

# **Bail and Release from Custody (Scotland) Bill**

## **Data Protection Impact Assessment**

**June 2022**

## Data Protection Impact Assessment

### Bail and Release from Custody Bill

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Version date: 09/06/2022

Review date:

Review Date	Details of update	Completion Date	Approval date
Stage 2 (approx. Apr 23)	DPIA will be reviewed to reflect any amendments		
Stage 3 (approx. Jun 23)	DPIA will be reviewed to reflect any amendments		
Royal Assent	DPIA will be reviewed to reflect any amendments		

This Data Protection Impact Assessment (DPIA) works in conjunction with the [Article 36\(4\) ICO](#) consultation form submitted in advance of this, as the proposal requires consultation with the Information Commissioner's Office (ICO).

This DPIA is undertaken in compliance with UK General Data Protection Regulation (UKGDPR) Article 35(10).

This is an iterative impact assessment, which we expect to amend as the Bill makes its way through Parliament.

## 1. Contact and schedule information

1.1	SG department	Justice
1.2	Contact email	<a href="mailto:futureofcustody@gov.scot">futureofcustody@gov.scot</a>
1.3	Data protection support email Data protection officer	<a href="mailto:dpa@gov.scot">dpa@gov.scot</a> <a href="mailto:dataprotectionofficer@gov.scot">dataprotectionofficer@gov.scot</a> <a href="mailto:stuart.gardner@gov.scot">stuart.gardner@gov.scot</a>
1.4	Is your proposal primary legislation, secondary legislation or other form of statutory measure?	Primary
1.5	What stage is the legislative process at? Please indicate any relevant timescales and deadlines.	<p>The Bill is due to be introduced in the Scottish Parliament on 08 June 2022.</p> <p>This DPIA is designed to analyse, identify and minimise the data protection risks of the Bill ahead of introduction.</p> <p>The DPIA, and other impact assessments, will be reviewed and revised in line with each stage of the passage of the Bill to reflect any amendments as well as stakeholder feedback.</p>

## 2. Introductory information

	<b>Questions</b>	<b>Comments</b>
2.1	Summary of proposal	<p>The Bill introduces a number of reforms designed to deliver on the Scottish Government’s commitment to refocus how imprisonment is used. They are intended to ensure that, as much as possible, the use of custody for remand is a last resort for the court when a risk of serious harm arises. The Bill is also intended to give greater focus to the rehabilitation and reintegration of individuals leaving prison custody. The Bill is underpinned by a commitment to public safety and the protection of victims, and is intended to support a reduction in future risk of reoffending, fewer victims and improved outcomes for individuals and their families.</p> <p><b>Bail Law</b></p> <p>For those accused of criminal offences, the Bill refocuses the decision-making framework so that remanding a person in custody is reserved for those who post a risk to public safety (including victim safety) or for when it is necessary to prevent a significant risk of prejudice to the interests of justice in a given case. All bail decisions will remain a matter for the independent courts in each case.</p> <p>Provisions in the Bill relating to bail can be broadly split into four distinct areas. These are:</p> <ul style="list-style-type: none"> <li>• Reform to the legal framework within which bail decisions are made;</li> <li>• Enhanced role for justice social work in provision of information to the court;</li> <li>• Recording of reasons when bail is refused;</li> <li>• How periods on electronically monitored bail conditions affects time served for custodial sentences</li> </ul> <p><b>Release from prison custody</b></p>

	<b>Questions</b>	<b>Comments</b>
		<p>The Bill will also include reforms on arrangements around release from prison custody, with an emphasis on providing greater opportunities to support the reintegration of people leaving prison to reduce the risk of future offending and to enable people to move on towards more positive outcomes.</p> <p>The provisions cover four broad areas:</p> <ul style="list-style-type: none"> <li>• Point of release</li> <li>• Improved support for people leaving prison</li> <li>• Provision of information to victim support organisations on prisoner release</li> <li>• Early release of prisoners in emergency situations</li> </ul> <p>The changes will continue to be compliant with GDPR.</p>
2.2	<p>Description of the personal data involved</p> <p>Please also specify if this personal data will be special category data, or relate to criminal convictions or offences</p>	<p>The legislation provides and strengthens the legal gateways of some bodies to access and process some personal data, after this point operational data protection responsibility moves to the data controllers as outlined below.</p> <p>The bodies who will be data controllers already process information of this nature and many have suitable controls and information sharing agreements already in place. They have their own individual responsibilities to comply with GDPR as operationally independent bodies / agencies. The bodies / agencies which will be involved in data processing are:</p> <ul style="list-style-type: none"> <li>• Scottish Courts and Tribunal Service (SCTS)</li> <li>• The Scottish Ministers (as the Scottish Prison Service)</li> <li>• Local Authorities, including Justice Social Work (JSW)</li> <li>• Victim Support Organisations (VSOs)</li> <li>• Parole Board for Scotland</li> </ul>

	Questions	Comments
		<p><b>Decisions on bail: relevant information from officer of local authority -</b></p> <ul style="list-style-type: none"> <li>• Justice social work must be given an opportunity to provide the court with relevant information on the question of bail on the accused’s first appearance.</li> <li>• The provision does not require justice social work to provide information but ensures the court must give them an opportunity to do so.</li> <li>• Additionally, the court will have the power to ask for information relevant to the question of bail at subsequent bail decision points.</li> <li>• Relevant information justice social work may be able to provide, or the court may proactively request, could include matters about the accused, such as addiction issues, home life and parental responsibilities.</li> <li>• The Scottish Government understands that often in practice the court may already seek information from justice social work, therefore the amendments brought through the Bill will formalise this process.</li> </ul> <p>The process map for this provision is set out in Annex A.</p> <p><b>Refusal of Bail: Duty to state and record reasons (criminal offence data) –</b> Where the court refuses bail, it must state:</p> <ul style="list-style-type: none"> <li>• the grounds on which it determines, that there is good reason for refusing bail;</li> <li>• if refusing bail [solely] on the ground of “substantial risk of absconding or failing to appear”, its reasons for considering that it is necessary to do so;</li> <li>• its reasons for considering that it would not be appropriate to grant the accused bail subject to electronic monitoring</li> <li>• those grounds and reasons must be entered in the record of the proceedings.</li> </ul> <p><b>Duty to engage in release planning (criminal offence data) –</b></p> <ul style="list-style-type: none"> <li>• In preparation for an individual’s release, the Scottish Prison Service (SPS) will offer to engage with the person in release planning. Where the individual wishes to do so, SPS</li> </ul>

