

# **Bail and Release from Custody (Scotland) Bill – 2022**

## **Fairer Scotland Duty Summary**

**June 2022**



**Scottish Government**  
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## Fairer Scotland Duty Summary

<p><b>Title of policy, strategy or programme</b></p>	<p>Bail and Release from Custody (Scotland) Bill – 2022</p>
<p><b>Summary of aims and expected outcomes of strategy, proposal, programme or policy</b></p>	<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 to refocuses 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. 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> <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><b>Summary of evidence</b></p>	<p><b>Sources</b>  Evidence was gathered from responses to a public consultation on the draft bail and release proposals. There was a total of 142 respondents to the consultation, including 19 “non-standard” responses which provided supplementary information and references.</p> <p>Online consultation events were also held with stakeholders and representatives from various sectors including: community justice partnerships, victim support organisations and academic forums. Engagement with those with related experience was conducted via a supported survey and focus groups.</p> <p>This assessment also incorporates evidence available via the SPS Prisoner Survey 2019<sup>1</sup>, the report of the Scottish Parliament Justice Committee, “<i>An Inquiry into the Use of Remand in Scotland</i>”<sup>2</sup> and the latest report of the Scottish Parliament Criminal Justice Committee “<i>Judged on Progress</i>”<sup>3</sup>. As well as social research projects published by Hard Edges<sup>4</sup>, Howard League Scotland<sup>5</sup> and the Equality and Human Rights Commission<sup>6</sup>.</p> <p><b>The link between poverty and custody</b></p> <p>Evidence from Scottish Prison Population Statistics 2019-20 shows that many people in contact with the criminal justice system have already experienced socio-economic disadvantages, including homelessness. The statistics within the report show that individuals from the 10% most deprived areas (SIMD group 1) are over-</p>

<sup>1</sup>SPS Prisoner Survey 2019

(<http://www.sps.gov.uk/Corporate/Publications/Publication-7196.aspx>)

<sup>2</sup>Scottish Parliament Justice Committee, *An Inquiry into the Use of Remand in Scotland*

(<https://digitalpublications.parliament.scot/Committees/Report/J/2018/6/24/An-Inquiry-into-the-Use-of-Remand-in-Scotland#Executive-Summary>)

<sup>3</sup> *Judged on progress: The need for urgent delivery on Scottish justice sector reforms* ([parliament.scot](http://parliament.scot))

<sup>4</sup> Hard Edges Scotland, Lankelly Chase (2019)

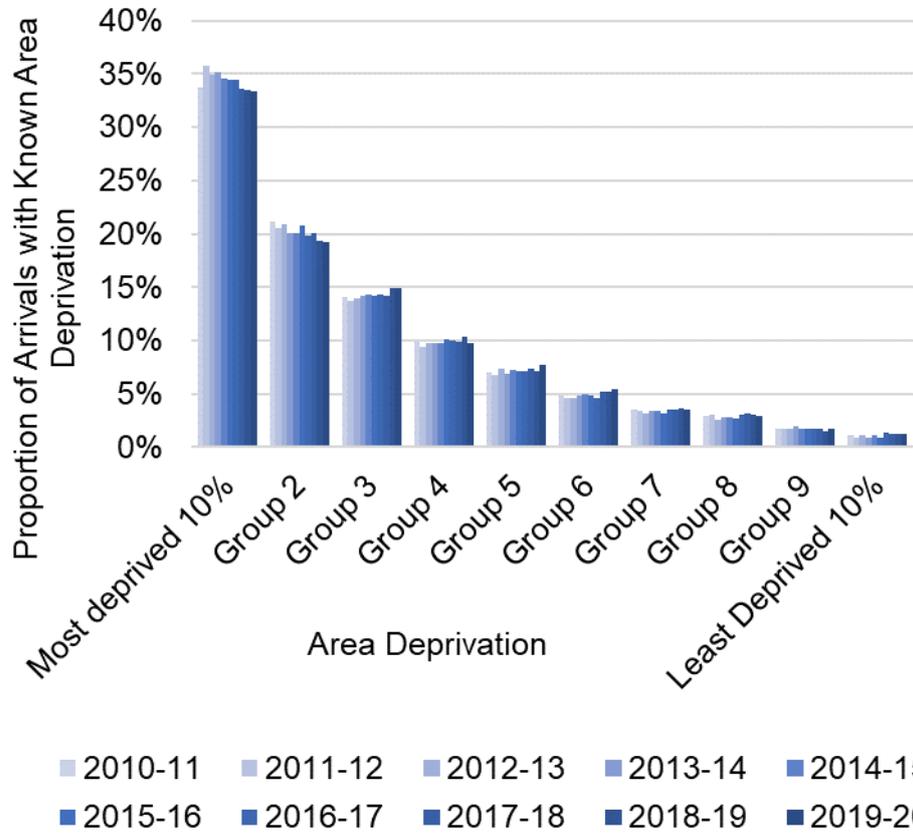
(<https://lankellychase.org.uk/publication/hard-edges-scotland/>)

