Bail and Release from Custody Arrangements in Scotland: Consultation Analysis

Final Report

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Executive Summary

Background

The Scottish Government ran a public consultation to seek views on proposed reforms to the law relating to bail and release from custody in Scotland. The consultation ran for a period of 12 weeks and included 32 questions, with a mix of both open and closed questions inviting feedback on specific proposals. An independent analysis of consultation responses was commissioned, and this report presents the findings from that analysis.

Methodology

A total of 142 responses to the consultation were received - 68 from individuals and 74 from organisations. Among the organisations that responded, there was a broad range of stakeholders represented from within the justice sector as well as a mix of national and local third sector organisations. There was also a good mix between advocacy/support organisations representing the interests of prisoners, accused and released prisoners, children and young people and victims and witnesses, among others.

The majority of responses were submitted via Citizen Space, the Scottish Government's online consultation platform. All responses were read and logged into a database for analysis purposes. Closed question responses were quantified to ascertain the number and percentage of respondents who agreed/disagreed with each proposal or question statement, and open question data were analysed thematically to provide an overview of the main feelings expressed by participants.

Main Findings: Bail

Just under two thirds of respondents supported proposals for the need to protect public safety as being a required ground that must be present to justify refusal of bail. This was mainly on the basis that they perceived it would help to reduce the numbers of people being held on remand in Scotland, which many perceived was currently (and historically) too high.

Two thirds of respondents also agreed that the court should have particular regard to victim safety when making bail decisions. This was seen as important in protecting the rights, needs and safety of victims as well as adding more transparency to the decision making process, potentially bolstering public confidence in the justice system. For similar reasons, there was support for requiring the court not only to give, but also to record, explanations where a decision is made to refuse bail (with some suggesting recorded explanations may be relevant for all decisions). Accessibility in any communications from the court was seen as crucial, especially for vulnerable accused, children and young people, victims and their respective families/supporters.

Empowering the court to rely, in all cases, on the general grounds relevant in reaching the decision on the question of bail was also supported by most. Again, greater clarity on what a 'simplified legal framework' may look like in practice was sought and safeguards should also be in place to protect accused and victims, ensuring that the system does not become 'over simplified'.

There was evidence across the consultation that, in taking forward many of the suggested reforms, a partnership approach would be required. While most welcomed the idea of improving and making more consistent the provision of information by social work (and potentially other partners too) to inform decisions in relation to the question of bail, there were mixed views on whether this would be achievable in practice. The main reservations were a perceived shortfall in resources and staff capacity to allow this proposal to be effectively, timeously and consistently delivered. Flexibility to allow both court and social work discretion in decisions linked to the request and release of information on accused was seen as necessary to meet the best interests of all parties involved in individual cases.

Across the consultation, there was strong support for community based interventions for accused as an alternative to remand. Many supported proposals that, before a decision to refuse bail is finalised, there should be an explicit requirement for the court to consider the use of electronic monitoring (EM) as a means of the accused remaining in the community. While there were mixed views on if and how time spent on bail with EM should be taken into account at sentencing, there was broad (but not unanimous) consensus that, if time on electronic monitoring was to be taken into account, there should be legislation to ensure it is applied consistently.

EM was seen by many as being much more effective (and cost effective) than custody at protecting the public whilst minimising interference to the lives of accused and their families. The main reservations, however, appear to be that the infrastructure (in terms of electronic tagging and monitoring equipment) as well as staff time and capacity within criminal justice social work does not (and would not for some time) exist to support the proposals. Significant additional resource may be needed to make the proposals workable, it was felt.

Although supported by more than half of respondents, there was mixed feedback on proposals that legislation should explicitly require courts to take someone's age into account when deciding whether to grant them bail. In contrast, however, there was strong agreement on the need to protect children's welfare and agreement, in principle, that courts should be required to take any potential impact on children into account when deciding whether to grant bail to an accused person. The negative and often disruptive impacts of imprisonment for both accused and their wider families was stressed by many respondents as being significant and something to be avoided wherever safe and appropriate.

Overall, there was strong support for almost all of the proposed reforms to bail. The main proviso was that any legislative change would need to be supported by increased availability and resourcing for appropriate community alternatives to

remand and additional capacity to allow community based services (especially social work) to offer the appropriate level of supervision and support required.

Main Findings: Release from Custody

In general, there was strong agreement with the principle of enabling prisoners to serve part of their sentence in the community, to help with their reintegration (especially those convicted of less serious offences or who were considered low risk if released). The main caveat to this was, again, the need for sufficiently robust and consistent support services being in place in the community to assist those released. This would require adequate staffing and resources (for social work supervision), collaborative planning (between the Scottish Prison Service and community based practitioners) and availability of meaningful interventions (including access to employment, education, housing and health services).

There was less overall support for giving certain categories of prisoner the ability to demonstrate their suitability for early release or to serve the remainder of their sentence in the community following successful completion of programmes, etc. Similarly, there were mixed views on whether, through good behaviour, or completing education, training and rehabilitation programmes, prisoners should be able to demonstrate their suitability for completing their sentence in the community. The main reservations appear to be perceptions that some offenders may 'play the system' and/or that completion of programmes may not necessarily be an indication of reduced risk. There was also a broad agreement that prison-based programmes were not consistently available across the prison estate.

Just over half of respondents supported bringing forward the point at which short-term prisoners are automatically released, subject to conditions, although a reasonable proportion of respondents supported 'no change' to the current model. Several respondents also did not support automatic early release (AER) in any guise. Similarly, bringing forward the point at which long-term prisoners can first have their case heard by the Parole Board was not well supported. The main reasons for lack of support in relation to AER and early Parole Board consideration was that all cases should be dealt with on a case-by-case basis and informed by robust risk assessments, i.e. an individualised rather than generic approach.

The only proposals linked to release that did receive strong (but not unanimous) support were banning all prison releases on a Friday (or the day before a public holiday), so people leaving prison have greater opportunity to access support and proposals for providing victim support organisations with information about the release of prisoners from custody to enable proactive safety planning to be undertaken.

Several proposals for amending or replacing the current model of Home Detention Curfew (HDC) were also included in the consultation and there was only moderate support for most. Again, this was mainly because respondents viewed that HDC should first and foremost be determined by individual risk and need but also that

some individuals would not wish to take up the offer of HDC and should not have conditions mandatorily imposed.

Many respondents viewed that existing duties on public services to engage with pre-release planning were not sufficient and therefore agreed with proposals for a specific duty on public bodies to engage with pre-release planning for prisoners. Introducing a support service for prisoners released direct from court to enable their reintegration was very widely supported as was revising throughcare standards for people leaving remand, short-term and long-term sentences (with views that access to appropriate support should be equitable for all). Collaboration between statutory services and third sector partners was seen as key to the future success of throughcare but there were again concerns that more resources would be needed to allow relevant partners to fulfil any new obligations.

There were mixed views in relation to introducing wider powers of executive release to enable Scottish Ministers to release groups of prisoners in exceptional circumstances. A clearer definition of ‘exceptional circumstances’ was urged.

Other Feedback

While feedback on most of the proposals in the consultation was very positive, it is important to note that a small number of respondents (mainly legal organisations) disagreed with the need for some of the reforms to bail, mainly on the basis that they perceived the current system already worked well or that ‘guidance’ may be more appropriate than legislative change. In contrast, a number of mainly local authority/justice partnerships and advocacy organisations expressed views that the proposals did not go far enough and were not sufficiently radical or transformational to address the issue of high prevalence of remand, and how best to support and address individuals’ criminogenic needs. In taking the findings from the consultation forward there may be a need for more clearly rationalising or explaining some of the proposals to make sure that they are understood and are embraced, and some suggested this may require ongoing stakeholder engagement.

Conclusion

The consultation attracted a strong response from a broad range of stakeholders. It was widely recognised that it would be difficult to legislate for the full range of scenarios that would be presented to the courts, and that it would not be possible to plan for all eventualities, given the complexity of human nature and needs. Many of the proposals would, nonetheless, be a step change and make progress towards more compassionate and equitable justice. Key to the success of many of the proposed changes would be collaborative working between statutory and third sector organisations, with honest and open communications that reflect the unique circumstances of individual cases. Overall, subject to refinement and suitable safeguards and appropriate resources being put in place, many of the proposals were seen as potentially contributing to the underlying aim to reduce crime, reduce reoffending and have fewer people experiencing crime.

Introduction

Background

The Scottish Government ran a public consultation to seek views on proposed reforms to the law relating to bail and release from custody in Scotland[1]. The consultation supported the commitment within the 2021 Programme for Government that:

> "…we will introduce legislation in this parliamentary term to change the way that imprisonment is used, with consultation on initial proposals relating to bail and release from custody law this autumn"[2].

The consultation provided the opportunity to consider how custody should be used in a modern and progressive society. It specifically sought views on options for change when people accused of, but not convicted of or sentenced for, criminal offences may enter custody, with an emphasis on public safety as the key concern. It also considered how release mechanisms should operate in future, with a focus on supporting effective reintegration so that people can move on from a period of imprisonment and make a positive contribution to their community.

The consultation contained 32 substantive questions under two sections:

- proposals in relation to bail law which focused on changing the way that bail law operates so that those who do not pose a risk of serious harm are managed safely in the community and are not remanded in custody; and
- proposals in relation to arrangements around release from prison custody which focused on ways of better enabling reintegration through providing support to people leaving prison so that they do not reoffend.

Collectively, the proposals within the consultation recognised that, while imprisonment will always be needed for those who pose a risk of serious harm, many people in contact with the justice system have already experienced multiple and serious disadvantage. This includes issues such as homelessness, substance misuse, mental ill health and domestic abuse. The consultation therefore sought views on how to respond to the harms caused by Scotland's high use of imprisonment[3], while continuing to focus on public safety and the safety of victims. The underlying aim of all proposed reforms is to reduce reoffending, leading to fewer victims in the future.

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[1] Bail and release from custody arrangements: consultation - gov.scot (www.gov.scot)

[2] Programme for Government - gov.scot (www.gov.scot)

[3] The World Prison Brief ranks 57 European jurisdictions in terms of Prison Population Rate, with Scotland ranked at 20 at the time of writing (see: Highest to Lowest - Prison Population Rate | World Prison Brief (prisonstudies.org)

The consultation opened on 15 November 2021 and closed on 7 February 2022. An independent analysis of consultation responses was commissioned, and this report presents the findings from that analysis.

Methodology

The majority of responses were submitted via Citizen Space, the Scottish Government's online consultation platform, and were automatically collated into a database, downloadable to Excel for analysis. A small number (n=3) who submitted an online response also sent complementary emails directly to the Scottish Government containing further detail or supporting documents to supplement their online response. A further 16 organisations submitted responses directly to the Scottish Government via email only, most of which were classified as 'non-standard' i.e. responses which did not follow the standard Citizen Space structure/format and which included more general observations and open ended text/arguments/points for discussion related broadly, but not explicitly, to the questions asked. These were incorporated into the main analytical spreadsheet.

Respondent Profiles

A total of 142 responses were received - 68 from individuals and 74 from organisations. Among the organisations that responded, there was a reasonable split between local authorities/justice partnerships and other organisations, including legal organisations, support/advocacy organisations, public bodies and academics, among others. Among the local authorities/justice partnerships that responded, there was wide geographical coverage. In addition, there was a mix of national and more local Third Sector respondents. The table below shows the breakdown of organisational responses by type.

Organisation Types	**Number of respondents**	**% of respondents**
Local authority/justice partnership	29	39%
Advocacy/support organisation (Prisoners, Accused, Released)	9	12%
Advocacy/support organisation (Children and Young People)	8	11%
Public Bodies	8	11%
Third Sector/Other	8	11%
Legal organisations and Professional Bodies	7	10%
Advocacy/support organisation (Victims)	4	5%
Academia	1	1%
Total	**74**	**100%**

All responses were screened to ensure that they were appropriate/valid. There were no blank, duplicate or campaign responses. While some organisational responses were very similar in content, indicating an element of collaboration in the submission process, none were duplicated in their entirety. All were also submitted on behalf of separate bodies and were therefore counted as unique responses.

Report Presentation and Research Caveats

The tables below show the number and proportion of respondents who concurred with the different proposals/reforms presented, but in many cases, large numbers of 'non-responses' were noted. In all cases, therefore, the 'valid percent' has also been shown (i.e. the proportion who 'agreed' or 'disagreed' with proposals once the non-responses were removed). This provides a more accurate account of the strength of feeling among those who answered the set questions.

Comments given at each open question were examined and, where questions elicited a positive or negative response, they were categorised as such. The main reasons presented by respondents both for and against the content included in the consultation were reviewed, alongside specific examples or explanations, alternative suggestions, caveats to support and other related comments. Verbatim quotes were extracted in some cases to highlight the main themes that emerged. Only extracts where the respondent indicated that they were content for their response to be published were used and a decision was made to anonymise all responses as part of the reporting process.

For qualitative data, as a guide, where reference is made in the report to 'few' respondents, this relates to five or less respondents. The term 'several' refers to more than five, but typically less than ten. Any views that were expressed by many respondents (i.e. ten or more) are highlighted throughout.

While it was possible to carry out disaggregate analysis of the data based on whether the respondent was replying as an individual or on behalf of an organisation, the analysis suggested that there were no quantifiable or notable differences in the main themes to emerge between the two respondent 'types' for most proposals.

It should be also noted that earlier questions in the consultation attracted a higher response rate than those that appeared towards the end, and this is reflected in the analysis presented below (i.e. there was less to report in general on questions related to release compared to questions related to bail). There was also a great deal of repetition in responses especially within the two different sections, such that views expressed in relation to one question were repeated multiple times in response to later questions. Some respondents did not answer the set questions directly and instead offered more general comments or observations, but all data were integrated into the analysis and are reported under the most appropriate sections.

It should also be noted that some people clearly misunderstood or misinterpreted some of the questions that were asked, and provided responses to the open and

closed components of the same question which were sometimes contradictory. This is noted where relevant. Some also often referred to ‘offenders’ instead of ‘accused’ when discussing issues linked to bail and while this is factually inaccurate, quotes and wider sentiments have been left unedited for authenticity/transparency purposes.

Finally, although a reasonably large number of responses were received overall, it is worth stressing that the views presented here should not be taken as representative of the wide range of stakeholders invited to respond to this consultation, nor should they be generalised too broadly. They simply reflect the views of those individuals and organisations who chose to respond formally through the consultation process.

Bail

The first part of the consultation explored issues related to bail and remand decisions in Scotland, and included 12 questions with specific proposals for reform linked to:

- the need to protect public safety being a required ground that must be present to justify refusal of bail;
- requiring the court to have particular regard to victim safety when making their bail decision;
- empowering the court to rely, in all cases, on the general grounds relevant in reaching the decision to the question of bail;
- where a court refuses bail, requiring the court not only to give, but also to record, explanations for that decision;
- improving the provision of information to inform decisions in relation to the question of bail including enhanced involvement by justice social work;
- before a decision to refuse bail is finalised, making it an explicit requirement for the court to consider the use of electronic monitoring as a means of the accused remaining in the community;
- a number of miscellaneous issues relating to the relationship between bail and electronic monitoring; and
- a number of miscellaneous issues affecting the bail decision process.

Q1. Agreement with changes proposed in relation to when judges can refuse bail linked to public safety

	Number of respondents	Percentage of respondents	Valid %
I agree with the proposed change	81	57%	63%
I disagree with the proposal	43	30%	34%
I am unsure	4	3%	3%
No response	14	10%	-

Just under two thirds of respondents agreed with the proposal that judges should only refuse bail if there were public safety grounds for doing so. This was largely on the basis that they perceived it would help to reduce the numbers of people being held on remand in Scotland, which many perceived was currently (and historically) too high.