	Questions	Comments
		<p>will work with them to identify their support needs, and which public services they will need to engage with on release.</p> <ul style="list-style-type: none"> <li>• SPS provide information to all local authorities about planned releases of sentenced prisoners into their area 12 weeks in advance of liberation. For remand prisoners their needs will be assessed by SPS and where support is required (e.g. housing appointments etc) the local authority is informed when possible.</li> <li>• There are existing duties on public bodies to provide essential services to members of the public who require them. These are the needs that will be identified through pre-release planning and this information will be shared with the appropriate services.</li> <li>• The services and support provided will generally be in relation to housing, employment, education, children, physical or mental health, social welfare and any other matter which may affect the likelihood of future offending.</li> <li>• The engagement by identified partners will involve acknowledging a formal response by Scottish Ministers (as SPS) and providing input into the development, management and delivery of the individual's plan.</li> </ul> <p><b>Provision of information to victim support organisations (criminal offence data) -</b></p> <ul style="list-style-type: none"> <li>• Section 16 of the Criminal Justice (Scotland) Act 2003 ("the 2003 Act") introduced the right for a victim to be provided by the Scottish Ministers with certain information in relation to the release of the person who perpetrated (and was convicted and sentenced for) the offence against them in certain circumstances.</li> <li>• The victim has to intimate to the Scottish Ministers that they wish to receive this information.</li> <li>• The information to be provided under section 16 of the 2003 Act is: <ul style="list-style-type: none"> <li>○ the date on which the convicted person is released (other than being granted temporary release);</li> <li>○ if the convicted person dies before the date of release, the date of death;</li> <li>○ that the convicted person has been transferred to a place outwith Scotland;</li> <li>○ that the convicted person is for the first time entitled to be considered for temporary release by virtue of the prison rules;</li> </ul> </li> </ul>

	Questions	Comments
		<ul style="list-style-type: none"> <li>○ that the convicted person is unlawfully at large from a prison, young offenders institution or hospital;</li> <li>○ that a person who has been released has subsequently been returned to a prison, young offenders institution or hospital;</li> <li>○ where the convicted person is liable to be detained in a hospital under a hospital direction or transfer for treatment direction, that a certificate has been granted for the first time which suspends the person's detention and does not impose a supervision requirement, or that that certificate has been revoked.</li> </ul> <ul style="list-style-type: none"> <li>● Section 27A of the Victims and Witnesses (Scotland) Act 2014 provides a further route by which a victim can obtain information in relation to the release of the perpetrator of the offence against them. This applies only in cases where the convicted person is sentenced to fewer than 18 months' imprisonment or detention. The victim may request that Scottish Ministers notify them of the convicted person's release and any conditions imposed on them which are for the protection of the victim. The victim may also request that they be advised of the convicted person's escape from prison.</li> <li>● In practice, victims who have requested to do so receive the above information from SPS. Under this section of the Bill, victims will be able to nominate a Victim Support Organisation (VSO) to receive the same information provided to the victim under sections 16 and 17 of the 2003 Act and section 27A of the 2014 Act.</li> <li>● Any VSO which receives information about an offender under this Bill will need to have in place the mechanisms required to process that data in accordance with the law.</li> <li>● In order to provide a safeguard against offender information being released to an inappropriate organisation, the Bill makes provision for VSOs which victims can nominate to receive information to be prescribed in secondary legislation by the Scottish Ministers after undergoing a vetting process in which they will be required to demonstrate that they satisfy this criteria.</li> </ul> <p>The process map for this provision is set out in Annex C.</p> <p><b><u>Information Sharing Agreements (ISAs)</u></b></p>



	Questions	Comments
		<p>We are confirming that there are ISAs already in place between:</p> <ul style="list-style-type: none"> <li>• The Scottish Prison Service (SPS) and Scottish Courts and Tribunal Service (SCTS)</li> <li>• SPS and Scottish Social Security Agency</li> <li>• SPS and Risk Management Authority (RMA)</li> <li>• SPS and Parole Board for Scotland</li> <li>• SPS and Local Authorities</li> <li>• SPS and some third sector throughcare organisations</li> </ul> <p>New ISAs may need to be established between SPS and VSOs and between the Parole Board and VSOs.</p> <p>Scottish Government will recommend that all ISAs should be reviewed to ensure they remain sufficient for this particular legislation. This should include a review of the technical and organisational measures that should be in place to satisfy the requirements of the UK GDPR and the DPA 2018 (with consideration given to Part 3 for criminal offence data). However each data controller will be responsible for their own ISA review.</p>
2.3	<p>Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups or categories of persons?</p> <p>If so, please explain the potential or actual impact. This may include, for example, a denial of an individual's rights, or use of social profiling to inform policy making.</p>	<p><b>Yes.</b> The provision of information by JSW to the court, which already takes place but will be enhanced by virtue of the Bill, will inform decision making on the question of bail. This will impact on a person's liberty. Either through the bail conditions imposed or decision by the court to remand the person in custody. It will also inform/impact upon the support a person may be offered while subject to bail e.g. through bail supervision.</p> <p>The provision of information from SPS to the Local Authority in advance of a person's release will impact on the planning which is put in place to support them.</p> <p>The provision of information about the release of a prisoner to a VSO may have an impact on decisions made by that VSO about the type of support which is offered.</p>