<sup>5</sup> *The Scandal of Remand in Scotland: A Report by Howard League Scotland – May 2021* | Howard League Scotland –

(<https://howardleague.scot/news/2021/may/scandal-remand-scotland-report-howard-league-scotland-%E2%80%93-may-2021>)

<sup>6</sup> *Is Scotland Fairer?* (EHRC, October 2018)

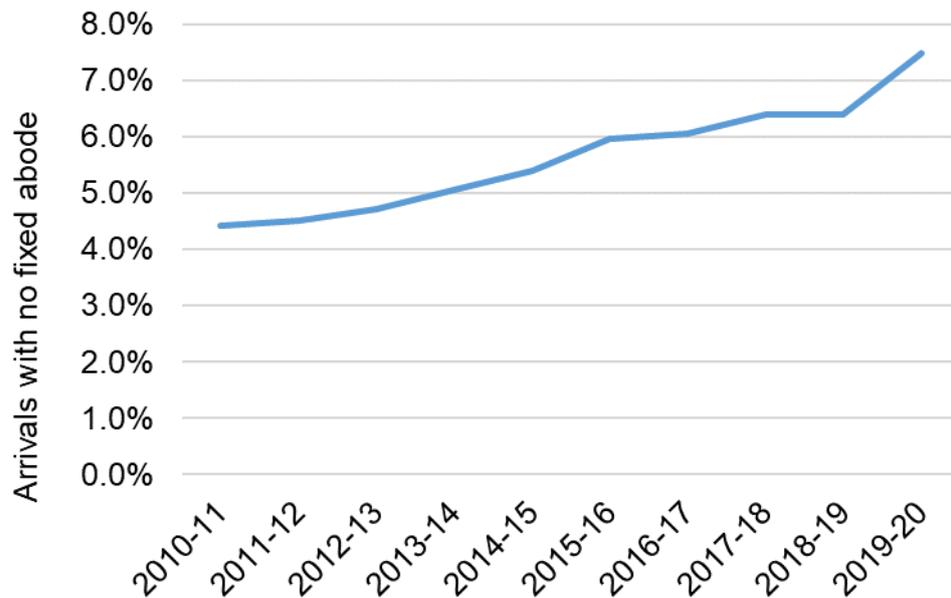
represented in prison arrivals by a factor of three. Individuals from the most affluent areas (SIMD group 5 and above) are underrepresented. This relationship has been more or less static over the past decade as demonstrated in Figure 9 from that report (shown below)<sup>7</sup>.



In addition, the proportion of individuals arriving in prison who report having no fixed abode has increased over the past decade, from 4.4% to 7.5%. This is demonstrated in Figure 10 from the Scottish Prison Population Statistics 2019-20 report<sup>8</sup>.

<sup>7</sup> [Scottish prison population: statistics 2019 to 2020 - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>8</sup> Scottish Prison Population Statistics 2019-20  
 (<https://www.gov.scot/publications/scottish-prison-population-statistics-2019-20/pages/1/>)



Recently published statistics relating to homelessness in the Scottish Prison Service between 2020 to 2021, show that there were 1,765 homeless applications from people leaving prison<sup>9</sup>.