Among those who agreed (and were unsure) with the proposal, however, several expressed the need for greater clarification over the term 'public safety' which they perceived could be open to different interpretation unless clearly operationalised. Defining 'public safety in very clear terms was seen as particularly important for victims (and one organisation suggested that the proposal could be changed to make explicit reference to safety of victims). It was felt that some crimes may affect victims and the public more widely in different ways, and so safety would need to consider the likely trauma or response among victims/the public from some types of crime compared to others:

> "Public safety is an elastic term: often there are very specific individuals putatively in need of protection when a bail/remand decision is to be made (not necessarily "the public" at large)." (Third Sector/Other)

> "…'public safety' is not adequately defined in the consultation. Whilst there will be some common understanding of the term, clarification is required as to whether this includes, for example, psychological factors such as fear and alarm caused by an individual remaining in the community that will have a negative impact on a victim even if there is no tangible physical risk of harm. Trauma can be created simply by the victim knowing an alleged perpetrator has been granted bail." (Professional Body)

> "There are significant implications on victims' psychological as well as physical wellbeing when an accused person is bailed, including but not limited to fear of safety, threat of repeat victimisation, and emotional stress." (Advocacy/support organisation (Victims))

Domestic abuse in particular was seen as an offence which may not pose a risk to the general public, but which may require remand in the interests of specific victims (with coercive control being cited as something which may not be classified as a 'public safety' concern but which nonetheless could be hugely damaging to victims). In contrast, some people who are regularly accused of lower level offences may not pose a public safety risk but may still cause significant community disruption, distress or fear which might be better managed by the accused being held on remand (especially to prevent offence escalation):

> "Recidivist offenders may not pose a significant risk to public safety however often if not remanded, particularly when they have numerous outstanding matters before the court, they will go on to commit multiple further offences." (Individual)

Clarification was also suggested around the interplay between 'public interests' and 'public safety', with the former being a broader concept already set out in the legislation and which may still allow undue use of remand unless clarified further. The way that 'risk' would be assessed and interplay with public safety would also need to be clearly explained and understood so as to be consistently applied.

Other factors (in addition to public safety) that respondents perceived should be considered when assessing risk included whether the accused had a recent history

of repeat serious violence, previous and current evidence of witness intimidation and identifiable ongoing risk of violence to any group or individual. Remand on public safety grounds may be appropriate, it was suggested, for those with a long history of offences or recidivist offenders, for example, who may not be dangerous to the public, but who commit crime causing fear and alarm to their victims. Comprehensive evidence based and proportionate risk assessments were therefore encouraged to ensure a more standardised form of defensible decision-making in respect of the use of remand.

Several respondents also felt that people who have been assessed as low risk in particular should be bailed, with remand used only for people accused of the most serious or dangerous offences. A small number of respondents expressed that they felt that women and children/young people would rarely fit the profile of the 'most dangerous' individuals and so the proposal was particularly welcomed for this group as well as other 'vulnerable' groups (including accused with addictions and physical and mental health concerns, as well as those with no fixed abode).

Among supporters of this proposal, the cost of imprisonment (both financial and personal) was also frequently cited - several argued that the disruptive nature of imprisonment (including negative impacts on tenancy, employment, health (physical and mental), social security benefits, family relationships, etc.) meant that public safety concerns would need to be quite significant to warrant the disruption caused to the accused individual and their families:

> "We recognise that periods in custody impacts on individual's support systems, their income/employment, housing and mental health. In order to reduce the risk of re-offending having as much stability as possible is vitally important. Therefore, unless there is an identifiable individual or group at risk, remand should be avoided." (Local authority/justice partnership)

Several respondents stressed that they viewed community interventions and community support as being more appropriate than the use of remand for those who do not pose a risk/significant risk to the public, with suggestions that there needed to be greater public awareness raising of the credibility of community options as an alternative to remand. Indeed, some argued that the link between imprisonment and 'public safety' may be false and that community interventions may in fact provide a 'safer' option than remand:

> "The conflation of imprisonment with community safety, both in popular discourse and among the general public, is problematic…alternatives focus more on prevention, integration and restoration and aim to keep communities safer than custody currently does." (Advocacy/support organisation (prisoners, accused, released))

Such measures would, however, need to be properly resourced to provide the required confidence in their effectiveness:

> "This change to policy will need to be resourced in terms of current bail support services and other third sector alternatives. This change in policy should also be looked on as an opportunity to link people into correct services e.g. addiction and mental health. Wherever possible, a holistic, wrap-around, whole-systems approach should be used to support the person on bail and reduce the likelihood of re-offending." (Third Sector/Other)

Others noted that this proposed change would not be sufficient in isolation and would require corresponding changes, including changes to Section 23C(1)(d): "any other substantial factor which appears to the court to justify keeping the person in custody." This ground was seen as inconsistent with a modern, evidence-led, objective and progressive model where bail is the default position. Indeed, several commented on the importance of presumption of innocence and the unsuitability of removing someone's liberty until/unless found guilty:

> "Whilst everyone agrees that there are instances in which it is necessary to make use of remand, persons who are remanded because they are accused of a crime are innocent until proved guilty. Further, remand prisoners are human beings that have rights, including rights to equal treatment and to family life." (Third Sector/Other)

Several also commented on the fundamental human rights of the individual of being granted bail wherever possible.

Among those who disagreed with the proposal, the main view was that victim and/or witness safety should be paramount in decision making rather than safety of the general public alone. In contrast, a small number suggested that safety/protection for the accused may also sometimes warrant use of remand, especially if community support was lacking and a period of imprisonment may help them to stabilise. In such cases, public safety interests should not also need to be evidenced, they felt.

Another concern raised by a minority was that flexibility would be needed in the system to allow for those with repeated breaches of bail (and bail conditions) and/or repeated failure to appear or to comply with conditions of release to be remanded. This would be necessary to minimise costs to the public purse of pursuing those with no regard for orders of the court. It would also be necessary to mitigate against trauma experienced by victims from those who failed to adhere to court orders:

> "There is a huge amount of time and resources spent trying to trace people to attend court. Court time, witness time and other expenses all get wasted when trying to trace an accused who has repeatedly failed to appear for court. There are other reasons other than public safety that impact on other people." (Individual)

> "Those who pose no public risk but habitually fail to cooperate with the courts add considerable delay into the justice processes. These are often deliberate attempts to drag matters out for so long that witnesses either give up, or the

> Crown eventually throws in the towel. Whilst this may be in the accused's interests, it is not in the interests of complainers, victims, or witnesses, and it is certainly not in the public interest either." (Public Body)

A concern was also raised that there may be the potential for an increase in individuals failing to appear at court dates given there would be no prospect of custody as a consequence of non-attendance.

A view was also asserted that remand may sometimes be necessary as a means of maintaining public (and victim) trust in the justice system:

> "While public safety should be the main reason for refusing bail, it should not be the only reason. In some cases it may be appropriate to refuse bail to maintain public confidence and the confidence of victims in the judicial process." (Local authority/justice partnership)

Comments were also made that, while reducing the remand population may be desirable, there was perhaps a false assumption that remand was being used inappropriately and, in fact, that high levels of remand may reflect the high levels of offending (including serious offending) that Scotland faces. This proposal may, therefore, be based on an unstable rationale:

> "We are always reminded how the custody figures in Scotland are amongst the highest in Europe but we are not told how the offending, and serious offending rate similarly compares. We consider this to be regrettable as the totality of the picture on an issue of this significance should be provided to help inform decision making." (Public Body)

Other more general comments included that that Sheriffs/Judges were best placed to make such decisions, rather than blanket rules being applied and that decisions should always be politically impartial. Judicial independence and discretion was paramount, some felt.

Others again felt that the proposal would only work if increased/sufficient investment in alternative support and community interventions was made available. Several wished to see more clarity over what 'additional support' for accused in the community might look like if this change was made, to ensure safety of the perpetrator as well as the public. Others, who offered partial support, felt that release on bail would only be appropriate if the accused was not at risk themselves, i.e. of homelessness, physical or mental harm, exploitation or victimisation, etc. Support for persons held on remand may be better in some cases than those released on bail. While the ideal scenario would be for better provision of community support for those granted bail, it was noted that the better opportunities presented in prison for some may make remand a more supportive option in certain cases.

Q2. Agreement with changes proposed in relation to how judges consider victim protection when making decisions about bail

	Number of respondents	Percentage of respondents	Valid %
I agree with the proposed change	84	59%	66%
I disagree with the proposal	34	24%	27%
I am unsure	9	6%	7%
No response	15	11%	-

Two thirds of respondents agreed that judges should have to have particular regard to the aim of protecting the victim(s) when making bail decisions. Many respondents who agreed with this proposal felt that it was a basic right or expectation for victims to feel safe when an accused was given bail. Consideration of victims was described as 'paramount', 'essential' and 'central', and having victim protection formally included as part of the judicial decision making process was therefore welcomed:

> "The rights and needs and safety and protection of victims should be at the forefront of any decision made on bail." (Local authority/justice partnership)

This proposal was particularly welcomed for those accused of violent crimes and in cases of domestic abuse and gender-based violence, or where victims (especially women and children) may be highly vulnerable.

Having victim safety as a separate consideration was seen as congruent with a victim centred approach to justice and would also mitigate against some current concerns that the victim's voice is often lost in the justice process:

> "Although current bail considerations include victim safety as part of public safety considerations, specific considerations of victim safety as an independent element may focus attention and ensure thorough consideration of elements in relation to victim safety in each case." (Local authority/justice partnership)

The proposal was also welcomed on the basis that it would bring greater transparency to the decision making process as well as assist victims, witnesses and the wider public to better understand judges' decisions. It may also improve public confidence in the criminal justice system, it was suggested:

> "Whilst there is a competing balance to be struck in the rights of the alleged offender and victim, if we are to ensure everyone has the right to feel safe in their community, and especially victims, and the latter are to be put at the heart of justice, this is essential. It ensures transparency and holds judges accountable

for their decisions and for considering the impact on the victim(s) and risk management planning - the safety of victims is of paramount importance." (Professional Body)

A small number of respondents again suggested that this proposal could be bolstered by the use of bail supervision and electronic monitoring to reassure victims that, in cases where victim risk is assessed but bail is still given, accused are being monitored to minimise risk of harm to others.

Several respondents indicated that it was essential that reliable and timely information was made available to Sheriffs/Judges to help inform such decisions and to reassure everyone that victims would be safe:

"It is imperative that the best information is brought before the Judge to ensure that the suitability for bail (including any risk to actual or potential victims and witnesses) is adequately assessed (by those best positioned to do so) and the narrative of this (including any specific risk considerations) is articulated in a way that is meaningful and accessible to the Judge." (Local authority/justice partnership)

There were some doubts about whether such information could/would be provided in sufficient time/at early stages of a court case. It was felt that information should include feedback from the victim(s) regarding their understanding and assessment of future risk, as well as information from the police, defence, Crown, social work and others, to allow a more accurate assessment of risk. Unless the court had access to comprehensive information around risk and vulnerability, this proposal may not be workable.

Some clarification was also sought around whether this proposal related only to the victim of the offence with which the accused was currently being charged, or future potential victims, as well as clarity around whether victim safety would take precedence over, or be secondary to, wider public safety. Questions were also asked around how the victim would be defined in cases of offences perpetrated against the wider public, or where the victim was not a readily identifiable individual. Similarly, one organisation highlighted that 'victims' may not be accurately defined as such pre-conviction, but would instead legally be 'complainers' (thus making this proposal inaccurate in its formulation).

A clear definition of risk and thresholds for risk would also need to be established, it was suggested, as well as being clear about whether risk of harm included physical and/or psychological harm to victims. Tensions may also exist between what the Crown may perceive as the necessary protection of the victim and what the victim may feel is necessary and proportionate, and this too would need to be considered in taking the proposal forward:

"We agree with the proposal to place a specific responsibility on the court for victim issues to be considered within the context of decision making in relation to bail. However, clarity is required as to the parameters of what is considered in

relation to the ‘safety’ of victims and how this is determined.” (Local authority/justice partnership)

Cases where this proposal may prove challenging included cases of familial offences (especially where perpetrators and victims live in the same household), as well as cases where there are secondary victims (including children impacted). It was suggested that it may also be pertinent in some cases to extend the proposal to include witnesses, especially vulnerable witnesses or those living in the same communities or known to the accused.

Among those who were unsure, this was largely because they felt that the notion of risk was subjective and may be hard to operationalise, potentially resulting in inconsistent practice and some individuals being bailed while others (in similar circumstances) are not.

Others were unsure or did not agree on the basis that they did not want the voice of victims to overwhelm or dominate the voice of the accused, especially young or vulnerable accused, i.e. “protecting victims is important, but so too is protecting those wrongly accused” (Individual). Victims’ voices could also be very emotive, it was felt, and so it may be difficult for decisions to remain impartial and based on objective assessment of risk. It was also unclear in the consultation document how victim protection would be weighted alongside other factors which may inform bail decisions.

A small number (both who disagreed or were unsure) suggested that the proposal may be unnecessary as bail conditions can be (and often are) already imposed that restrict a person’s contact with the victim or witness(es) in a case and/or other curfews and restrictions imposed - it was therefore unclear what additional considerations or changes were being proposed. Others simply stated that judicial independence was again key.

Only a very small number welcomed this proposal on the basis that it would likely result in harsher treatment of offenders by reducing the likelihood of bail, and a similarly small number disagreed with the proposal on the basis that it may be used to justify higher levels of remand:

“We do not feel that the proposed change is necessary, given that considerations surrounding victim safety and public protection already inform decision-making around bail, and its implementation may well be detrimental. The exaggerated zero-sum logic of this question, of accused versus victims, results in a punitive logic that helps legitimise each use of remand, which has culminated in Scotland’s current punitive moment. The overuse of remand damages individuals, societies, families, and communities. Its use should always be a balance of safety and security of all parties.” (Academic)

Q3. Agreement with changes proposed in relation to courts being empowered to make decisions on the question of bail in all cases using a simplified legal framework

	Number of respondents	Percentage of respondents	Valid %
Strongly agree	43	30%	35%
Somewhat agree	52	37%	42%
Somewhat disagree	16	11%	13%
Strongly disagree	12	9%	10%
No response	19	13%	-

The majority of respondents agreed with the proposal that the court should be empowered to make decisions on the question of bail in all cases using a simplified legal framework. There was, however, relatively little qualitative feedback in response to this question compared to other parts of the consultation. Some of this may be attributed to the fact that the proposal appeared to be poorly understood. Indeed, several comments were made by those who agreed, disagreed or were unsure that there was insufficient information provided in the consultation paper regarding the 'simplified legal framework' being proposed. Others commented that the information that was provided was unduly complicated, not entirely accessible or clear. Some who provided support for the proposal therefore did so only on the proviso that more detail/explanation of the simplified framework was provided.

Among those who provided a substantive response (and who agreed with the proposal either strongly or somewhat), the simplified framework was mainly welcomed on the basis that it would engender better communication and understanding of court decisions for all parties, particularly in cases where bail is not granted. This was particularly important for accused and their families, it was felt, as they currently often do not understand the decisions made against them:

> "Section 23C and 23D provides very basic information that can be used to support families [of accused] during this time…Providing information on when remand is more likely to be used helps families to plan for the significant change in circumstances of a family member being held on remand and no longer being in the family home." (Third Sector/Other)

Other perceived benefits (mentioned by just one or two respondents each) included that a simplified framework may speed up court proceedings, reduce arguments and case delays, lead to more transparent decision making, allow more flexibility for sentencers and allow for more consistent bail decision making across the board. Two respondents who offered marginal support did, however, question what the role of defence agents would be in a simplified framework.

Caveats cited by respondents included that any adjustments to the legal framework would need to be clear about considerations of the court in ensuring victim protection, as well as being careful not to oversimplify the impact of crime on victims. It would also need to be clear about the way that vulnerable accused (including children and young people) would be considered. It was also stressed that sufficient legal safeguards would need to be in place to ensure no diminution of rights. A final caveat was that wider awareness raising/public messaging would be required for people in Scotland to understand and support these changes.

Assuming that the proposals set out at Question 1 were implemented, many considered that Section 23D would become redundant, allowing the question of bail to be considered according to the proposed new principle of public safety in all types of case:

> "…empowering the courts by removing this additional statutory provision would ensure independent decision making on a case-by-case basis." (Local authority/justice partnership)

Others agreed that it was appropriate that S23D was replaced by proportionate and evidence-based decision-making (rather than offence-specific decision-making) and hoped that this proposal would remove barriers to improve appropriate access to, and appropriate use of, bail. Indeed, one organisation posited that the trend in remand identified in the consultation may be, in part, a consequence of the presumption against bail where section 23D of the Criminal Procedure (Scotland) Act 1995 applies.