	<b>Questions</b>	<b>Comments</b>
2.4	<p><b>Necessity, proportionality and justification</b></p> <p>What issue/public need is the proposal seeking to address?</p> <p>What policy objective is the legislation trying to meet?</p> <p>Were less invasive or more privacy-friendly options considered, and if so why were these options rejected?</p> <p>Are there any potential unintended consequences with regards to the provisions e.g., would the provisions result in unintended surveillance or profiling?</p> <p>Have you considered whether the intended processing will have appropriate safeguards in place? If so briefly explain the nature of those safeguards and how any safeguards ensure the balance of any competing interests in relation to the processing.</p>	<p>Legislating is a well-considered, necessary and proportionate measure to adjust how courts make decisions relating to the liberty of people accused of offences. The legislation will also support the aim of reducing future offending and rates of victimisation by providing more opportunities for reintegration and support upon release from custody. Preparation for release will also include people who are being released from a period on remand as well as after sentencing.</p> <p>Less invasive options were considered, but in most cases these reflected the current system of practice, which raise a number of issues and are therefore not considered appropriate to continue e.g.:</p> <ul style="list-style-type: none"> <li>• When a decision by the court to remand a person is made, oral reasons are given in court (where brief minutes are generally taken). There is no formal requirement to record the full explanation for the remand decision in writing in the court record of proceedings. The nature of this method of delivery means that the accused, who can be overwhelmed by the court process, does not fully understand the reasons for the decision to remand.</li> <li>• When requested Justice social work provide information to the court to inform decision-making on bail but this information is not requested consistently across Scotland, meaning some courts may not have access to full information around available alternatives which may result in the court making a different decision.</li> <li>• Public sector bodies already have a duty to provide support to someone upon release from custody although this engagement is not consistent across the country meaning some partners do not engage until after a prisoner has been released, which can lead to problems with the individual's reintegration</li> <li>• Currently VSOs are only provided with information on a prisoner's release via the victim once they have received it – we know that many victims have found the current practice re-traumatising and would prefer an option where the VSO receives the information instead and is able to support them through the process from the start.</li> </ul> <p>In relation to the proposal for the recording of reasons for refusal of bail (which includes why electronically monitored (EM) bail is not considered appropriate) the processing of personal</p>

	<b>Questions</b>	<b>Comments</b>
		<p>data is considered necessary in order to improve transparency and general understanding of this part of the court's decision making process at a critical point when a person not convicted of any offence loses their liberty and to emphasise to the court the importance and gravity of a decision to refuse bail. The recording of reasons will not mean details of individual cases are released, but will allow for improved statistical understanding of the reasons for remand across Scottish courts.</p> <p>In relation to the proposal that Justice Social Work (JSW) are provided with the opportunity to share relevant information about the accused with the court on the question of bail, this happens already but the Bill seeks to make it a more consistent practice. It is considered necessary to process personal data this way in order for the court to be as fully informed in their decision as possible when determining whether to grant a person bail. As noted, this is not new data processing as JSW already carry out this role in various courts in Scotland but this practice is inconsistent and can be dependent on certain factors, such as the availability of a justice social worker in the court. The measure therefore formalises on a statutory footing existing practice with the aim of making it happen on a more consistent basis.</p> <p>In relation to the processing of personal data when exercising the new duty to engage in pre-release planning, it is considered necessary in order for public bodies to provide appropriate and timely access to the right support services to a person on their release from custody. These changes will engage these public bodies at an early stage of planning for a prisoners release, to improve the provision of this support.</p> <p>In relation to the processing of personal data by providing information on a person's release etc. from custody to a VSO, this is considered necessary in order for those VSOs to proactively support victims in a trauma informed way. This will include allowing them to proactively safety plan with the victim of the person being released and to assist the victim in making representations to the Parole Board or the Scottish Ministers on the proposed release. These changes will allow for a more trauma informed approach.</p> <p><b>Safeguards.</b></p>

	Questions	Comments
		<p>For data shared between SCTS and SPS safeguards are already in place through ISAs. For the pre-release planning, ISAs should already be in place. This duty will move engagement to an earlier stage in the process but the engagement itself is not a new power. ISAs will also be developed between SPS and VSOs and between the Parole Board and VSOs as appropriate. The process for sharing information with victims about a prisoner's release is already set out through the Victim Notification Scheme (the VNS). The safeguards for this scheme such as victims eligibility checks will remain in place. VSOs eligible for the scheme will be identified through secondary legislation and checks will be carried out to ensure the VSO is acting on behalf of, or has been nominated by, a person already entitled to information through the VNS and the legislation underpinning it. The type of information which can be provided is limited to the information currently shared with victims and the legislation will set out the limited purposes for which it can be used.</p>
2.5	<p>Will the implementation be accompanied by guidance or by an associated Code of Conduct?</p> <p>If the latter, what will be the status of the Code of Conduct? (statutory or voluntary?)</p>	<p>SCTS, JSW and VSOs already have robust policies and procedures in place for their current extensive responsibilities and are well versed in the sensitivities and legal requirements for handling this type of information. Therefore it should be possible to incorporate the handling of new information / processes for requesting this information into these existing processes.</p> <p>VSOs already handle information about prisoner release, albeit that information is acquired via the victims sharing with them when engaging themselves in relation to support.</p> <p>We will consider the need for guidance relating to data sharing and management under the Bill in collaboration with statutory delivery partners and VSOs. This is in recognition that some VSOs which will be responsible for data protection may welcome voluntary guidance to help them apply controls consistently. This engagement will take place post-introduction: the Scottish Government will share the relevant provisions with VSOs and actively seek their views on what support might needed to help them comply with their GDPR responsibilities and their new role under this legislation.</p> <p>This will enable VSOs to develop an understanding of the practical implications of the provisions, and clarify whether they would benefit from any guidance. Should such guidance</p>

	Questions	Comments
		<p>be deemed beneficial, the intention that it would be in place in advance of the commencement of the provisions on information-sharing.</p> <p>To ensure the information handling is consistent information sharing agreements will be developed where they do not already exist.</p> <p>In relation to this Bill we would favour guidance over a code of conduct approach.</p>

### 3. Data Controllers

Organisation	Local Authorities (Justice Social Work departments)		
Activities	<p><b>Provision of information by justice social work to the court to inform decision making on bail</b> – at present the court may seek information from Local authority criminal justice social work departments (JSW) to help inform bail decisions but this practice is inconsistent and varies across the country. Each local authority is responsible for their own JSW department.</p>		
Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?	<b>Yes</b>		
Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection and sharing of	<ul style="list-style-type: none"> <li>– Legal Obligation</li> <li>– Public task (it is considered in the public interest that all information is provided to the court to protect public safety)</li> </ul>	Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 9 – special category data or	<p>The main lawful basis to be relied on for this proposal is, schedule 1(6) – Statutory etc. and government purposes.</p> <p>This allows for the processing of criminal offence data on the condition that it is necessary for the exercise of a function conferred on a person by an enactment of law and is necessary for reasons of substantial public interest. This condition will be met as we are requiring this processing by law through the Bill.</p>

