consideration of the impact on the child's rights, their views and their best interests with a presumption of diversion away from the adult criminal justice system.
- The impact on and best interests of any child likely to be adversely affected in exercising the child's rights to family life, by parental or sibling imprisonment, must also be taken into account in decisions on bail or release.
- [REDACTED] has expressed the view that the pre-trial detention of children in YOI contravenes the requirements of the UNCRC and is incompatible with children's human rights. We share the concerns raised on the disproportionate percentage of children detained on remand, where there is no evidence of robust risk assessments or specifically assessments of wellbeing and need, including to fulfil their rights to additional support for learning in education, and where public authorities are not fulfilling their statutory duties to children in need. Similarly, where care experienced children and young people are prosecuted in the adult criminal justice system there is a significant gap in their rights being realised and duties of all public authorities as Corporate Parents to all who are under 26. We would therefore urge greater alignment of the law and policies across all Children's and Young People's Services for planning, rehabilitation and recovery supports and services to be put in place for all transitions.
- [REDACTED] has also raised concerns about the conditions and regime within YOI for children and young people especially when strip searched, restrained, including pain-inducing restraint, punished, refused contact with family, with little education or purposeful activities, play or leisure and association as well as subjected to solitary confinement for large periods of their days and often at least 22 hours confined to cells, thus contravening international norms and standards under the UN Convention against Torture and the ECHR and UNCRC. We would refer you to the legal briefing by Dr Kasey McCall-Smith.
- A further area which does not appear to have been considered in any detail is the number of foreign nationals including children who are probably victims of trafficking, and exploitation and who have not been afforded protections in line with the Non- Punishment principle nor indeed, protections under Scotland's Child and adult protection systems and statutory equality and welfare duties.