

Bail and Release from Custody (Scotland) Bill

Business and Regulatory Impact Assessment

June 2022



Scottish Government
Riaghaltas na h-Alba
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- Provision of information to victim support organisations on prisoner release
- Early release of prisoners in emergency situations

Rationale for Government intervention:

The Scottish Government supports the use of prison as being necessary for those who pose a risk of serious harm. However, it is also recognised that imprisonment damages the connections that prevent people from offending or reoffending, such as family relationships, accommodation and employment. Short-term imprisonment in particular, is not effective in addressing the underlying causes of offending.

For those leaving prison, effective support to enable them to reintegrate and make positive connections in their communities helps to prevent reoffending and supports more positive outcomes for them and those around them. A reduction in reoffending also means less crime and fewer victims.

In order to see reductions in reoffending and victimisation, with the associated damage to people and communities, there needs to be a more decisive shift away from the use of custody, including for remand, towards community-based interventions which do more to address the underlying causes of offending. More also needs to be done to ensure that consistent, timely services are available to support people on their release from prison at the point that they need them.

The proposals contribute towards the following objectives of the National Performance Framework: “live in communities that are inclusive, empowered, resilient and safe” and “respect, protect and fulfil human rights and live free from discrimination”.

The proposals recognise that there is already support provided by local authorities and the third sector to people on bail and leaving prison custody. There are existing duties on public bodies to provide essential services to members of the public who require them, these duties are not specific to those leaving prison. There are good practice examples of services engaging in pre-release planning but this is not a consistent picture across Scotland.

Similarly local authorities currently have a duty to provide voluntary throughcare support to prisoners leaving custody following a period of remand or a short-term sentence (less than four years) should the individual request it within 12 months of leaving prison. Short-term prisoners may also receive throughcare assistance from a range of third sector services. Local Authorities must provide statutory throughcare for prisoners leaving long-term sentences (four years or more). However it is felt that revised minimum standards for throughcare should encompass a broader range of services reflecting the need for holistic support for people leaving prison.

Therefore the proposals may have some business impact on these local authority and third sector services including increased demand for bail support services and revised standards of throughcare.

Consultation

Within Government:

A number of Scottish Government departments/agencies and non-departmental public bodies (NDPBs) were engaged in the development of the consultation proposals, prior to publication of the consultation, throughout the 12 week consultation process and after. These included:

- Community Justice Division (Scottish Government) on impact of proposals on alternatives to remand, prison policy, throughcare provision and expansion of electronic monitoring;
- Criminal Justice Division (Scottish Government) on impact of bail law proposals and consideration of victims' issues;
- Civil Law Division (Scottish Government) on impact of bail law proposals on legal aid.
- Crown Office and Procurator Fiscal Service on impact of bail law proposals.
- Justice Analytical Services Division (Scottish Government) for evidence and analysis surrounding the proposals;
- Youth Justice Division (Scottish Government) on how proposals may impact children and young people and interaction with further planned legislation;
- Areas within Scottish Government with responsibility for equality, health (inc mental health), housing and homelessness, fair work, substance misuse and social security;
- Executive Agencies including Scottish Prison Service and Social Security Scotland on potential financial and operational impacts of the proposals;
- Executive, Advisory and Tribunal NDPBs including, Community Justice Scotland, Parole Board for Scotland, Risk Management Authority, and Scottish Sentencing Council.

Public Consultation:

Prior to publication of the public consultation, informal consultation was carried out with a number of organisations and fora including COSLA, the Criminal Justice Voluntary Sector Forum, HM Inspectorate of Prisons for Scotland, Police Scotland, Scottish Courts and Tribunals Service, Social Work Scotland and the Victims Organisations Collaboration Forum Scotland.

The Cabinet Secretary for Justice launched a public consultation entitled '*Bail and Release from Custody Arrangements in Scotland*' on 15 November 2021. The consultation contained a number of specific questions around proposed reforms relating to the law governing the use of bail and remand for those accused of criminal offences, and the release from custody of those serving sentences following conviction. The consultation had an emphasis on both addressing the underlying causes of offending and protecting public safety and was intended as the first stage in a longer-term consideration of how custody is used in Scotland.

The public consultation was published on 15 November 2021 and closed on 7 February 2022, receiving 142 written responses in total. A total of 68 responses

were received from individuals (48%) and 74 responses from organisations (third sector bodies, public sector and partnership bodies and other organisations).

Among the 74 organisations that responded, there was a reasonable split between local authorities/justice partnerships and other organisations. 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%

The analysis of responses summarised that there was strong support for almost all of the proposals in relation to bail reform. Many respondents caveated that legislative change in this area will need to be supported by an increased availability of community alternatives to remand and throughcare support. It was also suggested that collaborative working between statutory and third sector organisations would be essential for the delivery of the proposals.

There were concerns expressed about the impact improved provision of information by justice social work may have, including on resources and staff capacity of the social work and court service. Similar concerns were expressed about the use of EM bail. It was felt that resource may be required in order to support the infrastructure needed for the success of EM bail proposals.

