

Bail and Release from Custody (Scotland) Bill

Island Communities Impact Assessment

June 2022



Scottish Government
Riaghaltas na h-Alba
gov.scot

Island Communities Impact Assessment – Bail and Release from Custody Bill

Step One – objectives:

What are the objectives of the policy, strategy or service?

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.

A public consultation ran for 12 weeks up until 15 February 2022. An independent analysis of the responses was published and can be accessed here: [Bail and release from custody arrangements: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/bail-and-release-from-custody-arrangements-consultation-analysis/pages/2.aspx).

All published responses can be accessed here: [Published responses for Bail and release from custody arrangements in Scotland - Scottish Government - Citizen Space \(consult.gov.scot\)](https://www.consult.gov.scot/consultations/bail-and-release-from-custody-arrangements-in-scotland).

The responses to this consultation helped to develop the legislative provisions for inclusion in the Bill.

There was no specific reference to Island communities within the proposals outlined in the consultation.

The sections of this ICIA follow the broad structure of the Bill. Where certain provisions have not been mentioned in this ICIA, this is because the Scottish Government has concluded that these provisions would have no differential impact on island communities.

For Bail law, the Bill will:

- require court to give justice social work the opportunity to provide information relevant to initial bail decisions and providing that the court can ask justice social work for information at any bail hearing;
- amend the decision making framework for when the court can refuse bail to an accused person by adding a requirement that the court considers it necessary to refuse bail for the purpose of public safety (including, expressly, the safety of the complainer from harm) or for the purpose of preventing a significant risk of prejudice to the interests of justice (with the Bill including a definition of what is meant by "prejudice to the interests of justice" for this purpose);

- remove the current presumption in favour of remand in certain solemn cases so that the same test for bail applies in all cases;
- where court remands an accused, requiring it to record explanation for the decision, which must include reason why electronically monitored bail is not appropriate or suitable for safeguarding the public interest such that bail can be granted, and why, if refusing bail on the ground that there is a substantial risk of failure to appear/ abscond, the court considers it necessary to do so;
- requiring the court to have regard to any time that an accused has spent on bail subject to electronically monitored curfew condition and to consider how much (if any) of that time should be treated as “time served” toward the sentence.

For Release law, 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;
- replace the current model of Home Detention Curfew for long-term prisoners so that, in certain circumstances, some long-term prisoners can be temporarily released in advance of their Parole Qualifying Date (or subsequent review if not released at PQD), subject to risk assessment and consultation with the Parole Board;
- introduce early release of prisoners in emergency situations to protect the security and good order of prisons and the health and safety of prisoners and prisons staff (e.g. public health emergency, or a fire making part/all of a prison unusable).
- improve release planning by placing duty on public bodies to engage at an earlier stage in an individual’s sentence when requested by Scottish Prison Service
- improve throughcare support for remand and sentenced prisoners by introducing statutory throughcare standards which apply to wider range of services; and
- provide victim support organisations with information about release of prisoners to inform the support they provide to their clients, including safety planning if required.

What are the intended impacts/outcomes and how do these potentially differ in the islands?

Generally, the provisions in this Bill are intended to benefit all communities across Scotland.

Bail Law

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.

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.

Additionally there will be an enhanced role for justice social work in provision of information to the court to inform bail decisions.

The benefits of these changes 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 well as, to recognise explicitly the safety of complainers is a specific factor in the court's decision making when assessing public safety to determine the question of bail, which encapsulates both physical and psychological harm.

Whilst decision-making will remain with the independent court in individual cases, the intention of the legislation relating to the bail decision is a promotion of the use of alternatives to remand and a victim-centred approach to decision making.

The availability of support services (including third sector services), justice social work and other providers of support within island communities is something that will be given consideration as Scottish Government develops guidelines for bail supervision.

Electronic Monitoring

Electronic Monitoring (EM) devices use either radio frequency (RF) or global positioning system (GPS) technology. The lack of reliable signal in some Island communities may need consideration when placing someone on EM, however, signal considerations will also apply to the more rural areas of mainland Scotland. RF monitoring base units can be connected to a mobile network or a landline, therefore, as long as there are mobile phone networks, landlines or satellites, EM can be utilised successfully.

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.

Replacement for Home Detention Curfew

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. The intended outcome of the replacement HDC is to better support the reintegration of certain long-term prisoners by providing them with a managed return to their communities.

There may be specific considerations for Island communities to allow someone to successfully serve part of their sentence in the community. If a person is to be placed on EM, then the technology used will have to be decided based on connectivity (see above). Similar considerations will also need to be made as to the availability and accessibility of support services and justice social work, these considerations are likely to be addressed at a local level within the planning arrangements for any temporary release.