There was, however, some lack of clarity around if the offences currently covered by S23D would be considered by changes proposed in Question 1 and so corresponding uncertainty around whether there were certain offences that were so serious that simply using the same general grounds would be unacceptable. Again, more clarity on what additional measures would be included in the framework relating to consideration of bail in cases currently covered by S23D of the 1995 Act was needed to inform respondents' decisions about whether this section should be retained or removed.

Those who strongly disagreed typically indicated that they felt the current framework/system was robust and worked well (and did not need to be further simplified), and that the proposed changes would interfere with judicial independence. Specifically in relation to S23D, some expressed quite strong concerns about the possible removal of presumption in favour of remand for those accused of sexual violence or domestic abuse who already have convictions for similar crimes, and felt that the current provision worked well. There were also more general concerns that a 'simplified' legal framework may not be able to capture the complexity of the decisions that needed to be made.

Q4. Agreement with changes proposed in relation to judges giving written and oral reasons when they decide to refuse bail to an accused person

	Number of respondents	Percentage of respondents	Valid %
I agree with the proposed change	96	68%	76%
I disagree with the proposal	25	18%	20%
I am unsure	5	3%	4%
No response	16	11%	-

The majority of respondents agreed with the proposal that judges must give reasons when they decide to refuse bail to an accused person, both orally and in writing. The main reason for agreement was that it would help the accused (and other parties) better understand the decisions that were made. Several respondents agreed that verbal decisions may not always be taken on board or be properly heard/understood at the time they are delivered, and that giving both accused and victims an opportunity to read, review and reflect on decisions after the event (and especially when not in the court room environment) would be beneficial:

> "Being held on remand can be a traumatic experience for those involved. Consequently, the accused may not always immediately comprehend or remember an oral explanation. Written confirmation would help to mitigate against this risk." (Individual)

The proposal was also seen as potentially benefitting families/supporters of accused in helping them to understand decisions:

> "…if the written reasons for the remand decisions are able to be passed on to the family shortly after this would help keep families informed of the decision made about their loved one and help them to understand why they are being held on remand." (Local authority/justice partnership)

While written reasons may be of great assistance to victims if made available, one victim advocacy organisation suggested that this proposal could also go further to include written reasons when bail is granted, not only when it is not.

Several other perceived benefits of this proposal were cited, including that:

- it would lead to more transparency, openness and accountability in the system;
- having decisions clearly presented and recorded may help increase public confidence in the justice system;
- it may enhance the opportunity for appropriate support to be identified and directed to victims and accused soon after the point of decision;

- written evidence would be useful in the case of appeals against decisions; and
- providing an unambiguous account of decisions in writing would mitigate against different (and potentially inaccurate) recall by different parties (i.e. minimise supposition).

More general comments were made that this proposal was welcomed because it reflected a Human Rights Framework, which was key to a fair justice system:

> "It is recognised as good practice, in accordance with the human right to a fair trial, for reasons to be given for judicial decisions in a form that is clear and comprehensible. In order to meet this requirement, decisions should be given both orally and in writing." (Third Sector/Other)

Additional comments included that it would need to be made very clear exactly what data require to be recorded and how, including timescales for producing written decisions. A standardised approach to recording decisions in writing was suggested and one which provided assurances that all safeguards in terms of fairness, data protection, judicial process, etc. were met. Robust processes must also be in place, it was felt, around data privacy, including clear guidelines on whether victims or families would be able to access this level of information.

Other respondents who welcomed the proposal stressed that the reasons should be recorded in clear, accessible language to make it easy for people to understand. This was seen as especially important for young and otherwise vulnerable accused, including those with learning difficulties, impaired communication, poor literacy skills and those who do not speak English as their first language:

> "In the interests of transparency and equity, the provision of bail refusal reasons, both orally and in writing, will be likely to provide consistency of, and confidence in the shrieval decisions. Such reasons must be provided in clear, understandable language which can be easily understood by those upon whom the decision impacts." (Advocacy/support organisation (prisoners, accused, released))

A large number welcomed the proposal on the basis that it would provide useful evidence for future research, monitoring and evaluation, as well as future service planning and improvement purposes (acknowledging that data safeguards would need to be in place if made available for public/research use):

> "…this would provide a richer and [more] accurate stream of data than is currently available in regard to bail decisions which has been identified as a gap for many years." (Advocacy/support organisation (prisoners, accused, released))

The main caveats to support were that communication should always take into account the safety of victims, particularly in domestic abuse cases (i.e. so that additional blame is not directed at victims) and that all personal data must be kept secure. One respondent suggested that there should be an option for defence

solicitors to advise the court that written reasons are not necessary and oral reasons would suffice (although they did not specify why this would be beneficial).

Only a very small number of respondents were ambivalent and suggested that they could see no benefit to be gained from written reasons compared to verbal. A point was also raised that providing explanations to the accused of verbal reasoning was arguably a role for the defence agent, rather than Judges.

Those who disagreed did so mainly on the basis that verbal decisions were already recorded (in most cases) in written notes of court proceedings (and was already necessary in case of later appeals). Therefore, it was felt this would result in duplication of effort: i.e. the stating of reasons for granting or refusal of bail (orally, in court) is already a matter of law (Section 24(2)(A) of the 95 Act) so arguably no legislative change is required to effect this so long as court notes are reliable.

Other arguments against the proposal included that having judges give reasons in writing would be time consuming and may slow down the court process and cause more backlog/case delays (especially given the volume of cases heard in court each day which would be subject to this change) and that this process could be costly in terms of staff time and resources. Comments were also made that the current system already worked well.

Q5a. Agreement with different options for courts considering bail decisions in cases where the prosecution opposes bail

	Number of respondents	Percentage of respondents	Valid %
The court ***may*** ask for information from social work but is not obligated to. Social work ***may*** decide whether to provide it	29	20%	24%
The court ***must*** ask for information from social work. Social work ***may*** decide whether to provide it	12	9%	10%
The court ***must*** ask for information from social work. Social work **must** provide it	81	57%	66%
No response	20	14%	-

When a court is considering bail decisions in cases where the prosecution *opposes* bail, two thirds of respondents preferred the option that the court **must** ask for information from social work and that social work **must** provide it.

Among the qualitative feedback given, there was some duplication in themes presented by those who had answered the closed question differently, with similar justifications being forward for why the court ‘may’ and ‘must’ ask for information as well as similar justifications for why Social Work ‘may’ and ‘must’ provide it. The qualitative data could not, therefore, be neatly clustered.

Those who indicated that they preferred the option that information **must** be requested and **must** be provided typically commented that involvement from Social Work usually meant that more evidence-based, proportionate and appropriate decisions could be made and better outcomes achieved for all:

> "By always having information on accused's background…this improves the understanding of the individual and what works best for them. It can help to find suitable alternatives to bail and what would help the accused." (Individual)

Social Work information provided in this way was seen as benefitting not only decisions regarding bail but would also provide critical insights into an individuals' unique personal circumstances which could inform necessary supports being put in place if bail is granted:

> "The information from justice social work can help inform not just whether bail is granted, but the conditions upon which it is granted. It is imperative that conditions must be doable, make sense to the person who has to follow them and be properly communicated to the individual." (Advocacy/support organisation (prisoners, accused, released))

Social work reports could also help anticipate and identify considerations relating to experiences of remand which may have unintended consequences for the accused which the court may otherwise fail to anticipate, it was suggested.

Comments were made that this option would help to build consistency into the bail decision making process, with perceptions that the involvement of Criminal Justice Social Work (CJSW) in bail decisions was, at present, based on a "postcode lottery". If adopted, this proposal may also help to bring standardisation to the information that CJSW teams expect to be requested, rather than considerable existing differences in what Judges/Sheriffs require. It may also help to establish shared standards for what should be provided.

This model was supported in particular for children and young people (i.e. accused under 25) and those with issues relating to addiction, trauma, learning difficulties/disabilities, mental health issues, etc. to help ensure that decisions relating to bail were in their best interests.

This option was also supported on the basis that it could help to ensure that the views of families of the accused are considered in bail decisions (via communication with CJSW representatives).

Others who said that information must be provided if requested felt that this would need to be mandated in order for it to be fulfilled, and that Social Work may opt not to provide information if there was any room for discretion set out legislation (and may excuse or defend this on the basis of lack of time/resource). Comments were made that any discretion in application would defeat the intention of the provision.

In general terms, among those who preferred the option that the court **may** ask for information from social work but is not obligated to and social work **may** decide

whether to provide it, the main reasons given linked to the need for flexibility and for all cases to be treated differently. Others welcomed that the court may request the information but was not required to do so, as they felt this would unduly delay the process of justice in some cases. A suggestion was made that existing reports rather than new reports would often suffice if asked for and that requesting 'new' information in all cases would also be unmanageable for Social Work services. There may also be cases where other factors may mean that remand was inevitable and so in such cases requesting Social Work information would seem irrelevant:

> "Sometimes there are very obvious grounds for opposing bail where additional information from social work will not add anything. Asking for the Court to consult JSW in these cases seems an unnecessary complication for all parties." (Local authority/justice partnership)

> "There will be plenty of cases where it is plain that bail is not appropriate and social work needs then not be consulted. Adding needless layers of mandatory bureaucracy is wholly unnecessary." (Individual)

Among those who supported the option that the court **must** ask for information from social work and social work **may** provide it, this was because sometimes the court may request information that was outwith the remit of CJSW or that the timescales for gathering and providing the information may be unreasonable, making a refusal to provide the information seem reasonable. A view was also offered that provision of information must be a decision left to Social Work based on the staff and resources available to them at any given point in time to be able to deliver what was required (whilst also maintaining services such as bail supervision, etc.) Others offered support for Social Work discretion on the basis that it would depend on what information was being sought (and that greater clarity was needed in the consultation on exactly what information would be sought from social work).

Other reasons for preferring a model where Social Work could refuse to provide information included that it may prevent some accused/service users from sharing important information with CJSW if they had concerns that the court could access any/all information held without restrictions:

> "There may be barriers to service users sharing information with social work services if they understand court services would have unreserved access to this. Further consideration would need to be given to what information was requested and how we would resource such requests. Currently this would not be manageable with the current staffing compliment." (Local authority/justice partnership)

Other comments were made that it was right that Social Work services retained the discretion to decide when it may/may not be in the best interests of the individual or a case to share the information held (although this was a minority view).

Several provided more general comments at this question. In the interests of being case led, suggestions were made that the proposal should not be limited to Social Work only, and that the court should be able to request information from any source it believes to be relevant in assisting a decision, and that the person or institution should be obliged to provide it. This included information provided by Police Scotland and several suggested that third sector organisations in particular should be included as a potentially valuable source of information:

> "…third sector providers that are working with the individuals concerned may be well placed to also provide up-to-date, credible information which could help to inform bail decisions." (Third Sector/Other)

Flexibility may be needed, it was suggested in how this proposal would apply where people appear from custody, and where a short extension of a temporary custody arrangement may allow for more reliable information to be gathered and presented to the Judge.

The main concerns raised in relation to this proposal (across different respondent types) were costs and time associated with generating the requested information and agreement that significant additional investment/resource would be needed to allow CJSW both to provide this function and to provide necessary training for CJSW staff to respond:

> "…such a change to the current system will require a significant investment in Social Work resources to provide such services. This would be in respect of physically-located court teams, community-based activity, training, development work in processes and procedures, etc." (Local authority/justice partnership)

While some welcomed the recognition and support for additional funding within the consultation, robust information gathering, analysis and oversight were also seen as necessary to ensure that funding is sufficient to sustain efficient and effective services (including monitoring any negative impacts of this change on existing services such as Electronic Monitoring bail assessments, bail supervision, etc.) Comment was made around the time/resources involved in interviewing the accused to inform such reports, as well as conducting home visits, etc. This would be particularly problematic in Sheriffdoms serving remote communities, or large Sheriffdoms where travel, etc. may impact on resources required to collect the information required for reports.

Many respondents concurred that there may be challenges in always accessing the required information quickly enough in court proceedings to make this a viable proposal. If information could not be provided timeously, the proposal would fail:

> "There is great value in seeking information from Social Work. While we support information being gathered, research has shown that it is very difficult to gather meaningful information in a short space of time. As the consultation focuses on remand decisions, the time available will be very short, in order to avoid people

being held awaiting a remand decision for significant periods of time." (Advocacy/support organisation (prisoners, accused, released))

One way to mitigate against this would be for the Crown, in cases where they plan to oppose bail, to discuss the information required from social work ahead of the appearance at court:

"It might be an idea for cases where the [Procurators Fiscal] PF plan to oppose bail, to be discussed with social work in advance of the individual's appearance in court. That could prevent unnecessary delays." (Local authority/justice partnership)

"…an obligation on COPFS to inform Social Work of a decision to oppose bail in advance of any court hearing may allow for a more speedy production of relevant information to the court and reduce the need for continuations of hearings and any consequent unnecessary deprivation of liberty." (Local authority/justice partnership)

A slow and phased introduction of this change may also be necessary to ensure that resources could be built up over time to respond to any increase in demand for information.

Other caveats raised across the board included that consideration must be given to sourcing information without increasing risk to the victim, and there were also some suggestions that this proposal wrongly placed the needs of the accused ahead of those of the victim (i.e. administering justice in an accused-led way). Clear messaging around defence/Crown roles and responsibilities in relation to requests for information and the need to collaborate with criminal justice social work would also need to be provided, it was felt.

A small number of respondents said that they would like to see the option that a court **may** request information and in such cases social work **must** provide it and were unsure why this had not been offered as an alternative:

"In my view it would be better to for the court to have the option of asking for further information from Social Work only in cases in which it is deemed necessary. In such instances Social Work must provide what has been asked for." (Individual)

Q5b. Agreement with different options for courts considering bail decisions in cases where the prosecution is not opposing bail

	Number of respondents	Percentage of respondents	Valid %
The court ***may*** ask for information from social work, but is not obligated to. Social work ***may*** decide whether to provide it	55	39%	48%
The court ***must*** ask for information from social work. Social work ***may*** decide whether to provide it	13	9%	11%
The court ***must*** ask for information from social work. Social work **must** provide it	48	34%	41%
No response	26	18%	-

When a court is considering bail decisions in cases where the prosecution is *not opposing bail*, there was less agreement among respondents around the preferred option. Almost half of respondents instead urged that flexibility should be included in such cases with both the court and social work having discretion to act (i.e. the court **may** ask for information from social work, but is not obligated to. Social work **may** decide whether to provide it).

The main reasons for this difference (compared to cases where bail was opposed) was that, if bail is not being opposed it was presumed that the risk to victims and the public would be low, and so the information may be superfluous (and thus the additional work associated with generating reports may be unwarranted):

> "Where there is no identified threat to public safety from the granting of bail, and it is not therefore opposed by the prosecution, there will be no need, in most circumstances, to add to the work of the court and of justice social work by requesting further information." (Third Sector/Other)

Only if the court was actively considering remand should this be considered, some felt. Others suggested it may also be useful for the court to request information in specific types of cases, including domestic abuse cases and contact sexual offences, or where there were concerns for the accused or others.

Suggestions were also made that requesting reports in cases where bail is not opposed may assist if the Judge is considering the imposition of further conditions to support compliance with bail conditions (and in such cases, a request may be made which social work should fulfil in the interests of appropriate support/supervision measures being put in place for the accused):

> "Where the Judge is considering the imposition of further conditions, it is critical that those personal circumstances, etc. of the individual appearing before them - as compiled by social work - detail any vulnerability or complexity and,

particularly, on the nature of support the person would require in the community….This amended proposal would ensure that in such circumstances, the Judge is afforded the opportunity to make a more informed decision when granting bail (with whatever conditions they deem necessary) which would ensure that people, where appropriate and necessary, are afforded the support they need." (Local authority/justice partnership)

Others indicated that where bail is not opposed by the Crown, they would like to see greater flexibility afforded to the courts and to social work based more on the perceived risks/vulnerabilities of the accused - where risk and support needs were low, reports would not be needed and may be a waste of time and resources (and decisions about risk, time and resources would be best determined by the judge on a case-by-case basis).