The Hard Edges report found that poverty is a significant background factor to offending, with people who have experienced custody more likely than the general population to have experienced: material deprivation; financial stress and debt; housing deprivation; and severe poverty<sup>10</sup>.

The most recent SPS prisoner survey found that over half of prisoners surveyed (56%) said that they lost their tenancy/accommodation when they went to prison, and over a third (37%) said they did not know where they would be staying upon their release<sup>11</sup>.

Within the same survey 16% were of the opinion that unemployment was a factor which may have led to their offending and 15% said financial difficulties were a factor. SPS also published a report in 2014 which found most prisoners originate from areas of high socioeconomic deprivation, with 62% of prisoners' addresses found in the 25% most deprived areas<sup>12</sup>.

<sup>9</sup> <https://www.gov.scot/publications/homelessness-in-scottish-prison-service-2020-2021/>

<sup>10</sup> Hard Edges Scotland, Lankelly Chase (2019) (<https://lankellychase.org.uk/publication/hard-edges-scotland/>)

<sup>11</sup> 17<sup>th</sup> Annual Scottish Prison Service Prisoner Survey 2019, published 2020

<sup>12</sup> Unlocking potential, transforming lives (Published: January 2014, Scottish Prison Service)

## **Impacts of remand**

The 2018 Justice Committee inquiry into the use of remand found that the time people currently spend on remand is potentially damaging for the individual and their family. Although this inquiry pointed towards several gaps in evidence including difficulty in investigating comprehensive reasons for remand<sup>13</sup>, there was some evidence presented that periods of remand can also lead to a loss of employment or benefits. Additionally the lack of an additional earner, and childcare costs can mean lone-parent families have an additional higher risk of poverty<sup>14</sup>. Therefore, the financial impacts of a household member spending a period of time on remand is likely to impact on their whole household income and may contribute to an intergenerational cycle of poverty.

These findings were further emphasised through the 2022 Criminal Justice Committee report, “Judged on progress” which noted that there has been a significant rise in the number of people held on remand in Scotland linked to court delays due to the Covid-19 pandemic. This report also recommended increased provision of throughcare support, “an end to Friday liberations or in advance of a public holiday, and that alternatives to remand and imprisonment should be considered, which should include bail supervision and residential rehabilitation.”<sup>15</sup>

**Use of remand**—The Justice Committee heard that those experiencing homeless or with no fixed address could be more likely to be placed on remand<sup>16</sup>.

**Employment and Housing** —Periods on remand can have repercussions for someone’s employment and housing: they might lose their job or be unable to continue meeting the requirements of their tenancy, including paying rent and maintaining the property. This will be a particular concern for those from lower socioeconomic backgrounds who may be more likely to be experiencing unstable employment or housing. An evidence review conducted by Emma Dore (Shelter Scotland) in 2015 identified remand prisoners and those who are homeless on entering prison as groups that face particular barriers in relation to finding and sustaining accommodation on release<sup>17</sup>.

**Financial Repercussions** —If they have been acquitted or received a non-custodial sentence, remand prisoners receive no discharge grant or travel warrant to support them after being imprisoned<sup>18</sup>. This will particularly impact those on lower incomes. Depending on the length of time spent on remand people may have lost access to their benefits and be compelled to reapply. In addition, an application for benefits

may also be required if someone has lost their employment through a period of time in custody (remanded or sentenced).

The consultation response received from the Child Poverty Action Group in Scotland (CPAG) highlighted the impact remand can have on people low incomes. They indicate that even short periods on remand cause many benefits paid to those on low incomes stop for any period spent in custody, even if a custodial sentence is not received at the point of sentencing. CPAG also highlight that many of these benefits are being replaced by universal credit, meaning it is not possible to reclaim the benefits if they stop, and instead, a claim must be made for universal credit. The loss of benefits, followed by the wait to receive UC after the initial application can have long term consequences for those people on lower incomes. Howard League Scotland stated in their evidence to the Justice Committee at consideration stage of the Management of Offenders (Scotland) Act 2019, that they believe a period on remand is “at least as disruptive to people’s lives as a short sentence”. CPAG also highlighted this, stating that any help with rent can only be continued for up to 6 months (whether on remand or sentenced to time in custody), and that this help is only available if it was in place prior to the point of being remanded. The COVID-19 pandemic has resulted in longer periods of time spent on remand, causing more disruption to people’s lives, affecting their income and housing.