Early releases of prisoners in emergency situations

The intended outcome is to enable Scottish Ministers to release groups of prisoners in emergency circumstances. It is unlikely that this will impact island communities any differently to mainland communities, with perhaps the exception of difficulties regarding throughcare support, transport to islands or EM considerations.

Support upon Release

Public bodies engagement with pre-release planning

Public bodies will be required to engage in release planning for prisoners prior to their departure. This will benefit prisoners returning to both Island and mainland communities. While Island-based local authorities may have specific considerations when engaging with pre-release planning (for example the availability approved housing), the support given to prisoners will be dependent on individual needs and requirements.

Minimum standards of throughcare

The minimum standards of throughcare support for remand, short-term and long-term prisoners are to be revised. The intended outcome of this is to ensure that prisoners across Scotland will be able to access the same minimum level of support for up to 12 months following release, including the prisoners from Island communities. In addition, several proposals of the Bill would require additional support for people in the community, either on bail or serving part of their sentence within the community.

The availability of transport, either for a person to travel to these services or for the services to deliver support to the person, may be a consideration for island and rural communities, with severe weather, and a lack of alternative routes potentially resulting in a breach of EM or HDC conditions.

The impact of technological difficulties and more complex transport routes is currently unknown, however, consideration of these areas will be needed as policy is developed in support of the legislation.

Information Sharing with Victim Support Organisations

The provision of information on release of prisoners to VSOs is intended to have broad benefits for victims regardless of where they live. However, that benefit could be enhanced for victims who reside in island communities and who may not have ready access to a VSO. The provision of information to VSOs may enable them to proactively support victims in island communities through an early understanding of their situation and needs, rather than a more reactive approach that would be required should a victim ask for their support after having received the information about release.

Step Two – gather your data and identify your stakeholders:

What data is available about the current situation in the islands?

Bail Law

At the last census (2011), a total of 93 islands in Scotland were inhabited, with a total population of 103,700 (2% of the total population of Scotland).

The crime rate of the islands is generally very low, with 144, 198 and 205 crimes per 10,000 people from Orkney, Shetland and Na h-Eileanan Siar local authorities respectively (compared to the 451 crimes per 10,000 people across Scotland on average). It is worth noting that three local authorities include both mainland and island communities. The crime rate of two of these areas, Highland (319 per 10,000 people) and Argyll and Bute (311 per 10,000 people) are below the Scottish average. However, North Ayrshire, which includes the islands of Arran and the Cumbraes, has a higher crime rate (497 per 10,000 people) than the average across Scotland. The Scottish Index of Multiple Deprivation (SIMD)¹ for the area of North Ayrshire shows that for the 186 data zones in the area (2020), none of the 10% most deprived areas are on the island of Arran and only 2 are found in the north coast region, which includes the Cumbraes^{2,3}.

It is therefore likely that the bail proposals will affect proportionally fewer people in Island communities as accused, witnesses or victims.

Electronic Monitoring

Digital connectivity is variable across Scotland, both in the Islands and on the mainland. Ofcom reports that while 80% of Scotland can get coverage from at least one mobile company, there are stark differences between urban and rural areas, with only 42% of Scotland's land area covered by good 4G reception from all mobile companies⁴. The UK Government has pledged £1 billion to 'level up digital connectivity across the UK'⁵. However, even without this, as long as there is access to satellites, mobile phone networks or a landline, EM can be successfully used.

Point of Release

SPS have already made arrangements in many cases to ensure that where people are being released to island communities this does not happen on a Friday⁶. This is in recognition of the additional difficulties with traveling to island communities, such as restricted ferry times. Currently the cost of transport on the Islands is higher relative to income than in the rest of Scotland⁷. The national plan for Scotland's Islands describes travel to some Islands as complex and more expensive than travel elsewhere. The cost, time and complexity of travel arrangements to some Island communities could impact on people returning to the

¹ [SIMD \(Scottish Index of Multiple Deprivation\)](#)

² [North Ayrshire Council SIMD presentation](#)

³ [Recorded Crime in Scotland, 2020-2021 - gov.scot \(www.gov.scot\)](#)

⁴ [Latest Scottish broadband and mobile coverage revealed - Ofcom](#)

⁵ [Rural Scotland to see significant boost in 4G coverage - GOV.UK \(www.gov.uk\)](#)

⁶ Shetland CJP consultation response available at: [Published responses for Bail and release from custody arrangements in Scotland - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

⁷ [The National Plan for Scotland's Islands - gov.scot \(www.gov.scot\)](#)

islands from custody or court. There may therefore be considerations for policy developments in relation to bail supervision and throughcare in this area.