Some who supported this more flexible approach also commented that mandating the request and provision of reports in cases where bail was not opposed may undermine the presumption of innocence and be an unwelcome intrusion into the life of an accused.

Where respondents agreed with the option that the court **must** ask for information from social work and that social work **may** decide whether to provide it, this was largely because it was perceived that social work may hold information that would bring into question the prosecution position of not opposing bail. They, therefore, would be best placed to determine if disclosure was appropriate and relevant.

For those who indicated that the court **must** ask for information and that social work **must** provide it, the same reasons were given as those for cases where bail was opposed, i.e. that it was always preferable to consider all information which helps see the accused in the context of their social circumstances, including risk and needs and the provision of support to address the issues underpinning their offending. Others again mentioned that this option would maximise fairness, consistency and transparency in the decision making process and make the process more individualised. This approach would also mitigate against cases where the prosecution had 'missed' or not been given crucial information relevant to the case which may have otherwise changed their position regarding bail.

Again, many who answered this question gave the same caveats shared in response to Question 5a, i.e. that more clarity was needed on the type of information that would be sought and reassurances offered that additional funding would be provided to social work to allow this proposal to be implemented. Concerns were again raised that additional time would need to be built into court cases for any option as it would be difficult for social work to gather meaningful information in a short space of time. Flexibility to provide pre-written/existing reports instead of generating 'new' reports was again encouraged as well as the gathering of information from third sector organisations and others to inform decisions, rather than social work alone.

Q6. Agreement with proposals that courts should be required to consider Electronic Monitoring before deciding to refuse bail

	Number of respondents	Percentage of respondents	Valid %
Strongly agree	68	48%	55%
Somewhat agree	30	21%	24%
Somewhat disagree	14	10%	11%
Strongly disagree	13	9%	10%
No response	17	12%	-

Around three quarters of respondents who answered this question agreed (either 'strongly' or 'somewhat') with the proposal that courts should be required to consider Electronic Monitoring (EM) before deciding to refuse bail. Among those who 'strongly agreed' the main reasons given for support were that EM used in appropriate cases could provide a credible and cost-effective alternative to custodial remand, potentially nullifying the negative impacts of remand to an individual and their family:

> "We strongly support this proposal for electronic monitoring where it is assessed as safe and proportionate to do so. This would limit the negative impacts on positive and protective factors in the alleged offender's life such as family and work whilst ensuring victim and community safety." (Local authority/justice partnership)

EM was particularly welcomed for young accused as a way of protecting the public whilst also supporting them to address their behaviour and wider needs:

> "All opportunities for someone to remain in the community must be considered and evidence provided as to why this would not be suitable, to ensure arrival at remand is the only option and clarity as to why. Specifically articulating the consideration of EM within this decision-making and why not suitable or why suitable would be welcomed. This ensures it does not become a 'tick-box' exercise and is fully considered." (Advocacy/support organisation (Children and Young People))

EM was seen as providing accused with an opportunity to demonstrate compliance with court orders/bail conditions as well as offering reassurances to judicial decision makers. It was also seen as an asset in higher tariff cases where ordinarily bail would be refused. Others simply stressed that all alternatives to remand should be considered, with remand being the last resort.

Caveats outlined by those offering marginal agreement included that EM conditions would need to be sufficiently flexible to accommodate people's often challenging

lifestyles/circumstances, and that suitable solutions would need to be found to allow those with no fixed abode to also be considered for EM.

For female accused, there was a suggestion that the court would also need to take into account the impact of EM in relation to stigma, impact on family life and the potential for women to be electronically monitored and restricted to an address where they are at risk from a partner. Some more general concerns around human rights and use of EM to ensure that it used only to capture necessary data were also raised. Potential negative impacts of EM on family members of the accused would also need to be considered if its use was to increase. In addition, consideration to victim and witness safeguarding would need to be clearly evidenced in all cases of use, it was felt, and the proposal may also need to be accompanied by clear public messaging to increase public confidence in the credibility of EM. Several also commented that GPS tracking (rather than relying only on Radio Frequency (RF) EM) should be implemented at the earliest opportunity as this would also bolster confidence in its effectiveness.

Many respondents also highlighted that they perceived EM was only effective if supported by robust supervision as the technology itself may not change behaviour or guarantee compliance, and was also likely not to address wider criminogenic or personal needs:

> "EM however should be used in the context of a package of support in conjunction with other measures to assist compliance and desistance. EM used as a stand-alone measure is likely to be ineffective." (Local authority/justice partnership)

Additional staff and other resources would be required to put this support in place, it was stressed, if the proposal was implemented. This would include time and resources for social work staff and others involved in drawing up the necessary paperwork to support decisions on EM and its use. Plans would also need to be put in place to ensure that EM was consistently available to all accused (including those living in rural and remote areas) so that this proposal was fair to all. Others stressed that while they supported this proposal, EM should still be considered as only one option from the full suite of possibilities open to the court:

> "We would encourage that all alternatives to custody are fully considered by the courts and not just electronic monitoring. Again, as alternatives to custody take time and resources, it will need properly funded to be successful." (Third Sector/Other)

Support for the proposal was also contingent on explanations being given to those made subject to EM (or refused) about the reasoning for such decisions, as well as clear information being given about the consequences of breach. Others supported this proposal only if it did not mean that those previously unlikely to receive EM bail would now do so (to removed risks of 'net-widening' where EM is added more regularly to bail where its use is not clearly justified and necessary).

Among those who 'somewhat disagreed' the main reason was that all cases should be dealt with on a case-by-case basis with due regard to risk and public safety. If bail was being refused, it was likely that there was a safety reason for doing so and, therefore, EM would likely be inappropriate. Similarly, there was concern that assessing suitability for EM could take time to ensure that safety of victims and the public were fully considered.

Those who 'strongly disagreed' mainly did so on the basis that the effectiveness of Electronic Monitoring was not sufficiently well evidenced. Some perceived that it did not reduce or prevent re-offending and others indicated that it may have negative impacts on accused. Again, those who strongly disagreed also suggested that EM was expensive and labour intensive to manage and oversee.

Other reasons for not supporting this proposal included perceptions that it was too offender-focused rather than victim focused, and that it was not always effective at preventing witness and evidence interference:

> "We also know that perpetrators take on more sophisticated methods of contacting their victims e.g. through social media, mobile contact, etc. which falls outside of what Electronic Monitoring records." (Advocacy/support organisation (victims))

One respondent suggested that bail was currently only refused after consideration of all other options (including EM) and so this proposal in itself was not 'new'.

Q7. Agreement with proposals that, when a court decides to refuse bail, they should have to record the reason they felt electronic monitoring was not adequate

	Number of respondents	Percentage of respondents	Valid %
Strongly agree	79	56%	62%
Somewhat agree	30	21%	24%
Somewhat disagree	5	3%	4%
Strongly disagree	13	9%	10%
No response	15	11%	-

There was considerable agreement with the proposal that, when a court decides to refuse bail, they should have to record the reason they felt EM was not adequate. Many reiterated comments made in response to previous questions that there should be accountability, openness and transparency in all bail and remand decision making, not only in relation to EM decisions.

Suggestions were made that, in order for this proposal to be workable and reliable, a set criteria and framework should be developed to allow consistency across all

Sheriffdoms around the use of EM, that explanations should be given both verbally and in writing, and should be presented in an accessible way. Clarifying what was meant by 'not adequate' (as opposed to 'not appropriate') was seen as particularly important to avoid any room for different interpretation. Clarity was also sought around whether decisions linked to 'adequacy' would also be person-centred (rather than being based on availability/quality/capacity of EM).

Again, having reasons recorded may help with concurrent decisions around wider support needed for victims or the accused and may allow these to be responded to more effectively. It would also help with appeals, monitoring, evaluation, research and service planning in relation to EM provision and its effectiveness, it was felt.

As with responses to earlier questions, some also agreed on the basis that a decision in writing may allow all parties an opportunity to reflect on, and understand, a decision rather than in the often stressful environment of a court hearing where things may be misunderstood.

Caveats included that records of decisions in one case should not be used in subsequent cases for the same accused, i.e. an assessment should relate only to the case at hand, and this should only be implemented if it did not unduly delay the progress of a case through court.

Those who disagreed felt that Judges should not be continually questioned, as it was their job to independently 'judge' and as such they should be trusted to use their discretion. A small minority disagreed because they did not support EM *per se*.

Q8. Agreement with proposals that time spent on bail with electronic monitoring should be taken into account at sentencing

	Number of respondents	Percentage of respondents	Valid %
Strongly agree	59	42%	47%
Somewhat agree	23	16%	18%
Somewhat disagree	11	8%	9%
Strongly disagree	33	23%	26%
No response	16	11%	-

Proposals were set out that time spent on bail with electronic monitoring could be taken into account at sentencing. While most agreed with this proposal (either 'strongly' or 'somewhat'), a larger proportion 'strongly disagreed', compared to earlier proposals.

Those who agreed felt that EM was still a restriction of liberty and as such should definitely be counted, in the same way that time spent on remand would be taken into account, so as to bring parity:

> "…any time already spent with a reduction of liberty should be taken into account at the point of sentencing. In the same way that time spent in custody on remand is taken off a custodial sentence, time spent on bail with Electronic Monitoring should also be taken into account." (Local authority/justice partnership)

> "Any activity compelling people to comply with certain requirements before being convicted should be taken into account at sentencing. This would support a consistent approach since time spent on remand is taken into account during sentencing. Taking those factors into account may also incentivise compliance." (Local authority/justice partnership)

> "In the same way that time spent on remand is taken into account when a custodial sentence results from a case, it should naturally follow that a period of restriction on bail subjected to Electronic Monitoring should also be taken into account. Bearing in mind that even if granted bail with an EM order, an individual remains innocent until proven guilty, therefore having to spend a period on bail with an EM requirement must be viewed as having a punitive element and should not put an individual at a disadvantage in the event of a custodial disposal." (Advocacy/support organisation (prisoners, accused, released))

Several suggested that this proposal would work as an incentive for compliance, and several also viewed that compliance with electronic monitoring during the bail period bail could provide evidence of an individual's likely engagement with community based sentencing. A caution was given, however, that if a community sentence was given, it should not be shortened so much as to become ineffective at addressing criminogenic need:

> "…consideration would need to be given to the length of community-based sentences that may subsequently be made to ensure that meaningful, relationship based interventions can take place and that there is sufficient time to complete programme work to address issues and reduce risk to prevent the pitfalls of short-term custodial sentences being repeated with community sentences." (Professional Body)

Others welcomed this proposal specifically because it would bring comparability with other jurisdictions, which they felt was important in the interests of fairness. One organisation suggested, however, that 'regard to' EM rather than the 'requirement to' may be more appropriate in Scotland, and be more consistent with other legislative provisions:

> "[Organisation's] view is that the legislation should simply require the court to "have regard to" time spent on bail with electronic monitoring, rather than (as in England) requiring the court to apply a specified arithmetical formula to its assessment. This would preserve the discretion of the sentencing court. It also

> recognises that quantifying the impact of a period spent on bail with electronic monitoring can be complex, and gives the court flexibility in doing so. And it would be consistent with the terms of section 210 of the Criminal Procedure (Scotland) Act 1995, which require courts to "have regard to" time spent in custody awaiting sentence if imposing a sentence of imprisonment or detention." (Public Body)

Those who offered less stringent support felt that flexibility was perhaps needed with this proposal so that reductions could be applied if the accused had shown good compliance and progress whilst on EM (e.g towards stabilising employment, housing, relationships, address substance misuse, no further offending, etc.) and that reductions may also be relevant for low level offences which attract shorter sentences. Those who receive longer sentences for more serious offences (including violent crimes) should not, however, be afforded the same flexibility, it was felt. Respondents also suggested that the exact nature of EM and level of restriction imposed during the EM period should feature in the decisions:

> "…we believe each case will require to be carefully considered on its merits taking into account the particular circumstances and the impact on the accused's liberty and freedoms. For example, electronic monitoring which includes curfew conditions might be considered more impactful on those which exclude someone from a particular geographic area i.e. a 'stay away' alarm with no restrictive curfew element." (Public Body)

Clarity was required around what might constitute 'exceptional circumstances' for this proposal. Some also felt that more thought needed to be given to how much reduction in sentence would be fair for time spent on EM, with concerns that these calculations would be complex and difficult to apply in a consistent way (with no straightforward formula). Not counting time spent on EM could also impact on statutory and voluntary throughcare decisions, it was suggested, and this had perhaps not been well thought out.

Those who disagreed (both 'somewhat' or 'strongly') mainly did so on the basis that EM was only a partial removal of liberty and thus not comparable with time spent in prison. This could be viewed very negatively by victims and members of the public for whom EM bail may not be considered a 'punishment', it was suggested:

> "Electronic monitoring is to try to keep them from committing more crime, it is not a punishment or a way of restorative justice." (Individual)

> "Bail still allows the person to live their life, potentially with a few restrictions, but effectively they are 'free' while the victim still battles on. Only time served on remand should be taken into account." (Individual)

> "We are unclear what the perception/impact on victims of an offence would be in these circumstances and think that there would need to be some way of ensuring they understand the sentencing decisions." (Public Body)

Others felt that EM bail should not be treated differently from any other form of bail (e.g. curfew without EM where similar reductions were not applied), and that considerations made on time spent 'pre-sentence' and 'post-sentence' should be kept separate.

Q9. Agreement with proposals that, if time on electronic monitoring is to be taken into account at sentencing, there should be legislation to ensure it is applied consistently

	Number of respondents	Percentage of respondents	Valid %
Strongly agree	78	55%	63%
Somewhat agree	22	16%	18%
Somewhat disagree	6	4%	5%
Strongly disagree	17	12%	14%
No response	19	13%	-

Most respondents agreed with the proposal that, if time spent on electronic monitoring was to be taken into account at sentencing, legislation should be drawn up to ensure it is applied consistently. This was because 'consistency' was seen as essential to ensure equity for accused and to build public confidence in the justice system.

Others who supported the idea did caution that legislation of this nature may take time to be implemented and, as such, urged more immediate action to address consistency in practice, including guidance. Even longer-term, some who agreed and some who disagreed suggested that guidance (rather than legislation) may suffice.

Those who disagreed, again, stressed the importance of judicial independence and stated that legislation in this regard was futile as safeguards for consistency already existed through the Appeal Courts and Scottish Sentencing Council. Section 23C(2)(a) of the Criminal Procedure (Scotland) Act 1995 may also apply. Others (both who agreed and disagreed) felt that legislation in itself would not guarantee consistency and that all cases should always be dealt with on a case-by-case basis.

Q10: Based on the information above, please use this space if you would like to make any comments about the idea of a law in Scotland that would prevent courts from remanding someone if there is no real prospect that they will go on to receive a custodial sentence in the proceedings.

A wide range of feedback was provided in response to this question, but the main emergent themes among those who supported such a law in Scotland appeared to be:

- support for never taking away someone's liberty unless absolutely necessary, and especially not where a custodial sentence was unlikely;
- the need for more creative and flexible community based alternatives for remand to support any such law;
- the need for consistency in the way that any such law is applied and measures in places to monitor consistency in the interests of all accused receiving equitable treatment;
- that decisions must always include a focus on likely reoffending and how best to break the cycle of offending (and that this would typically not be supported by use of remand):
- that such a law would minimise disruption and the considerable negative impacts of remand that has been evidenced in research over the years, and so should be supported;
- that such a law would be particularly helpful for addressing the criminogenic needs of women and children/young people; and
- a law which may reduce unnecessary use of remand could have widespread social and economic benefits (including keeping accused in employment, reducing prison costs and possibly reducing re-offending).