<p>personal data— general processing</p>		<p>Article 10 – criminal offence data</p> <p>Include condition from Schedule 1 or 2 of the Data Protection Act 2018</p>	<p>The lawful basis of, Schedule 1 (7) Administration of Justice - can also be reasonably relied on dependant on the circumstances of the case.</p>
<p>Law Enforcement – if any law enforcement processing will take place – lawful basis for processing under Part 3 of the Data Protection Act 2018</p>	<p>Schedule 1 (7) Administration of Justice - This condition is met if the processing is necessary— (a)for the administration of justice,  Schedule 1 (33) Legal claims - This condition is met if the processing— (a)is necessary for the purpose of, or in connection with, any legal proceedings (including</p>	<p>Legal gateway for any sharing of personal data between organisations</p>	<p>Bail and Release from Custody (Scotland) Bill – Part 1, Section 1 - Decisions on bail: relevant information from officer of local authority.</p> <p>(1) The Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) is amended as follows.</p> <p>(2) In section 22A (consideration of bail on first appearance), after subsection (1) insert— “(1A) Before determining whether to admit or refuse to admit the person accused or charged to bail, the sheriff or judge must also give an officer of a local authority an opportunity to provide (orally or in writing) information relevant to that determination.”.</p> <p>(3) In section 23B (entitlement to bail and the court’s function)— (a) at the end of subsection (4) insert “(including submissions in relation to any information provided by an officer of a local authority under section 22A(1A) or in response to a request under subsection (6))”, (b) in subsection (6), after “counsel” insert “or an officer of a local authority”,</p>

	<p>prospective legal proceedings),  (b)is necessary for the purpose of obtaining legal advice, or  (c)is otherwise necessary for the purposes of establishing, exercising or defending legal rights. - can also be reasonably relied on dependant on the circumstances of the case.</p>		<p>(c) in subsection (7), after “party” in each place where it occurs insert “or officer”.</p> <p>(4) The Social Work (Scotland) Act 1968 is amended as follows.</p> <p>(5) In section 27 (supervision and care of persons put on probation or released from prisons etc.), in subsection (1), before paragraph (a) insert—  “making available to any court, in accordance with section 22A(1A) or 23B(6) of the Criminal Procedure (Scotland) Act 1995, such information as may be relevant to the court’s determination of whether to grant bail to persons who are accused of or charged with an offence;”.</p>
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<p>Organisation</p>	<p>The Scottish Ministers (as the Scottish Prison Service)</p>
<p>Activities</p>	<p><b>Improving pre-release planning by placing duty on public bodies to engage in pre-release planning at an earlier stage</b> – will require the public bodies involved to process and share information relating to someone ahead of their release. This happens already in some cases, the Bill will place a duty on public bodies to engage in this pre-release planning at an earlier point in a prisoner’s sentence when asked to by the Scottish Prison Service. This is intended to bring consistency to the approach</p> <p><b>Providing victim support organisations with information about release of prisoners so that the most effective support can be provided to victims</b> – will require SPS to share information about the date of a prisoners release or parole hearing and any associated</p>

		conditions of their release. This will not include personal health-related information for example, or details of the prisoner's address.	
Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?	<b>Yes</b>		
Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data – general processing	Legal Obligation (SPS to provide information on a person's release to the public bodies)  Legal Obligation (SPS to provide information to VSOs if requested).	Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal offence data  Include condition from Schedule 1 or 2 of the Data Protection Act 2018	In relation to providing information on a person's release to public bodies Schedule 1(6) - Statutory etc. and government purposes will be relevant.  In relation to, providing information to VSOs if requested the following Schedule 1(6) - Statutory etc. and government purposes will be relevant.  The Bill will require this information sharing by law.
Law Enforcement – if any law enforcement processing will		Legal gateway for any sharing of personal data between organisations	Bail and Release from Custody (Scotland) Bill – Part 2, Section 9 - Duty to engage in release planning.  34A Duty to engage in release planning



<p>take place – lawful basis for processing under Part 3 of the Data Protection Act 2018</p>			<p>(1) Each person falling within subsection (2) must, so far as reasonably practicable, comply with a request by the Scottish Ministers to engage in the development, management and delivery of a release plan.</p> <p>(2) The persons are—  (a) a local authority,  (b) a health board,  (c) the chief constable of the Police Service of Scotland,  (d) Skills Development Scotland,  (e) an integration joint board established by virtue of section 9 of the Public Bodies (Joint Working) (Scotland) Act 2014.</p> <p>(3) Engagement under subsection (1) must take place within the timescale specified in the request.</p> <p>(4) In complying with subsection (1), a person—  (a) must have regard to the role which third sector bodies are able to play in the development, management and delivery of the release plan,  (b) may commission services from, or co-ordinate with existing services provided by, third sector bodies as the person considers appropriate to meet the needs of the individual to whom the release plan relates.</p> <p>Bail and Release from Custody (Scotland) Bill – Part 2, Section 11 -  Provision of information to victim support organisations</p> <p>(1) This section applies where—  (a) a person entitled to receive information under section 16 (the “victim”) intimates to the Scottish Ministers that a person to whom subsection (2) applies (the “supporter”) is to be given, as well as or instead of the victim, the information described in section 16(3) in relation to the person convicted of the offence perpetrated against the victim, or</p>
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			(b) a supporter intimates to the Scottish Ministers that they wish to be given that information and Ministers are satisfied that the supporter requires the information in order to provide the victim with support services.
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Organisation		Scottish Courts and Tribunals Service	
Activities		<p><b>Recording of reasons for refusal of bail</b> - while this data is already currently processed by virtue of section 24(2A) of the Criminal Procedure (Scotland) Act 1995 which provides that whenever the court grants or refuses bail, it shall state its reasons, at present reasons are generally given orally and are not formally recorded unless the decision is subsequently appealed. This proposal will create a new obligation on the court to formally record the information already collected when an accused person is refused bail at the pre-conviction stage of the criminal justice process. As an explicit part of this requirement, the court must record why electronically monitored bail was not suitable and why the imposition of an electronically monitored condition was not sufficient to safeguard the public interest. Information processed may include; reason for bail refusal including risk assessment through reference to e.g. previous convictions of the accused person; safety concerns in relation to the complainer and/or witnesses; public safety concerns relative to the accused person. This information will help improve understanding of how remand is used across courts in Scotland, but no personal information would be released through the analysis of the statistical information.</p>	
Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?		Yes	
Lawful basis for processing under UK General Data	Legal obligation Public Task	Lawful basis for processing under UK General Data	Schedule 1 (7) Administration of Justice - This condition is met if the processing is necessary— (a)for the administration of justice,