Support upon Release

The Shetland Community Justice Plan highlights the support that is available to those released from custody, much of which is supported by volunteers⁸. In addition, there are several national organisations which work across the whole of Scotland to provide post-release support.

There is no definitive mapping available which sets out all local/national projects that provide throughcare or similar services within island communities.

Information Sharing with Victim Support Organisations

There is no available data on the number of victims who currently seek support from VSOs or may nominate a VSO to receive information. The VSOs which will qualify under this provision will be set out in secondary legislation.

Who are the key stakeholders?

- COPFS
- Community Justice Partnerships (Orkney, Shetland)
- Justice Social work
- Local Authority
- Parole Board for Scotland
- SCTS
- SPS
- Voluntary Throughcare services
- Victim Support Organisations

How does any existing data differ between islands?

No information available.

Step Three – consultation:

Is there any information already gathered through previous engagements?

A public consultation on proposals around Bail and Release from Custody arrangements ran from 15 November 2021 to 7 February 2022. While none of the questions specifically asked about potential impacts of the proposals on people in rural or island communities, some responses did contain information in this regard:

- Evidence was provided through the public consultation that accessing appropriate services - especially housing and benefits - on the day of release can be difficult. This can be exacerbated when individuals are

⁸ [cj-plan-final.pdf \(safershetland.com\)](#)

travelling to rural or more remote communities, leaving little to no time to attend to issues with housing (for example) and subsequently having a negative impact on their release plans.

- The Shetland Community Justice Partnership provided a response to the public consultation which included evidence that the impact of any period of imprisonment can have disproportionate impacts on prisoners from the islands and their families. They felt therefore that, the use of remand should be limited to where there is a risk to public and personal safety.
- They also raised a concern that a blanket 'consideration' within a context where EM is not available should not complicate or protract the process. This could discriminate against those in remote rural areas where the limitations in technology or resource would prevent effective use of EM. They emphasised that consideration should be given to how EM could be resourced where not currently available.
- Evidence was also provided through the consultation that the impact of release on a Friday or day before a public holiday can have additional impacts for those in remote rural or island areas. The time of release was also raised as a particular factor for consideration in the release of prisoners from/to rural areas and Island communities due to the frequency of public transport operating in these areas.

Details of separate consultation events for island communities/local authorities?

N/A

Step Four – assessment:

Does your assessment identify any unique impacts on island communities? (Demographic, Economic, Gaelic, Social)

No

Does your assessment identify any potential barriers or wider impacts?

No

Are there mitigations in place for these impacts raised?

While there may be some impacts to consider and mitigate during policy development there are no impacts identified to affect the drafting and introduction of this legislation.

Is a full Islands Communities Impact assessment Required?

You must now determine whether, in your opinion, your policy, strategy or service is likely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities).

To form your opinion, the following questions should be considered:

<ul style="list-style-type: none">• Are there mitigations in place for the impacts identified and noted above from stakeholders and community consultations?	While there may be some impacts to consider and mitigate during policy development there are no impacts identified to affect the drafting and introduction of this legislation.
<ul style="list-style-type: none">• Does the evidence show different circumstances or different expectations or needs, or different experiences or outcomes (such as different levels of satisfaction, or different rates of participation)?	No; they are not markedly negative or unique to islands communities.
<ul style="list-style-type: none">• Are these different effects likely?	No; they are not markedly negative or unique to islands communities.
<ul style="list-style-type: none">• Are these effects significantly different?	No.
<ul style="list-style-type: none">• Could the effect amount to a disadvantage for an island community compared to the mainland or between island groups?	No.
If your answer is No to the above questions, please complete the box below. If the answer is Yes, an ICIA must be prepared and you should proceed to Step 5.	

A Full Islands Community Impact Assessment is NOT required

In preparing the ICIA, I have formed an opinion that our policy, strategy or service is NOT likely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities). The reason for this is detailed below.
Reason for not completing a full Islands Communities Impact Assessment:

A partial ICIA has been prepared and published, which satisfactorily addresses the islands communities impacts of the Bill in line with available evidence and consultation input.

ICIA completed by: Future of Custody Team

Position: Future of Custody Bill Team

Signature:

Date completed: 23/05/2022

ICIA approved by: Cat Dalrymple

Position: Deputy Director, Community Justice

Signature:

Date approved: 26/05/2022



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2022

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80435-595-4 (web only)

Published by The Scottish Government, June 2022

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1103962 (06/22)

W W W . g o v . s c o t