Those who did not support such a law generally expressed that:

- remand should always be an option where all alternatives have been exhausted;
- that remand (even for short periods) may, in some cases, have a preventative effect with regards to future offending and so should remain as an option;
- flexibility should always remain that allows the specifics of a case to be factored into decisions (including nature of the offence);
- latitude must remain for courts as opposed to strict statutory interpretation of factors that are not flexible enough to deal with human nature;
- policy aspirations should never interfere with judicial independence;
- that such a law would pre-empt decisions made in court (and that there can be many cases where the totality of evidence is not available at the initial stages of a case); and

- that a clear presumption against remand would be damaging to victim confidence.

Other more general comments were made about the necessity for many of the changes discussed to be written into legislation, with views that policy intentions might be achievable with the introduction of 'guidelines' (instead of a lengthy process of legislative change).

Others suggested that more reference to existing research and evidence may be needed before any such legislative change was drafted, and that engaging with people with lived experience of bail and remand would be valuable in assisting taking forward/redrafting many of the bail and EM proposals included in the consultation.

A minority also expressed very clear and strong views that they offered no support for the proposals linked to bail mainly because they perceived the current system already worked well:

> "We agree that the use of bail and remand have to be carefully considered, not least as the difference between suspect and convicted criminal is, or ought to be, abundantly clear; we have seen no evidence to suggest the current approaches to bail and remand do not currently receive this careful consideration." (Professional Body)

What was clear in responses to this question, however, was support that all decisions must be carefully balanced considering the risk of harm for victims, witnesses, accused and the public.

Q11. Agreement with proposals that legislation should explicitly require courts to take someone's age into account when deciding whether to grant them bail

	Number of respondents	Percentage of respondents	Valid %
Strongly agree	58	41%	46%
Somewhat agree	18	13%	14%
Somewhat disagree	18	13%	14%
Strongly disagree	32	22%	26%
No response	16	11%	-

There was less consensus among respondents for this question compared to earlier questions in the consultation. While many respondents believed it was vital for legislation to explicitly require courts to take someone's age into account when

deciding whether to grant bail, a reasonable number considered that legislation was not necessary as current guidance and court judgement was sufficient.

Many respondents believed that no-one under 18 should be refused bail except in exceptional circumstances. Custodial experiences were considered particularly traumatising for children and young people, with bad behaviour being normalised, and heightened risk of suicide. If essential, remand should be in line with UNCRC, requiring a placement in a secure unit, ideally in close proximity to the young person's support network, it was felt. If restriction of liberty was deemed necessary, this should be done in as safe an environment as possible, for the minimum possible duration, prioritising a young person's rights.

Bail (with electronic monitoring if appropriate) was again considered particulalry effective for children and young people. Bail supervision for young people was also seen as key, as well as mentoring to assist with compliance.

Among those who disagreed with this proposal, comments were made that a person's age was immaterial and the nature of the crime and associated victimisation was a more important consideration:

> "The safety of the victim should be at the forefront of consideration surrounding releasing a perpetrator/accused person on bail, rather than the age. It is imperative that there is equity within our justice system in that you should have access to the same level of support and information irrespective of the age of the perpetrator." (Advocacy/support organisation (victims))

It was repeatedly highlighted that *all* available relevant information, not only age, should be considered to inform sentencing and bail decisions, including:

- nature of crime/seriousness of offence/risk of harm/safety issues;
- likelihood of reoffending/offending pattern;
- supports in place and the capacity of these (e.g., social, community, external agencies, and partners);
- gender;
- caring responsibility;
- individual's attitudes, cognitive maturity, and developmental capacity, with recognition that experiences and contexts, can also delay or disrupt development;
- disruption and loss of opportunities related to employment/training courses/accommodation; and
- vulnerability/communication difficulties/trauma experiences/care-experienced individuals.

It was suggested that many of the victims of perpetrators under 25 may be in the same age category as the accused and, therefore, may be more adversely affected if the perpetrator was not remanded. It was argued that focusing a remand decision

on someone's age may also potentially result in discrimination against other age groups and encourage criminal behaviour among children and young people:

> "We are already plagued by youngsters thinking that the courts won't punish them because they are too young. This message needs to be reversed." (Individual)

Others raised concerns that younger people may be more likely to cause public harm, and therefore believed leniency related to age was inappropriate.

Q12. Agreement, in principle, that courts should be required to take any potential impact on children into account when deciding whether to grant bail to an accused person

	Number of respondents	Percentage of respondents	Valid %
Strongly agree	83	58%	65%
Somewhat agree	18	13%	14%
Somewhat disagree	9	6%	7%
Strongly disagree	17	12%	14%
No response	15	11%	-

The majority of respondents agreed either 'strongly' or 'somewhat' with the proposal that courts should be required to take any potential impact on children into account when deciding whether to grant bail to an accused person. Overall, there was consensus that children's welfare should always be prioritised, but that the balance must remain primarily on risk and the course of justice. Again, there was agreement that the gravity of crime, public safety, and previous offending should be the paramount considerations when decisions about bail are made. It was argued that, if other earlier proposals in the consultation were enacted, a high bar would be set, meaning that a person would only be deprived of their liberty if they presented a sufficient level of risk to the public. Impact on children should/would therefore have no bearing on the bail/remand decision.

Suggestions were made that situations should be recognised where bail refusal may be in the child's or the other parents' best interests (e.g., where domestic abuse is occurring). Several others expressed views that, as children suffer when a parent carries out a criminal act, it may be in the child's best interests to be removed and relocated to a place of safety.

Several respondents commented that there could be a lasting impact of parental imprisonment and, as a result, incarceration (particularly prior to conviction), was not believed to be conducive to breaking the cycle of crime 'within' families. Several respondents highlighted that having a parent in custody should be recognised as an

Adverse Childhood Experience (ACE) which can have traumatic repercussions for young people. A range of potential impacts on children of remanded parents were highlighted, as listed below, and it was considered essential that these issues be addressed/compensated for by the system:

- child being accommodated in care of local authority with little preparation time;
- disruption to children's education;
- disruption to employment;
- financial burden (disruption to payment of rent and utilities/access to welfare benefits/a discharge grant is not provided following remand);
- disruption to relationships within the family;
- mental wellbeing; and
- community stigma.

Clarification was sought about what parameters would be considered in relation to the impact on a child if an adult in a significant caring role in their life is remanded.

Several respondents also raised concerns that a system prioritising child welfare could be open to abuse by offenders using children as pawns:

> "This provides a get out of jail free card and does nothing to ensure the law is applied fairly across the board." (Individual)

Concern was raised about the potential lack of consistency in decision making related to those with and without caring responsibilities, with the specific question "if an individual does not have children does it mean they may be more likely to be remanded?" being posed. Further issues of discrimination were highlighted in relation to gender, and it was suggested that the current system values women more than men in relation to childcare. It was proposed that being a biological parent does not guarantee, and is not the same, as being involved and engaged in the caring for one's children. Similarly, it was highlighted that individuals who have caring responsibilities for a child may not be their biological parent (e.g., a sibling, aunt/uncle, or close family friend). It was also highlighted that the accused may have other unpaid caring responsibilities, for example adult children with disabilities or elderly parents with dementia.

It was emphasised that consistently assessing and applying determined impacts on children would be extremely challenging and require multi-agency involvement and collaboration:

> "In the space of a 5-minute appearance how do you judge/assess that - highly unlikely to be achieved in the working court day." (Individual)

Clarification was sought on how young people will be provided with the opportunity to voice their views and for them to be represented to the court, rather than the

reporting of impact being based solely on a professional's assessment. The criminal justice social work assessment and Child Rights and Wellbeing Impact Assessment (CRWIA) were considered useful risk-assessment tools.

Where bail was determined to be the best course of action, improved support was again considered crucial to help with planning for the future and to address issues with chaotic lifestyles. Suggestions for how this could be logistically managed included:

- consistent bail supervision input (e.g. meetings or home visits);
- social work advocacy workers being involved to ensure the children are in good health, attend school, have an opportunity to express their preferences/needs, and do not have their routine disrupted;
- planning for the event of a custodial sentence, collating information about the suitability of prospective carers (finances, age, and health), visitation plans, decisions to separate siblings; and
- exploration of the option of paid kinship care fostering as an alternative to placing children in institutions.

Suggestions were also made that, if a parent was to be refused bail, the judge should provide a written explanation of why the child(ren)’s welfare needs were insufficient to avoid a remand in custody.

Release from Custody

The second part of the consultation sought views on proposed reforms to the mechanisms governing release from custody, including how support for those leaving custody could and should be provided. Proposals for reforms included:

- providing victim support organisations with information about the release of prisoners to enable proactive safety planning to be undertaken;
- giving certain categories of prisoner the ability to demonstrate their suitability for earlier release or to serve the remainder of their sentence in the community following successful completion of programmes, etc;
- bringing forward the point at which short-term prisoners are automatically released (either unconditionally or subject to conditions);
- bringing forward the point at which long-term prisoners can first have their case heard by the Parole Board;
- amending or replacing the current model of Home Detention Curfew (HDC);
- providing courts with the ability to determine the proportion of a custodial sentence that an individual should serve in the community whilst subject to conditions (monitored via electronic monitoring) at the point of sentencing, with an emphasis on supporting reintegration;
- altering current flexible release arrangements so that release no longer happens on a Friday or in advance of a public holiday in order that people leaving prison can access support at the point of release;
- placing specific duties on public bodies to engage with pre-release planning for prisoners;
- introducing a support service for prisoners released direct from court to enable their reintegration;
- revising throughcare standards for people leaving remand, short-term and long-term sentences and seeking views about which services these standards should apply to in addition to justice agencies; and
- introducing wider powers of executive release to enable Scottish Ministers to release groups of prisoners in exceptional circumstances.

Feedback in relation to each of these proposals is presented below, however, it is important to note that, while there was support for many of the above, there was relatively little qualitative feedback given for **why**, notably in respect of the release questions. Many who agreed with different options did not explicitly say what in particular they agreed with and most of the feedback that was given focused on provisos, caveats or elements that would be needed to support each proposal.

Q13. Agreement with the statement that, in general, enabling a prisoner to serve part of their sentence in the community can help their reintegration

	Number of respondents	Percentage of respondents	Valid %
Strongly agree	69	49%	54%
Somewhat agree	31	22%	24%
Somewhat disagree	9	6%	7%
Strongly disagree	19	13%	15%
No response	14	10%	-

The majority of respondents agreed with the proposal (either 'strongly' or 'somewhat') that enabling a prisoner to serve part of their sentence in the community could help their reintegration. Individual respondents were more ambivalent about a prisoner serving part of a sentence in the community (because they perceived that punishment should be prison-based), whereas organisations were primarily in favour of it (because they perceived that prison was disruptive and rehabilitation was crucial), albeit with provisos. As with proposals linked to bail and EM, the main caveat for all respondent types was having the resources in place to make supervision and reintegration meaningful:

> "Funding, additional staff and strengthened collaboration between SPS [Scottish Prison Service], justice and other support services are essential to the individual successfully reintegrating back into their community." (Local authority/justice partnership)

> "[C]urrently, the approach is narrow and too often reliant on whether an individual has attended an offending programme(s) (and these are not always available due to resource restraints)… There would require to be a comprehensive assessment of the additional resources required to provide the support to deliver the outcomes associated with better reintegration e.g. housing, and readily available drug, alcohol and mental health services. Planning would require to begin immediately, at the point of sentence, between prison- and community-based services." (Professional Body)

> "Community reintegration is vital as SPS do nothing to prepare prisoners for… proper release where they have to survive on benefits with no other support. If the reintegration test is to be effective then SPS need to have proper testing in place that properly reflects life in the community." (Individual)

> "We are concerned that people are released without adequate financial support and with limited support to ensure that maximum benefit entitlement

is claimed as quickly as possible." (Advocacy/support organisation (Children and Young People))

Several other respondents commented that suitability of this proposal depended on the type of crime and risk level posed by any individual, and that careful attention would need to be paid to vulnerable prisoners, children/young people, female prisoners, neurodivergent individuals, and the role of families on release.

Q14. What mechanisms do you think should be in place to support a prisoner's successful reintegration in their community?

Given that responses to the previous question stressed the importance of reintegration as part of a community sentence, the overwhelming majority of respondents to this question spoke of the need for adequate staffing and resources (not only in the community but also in prison), collaborative planning and meaningful interventions.

Adequate staffing and resources

Not only did many respondents comment on the need for greater resources for community based social work supervision (including that provided by the third sector) and the police, but also for prison-based throughcare officers to offer continuity in the transition from prison to the community. The Scottish Prison Service's (SPS) Throughcare Support Officers (TSOs) were viewed as sadly missed by many (as they supported more vulnerable people in a voluntary capacity than the current SHINE and New Routes partnerships can do) and one organisation suggested an alternative model of employing prison-based parole advisors as well as dedicated parole officers in the community:

> "HMIPS report (2020-21) noted that "In all establishments the absence of the TSO role was keenly felt during the pandemic. While there are services providing throughcare support, the absence of the TSO was perceived as a significant gap in provision at a crucial time" (p.25)." (Public Body)

> "… local authority capacity to carry out effective supervision is stretched. We believe this is partly a resource issue but would welcome a wider look at alternative models for supervision including a national rather than devolved service, with the option for more intensive and active 24/7 supervision where required. We wonder whether there is an enhanced role for prison officers, who will have built relationships with prisoners, to be involved in some aspects of community supervision. There may be benefit in looking afresh at what the role of a parole supervising officer should look like and the attributes and powers such an officer should have… The Prisoners and Criminal Proceedings (Scotland) Act 1993 empowers Scottish Ministers to appoint Parole Advisers to carry out this function but this has never been done. [We] would support the appointment of parole advisers and believe education and preparation of prisoners about their journey to release would positively impact release rates." (Public Body)

Low Moss Prison's Public Social Partnership, disbanded in 2020, was highly commended as an example of good throughcare practice, as was its successor, the New Routes Public Social Partnership, as well as the SHINE Public Social Partnership.

Collaborative planning

Needs and risk assessments prior to release were seen as important in enabling integration to work alongside public safety and comments were made that these should be done collaboratively between SPS and community-based practitioners. Preparation for release from a practical perspective (housing, benefits, employment and employer engagement, positive social networks, etc.) was also seen as needing to start early in the sentence and to ensure a seamless transition from prison to community support. In particular, accommodation was seen as an essential stepping stone towards successful reintegration:

> "[M]echanisms require to be developed that ensures that services in the custodial setting connect seamlessly to those in the community… a pathway for transition that is transparent and timeous… Critical to success would be partner organisations viewing their role as not within a specific setting but as a continuum of support for the individual." (Local authority/justice partnership)

> "Long-term prisoners should have permanent accommodation in place well before their release so that when they can come out on day release, they can - with support - decorate and furnish this… [and be able to] stay part-days, full-days and then overnights… if they have decent accommodation - a home in which they have an emotional and possibly financial investment - then they are less likely to reoffend." (Local authority/justice partnership)

One organisation suggested that a 'Community Sentence Plan', implemented in advance of release, would be helpful, while others mentioned information sharing protocols, and referral pathways as being key.

Meaningful interventions

As well as SPS offering greater access to prison programmes to facilitate early release, many suggested more engagement with industry, employers and education "to teach them some real working skills" (Individual), more access to primary care and mental health services and, some argued, matching the services offered in prison by improving those in the community. Increasing monitoring (e.g., GPS/EM) in the community was also promoted by several individuals, as was greater consistency in the delivery of throughcare options across the country.

Q15a. Agreement with proposals that, through good behaviour, or completing education, training and rehabilitation programmes, prisoners should be able to demonstrate their suitability for early release

	Number of respondents	Percentage of respondents	Valid %
Yes	67	47%	54%
No	26	18%	21%
Unsure	31	22%	25%
No response	18	13%	-

Just over half of those who answered this question agreed that, through good behaviour, or completing education, training and rehabilitation programmes, prisoners should be able to demonstrate their suitability for early release. This would show that prison had been effective in changing attitudes and behaviour and reducing the risk to public safety, although it was stressed that real behavioural change was more important than attending programmes since the latter could be a 'tick-box exercise'.