<p>Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data – general processing</p>		<p>Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal convictions data</p> <p>Include condition from Schedule 1 or 2 of the Data Protection Act 2018</p>	
<p>Law Enforcement – if any law enforcement processing will take place – lawful basis for processing under Part 3 of the Data Protection Act 2018</p>		<p>Legal gateway for any sharing of personal data between organisations</p>	<p>Bail and Release from Custody (Scotland) Bill – Part 1, Section 4 - Refusal of bail: duty to state and record reasons</p> <p>“(2AA) Where the court refuses bail in any proceedings in which a person is accused of an offence, it must—</p> <p>(a) state in particular—</p> <ul style="list-style-type: none"> <li>(i) the grounds on which it determines, in accordance with section 23B(1A), that there is good reason for refusing bail,</li> <li>(ii) if refusing bail solely on the ground specified in section 23C(1)(a) (substantial risk of absconding or failing to appear), its reasons for considering under section 23B(1A)(b) that it is necessary to do so, and</li> <li>(iii) its reasons for considering under section 23B(1A)(b) and (2) that either it would not be appropriate to impose on the accused bail conditions subject to a requirement to submit to monitoring in accordance with Part 1 of the Management of Offenders (Scotland)</li> </ul>

			Act 2019 (electronic monitoring) or that doing so would not adequately safeguard the interests of public safety or justice as mentioned in section 23B(1A)(b)(i) or (ii), and (b) have those grounds and reasons entered in the record of the proceedings.”.
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Organisation	Parole Board for Scotland		
Activities	<p><b>Providing victim support organisations with information about release of prisoners so that the most effective support can be provided to victims</b> – The Parole Board are relevant under section 17 of the Criminal Justice (Scotland) Act 2003 and will therefore be a data controller processing personal data in a new way by sharing it with VSOs.</p> <p>The information which the Parole Board will share with VSOs is (O = offender and V = victim):</p> <p>(1) whether or not it has recommended or directed that O be released, (2) if it has recommended or directed release, inform VSO as to whether O will be required to comply with licence conditions, (3) inform VSO about conditions which relate to O’s contact with VSO or V’s family, and (4) such other information as the Parole Board considers appropriate (subsections (5) and (6)). The Parole Board is required to provide this information whether or not representations were made by V.</p>		
Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?	<b>Yes</b>		
Lawful basis for processing under UK General Data	Legal Obligation (Parole Board to provide information	Lawful basis for processing under UK General Data	In relation to, providing information to VSOs if requested the following Schedule 1(6) - Statutory etc. and government purposes will be relevant.  The Bill will require this information sharing by law.

<p>Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data—general processing</p>	<p>to VSOs if requested).</p>	<p>Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal offence data</p> <p>Include condition from Schedule 1 or 2 of the Data Protection Act 2018</p>	
<p>Law Enforcement – if any law enforcement processing will take place – lawful basis for processing under Part 3 of the Data Protection Act 2018</p>		<p>Legal gateway for any sharing of personal data between organisations</p>	<p>Bail and Release from Custody (Scotland) Bill – Part 2, Section 11 - Provision of information to victim support organisations</p>

## 4. Consultation

	Questions	Comments
4.1	<p>Have you consulted with the ICO using the Article 36(4) form?</p> <p>(please provide a link to it)</p> <p>If the ICO has provided feedback, please include this.</p>	<p>Yes - Article 36(4) form was submitted and feedback received of draft DPIA. Consultation will continue as this assessment is further reviewed and developed through the stages of the Bill process.</p>
4.2	<p>Do you need to hold a public consultation and if so has this taken place? What was the result?</p>	<p>Yes – a public consultation ran from 18 November 2021 to 7 February 2022.</p> <p>Responses published – <a href="https://consult.gov.scot/justice/bailandreleasefromcustody/">https://consult.gov.scot/justice/bailandreleasefromcustody/</a>.</p> <p>Analysis published - <a href="https://www.gov.scot/publications/bail-release-custody-arrangements-scotland-consultation-analysis/">https://www.gov.scot/publications/bail-release-custody-arrangements-scotland-consultation-analysis/</a>.</p>
4.3	<p>Were there any Comments/feedback from the public consultation about privacy, information or data protection?</p>	<p>Yes- mention of GDPR in relation to information provided to VSOs</p>

## 5. Further assessment and risk identification

<Use this section to identify risks which are further detailed in section 6>

	<b>Question</b>	<b>Comments</b>
<b>5.1</b>	Will the proposal require the creation of new identifiers, or require the use of existing ones?	Existing
<b>5.2</b>	Will the proposal require regulation of: <ul style="list-style-type: none"> <li>• technology relating to processing</li> <li>• behaviour of individuals using technology</li> <li>• technology suppliers</li> <li>• technology infrastructure</li> <li>• information security</li> </ul>	No
<b>5.3</b>	Will the proposal require establishing or change to operation of an established public register (e.g. Accountancy in Bankruptcy, Land Register etc.) or other online service/s?	No
<b>5.4</b>	Please provide details of whether the proposal will involve the collection or storage of data to be used as evidence or use of investigatory powers (e.g.in relation to fraud, identify theft, misuse of public funds, any possible criminal activity, witness information, victim information or other monitoring of online behaviour)	Yes – the recording by the courts of their reasons for refusing bail may be used as evidence in any appeal against the decision to refuse bail.

