

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

## **Equality Impact Assessment – Results**

**June 2022**



**Scottish Government**  
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## EQUALITY IMPACT ASSESSMENT – RESULTS

<b>Title of Policy/Programme</b>	Bail and Release from Custody (Scotland) Bill – 2022
<b>Summary of aims and desired outcomes of policy</b>	<p>The provisions of this Bill are intended to introduce 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.</p> <p>The Bill is also intended to give greater focus to the rehabilitation and reintegration of individuals leaving custody.</p> <p>The provisions are underpinned by a commitment to public safety and the protection of victims, which we hope will lead to a reduction in future risk of reoffending, fewer victims and improved outcomes for individuals and their families.</p> <p>The changes will continue to be compliant with our human rights obligations under the 2010 Equality Act.</p>
<b>Directorate</b>	Directorate for Justice: Community Justice: Future use of Custody

### Executive Summary

An EQIA was undertaken in connection with the Bail and Release from Custody (Scotland) Bill to consider the potential impacts across the protected characteristics of the provisions included in the Bill.

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.

The policy has the potential to impact any person who comes into contact with the criminal justice system, including those accused of an offence, those being released from custody and victims of crime. This EQIA utilised multiple sources and evidence gathered from stakeholders to inform the potential impacts the Bill may have on people who possess one or more protected characteristics.

In developing the EQIA for this policy the Scottish Government is mindful of the three needs of the Public Sector Equality Duty (PSED) - eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity between people who share a protected characteristic and those who do not, and foster good relations between people who share a protected characteristic and those who do not. Where any negative impacts have been identified, we have sought to mitigate/eliminate these. We are also mindful that the equality duty is not just about negating or mitigating negative impacts, as we also have a positive duty to promote equality. We will seek to do this throughout the provisions of the Bill.

The EQIA is an ongoing process, and therefore will continually be amended as new evidence comes to light. We will continue to engage with our stakeholders and will regularly review the EQIA record and results following any additional data, analysis or amendments to the Bill. It is anticipated that all impact assessments will be reviewed at stages 1, 2 and 3 of the Bill process, as well as upon commencement.

### **Bail Law**

As the bail measures are not targeted at a specific group, it is anticipated that they will have a minimal impact in respect of the protected characteristics. The policy underpinning the bail reforms will apply to anyone who is arrested in connection with an alleged criminal offence and who proceeds through the criminal justice process. It is recognised that anyone accused of an offence may possess any and multiple of the protected characteristics.

### **Release Law**

The suite of proposed release policies may have a positive impact on individuals who possess protected characteristics, including the provision of information to victims organisations to allow for effective support to be put in place and the implementation of pre-release planning so that support on release is provided in a more proactive and holistic way. This may benefit people who have specific needs or requirements, for example due to age or having a disability.

### **Background**

The provisions of this Bill are intended to introduce 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 custody.

The provisions are underpinned by a commitment to public safety and the protection of victims, which we hope will lead to a reduction in future risk of reoffending, fewer victims and improved outcomes for individuals and their families.

### **Bail**

Provisions in the Bill relating to bail can be broadly split into four distinct areas. These are:

- Reform to the legal framework within which bail decisions are made;
- Enhanced role for justice social work in provision of information to the court;
- Recording of reasons when bail is refused;
- How periods on electronically monitored bail conditions affects time served for custodial sentences

### **Reform to the legal framework within which bail decisions are made**

For those accused of criminal offences, it is proposed to refocus the legal framework which is used to make decisions as to when custody is able to be imposed by a criminal court, so that accused persons who do not pose a risk of serious harm should be admitted to bail as the criminal justice process proceeds.

The benefits of this change will be to seek to reduce the undue use of custody for people not convicted of an offence who do not pose a risk of serious harm.

As part of how a court determines the question of bail for an accused person, it is proposed that consideration of the safety of complainers from harm in a given case should be explicitly recognised as forming part of the court's consideration of whether it is necessary to refuse bail in the interests of public safety.

It is also proposed to simplify the legal framework within which the court makes a decision on the question of bail. The benefits of this change will be to simplify the legal framework on bail so as to aid decision-making of the court and wider understanding as to how decisions of bail are made in each and every case before the court.

### **Enhanced role for justice social work in provision of information to the court**

When the court is considering the question of bail for the first time in a criminal justice process, it is proposed to enhance the role of justice social work so they can better inform the decision to be made by the court.

This will be achieved by giving a new explicit right for justice social work to offer information to the court to help inform the court's decision on the question of bail on an accused's first appearance. There will also be an explicit provision expressly enabling the court to proactively seek information from justice social work on a question of bail (in line with existing provision in relation to the prosecutor and the defence).