Of those who disagreed with discretionary early release, most considered prison to be a punishment, although others - including those who agreed with early release - noted that if prison rehabilitation programmes were adequately and consistently resourced, this proposition might be more viable:

> "… the waiting lists are long and they are not easily accessed or available in all prisons… or if they simply appease specifications for release."(Local authority/justice partnership)

> "[T]he complete debacle of MF:MC [where] SPS decide to withdraw the programme with no alternative in place and months later there is still no accredited programme in place. The Parole Board will not release as they are assessed as needing a programme but the prisoner has no control over what SPS decide. That no prisoner has yet taken this to a judicial review is amazing." (Individual)

> "Not all programmes [are] available in all prisons…Programmes [are] not a priority for SPS. Prisons [are] not resourced to monitor individual prisoner progress at current staffing levels." (Individual)

For some respondents, whether agreeing or not, it was felt that prisoners could 'play the system'. Regardless of their agreement or not with the proposition about early release, some noted that the risk of reoffending was still there and that robust risk assessments and indicators of change would still need to be in place:

> "Positive behavioural change and engagement with prison programmes, however, cannot alone be relied upon to accurately assess the risk an individual will pose in the community as some people may engage positively with all interventions offered but will continue to present a significant risk [on release]." (Local authority/justice partnership)

Q15b. Agreement with proposals that, through good behaviour, or completing education, training and rehabilitation programmes, prisoners should be able to demonstrate their suitability for completing their sentence in the community

	Number of respondents	Percentage of respondents	Valid %
Yes	66	47%	54%
No	30	21%	25%
Unsure	26	18%	21%
No response	20	14%	-

Again, just over half of those who answered this question agreed with the proposal i.e. that, through good behaviour, or completing education, training and rehabilitation programmes, prisoners should be able to demonstrate their suitability for the ability to complete their sentence in the community.

Many respondents struggled to differentiate this question from Question 15a above, and indeed many raised the same issues including the lack of availability of prison programmes, the need for comprehensive risk assessments and the fact that 'good behaviour' and completing programmes may not necessarily be an indication of reduced risk:

> "The overreliance on offending behaviour programmes within the current prison model to address identified risk/needs has considerable implications on proposals around release from custody, particularly for those serving short-term sentences…A recent meta-analysis on the effectiveness of psychological interventions in prison…found that…there was no significant reduction in recidivism…and that further research on understanding how the prison environment may impact on treatment effects…should be undertaken." (Individual)

In terms of Q15a and Q15b more generally, one legal organisation suggested that the consultation document lacked any consideration of the primary aim of sentencing, namely punishment, retribution and deterrence:

> "It may be a matter of significant public concern if the court imposes a sentence of, for example, 18 months' imprisonment taking account of the

need to punish the offender and the need to express disapproval of the offending behaviour, and concludes that this sentence is no more severe than necessary, and yet the offender is released after serving a period of 6 months imprisonment." (Legal Organisation)

Some individual respondents agreed with this concern, although most respondents concurred that early release should be a reward for good behaviour or evidence of progression within the prison estate, albeit noting that there were "serious issues" with the current process of progression within the SPS estate.

Q16. Do you have any comments on how you envisage such a process operating in the Scottish justice system? Who should be eligible to earn opportunities in this way? What risks do you see with this approach, or what safeguards do you feel would need to be in place?

A vocal minority in respect of questions 16, 17 and 18, as well as to earlier questions regarding release, suggested that automatic early release (AER) should be abolished and was ill-thought through:

> "My main concern here is that the current Scottish Government appears to be saying the prisons are full, they will get busier and so we don't want to send people there and we want to let many already there, out. This is no way to run the Justice System. We need proper planning when it comes to prison and a prison estate that will cope. Letting people out early, cutting corners and, potentially, signalling to the wider public that we're not coping, isn't the answer." (Individual)

Others also commented that if behaviour in the community does *not* merit the fact that they received early release, then they should be recalled, based on risk, which would have significant resource implications (for supervising social workers and prisons) and administrative implications, especially for short-term prisoners. Some said that such a move to release earlier would impact adversely on victims, through re-traumatisation:

> "Whilst 'punishment' remains one of the five primary responses of the criminal justice system there are inherent barriers to such an approach - particularly from those whose lives may have been devastated by an offence. A strong public campaign would be required to start to change the conversation and the voice of victim survivors would need to be heard loud and clear. Victims could easily be re-traumatised by an early release and could question their involvement in what is still a difficult adversarial criminal justice process." (Public Body)

Several respondents also commented on the under-use of the open estate and top end prisons, as well as the under-use of Home Detention Curfew (HDC).

Again, limited access to prison programmes was cited as a barrier to release, that the momentum to change is lost through ineligibility criteria or waiting lists for

programmes, and that programme participation does not necessarily mean reduced risk. Equally, the importance of robust risk and needs assessments was again stressed (with some citing Multi-agency public protection arrangements (MAPPA) as an example of good practice).

Q17. Agreement with options in relation to automatic early release for short-term prisoners

	Number of respondents	Percentage of respondents	Valid %
Automatic early release changes to earlier in the sentence, but the individual is initially subject to conditions and monitoring, until the half-way point	57	40%	55%
Automatic early release changes to earlier in the sentence, nothing else changes	4	3%	4%
No change: automatic early release remains half way through the sentence	42	30%	41%
No response	39	27%	-

Again, bearing in mind that some respondents, primarily individuals, felt the consultation wrongly excluded the option to abolish AER altogether, most were more concerned about early release being 'earned', risk informed and dependent on behaviour rather than arbitrary timescales. To that extent, it was felt by some that these three options in Q17 were limited:

> "None of these options are preferable, however the consultation necessitates a selection of one. This is an unsatisfactory approach to a complicated issue… [We] would not prefer any of the options as currently stated… [but] would, however, support earlier release on the proviso that better support and access to services was an integral part of that process." (Local authority/justice partnership)

Respondents to this question reiterated that release should be based on risk level, not on automatic or expedient timescales, that prisoners should have to 'prove' themselves, and that meaningful interventions should be made available as part of any licence conditions. However, many respondents noted the considerable resource implications of the move to earlier release, with supervising social workers taking the heaviest burden:

> "… without appropriate and adequate support this is likely not to work… [including] an increase of individuals being subject to conditions and monitoring (where previously the involvement might be more voluntary), to the potential very short time working with individuals." (Local authority/justice partnership)

> "This will result in significant resource implications for SPS and justice social work, as well as statutory and Third Sector services in the community. SPS would require to develop and implement a process to assess whether an individual is ready to be released and, on the assumption that JSW would be responsible for managing those subject to conditions, the workforce would require to substantially increase to meet the demand. Is this a realistic goal?" (Local authority/justice partnership)

Whilst it was suggested in the consultation that EM could form part of the release conditions, one organisation noted that the majority of prisoners lost accommodation as a result of imprisonment, the inference being that to have a 'suitable address' for EM or HDC eligibility, one would have to significantly improve access to accommodation for prisoners on release.

Q18. Agreement with options for long-term prisoners being considered for release by the Parole Board for Scotland

	Number of respondents	Percentage of respondents	Valid %
Change to allow some long-term prisoners to be considered by the Parole Board earlier if they are assessed as low risk	41	29%	36%
Change to automatic consideration by Parole Board once one third of the sentence is served for all long-term prisoners	14	10%	13%
No change: automatic consideration by Parole Board once half of sentence is served for all long-term prisoners	58	41%	51%
No response	29	20%	-

Just over half of respondents supported the status quo, namely that PBS consideration is given at the half-way stage of the sentence for long-term prisoners. Just over a third of respondents preferred option one, namely that the PBS should have the discretion to allow some lower risk prisoners to be considered earlier than the half-way point, dependent on risk assessment rather than time served to date:

> "I think if a prisoner is deemed to be a low risk then after a risk assessment their re-integration into community should begin at the earliest possible stage of a sentence." (Advocacy/support organisation (Children and Young People))

> "[T]his is less a consideration of the time than of the principle. If a person is not deemed to be a risk to the public, and could be successfully supported in the community, then that is what should happen… once people have served

a punishment element of a custodial sentence, they only remain in prison if there remains risk to other people." (Professional Body)

Several respondents commented, however, that options 1 and 2 above (changes to when parole may be considered) could overwhelm the Parole Board for Scotland (PBS) and it would therefore need more resources. Some suggested the Open Estate (HMP Castle Huntly) and National Top End[4] could be used more effectively in allowing prisoners to 'prove themselves' prior to parole consideration and that if the PBS was able to consider prisoners for parole at an earlier stage, they could flag up any issues that may cause concern at the first hearing where parole is unsuccessful:

> "Assuming that they have been monitored, assessed, and categorised as low risk, then it may be appropriate that they are given earlier consideration for parole. This does not necessarily mean that they will be granted parole, although some undoubtedly will, but if the Parole Board have any concerns or recommendations for programmes or intervention they may require to undertake, this would raise them at an earlier point in the process and allow them to be addressed." (Advocacy/support organisation (prisoners, accused, released))

Q19. Agreement with proposals that the Scottish Government should ban all prison releases on a Friday (or the day before a public holiday), so people leaving prison have greater opportunity to access support

	Number of respondents	Percentage of respondents	Valid %
Yes	98	69%	76%
No	16	11%	12%
Unsure	15	11%	12%
No response	13	9%	-

There was considerable agreement with this proposal, mainly on the basis that the existing system did not work. One respondent commented that the current system was:

> "… cumbersome, opaque and discriminatory… anecdotal accounts imply a prevailing form of logic which surmises that if someone already has support from local agencies then they do not 'need' early release, whereas if someone does not have support, there is no obvious incentive in releasing them early." (Advocacy/support organisation (Children and Young People))

[4] National Top Ends (NTEs) from which prisoners may qualify for unescorted access to the community, are operating in HMPs Cornton Vale, Shotts and Greenock.

Most suggested that this proposal would ensure a more comprehensive preparation plan for release in collaboration with external agencies, for example in arranging appointments with addiction services or housing providers. However, it was noted that there should be no 'last minute' decisions to release, irrespective of the day of the week, as throughcare and community based support agencies need advanced warning as well. Indeed, SPS, the Parole Board for Scotland and Sheriff and High courts (the latter where accused were released from court on bail), were often cited as undermining the effectiveness of pre-release planning (and arguably putting victims and the wider community at risk) because of a lack of forewarning. Equally, although successful models of throughcare were cited by respondents - those operated by SHINE, New Routes and SPS's now disbanded Throughcare Support Officers - it was acknowledged that their success depended on those organisations being forewarned of releases.

Several respondents who disagreed with the proposition to ban all releases on a Friday felt that support should be available regardless of the day of the week. It was also felt that such support should not only be available in the community *on* release, but in the prison *prior to* release.

The largest number of responses, both of those who were unsure about the proposition and those who agreed with it, related to improved pre-release planning and throughcare, as well as earlier release within the week, so as to enable prisoners to settle and be supported in their host communities, not least during the Covid-19 pandemic:

> "Given the impact of the pandemic, we feel that it is no longer enough simply to arrange appointments for people being released. Access to these services is greatly reduced to the wider population… At the point of release, we feel that every person leaving prison should have a suitable place to go home to, necessary prescriptions that can be taken to any chemist in Scotland, and an appropriate sum of money to last until benefits are reinstated." (Organisation)

> "[R]eintegration should begin at the point of entering custody, frameworks need to be put in place for seamless transition to community and plans in place for liberation." (Organisation)

Q20. Agreement with proposals regarding HDC

	Agree/Yes	Disagree/No	Unsure
(a) Prisoners must actively apply for HDC. Should HDC be considered automatically for some categories of prisoners instead *(Base 118)*	51%	27%	22%
(b) The maximum length of time allowed on HDC is 6 months (or 1 quarter of the	53% (be made longer)	47% (not change)	-

sentence). Do you think that this should be made longer or not change? *(Base 112)*			
(c) The minimum sentence for which HDC can be considered is 3 months. Should this limitation be removed? *(Base 119)*	39%	33%	28%
(d) There is currently a list of exclusions that make someone ineligible for HDC. Should this list be reviewed with the intention of expanding eligibility for HDC? *(Base 120)*	51%	27%	22%
(e) Currently, SPS make decisions to release prisoners on HDC following a risk assessment and engagement with community partners. Do you think this responsibility should remain with SPS? *(Base 119)*	43%	23%	34%
(f) Do you think decisions on whether to release prisoners on HDC (or similar) should be taken by the Parole Board for Scotland in future - even for those prisoners serving less than 4 years? *(Base 118)*	27%	39%	34%
(g) Do you think decisions about the length of time an individual would serve in the community at the end of their custodial sentence should instead be set by the court at the time of sentencing? *(Base 121)*	28%	49%	23%

Echoing responses to other questions in the consultation, the majority of respondents to Q20a-g felt that HDC should be determined by individual need/risk and not by category. Not only would it be more equitable and fair to offer it to all but there was also the likelihood that some people would not wish to take up the offer and should have the choice rather than be automatically/compulsorily included:

> "Many find it more difficult and restrictive to comply with the curfew conditions. Anecdotal evidence indicates that some families found it more disruptive than having the person in prison." (Local authority/justice partnership)

Whilst the potential for 'up-tariffing', where one sanction, if breached, is replaced with a more severe sanction, was only cited by one organisation specifically, others cited those with low risk of harm or first offenders as being likely recipients of HDC, which would risk up-tariffing them if breached:

> "[HDC has] serious implications for dignity, autonomy and human rights. We would not wish to see a widening of the use of HDC in respect of those who present no public safety risk and so could be released without it." (Third Sector/Other)

Where specific categories *were* mentioned by a minority of respondents, violent and sexual crimes and domestic offences were the only ones mentioned specifically. However, several respondents suggested that the higher the risk, the more appropriate HDC would be in general:

> "If the purpose of HDC is to promote successful reintegration, then there is no basis on which to exclude any category of prisoner. Indeed, prisoners who present a higher risk of reoffending or harm should really be considered a priority for HDC so that community based interventions can be delivered while the young person is under a level of constraint, with a strong incentive to comply with the conditions of the HDC." (Advocacy/support organisation (Children and Young People))

Several commented that HDC was currently under-used and that it should/could be better publicised to all prisoners and their families, including those with disabilities, neurodivergent prisoners and those for whom English is a second language.

In respect of Q20b, there was an even number of those who wanted HDC to be longer than 6 months, and those who wanted it no more than 6 months. Two respondents suggested it could be shorter, and several suggested 'scrapping' HDC completely. Of those who had reservations, they noted that the sentence length and time span of HDC was irrelevant if it was based on risk and needs per individual. For those who wanted HDC to remain at 6 months or less, the majority suggested that this was long enough for behavioural/attitudinal change and that any longer would likely result in breach. One organisation argued that the effectiveness of HDC would be dependent on criminal justice social work, and that the resources were already over-stretched:

> "[We are] not convinced the infrastructure (in terms of tagging and monitoring equipment) or personnel or capacity within criminal justice social work exists to support these proposals. We know from our day-to-day interactions with colleagues working in criminal justice social work that they are already beyond capacity. We know from our own experiences that there are significant vulnerabilities and limitations to electronic monitoring." (Professional Body)

Despite several respondents appearing to misunderstand the question of removing the three-month minimum sentence for HDC eligibility (Q20c), many noted that the Presumption Against Short Sentences (PASS) made HDC unnecessary for short sentences, since there should now be no prisoners serving 12 months or less without a written rationale (and in any case, Community Payback Orders (CPOs), Restriction of Liberty Orders (RLOs) and EM were already used for short sentences). Applying for, setting up and operating an HDC for a short period was also deemed counterproductive by several and that *"such structure as it can bring to a released prisoner's life hardly has time to kick in."* (Third Sector/Other)

Expanding HDC eligibility criteria (Q20d) was welcomed by just over half of respondents (with a few suggesting having *no* exclusions at all). Given the broad

agreement throughout the consultation that individual need and risk should be prioritised over generic categories of offender/offence, nobody should be excluded, it was felt:

> "There should not be a blanket ban on violent or sexual offenders receiving HDC… [They] may well warrant ineligibility, but each case should be judged on its merits." (Third Sector/Other)

Questions 20e and 20f asked respondents to comment on whether SPS or the Parole Board for Scotland (PBS) respectively should take responsibility for deciding on HDC applications. Although a third of respondents were unsure about SPS continuing in that role, or PBS taking it on, more respondents favoured SPS continuing because prison officers tend to know the prisoners best, and SPS is responsible for the overall sentence (of which HDC would be a part). However, SPS may not be au fait with detailed community-based risk assessment tools and respondents suggested that such decisions should be made jointly between SPS and community justice partners (including families, victims and prisoners themselves):

> "Currently, prison officers are not trained to apply accredited risk assessment tools… or more specialist tools applied for sex and domestic abuse-related offending… Whilst the responsibility should ultimately remain with SPS, consideration could be given for adjusting the decision-making process to more actively and explicitly involve partner agencies and set this out in updated HDC guidance." (Local authority/justice partnership)

> "I think that being under the care of the SPS, a prisoner would be best assessed by them, in conjunction with relevant services. I do, however think there should be an external body of appeal." (Advocacy/support organisation (Children and Young People))

Whilst some perceived that SPS may be less stringent in its consideration of HDC (the increased use of which, some suggested, would help reduce the prison population), PBS may be too risk averse to increase take-up of HDC, it was felt. It was broadly considered that PBS would become 'swamped' by what could be a drastically increased workload (taking on short-term prisoners as well as its current long-term prisoner parole applications which merit HDC, as an additional licence conditions).