	<b>Question</b>	<b>Comments</b>
<b>5.5</b>	<p>Would the proposal have an impact on a specific group of persons e.g. children, vulnerable individuals, disabled persons, persons with health issues, persons with financial difficulties, elderly people? (Please specify) In what way?</p>	<p>Yes – victims, witnesses and accused persons who enter the criminal justice process. Specific impacts on e.g. children and those with protected characteristics e.g. disabled persons, are considered in the associated Children’s Rights and Wellbeing Impact Assessment and Equality Impact Assessment for the Bill.</p> <p>The Bill will include provision on which VSOs the information can be shared with, that they must be working on behalf of a victim of a person to be released, and the type of information which can be shared is limited to specific things.</p>
<b>5.6</b>	<p>Is there anything potentially controversial or of significant public interest in the policy proposal as it relates to processing of data? For example, is the public likely to view the measures as intrusive or onerous?</p> <p>Are there any potential unintended consequences with regards to the provisions e.g. would the provisions result in unintended surveillance or profiling.</p> <p>Have you considered whether the intended processing will have appropriate safeguards in place? If so briefly explain the nature of those safeguards and how any safeguards ensure the balance of</p>	<p>Significant public interest – as a package the reforms in the Bill seek to engender real change in how custody is used in Scotland that emphasises the need to protect victims, ensure public safety and give those who have offended the support they need to make different choices so they can make a positive contribution to our communities.</p> <p>Providing Victim Support Organisations with information about the release of prisoners - This has been generally supported by stakeholders (particularly VSOs) through the consultation responses and our engagements. There is positive public interest in this provision which aims to ensure victims feel safe, are treated in a trauma informed way and retain/build confidence in the justice system’s approach to and support of victims of crime. The provision is however likely to generate some scrutiny around what and how information is shared. There is already a legal basis precedent to share the certain information (section 16(3) of the Criminal Justice (Scotland) Act 2003 specifies the information which can be shared) about the release of offenders with victims through the 2003 Act . This Bill does not alter the specifics of information that can be shared; rather, it enables only this same information to be shared with a VSO where it has been nominated by the victim or where it requests the information when supporting a victim.</p> <p>The Bill will include provision on which VSOs the information can be shared with, that they must be working on behalf of a victim of a person to be released, and the type of information which can be shared will be limited. A VSO will need to be prescribed in secondary legislation before they are able to receive information under these provisions. In order to be prescribed,</p>



	<b>Question</b>	<b>Comments</b>
	any competing interests in relation to the processing.	the VSO will need to demonstrate that they fulfil the criteria set down in the Bill, providing a mitigation against organisations receiving information where they should not.
<b>5.7</b>	Are there consequential changes to in other legislation that need to be considered as a result of the proposal or the need to make further subordinate legislation to achieve the aim?	<p>The Social Work (Scotland) Act 1968 is to be amended as below:</p> <p>In section 27 (supervision and care of persons put on probation or released from prisons etc.), in subsection (1), before paragraph (a) insert—  “making available to any court, in accordance with section 22A(1A) or 23B(6) of the Criminal Procedure (Scotland) Act 1995, such information as may be relevant to the court’s determination of whether to grant bail to persons who are charged with an offence;”</p> <p>There may be secondary legislation established which identifies the VSOs eligible for to be nominated to receive information / who have the right to ask for information regarding the release of an offender whose victim they are supporting.</p>
<b>5.8</b>	Will this proposal necessitate an associated code of conduct? If so, what will be the status of the code of conduct (statutory, voluntary etc.)?	<p>No</p> <p>It is not considered the bail proposals necessitate an associated code of conduct to be produced by the Scottish Government. As the data controllers in this instance are Police Scotland, SCTS and local authorities (including JSW), it is considered these bodies, which operate independently of the Scottish Government, are best placed to create any further guidance if needed, to ensure their staff comply with their obligations under the DPA e.g. principles of necessity and proportionality of the processing operations, storage limitation and the undertaking of regular reviews to ensure compliance with the statutory duties of the data controller. It would not be appropriate for the Scottish Government to determine how these operationally independent bodies approach their data protection requirements. The Scottish Government will continue to have ongoing engagement with SCTS and JSW as operational implementation planning takes place.</p>

	Question	Comments
		Regarding the pre-release planning proposals and statutory throughcare standards guidance the Scottish Government will continue to have ongoing engagement with SCTS and all named bodies as operational implementation planning takes place, to assess if further guidance other than that directed in the face of the Bill will be required.
5.9	<p>Have you considered whether the intended processing will have appropriate safeguards in place, for example in relation to data security, limitation of storage time, anonymisation? If so briefly explain the nature of those safeguards</p> <p>Please indicate how any safeguards ensure the balance of any competing interests in relation to the processing.</p>	The data controllers already have robust policies and procedures in place for the handling of e.g. criminal offence data, and are well versed in the sensitivities and legal requirements for processing the personal data engaged by the measures in the Bill. As now, they will continue to ensure they comply with their statutory duties and have appropriate safeguards in place.
5.10	Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups or categories of persons? If so, please explain the potential or actual impact. This may include, for example, a denial of an individual's rights or use of social profiling to inform policy making.	<p>Yes – the provision of data to the courts by JSW will inform the bail decisions made by the court and therefore has the potential to:</p> <ul style="list-style-type: none"> <li>• contribute to the court's determination that bail should be refused in a given case resulting in an accused person's loss of liberty</li> <li>• positively impact the accused person by contributing to the court's determination that an accused person should be admitted to bail, enabling the person to remain in the community, and receive support that is appropriate for their needs.</li> </ul> <p>There will be a positive impact for victims of data sharing with VSOs, as this will allow for the sharing of that information in a more trauma informed way and allow the VSOs to proactively engage with the victim to provide support to them related to the person's release from custody such as safety planning.</p>

	<b>Question</b>	<b>Comments</b>
<b>5.11</b>	Will the proposal include automated decision making/profiling of individuals using their personal data?	No.
<b>5.12</b>	Will the proposal require the transfer of personal data to a 'third country'? (Under UK GDPR this is defined as country outside the UK.)	No.