The benefit of this change will be to facilitate improved and informed decision making by the court on the question of bail.

### **Recording of reasons when bail is refused**

When the court has decided to refuse bail, it is proposed reasons will be noted in the court record of proceedings. This will be achieved through a new requirement falling

on the court to record the reasons in this way. Where electronic monitoring for bail is not deemed appropriate and bail is refused, it will also be an explicit requirement, for the court to explain why the possibility of electronic monitoring was not taken up.

The benefits of these changes are to reflect the seriousness of a decision to place an accused person in custody at the pre-conviction stage of the criminal justice process and emphasise the measures available to help support accused persons remaining in the community. Over time, the recording of reasons will also 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.

### **How periods on electronically monitored bail conditions affects time served for custodial sentences**

It is proposed that, at the sentencing point of the criminal justice process, time spent by an accused person on electronically monitored bail awaiting trial or sentence may be accounted for against any eventual custodial sentence.

This will be achieved by requiring the court to have regard to any period of time spent on bail subject to a qualifying electronically monitored curfew condition with the court being required to determine if some, all or none of that time should count as time served against a custodial sentence.

The benefit of this approach is to recognise the restriction of liberty imposed through electronically monitored bail in a way that ensures there is consistency and fairness in how courts determine the relevance of time spent on bail subject to electronically monitored conditions for sentencing purposes.

### **Release from prison custody**

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.

The provisions cover four broad areas:

- Point of release
- Improved support for people leaving prison
- Provision of information to victim support organisations
- Permanent executive power of release

#### **Point of release**

It is proposed to further restrict the days of the week on which individuals can be released from prison custody so that releases do not take place on Fridays or the day before a public holiday. Altering these release arrangements will reflect that access to services in the community are more limited at the weekend and on public holidays.

The Bill also proposes to remove long-term prisoners from the Home Detention Curfew (HDC) mechanism and establish a new approach to temporary release for this cohort. This is intended to better support the reintegration of certain long-term prisoners by providing them with a managed return to their communities. Part of the approach will also provide the Parole Board with better information about an individual's ability to comply with conditions to inform their decisions about whether to recommend release.

### **Improved support for people leaving prison**

The Bill intends to improve the provision of support for individuals leaving prison – whether on remand or detained following conviction or sentence. This will be achieved by ensuring identified public bodies have specific duties to engage with release planning at an earlier point in an individual's sentence (when asked to engage by SPS) and for these partners to have regard to the role that the third sector might play in the development, management and delivery of prisoner release plans.

This will have the benefit of supporting a more consistent approach to release planning and ensuring that the key role of the third sector in providing support to people leaving prison is recognised.

The Bill will also establish a duty on the Scottish Ministers to publish statutory minimum standards for throughcare support which relevant named bodies must comply with when providing throughcare support for individuals leaving prison. This reflects the need for non-justice services to support people leaving prison and is intended to promote a consistent approach to the provision of throughcare support across Scotland.

### **Provision of information to victim support organisations**

The Bill will enable information about the release (and attached conditions), death, absconsion, transfer and return to custody of prisoners to be provided to Victim Support Organisations (VSOs) to enable a VSO to work proactively with a victim to provide support including safety planning.

### **Permanent executive power of release**

The Bill will introduce a permanent power of emergency release of prisoners. The Bill provides that Scottish Ministers may provide that a person, who falls within a description specified in the regulations, is to be released from prison early. Only if it is necessary and proportionate, in response to the effect an emergency situation is having or is likely to have on a prison or prisons generally; and for the purpose of protecting the security and good order of a prison, or the health safety or welfare of prisoners or those working in a prison.

### **The Scope of the Equality Impact Assessment**

The EQIA assesses the impact of the Bail and Release from Custody Bill on individuals, looking at the following protected characteristics:

- Age
- Disability
- Sex
- Pregnancy and maternity
- Gender reassignment
- Sexual Orientation
- Race
- Religion/Belief

A variety of sources were used to gather evidence to compile this EQIA, including a full public consultation, where the 74 organisational responses included local authorities/justice partnerships, support/advocacy organisations, public bodies, academics, third sector and legal organisations.

Additional evidence was also gathered from other sources, including (but not limited to):

- The British Dyslexia Association
- Crown Office and Procurator Fiscal Service
- The Children and Young People's Centre of Justice
- The Royal College of Midwives
- Scottish Parliament Criminal Justice Committee
- Scottish Prison Service population statistics,
- Scottish Sentencing Council
- Scottish Crime and Justice Survey

## **Key Findings**

The policy has the potential to impact any person who comes into contact with the Criminal Justice system. This impact assessment separates the potential impacts of the legislation by; those accused of an offence, those being released from prison and victims of crime.