Finally, respondents were asked in Q20g whether the court should - at sentencing - determine the period of time a prisoner should serve in the community. Almost half of all respondents disagreed mainly on the basis that sentencers have no knowledge of, or ability to predict, how a prisoner will progress and such decisions should therefore be made at the time of considering possible early release. There was also the potential for conflict of roles, it was felt:

> "Requiring a judge to determine not only custody, but also the process and timing of rehabilitation for someone, is possibly a role conflict on the basis that judges do not, in the main, consider post-sentence rehabilitation. It could be argued that this may be the case in 'punishment' parts of life sentences, extended sentences, etc., but the judge does not determine or detail 'how' that rehabilitation should be undertaken - to do so in this context might be a conflict with one of their primary roles as sentencers." (Local authority/justice partnership)

Q21. Agreement with proposals that the Scottish Government should consider whether information on individuals being released from custody can be shared with third sector victim support organisations

	Number of respondents	Percentage of respondents	Valid %
Strongly agree	70	49%	59%
Somewhat agree	35	25%	29%
Somewhat disagree	6	4%	5%
Strongly disagree	8	6%	7%
No response	23	16%	-

The vast majority of respondents agreed or strongly agreed with this proposal, albeit with provisos, since the main cornerstone of successful throughcare and reintegration was collaborative partnership planning and sharing of information. Several organisations noted that whilst victims are the focus of much conviction and sentencing activity, they, and the agencies that support them, are often lost in the later release arrangements:

> "[This would] promote a survivor led justice system. Also to ensure third sector who at [the] time can be the main support to the individual are fully aware of protective and risk factors." (Local authority/justice partnership)

The main reservations related to GDPR concerns and prisoners' rights, and for the Government to be very clear and transparent about why such information needed to be shared - again, there was a need to balance the risk to victims with the rights of prisoners it was felt. Some thought, as elsewhere in the consultation, that domestic abuse cases (and victims) were often forgotten in release plans, and that lessons could be learned from MAPPA regarding information sharing protocols with regards to not only sex offence cases but also domestic abuse.

Whilst one respondent suggested SPS should lead on such information sharing, others suggested a partnership approach, with the third sector being one of those partners but not the lead.

There was caution expressed by some about inadvertent (or otherwise) media coverage encouraging vigilantism, a fear that may be relevant to those convicted of sex offences in particular.

In terms of victims, there was majority endorsement of the proposal to review the Victim Notification Scheme (VNS), and indeed to extend it, although there were mixed feelings as to whether this should be an 'opt in' or 'opt out' scheme in future. Many also agreed that victim safety planning was essential, but felt this all too often took secondary importance currently.

For the few who disagreed with the proposal to share information with third parties, some noted the breach of privacy, not least if a sentence had already been completed in prison or there was a fear of vigilantism (as above).

Q22. Agreement with proposals that, in addition to information on individuals being released, victims and victim support organisations should be able to access further information

	Number of respondents	Percentage of respondents	Valid %
Strongly agree	55	39%	47%
Somewhat agree	34	24%	29%
Somewhat disagree	19	13%	16%
Strongly disagree	10	7%	8%
No response	24	17%	-

While most respondents agreed with this proposal, many were unsure about exactly what was meant by 'further information' and several stressed that this would need to be clarified/elaborated before they could comment. For most, however, keeping victims safe and alleviating their concerns as much as possible was supported, without putting the prisoner at risk or contravening GDPR legislation:

> "[I]mproved victim support services is the answer here, not providing more information (on which the detail is currently patchy). All they should need to know is the person is being released, anything other than that would surely be verging on a data protection breach." (Local authority/justice partnership)

Q23. Views on public service engagement with pre-release planning for prisoners

	Number of respondents	Percentage of respondents	Valid %
Existing duties on public services to give all people access to essential services are sufficient to meet prison leavers' needs	32	23%	26%
Existing duties are not sufficient; public services should have a specific duty to engage with pre-release planning	90	63%	74%
No response	20	14%	-

Whilst the majority of respondents again agreed that a 'specific duty to engage' was required, they were concerned that public services still needed more resources to fulfil that obligation:

> "[F]or this 'duty' to be of value, the public services need to be properly funded and resourced to provide a service. A last minute expectation to engage with someone leaving custody is not always possible - most services have no additional resource so the whole process for release planning is vital." (Local authority/justice partnership)

Whilst it was seen as important for local authorities and the third sector to take on greater responsibilities with regard to pre-release planning, neither were necessarily seen as being appropriate lead partners, and collaboration was instead seen as key:

> "We argued in our response to the consultation on the community justice strategy review that whilst the vision remains broadly relevant, "Success … requires each of the partners to contribute equally and meaningfully - too often, justice social work is expected to shoulder the burden of driving the agenda and providing the resource." Too often other public services are not being held accountable for contributing meaningfully to meet prison leavers' needs." (Professional Body)

Only a few comments were made that existing duties were currently sufficient, the inference being that if planning was implemented at the start of the sentence, in collaboration with community partners, then existing duties should be adequate as long as these were carried out as intended:

> "The Community Justice (Scotland) Act 2016, detail contained in the national strategy and outcomes, performance and improvement framework, lays a statutory duty to local authorities to ensure access to services. How effectively and consistently this is applied varies greatly across the country. A

streamlined service standard approach…would ensure that the current postcode lottery situation is addressed." (Local authority/justice partnership)

"As the government are aware, the legislative duties assigned within the Community Justice (S) Act 2016 have been embraced to varying degrees amongst statutory partners. We are of the view that it would be more practicable for standards to be developed for partners to evidence their commitment to current responsibilities both strategically and operationally. Additionally, this needs to include non-specific justice services e.g. NHS, DWP, banks, etc." (Local authority/justice partnership)

Q24. If public services had an additional duty to engage in pre-release planning for prisoners, which services should that duty cover? Please list each service and what each should be required to do.

In response to this question, the most commonly cited specific service was housing (including being available at point of release and having basic essentials such as white goods), followed by health (including having access to a GP from the date of release), and benefits/banking (including a discharge grant on day of release for not only convicted but also remand prisoners, and benefits such as Universal Credit accessible on day of release). However, if 'health' incorporated physical and mental health, as well as addictions/prescriptions, then this was by far the most commonly cited service required on day of release.

The fourth most commonly cited service required was employment or employability, with social work (whether statutory or third sector) coming fifth, reflecting that practical support was deemed more important to support prisoners upon release than emotional support or supervision for some, not least on the immediate days post-release. Unless housing, finance and health were stable (including ready access to prescriptions where needed), prisoners on release may be unlikely to engage meaningfully in supervision or more emotional forms of support it was stressed.

Other services mentioned included education, family support, liaison with police officers and HDC agencies, and the importance of pre-release planning was again key. A one-stop shop arrangement (for example, as in the organisation, New Routes) was also seen as helpful, as was the lone but highly realistic suggestion that prisoners are given a mobile phone and pre-paid minutes on release. The issue of funding was inevitably raised, however:

"[A] tension often exists as a result of how local authorities are funded for the delivery and commissioning of justice social work. This is predicated on a local commissioning model but, whilst [organisation] supports this approach, it does not adequately protect third sector bodies because of the financial pressures local authorities are under. This can result in situations where the local authority has to reduce or stop funding third sector bodies in order to

deliver its core statutory functions. This requires to be addressed urgently." (Professional Body)

Q25. Agreement with proposals that support should be available to enable prisoners released direct from court to access local support services in their community

	Number of respondents	Percentage of respondents	Valid %
Strongly agree	90	64%	74%
Somewhat agree	26	18%	22%
Somewhat disagree	3	2%	2%
Strongly disagree	2	1%	2%
No response	21	15%	-

Most respondents somewhat or strongly agreed with this proposal, albeit again with the proviso that adequate resources were put in place:

> "… local authorities are not statutorily obliged to provide a court service and cannot guarantee to always be present in court… However, the scope of and resource required to deliver a comprehensive court service has been a neglected area of our work and we would welcome an opportunity to consider this afresh in collaboration with Scottish Government, Scottish Courts & Tribunal Service and other court services." (Professional Body)

Some suggested that there should be a one-stop shop for such services, and that a national provider with provision in each local authority (rather than per local authority such as justice social work) should take the lead, whether or not a third sector provider. Court-based signposting, such as having support workers based in every court, was considered essential for national consistency. It was further noted that not just remand prisoners are released from court, but also those given Diversion or Deferred Sentences, and that these would need to be considered also for ongoing community support.

One organisation highlighted the operational implications of providing court-based support, not just for the organisations offering that support, but for the courts themselves in accommodating it:

> "… it is not clear how this would work from an operational perspective, but would almost certainly result in an increase in post-sentence applications to the court with the resultant impact on court programming and length of court hearings etc… There are a number of circumstances in which a prisoner may be released direct from court and these cannot be predicted, meaning that

support cannot be arranged in advance of a court hearing… As indicated, not all courts have a social work resource located within the court building and many courts are currently unlikely to have available accommodation for these support services. Additionally, a number of prisoners now appear at court virtually and may be released from the prison following the hearing. Similarly a number of accused persons appear in courts outwith their local authority areas. It is unclear how support would be provided to these individuals in these circumstances." (Public Body)

Q26. Agreement with proposals that revised minimum standards for throughcare should incorporate a wider range of services

	Number of respondents	Percentage of respondents	Valid %
Strongly agree	82	58%	68%
Somewhat agree	32	23%	26%
Somewhat disagree	5	3%	4%
Strongly disagree	2	1%	2%
No response	21	15%	-

The vast majority agreed that minimum standards for throughcare should incorporate a wider range of services, not least if services are to be tailor-made and based on individual need, as suggested in answers to previous questions to the consultation, and to incorporate the third sector much more proactively:

> "The risk and needs assessment should help formulate the release plan, then those organisations who have the expertise should contribute to the plan with a key worker overseeing that the plan is carried out in full. The Third sector has expertise and an important role to offer in relation to co-production." (Advocacy/support organisation (prisoners, accused, released))

Increased resources were again noted as essential, since standards can only be met if appropriately funded. It was also noted that lessons could be learned from considering other Minimum Standards such as the Medication Assisted Treatment standards and Health and Social Care standards, as well as international good practice.

Finally, and more broadly, throughout this latter part of this consultation, there was a tension between what specific services criminal justice can provide as opposed to what universal services should be provided by wider social justice organisations. There was a sense that the Scottish Government was perhaps asking too much of a narrowly-defined sector (criminal justice) to address the more environmental,

financial and welfare needs of citizens, irrespective of their involvement or not in crime:

> "It is a matter of access to justice. These proposals on bail and release from prison custody form one part of this, but are not enough on their own and in isolation to realise major changes to uses of prison custody and prison conditions… I strongly commend the need for human rights and equalities considerations to be central in the Scottish Government's justifications of legislative reform… Solutions to community safety and decarceration often exist outwith criminal justice. No amount of funding, staffing, services and reforms at the 'front end' (supervising and supporting bail, diversion) or the 'back end' (early release, throughcare and reintegration) of the criminal justice system will effectively address some of the major contributing factors as to why so many end up in it." (Individual)

Q27. Agreement with proposals that revised minimum standards for throughcare should differentiate between remand, short-term and long-term prisoners

	Number of respondents	Percentage of respondents	Valid %
Strongly agree	41	29%	35%
Somewhat agree	36	25%	30%
Somewhat disagree	23	16%	19%
Strongly disagree	19	14%	16%
No response	23	16%	-

Two thirds of respondents agreed with this proposal, either strongly or somewhat. As with previous questions and responses relating to release, respondents stressed the need to consider 'individuals' and to include all prisoners irrespective of length of sentence (short- or long-term) or prisoner status (convicted or remanded), based on need and risk. However, they acknowledged that different groups had different needs - and would require different versions of the same services. Long-term prisoners may need help with reintegration as well as needing risk management; short-term prisoners and remand prisoners should have the choice to engage with services, but in a timely manner. However, not all agreed that one set of standards would cover all three categories:

> "Given that the existing standards date from 2004 we would agree that these should, in the first place, be revised. We would suggest that there needs to be a human-rights based 'universal baseline' which is applicable to all three categories to which variations are added depending on the length of the

custodial sentence and any statutory conditions that are attached to this." (Local authority/justice partnership)

"[T]here is much that is common to all in terms of what constitutes successful planning for release to maximise successful reintegration. Nevertheless, and notwithstanding this, minimum standards must reflect the different perspectives and our support is for distinct sets of standards, although this could be achieved by incorporating standards for remand and non-statutory short-term prisoners into one document containing an over-arching set of principles and distinct standards for each, thus recognising commonality." (Professional Body)

Q28. Agreement with proposals that revised minimum standards for throughcare should be statutory

	Number of respondents	Percentage of respondents	Valid %
Strongly agree	69	49%	58%
Somewhat agree	31	22%	26%
Somewhat disagree	11	8%	9%
Strongly disagree	9	6%	7%
No response	22	15%	-

Again, most respondents supported this proposal. While some saw a tension between 'statutory' standards for services and 'voluntary' participation in those services, and indeed the feasibility of placing statutory duties on third sector organisations, the majority agreed that statutory standards would enable consistency across all local authorities. Again, however, this was tempered with resource implications:

"[A]lthough the Community Justice (S) Act 2016 clearly states a range of activities local justice partners require to undertake, it is clear that - despite the legislative duty - this work is not always undertaken and, when completed, is delivered to varying standards across Scotland. Even though there is a legislative requirement there is no guarantee that required action will occur." (Local authority/justice partnership)

"[S]imply making something statutory does not actually guarantee a better service. It may or may not. It depends on the resources and quality of services that a legal obligation to provide throughcare requires." (Third Sector/Other)

Q29. Agreement with proposals that other changes should be made to the way throughcare support is provided to people leaving remand/short-term/long-term prison sentences

	Number of respondents	Percentage of respondents	Valid %
Yes	61	43%	53%
No	11	8%	10%
Unsure	42	29%	37%
No response	28	20%	-

The majority view was that other changes did indeed need to be made to throughcare, but many respondents simply reiterated comments made in response to earlier questions in the consultation. The primary concern was that there needed to be continuity and collaboration between SPS and the community agencies involved; secondly, that preparation for release was essential (and some mentioned domestic abuse perpetrators as needing more preparation through programmes in prison); and thirdly, that housing, addiction services and health needed to be more involved. Other suggestions, again, included bringing back the SPS Throughcare Support Officers, increased resourcing for throughcare, national coordination, a 'Whole System Approach', a single point of contact for prisoners prior to and following release and a robust pre-release plan:

> "Consideration of all individuals in custody being the subject of their own community reintegration plan to create a model where every person imprisoned has an active plan of preparation for release from the moment they are imprisoned and that recognises that even short periods of imprisonment can create significant barriers in social reintegration." (Local authority/justice partnership)

Q30. Agreement with proposals that other support mechanisms be introduced/formalised to better enable reintegration of those leaving custody

	Number of respondents	Percentage of respondents	Valid %
Yes	85	60%	71%
No	7	5%	6%
Unsure	27	19%	23%
No response	23	16%	-

The majority of respondents agreed with this proposal. Again, comments made in response to this question reiterated those in the previous question. This included the need for consistency in approach to throughcare, involving the community as well as voluntary sector (including Citizens Advice Bureau), improving access to employment/employability schemes, better signposting pre- and post-release, accountability of throughcare staff, family support and greater involvement of the Scottish Courts and Tribunals Service (SCTS) and PBS in throughcare service referral.