## 6. Risk Assessment

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity if unmitigated (Red/Amber Green)	Mitigated Result [Accepted Reduced Mitigated Eliminated]
<p><b>6.1.1 Risk to individual rights</b></p> <p>There is a risk that members of the public attempting to assert their data subject rights may not know what controller organisation to contact leading to a breach of the transparency principle and inability to assert rights.</p>	<p>Clear and consistent Privacy Notices across the relevant organisations.</p>	<p>Low</p>	<p>Amber</p>	<p>Mitigated</p>
<p><b>6.1.2 Risk to individual rights</b></p> <p>Risks might arise as a result of the use of personal information (recording of reasons for bail decisions) to undertake analysis to provide a statistical understanding of the reasons for refusal of bail.</p>	<p>No personal data would be released during any statistical analysis.</p> <p>Data controllers will ensure as they do at the moment that personal data is processed in a manner that is compliant with DPA and GDPR obligations.</p>	<p>Low</p>	<p>Amber</p>	<p>Mitigated</p>

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity if unmitigated (Red/Amber Green)	Mitigated Result [Accepted Reduced Mitigated Eliminated]
<b>6.2.1 Privacy risks</b>  Purpose limitation – Information provided to VSOs	The type of information which can be provided is limited to the information currently shared with victims and the legislation will set out the limited purposes for which it can be used.	Low	Amber	Mitigated
<b>6.2.2 Privacy risks</b>  Transparency – data subjects may not be informed about the purposes and lawful basis for the processing, and their rights	Clear and consistent Privacy Notices across the relevant organisations.	Low	Green	Mitigated
<b>6.2.3 Privacy risks</b>  Minimisation and necessity	N/A			
<b>6.2.4 Privacy risks</b>  There is risk that the personal information which is shared for the purposes of pre-release planning may not be accurate. This is due to the information	Data subject will be encouraged to provide accurate information with supported by clear and consistent Privacy Notices across the relevant organisations.	Med	Green	Accepted

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity if unmitigated (Red/Amber Green)	Mitigated Result [Accepted Reduced Mitigated Eliminated]
disclosed by the data subject themselves.				
<b>6.3.1 Security risks</b>  There is a risk that lack of maturity of some DP controls in VSOs may lead to personal information being mishandled.	Early engagement with VSOs will ensure appropriate documentation and processes are in place. If necessary guidance will be developed, supported by links to ICO guidance.  VSOs will be encouraged to undertake an audit of their current technical and organisation measures to ensure they remain sufficient.	Low	Red	Reduced
<b>6.3.2 Security risks</b>  There is a risk that lack of maturity of some DP controls in VSOs may lead to personal information being mishandled.	Early engagement with VSOs will ensure appropriate documentation and processes are in place. If necessary guidance will be developed, supported by links to ICO guidance.	Low	Red	Reduced

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity if unmitigated (Red/Amber Green)	Mitigated Result  [Accepted Reduced Mitigated Eliminated]
<p><b>VSO risks</b></p> <p>There may be a perceived risk that a VSO may access information about a prisoner where it is not appropriate for them to do so.</p>	<p>The Bill makes provision so that a VSO is only entitled to information where it is providing support to a victim. That requirement for an existing relationship between the VSO and the victim means that it is unlikely that VSO will be provided with information other than where it is required to support a victim.</p> <p>Furthermore, the Bill makes provisions requiring a VSO to be specified in secondary legislation in order to be capable of receiving information. In order to be so prescribed, a VSO will need to demonstrate that it fits the criteria in the Bill, thus providing a further safeguard against the passing of information to an organisation</p>	<p>Low</p>	<p>Red</p>	<p>Reduced</p>

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity if unmitigated (Red/Amber Green)	Mitigated Result [Accepted Reduced Mitigated Eliminated]
	which should not rightly have it.			



**Data Protection Officer (DPO)**

The DPO may give additional advice, please indicate how this has been actioned.

<b>Advice from DPO</b>	<b>Action</b>
Advice has been sought from DPO throughout the drafting of this assessment	All advice and comments have been incorporated where possible.

**I confirm that the Bail and Release from Custody (Scotland) Bill has been sufficiently assessed in compliance with the requirements of the UKGDPR and Data Protection Act 2018**

<b>Name and job title of a IAO or equivalent</b>	<b>Date each version authorised</b>
Cat Dalrymple	31/05/22

## Annex A – Data flow maps

Figures 1 and 2 are available in a larger format on request, please contact [futureofcustody@gov.scot](mailto:futureofcustody@gov.scot) .

Figure 1: The below diagram sets out the current process by which victims receive information relating to the release, and certain other circumstances, of a prisoner (blue) and the anticipated process Victim Support Organisations (VSOs) will follow to receive this information on behalf of (or at the same time as) a victim who has nominated them to do so (green).

This Bill does not propose to change the current process as it is set out below although organisations such as SCTS may take the opportunity to refresh their processes around this information sharing. The Victim Notification Scheme (VNS) is currently under review with the possibility of recommendations for change as a consequence of that review (both legislative and non-statutory).