### **People accused of an offence:**

The policy underpinning the bail reforms will apply to anyone who is arrested in connection with an alleged criminal offence and who proceeds through the criminal justice process. Anyone accused of an offence may possess any and multiple of the protected characteristics. However, as the bail measures are not targeted at a specific group, and it is anticipated that they will have a minimal impact in respect of the protected characteristics, we have given due regard to the three needs of the PSED to all characteristics as appropriate

While measures are not targeted at a specific group, there is some evidence to suggest young people and those with neurodiverse profiles are more likely to experience barriers to complying with imposed bail conditions.

The recording of written reasons for remand decisions may increase transparency/understanding of decision making when bail is refused. This could assist children and young people (CYP) and people with learning disabilities to have

more equal participation in, and understanding of, the process, therefore helping to advance equality of opportunity. It may also have a positive effect in fostering good relations between people, this may help to increase understanding of the difficulties faced by people with certain protected characteristics in the criminal justice system

Women are also reported to be particularly negatively affected by periods on remand, due to, for example, the higher likelihood of housing tenancies being placed in a woman's name (increasing the risk of homelessness), as well as commonly being the primary caregiver to their children. Considering around 70% of women held on remand do not go on to receive a custodial sentence, this impact on women is particularly relevant. Changes to the bail decision making framework, whereby those who do not pose a risk of serious harm will be admitted to bail, may result in more women remaining within the community.

### **People being released from prison custody:**

For those that are imprisoned, their protected characteristics are important to consider in terms of their opportunities for release, and support upon release.

There is some evidence that the prison estate is not always suitable for the needs of older or disabled prisoners, release arrangements such as Home Detention Curfew (HDC) may also not be suitable for these needs. In addition, there is a need for age-appropriate support for reintegration, including housing and employment, as, for example, children and young people often have limited choice over their options in these areas. This means that special consideration may need to be given to age and disability when considering release mechanisms such as reintegration licence so that it is equitably available. The release reforms will largely help to advance equality of opportunity, between people who share a protected characteristic and those who do not, to access support on release which will give greater focus to the rehabilitation and reintegration.

### **Victims of crime:**

The impact on potential victims must be considered when legislating changes to the bail and release from custody process. The types of crime which may be experienced are affected by many of the protected characteristics, including; gender, gender identity, sexual orientation, race, disability and religion.

Gender has a particular impact on the way violent crime is experienced. Women are more likely than men to have experienced partner abuse (including psychological as well as physical abuse). The 2019/2020 Scottish Crime and Justice Survey (SCJS), however, found that for the first time since 2014/15 there has been a difference in the likelihood of experiencing violent crime by gender, with males found to have a higher likelihood (3.1%) than females (2.0%).

Hate crime in Scotland includes crime motivated by race, disability, sexual orientation, and religion. Racially motivated crime remains the most commonly reported hate crime, followed by sexual orientation aggravated crime. The SCJS estimates that 15.0% of disabled people were victims of at least one crime in 2019/20, compared to 11.0% of non-disabled people.

Requiring the court to have particular regard to victim safety by emphasising the impact on victims including psychological harms when making the bail decision may have a particularly positive impact on those who have suffered from hate crimes or gender based violence. This is reform may help to increase understanding of the difficulties faced by some of the people as described above in the criminal justice system and help foster good relations between people who share a protected characteristic and those who do not.

## **Recommendations and Conclusion**

The evidence collected over the course of the EQIA process has highlighted evidence of known inequalities within areas which the Bill covers, in terms of those accused of crime, those imprisoned and victims of crime. However, the EQIA has shown the potential for an overall positive impact on the groups identified of the legislation.

Relevant stakeholders (including Victim Support Organisations, Community Justice Partnerships and academic forums) were engaged with prior to and during the consultation process. We have taken on board their views and will continue to engage with them during further development of the policies, which will underpin this legislation to ensure we gather, analyse and review all available data and evidence concerning equality impacts of this legislation. The EQIA process will be ongoing and the associated documents will be kept up to date with any new evidence.

## **Declaration and Publication**

I have read the Equality Impact Assessment and I am satisfied that it represents a fair and reasonable view of the expected equality impact of the Regulations.

**Signed:** Cat Dalrymple, Deputy Director Community Justice

**Date:** 26/05/2022



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EH1 3DG

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