Q31. Agreement with changes proposed in relation to the introduction of an executive power of release, for use in exceptional circumstances

	Number of respondents	Percentage of respondents	Valid %
Strongly agree	25	18%	21%
Somewhat agree	47	33%	39%
Somewhat disagree	14	10%	12%
Strongly disagree	33	23%	28%
No response	23	16%	-

There were mixed reactions to this proposal, not least because several respondents drew attention to the Coronavirus (Scotland) Act 2020 which was drawn up and enacted as a matter of urgency in order to ease pressure on the prison estate during the early months of the Covid-19 pandemic, and did not require an executive power to do so. Some respondents also queried what was meant by 'exceptional circumstances' and how this would be defined in any executive power. For those who agreed, some suggested involving either the judiciary or another relevant non-partisan organisation; and ensuring that resources and risk assessments were in place should such a power be used:

> "Can safety of the victims be guaranteed? In the cases of domestic abuse, specialist risk assessment for all parties should be mandatory before release." (Advocacy/support organisation (victims))

Some, however, feared that such a power might be used to reduce overcrowding (through the back door), and several argued that politicians should be at arm's length to the process of decision making.

Q32. If an executive power of prisoner release was introduced for use in exceptional circumstances, what circumstances do you consider that would cover?

With the provisos attached to the previous question, the circumstances which some respondents felt were exceptional enough to warrant an executive power of release were as follows, in priority order:

- pandemic/fire/flood/war, etc.;
- compassionate grounds;
- for the safety of staff or prisoners;
- prison infrastructure failures;
- medical grounds (including terminal illness of the prisoner);
- significant overcrowding;
- exceptional riots; and
- miscarriages of justice.

Discussion

Main Findings: Bail

The table below shows the percentage of respondents who agreed ('strongly' or 'somewhat') or said 'yes' to various proposals set out in relation to bail.

Proposal	% of Respondents
Q1. Agreement with changes proposed in relation to when judges can refuse bail linked to public safety	63%
Q2. Agreement with changes proposed in relation to how judges consider victim protection when making decisions about bail	66%
Q3. Agreement with changes proposed in relation to courts being empowered to make decisions on the question of bail in all cases using a simplified legal framework	77%
Q4. Agreement with changes proposed in relation to judges giving written and oral reasons when they decide to refuse bail to an accused person	76%
Q5a. Agreement with different options for courts considering bail decisions in cases where the prosecution opposes bail (the most popular option being that the court must ask for information from social work. Social work must provide it)	66%
Q5b. Agreement with different options for courts considering bail decisions in cases where the prosecution is not opposing bail (the most popular option being that the court *may* ask for information from social work, but is not obligated to. Social work *may* decide whether to provide it)	48%
Q6. Agreement with proposals that courts should be required to consider Electronic Monitoring before deciding to refuse bail	79%
Q7. Agreement with proposals that, when a court decides to refuse bail, they should have to record the reason they felt electronic monitoring was not adequate	86%
Q8. Agreement with proposals that time spent on bail with electronic monitoring should be taken into account at sentencing	65%
Q9. Agreement with proposals that, if time on electronic monitoring is to be taken into account at sentencing, there should be legislation to ensure it is applied consistently	81%
Q11. Agreement with proposals that legislation should explicitly require courts to take someone's age into account when deciding whether to grant them bail	60%
Q12. Agreement, in principle, that courts should be required to take any potential impact on children into account when deciding whether to grant bail to an accused person	79%

Overall, the majority of respondents supported proposals so that judges can only refuse bail if there are public safety reasons for doing so, subject to greater clarification around the definition of public safety (with a nationally agreed

framework/definition to ensure that processes are consistent across the country) and more investment and accessibility of community interventions and support to underpin confidence in the use of bail. This would help to address what many (but not all) considered to be excessively high numbers of people currently and historically being held on remand in Scotland.

A simplified legal framework which is transparent and comprehensible by all those involved in the criminal justice process, particularly the accused and victims, was seen as something that would be helpful, as well as potentially speeding up the administration of justice to the benefit of all concerned.

All measures to increase consistency, transparency and accountability were welcomed, including the provision of written explanations of bail/remand decisions and considering victim protection more specifically in bail decisions. Accessibility in any communications from the court was seen as crucial, especially for vulnerable accused, victims and their respective families/supporters.

There was strong support for community based interventions for accused, and many supported the proposed reforms in relation to electronic monitoring. EM was seen by many as being much more effective (and cost effective) than custody at providing a way of protecting the public whilst minimising interference to the lives of accused and their families. The main reservations, however, appear to be that the infrastructure (in terms of electronic tagging and monitoring equipment) as well as staff time and capacity within criminal justice social work does not (and would not for some time) exist to support the proposals. Significant resource may be needed to make the proposals workable, it was felt.

More than half of respondents offered support for all but one of the proposed reforms in relation to bail (that being the requirement for courts to ask for information from social work and social work possibly providing it in cases where the prosecution is not opposing bail). Provided that any legislative change to bail is supported by increased availability of appropriate community alternatives to remand, most other bail reforms would be supported, it seems.

Main Findings: Release from Custody

The table below shows the percentage of respondents who agreed (‘strongly’ or ‘somewhat’) or said ‘yes’ to various proposals set out in relation to release from custody.

Proposal	% of Respondents
Q13. Agreement with the statement that, in general, enabling a prisoner to serve part of their sentence in the community can help their reintegration	78%
Q15a. Agreement with proposals that, through good behaviour, or completing education, training and rehabilitation programmes, prisoners should be able to demonstrate their suitability for early release	54%

Q15b. Agreement with proposals that, through good behaviour, or completing education, training and rehabilitation programmes, prisoners should be able to demonstrate their suitability for the ability to complete their sentence in the community	54%
Q17. Agreement with options in relation to automatic early release for short term prisoners (the most popular option being automatic early release changes to earlier in the sentence, but the individual is initially subject to conditions and monitoring, until the half-way point)	55%
Q18. Agreement with options for long-term prisoners being considered for release by the Parole Board for Scotland	51%
Q19. Agreement with proposals that the Scottish Government should ban all prison releases on a Friday (or the day before a public holiday), so people leaving prison have greater opportunity to access support	76%
Q20. Agreement with proposals regarding HDC (the most popular option being that the maximum length of time allowed on HDC should be longer)	53%
Q21. Agreement with proposals that the Scottish Government should consider whether information on individuals being released from custody can be shared with third sector victim support organisations	88%
Q22. Agreement with proposals that, in addition to information on individuals being released, victims and victims support organisations should be able to access further information	76%
Q23. Views on public service engagement with pre-release planning for prisoners (the most popular option being that existing duties are not sufficient; public services should have a specific duty to engage with pre-release planning	74%
Q25. Agreement with proposals that support should be available to enable prisoners released direct from court to access local support services in their community	96%
Q26. Agreement with proposals that revised minimum standards for throughcare should incorporate a wider range of services	94%
Q27. Agreement with proposals that revised minimum standards for throughcare should differentiate between remand, short-term and long-term prisoners	65%
Q28. Agreement with proposals that revised minimum standards for throughcare should be statutory	84%
Q29. Agreement with proposals that other changes should be made to the way throughcare support is provided to people leaving remand/short-term/long-term prison sentences	53%
Q30. Agreement with proposals that other support mechanisms be introduced/formalised to better enable reintegration of those leaving custody	71%
Q31. Agreement with changes proposed in relation to the introduction of an executive power of release, for use in exceptional circumstances	60%

There was considerably more divergence in the views offered in relation to proposals to release from custody with some proposed reforms being almost unanimously supported and others attracting very weak support.

Similar to views expressed in relation to EM as a bail option, there was consensus that many benefits could be found in allowing a prisoner to serve part of their sentence in the community (to minimise the negative impacts of custody and maximise opportunities for reintegration).

There was a strong sense that throughcare should not be voluntary but should be part of a sentence and part of every process of release - it was felt that release plans should look holistically at the social and wellbeing needs of individuals and ensure that appropriate supports are in place. Support available in the community to enable prisoners released directly from court was very widely supported as well as revised minimum standards for throughcare incorporating a wider range of services.

Early automatic release was not at all well supported, given that respondents felt that risk and behaviour in prison should determine earlier release. Robust and reliable pre-release planning was also considered essential to help tackle the issue of high proportions of returning prisoners. Indeed, collaborative working between SPS, criminal justice social work and third sector support organisations was seen as crucial in supporting release, in whatever guise.

The various proposals set out in relation to Home Detention Curfews (HDCs) were also not well supported with only two attracting support from more than half of respondents. Eligibility and suitability for HDC should always be determined by individual need/risk, it was felt, and the HDC system should not be unnecessarily constrained.

While support for accused in addressing criminogenic needs was a recurring thread in many responses, there was concurrent agreement that victim interests should be supported including very strong support for information sharing with victim support organisations when people are released from custody.

Differences in views by respondent type

Although separate analysis of feedback provided by organisations and individuals was carried out to look for any divergence in the views expressed by each group, the only qualitative difference observed was a marginally more punitive stance adopted by individuals compared to a more rehabilitative stance from organisations (although this was not evident across the board). There was also a skew towards concerns around costs, resources and practical constraints to implementation being noted more by organisations than individuals.

Some differences in the closed question responses offered by different ‘types’ of organisations were also noted but only in response to a small number of proposals, these being:

- victim support and advocacy organisations were less supportive of the proposed change in relation to the simplified legal framework compared to other types of organisations;
- victim support and advocacy organisations were also more likely than others to disagree with courts being required to consider electronic monitoring before deciding to refuse bail and proposals that time spent on bail with electronic monitoring should be taken into account at sentencing;
- organisations representing both accused, prisoners and released and victims were the main types of organisations to disagree that legislation should explicitly require courts to take someone's age into account when deciding whether to grant them bail;
- the majority of organisations representing accused, prisoners and released supported the change to allow some long-term prisoners to be considered by the Parole Board earlier if they were assessed as low risk (as opposed to the other options presented);
- organisations representing the interests of accused, prisoners and released as well as children and young people were slightly more likely than others to be against information being released to victims and victim support organisations (but were not the only types of organisations to disagree with this); and
- local authority/justice partnerships were the main types of organisations to disagree with the introduction of an executive power of release, for use in exceptional circumstances.

Given that the numbers of each different ‘type’ of organisation were relatively small, the above findings should not be generalised too widely.

Cross-cutting themes

Specifically for proposals linked to bail legislation, some legal organisations and public bodies suggested that some of the reforms were unnecessary (as existing legislation already worked well) and lacked robust justification. Judicial independence should be protected, it was felt, and changes to the way that bail and remand operate should remain politically independent. In contrast, a number of mainly local authority/justice partnerships and advocacy organisations expressed views that the proposals did not go far enough and were not sufficiently radical or transformational to address the issue of high prevalence of remand, and how best to support and address individuals’ criminogenic needs.

Comments were also made throughout that reforms to the bail and release system may only be possible if embedded in a more holistic and inclusive idea of justice. Several argued that wider social and systemic change was needed to policies in health, education, employment, housing, etc. in order for justice reforms to also succeed and, without these wider changes, bail and release reforms would inevitably fail to achieve their wider aspirations. Tackling wider social issues around inclusivity and social equality was also needed, it was felt.

Another common theme throughout the consultation was for the justice system to better balance the needs of victims and the accused. Many of the proposals in relation to bail were welcomed on the basis that they would promote the needs of both offender and victim which many saw as a core aspect of the justice system. Others, however, argued that the proposals needed to be accompanied by more fundamental change throughout the whole justice system to improve the picture of justice for both offenders and victims.

There was also an inherent conflict in responses from those representing accused, prisoners and released prisoners, as well as victims, with some offering views that the former were clearly in need of support and assistance (evidenced by their involvement in crime) while in respect of the latter, it was felt that the proposals largely moved away from victim centred approaches to placing perpetrators' needs ahead of victims. Others posited that the questions in the consultation framed the discussion around justice reform in a way that contravenes principles of social justice, setting the victims' rights against the accused. While the quantitative data presented appears to show more weight or support for the majority of proposals (than against), this may reflect the interests of those who responded (with fewer victims organisations represented than other groups, for example) and this must be considered when interpreting the findings.

This being said, there was consensus regarding the importance of safeguarding particularly vulnerable accused and victims (especially victims of domestic abuse) as well as children and young people (as accused, offenders and victims).

The final significant theme to emerge was the need for more investment and resources to boost capacity to deliver the proposed changes. Existing services would be unable to deliver what was being proposed (especially criminal justice social work services) and while many supported the policy aspirations, these would come at significant costs to the public purse, it was suggested.

Feedback on the consultation

While all responses were treated with equal weight in the analysis (in the interests of fairness), it is important to note that some views may have been more evidence- and experience-based compared to others. It should be noted that several respondents commented in response to certain questions that they did not feel sufficiently knowledgeable or experienced to be able to provide an informed response, yet still gave a response based on conjecture.

Several respondents also commented that they felt they could only offer 'cautious support' for many of the proposals, sometimes because they felt the proposals still needed some further thought or development before being finalised. Although the sample was fairly representative of the criminal justice sector, this (and the perceived lack of respondent expertise noted above) points towards a need for more clearly rationalising or explaining some of the proposals to make sure that they are understood, as well as ongoing engagement and consultation with the broad range of stakeholders to ensure that changes, if introduced, are embraced.

Indeed, a vocal minority expressed that they viewed the consultation as an inappropriate medium by which to address the considerable challenges at hand, instead viewing it as a ‘tick box exercise’. Wider and different forms of engagement were therefore suggested to ensure that points of critical importance are not missed as the legislative change process moves on.

A further observation was the questioning by a small number of organisations and individuals of the evidence presented to support some of the proposals, including the effectiveness of HDC and EM (without supervision) and assumptions that prison programme attendance/completion may evidence rehabilitation. Others urged clearer linkages in the consultation with other policy developments, guidance and research in aligned fields (including recent and ongoing changes being made by the Scottish Sentencing Council).

Finally, several noted that the consultation was quite lengthy and a more accessible version of the document may have been welcomed, particularly for gathering views of children and young people. While some support and advocacy organisations had engaged with their service users/members to inform their response, a medium which would have allowed them to contribute more directly would have been welcomed. Despite the fact that the Scottish Government did, in fact, engage with a range of stakeholders concurrent to the online consultation process (including those with lived experience), some respondents were unsure of this and suggested that engaging with victims, witnessed, accused, offenders or supporters of these groups may be helpful in taking the proposal forward to the next stage. Separate and dedicated engagement with young people was also suggested.

Conclusion

The consultation attracted a strong response from a broad range of stakeholders. It was widely recognised that it would be difficult to legislate for the full range of scenarios that would be presented to the courts, and that it would not be possible to plan for all eventualities, given the complexity of human nature and needs. Many of the proposals would, nonetheless, be a step change and make progress towards more compassionate and equitable justice. Key to the success of many of the proposed changes would be collaborative working between statutory and third sector organisations, with honest and open communications that reflect the unique circumstances of individual cases. Overall, subject to refinement and suitable safeguards and appropriate resources being put in place, many of the proposals were seen as potentially contributing to the underlying aim to reduce crime, reduce reoffending and have fewer people experiencing crime.

Next Steps

The responses to the consultation, summarised above, will be used alongside other evidence to inform legislation which is expected to be introduced to Parliament in mid-2022.

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