### **Impacts of release**

**Employment and Housing** – The EHRC reported that the number of Scottish prisoners who are released without an address to go to was a particular concern<sup>19</sup>. They found the lack of an address is not only an issue concerning shelter and personal safety, but also has implications for the individual’s ability to access appropriate healthcare services and social security payments.

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<sup>13</sup> Scottish Parliament Justice Committee, An Inquiry into the Use of Remand in Scotland

(<https://digitalpublications.parliament.scot/Committees/Report/J/2018/6/24/An-Inquiry-into-the-Use-of-Remand-in-Scotland#Executive-Summary>)

<sup>14</sup> Child poverty facts and figures | CPAG

<sup>15</sup> Judged on progress: The need for urgent delivery on Scottish justice sector reforms (parliament.scot)

<sup>16</sup> Scottish Parliament Justice Committee, An Inquiry into the Use of Remand in Scotland

(<https://digitalpublications.parliament.scot/Committees/Report/J/2018/6/24/An-Inquiry-into-the-Use-of-Remand-in-Scotland#Executive-Summary>)

<sup>17</sup> Prison leavers and homelessness | Iriss

<sup>18</sup> <https://www.gov.scot/news/understanding-use-of-remand/>

<sup>19</sup> EHRC Is Scotland Fairer report (equalityhumanrights.com) (page 82)

**Financial Repercussions** – Any claim for benefits can generally not be made until someone is released from custody. In addition, benefits are paid in arrears, therefore there will be a wait between the point of release and the payment of any benefits. While it is possible to request an advance, any benefits paid this way will need to be paid back from future payments.

**Access to support** – There is evidence that often individuals who have experienced custody may struggle engaging with services. This can make it difficult to fully integrate and utilise services upon release.

The Criminal Justice Committee Report found a key issue raised during their roundtable was the lack of support for people after their prison sentences, including putting in place the necessary support prior to release. They called for consideration to be given to improving support prior to release in terms of access to suitable housing, health care, and addiction support if required.<sup>20</sup>

In April 2020, the Drugs Death Taskforce recommended that adequate throughcare provision be made available to prisoners on liberation, including: access to a GP and a supply of appropriate medications on release<sup>21</sup>.

The consultation response provided by Howard League Scotland stated that “people leaving prison are in a vulnerable position and need to access local services (e.g. general practice, mental health, alcohol and drug treatment, community pharmacy and social care) quickly to make certain that they remain safe on release and do not revert to any offending behaviour. It is likely that they will need emergency access to funds and food for some time before benefits arrive.” This was echoed in many other consultation responses, along with the need for support for housing, social work and employment. Families Outside added to this, suggesting that any housing support should also ensure there is a means of getting to a property, especially if it is in a rural area.

The SPS Throughcare Strategy acknowledged that people leaving prison who were at high risk of homelessness were more likely to reoffend and that many of them would be dependent on benefit and welfare support<sup>22</sup>.

Engagement with those who have experience of the criminal justice system was carried out via a support survey. The survey was shared through the PSP networks with organisations who provide support and mentoring to people who have been released from custody after

<sup>20</sup> [Judged on progress: The need for urgent delivery on Scottish justice sector reforms \(parliament.scot\)](https://www.parliament.scot/committees/criminal-justice-committee/2020-21/2020-21-01-02)

<sup>21</sup> [Drug Deaths Taskforce meeting: April 2020 - gov.scot \(www.gov.scot\)](https://www.gov.scot/Topics/Justice/Drug-Deaths-Taskforce)