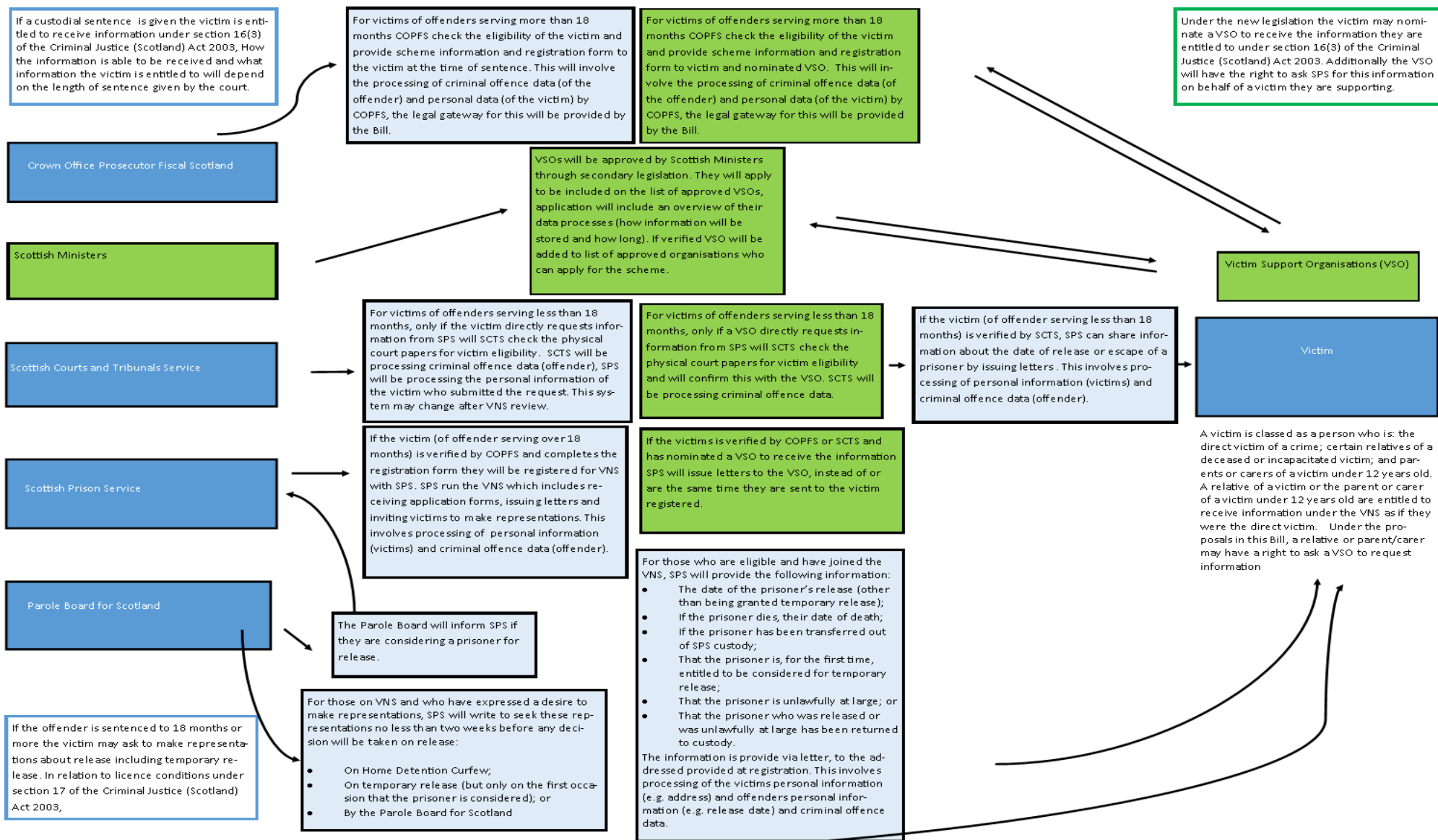
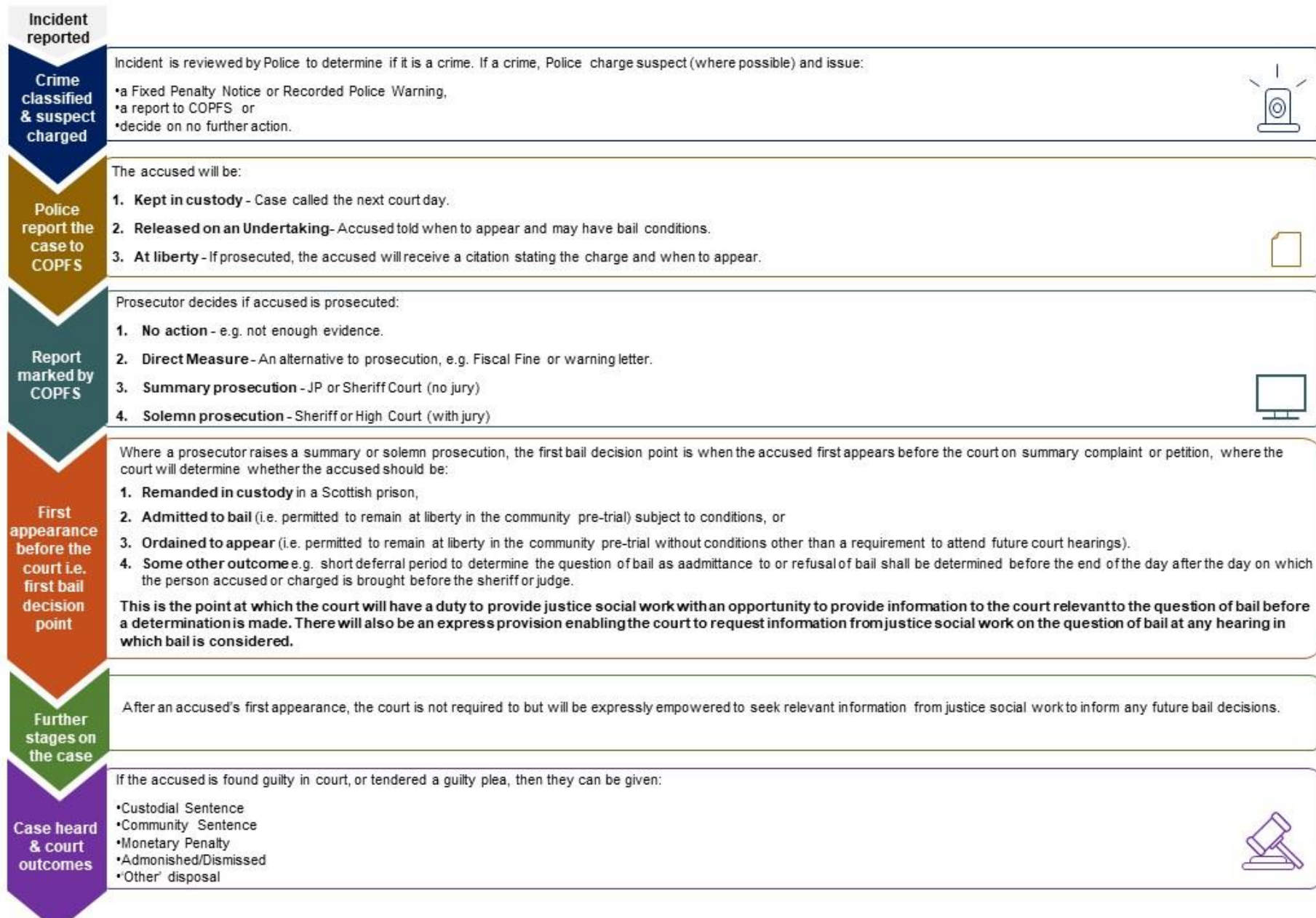


Figure 2: The below diagram sets out the stages of the bail decision process, outlining where the court may seek information from Justice Social Work





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