<sup>22</sup> <https://www.sps.gov.uk/Corporate/Publications/Publication-5537.aspx>

	<p>serving a short sentence. These organisations could support their mentees to complete the survey.</p> <p>75% of respondents to this survey strongly agreed that it is more difficult to get help from public services on a Friday or day before a public holiday. 80% of respondents also strongly agreed that it would be beneficial if throughcare support was offered to remand and long-term prisoners as well.</p> <p>The respondents to the survey detailed which supports and services they felt would make it easier for people being released from prison. A key message from the responses was the importance of engagement with all necessary public services prior to release. The most frequent supports to be highlighted were: access to housing, access to benefits, having a photographic ID and bank account before release. These supports will be more imperative for people who are less likely to already have these supports (such as appropriate housing) in place.</p>
<p><b>Summary of assessment findings</b></p>	<p><b>Which changes, if any, are being implemented?</b></p> <p>The provisions in the Bill recognise the issues raised above. They take account of evidence gained from those with related experience and views expressed through the consultation responses. Some of the provisions are anticipated to address some of the issues the evidence has shown that socio-economically disadvantaged individuals and their families can experience.</p> <p><b>Bail</b></p> <p><b>Reform to the legal framework within which bail decisions are made;</b></p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• It is also proposed to simplify the legal framework within which the court makes a decision on the question of bail through removal of the rule that bail is only to be granted in exceptional circumstances in solemn proceedings involving persons accused of certain offences where they have previous convictions for similar such offences.</li> </ul>

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

- There will be 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).

**Recording of reasons when bail is refused**

- When the court has decided to refuse bail, there will be a new requirement falling on the court to record the reasons in the court record of proceedings.
- 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.

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

- 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.
- The court will be required 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 sum of these provisions should increase collaboration between the Crown and social work should ensure that a fuller picture of an individual's circumstances is available, including identification of resources, which could be provided to support them whilst on bail.

The reforms to remand 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.

Evidence demonstrates the damaging effects of short periods in custody and so the proposed effect of the change will be the use of custody is limited to cases where it is considered necessary to do so in order to protect public safety, which includes victim safety, or to facilitate the delivery of justice in a given case. Periods on remand are likely to negatively impact on someone's access to; housing, employment and certain benefits. Reducing the use of remand therefore could therefore have a positive impact on social-economic

inequalities by helping people to stay within their communities and retain their housing and benefits.

There was, however, some evidence presented to the Criminal Justice Committee that remand can provide a stable location for some people to access benefits and support that they were not able to receive in the community<sup>23</sup>. Consideration needs to be given to the resources required to support people on bail within their communities in order that people who are socio-economically disadvantaged are not more negatively impacted than the general population.

## **Release from prison custody**

### **Point of release**

- The Bill will 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.
- 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.

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

- Identified public bodies will have specific duties to engage with release planning at an earlier point in an individual's sentence (when asked to engage by SPS)
- These partners to have regard to the role that the third sector might play in the development, management and delivery of prisoner release plans.
- 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.

### **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.

### **Early release of prisoners in emergency situations**

- The Bill will introduce a permanent power of emergency release of prisoners.
- This is be able to be used 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

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<sup>23</sup>[An Inquiry into the Use of Remand in Scotland \(azureedge.net\)](https://www.azureedge.net)

	<p>of protecting the security and good order of a prison, or the health safety or welfare of prisoners or those working in a prison.</p> <p>We know that for those leaving prison, effective support to enable them to reintegrate and make positive connections in their communities helps to prevent reoffending and supports more positive outcomes for them and those around them.</p> <p>These proposals could help address socio-economic inequalities by putting mechanisms in place to enable pre-release planning to start at an earlier stage in their sentence so that needs are properly assessed and an appropriate support package is put in place in advance of their release. This could include access to suitable accommodation, engagement with appropriate community services (e.g. addiction services) and support for income maximisation.</p>
<p><b>Sign off</b></p>	<p><b>Name: Cat Dalrymple</b></p> <p><b>Job title: Deputy Director, Community Justice</b></p>



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