There was general agreement to the principle of enabling more prisoners to serve part of their sentence in the community. Many respondents viewed that existing duties on public services to engage with pre-release planning were not sufficient and therefore agreed with proposals to place specific duties on public bodies and revise throughcare standards.

While the consultation was running, the Scottish Government continued to engage with external stakeholders, largely on a virtual basis due to Covid restrictions. Scottish Government officials attended a number of meetings with stakeholders

and interested parties in order to highlight the contents of the consultation and how the proposals within may impact them.

In addition to the responses received from the consultation, engagement with those with related experience was conducted via a supported survey. The survey was shared through the Public Social Partnership networks with organisations who provide support and mentoring to people who have been released from custody after serving a short sentence. These organisations could support their mentees to complete the survey.

80% of respondents strongly agreed that it would be beneficial if voluntary throughcare support was offered to remand and long-term prisoners. A key message from the responses was the importance of engagement with all necessary public services prior to release. The respondents to the survey detailed which supports and services they felt would make it easier for people being released from prison custody. The most frequent supports to be highlighted were: access to housing, access to benefits, being linked in with any necessary health or addiction services and having a photographic ID and bank account set up before release.

Businesses:

As stated above, the Scottish Government consulted widely. Government officials actively brought the consultation process to the attention of a wide range of stakeholders, encouraging them to participate.

A number of organisations from the third sector, who have a particular interest in the delivery of throughcare, provided responses to the consultation including Apex Scotland, The Wise Group, Shine (Public Social Partnership) and Sacro. Additionally a number of advocacy/support organisations for victims provided responses including Scottish Women's Aid and Victim Support Scotland. Some professional bodies, such as Social Work Scotland, and legal organisations also provided responses.

Engagement has focussed primarily on the public and third sector, given that they will be most affected by the provisions contained within the legislation. It is unlikely that the provisions will have significant impact on the private sector.

Uptake of Electronic Monitoring, which is a demand-led service through a private contractor, will continue to be monitored.

Community Justice Services: As we move towards a greater of use of community-based disposals, an additional £11.8m has been made available to support community justice services in recovering from the pandemic in 2021-22. This investment will be increased to £15m for year 2022-23, in addition to around £119m of continued funding for community justice.

Electronic monitoring contracts: The electronic monitoring service is demand-led and the exact cost of the service depends on usage, as such, it depends on the numbers of orders or licences given by the Courts, Scottish Prison Service,

and the Parole Board. Scottish Government spend on the electronic monitoring contract has averaged at around £3m a year for the last five years. This spend will vary dependent on use and future technology developments and policy uses.

The electronic monitoring provision is delivered on behalf of the Scottish Government by G4S (service provider). All contract variation will be discussed with the service provider to ensure contractual requirements are agreed and in place for the introduction and expansion of any new electronic monitoring policy and subsequent uses.

Bail Supervision services: In 2022/23, the Scottish Government are investing an additional £3.2m to further increase bail assessment capacity, helping develop bail supervision services across all parts of Scotland and supporting the implementation of electronically monitored bail. This builds on ongoing support, including additional investment of £550,000 per annum to bolster existing provision for supervised bail as an alternative to remand and a ring-fenced allocation of £1.5m for bail support for women. In May 2022, updated national guidance on bail supervision was published to support the consistent establishment and delivery of bail supervision across Scotland.

Throughcare services: Scottish Government work with partners in the SPS, Local Authorities and third sector service providers, to deliver throughcare services in Scotland. £3.7 million in funding is provided annually to third sector partnerships to support throughcare services for men, women and young people leaving short-term prison sentences. We also provide funding to local authorities to support the voluntary and statutory throughcare services they provide people leaving custody.

Victim Support Organisations: 4 VSOs responded to the public consultation. While the consultation was running, the Scottish Government continued to engage, largely on a virtual basis due to Covid restrictions, with the Victims' Organisation Collaboration Forum Scotland as well as VSOs on an individual basis. Victim Support Organisations currently receive £16m funding p.a. from the Victim Centred Approach Fund (VCAF). This includes funding to support the direct provision of advice and support to victims of crime.

Options

Option 1: 'Do nothing'

The policy impact of this option is likely to be:

- Continued rise in prison population/remand population,
- Current rates of re-offending likely to continue,
- Continued release from custody on a Friday meaning support is likely to not be available until after the weekend,
- People placed on remand who are not identified as posing a risk of serious harm,
- Disruption of children and young people's lives when parents are placed into custody, which has been shown to result in increased poverty, offending and poor academic performance.

Option 2: 'Non-legislative option to encourage change through policy/funding'

The policy impact of this option is likely to be:

- Limited impact on the in prison population/remand population,
- Continued limited information available about the bail decision where the person is remanded,
- Continued release from custody on a Friday meaning support is likely to not be available until after the weekend,
- People placed on remand who are not identified as posing a risk of serious harm,
- Inconsistent availability of pre-release planning and throughcare support.

Option 3: 'Introduce a Bail and Release from Custody Bill'

The policy impact of this option is likely to be:

- Limiting the use of remand to those that pose a risk of serious harm, with a particular emphasis on a risk to public safety, and in all other cases removing the unnecessary disruption of remand to a person's life, relationships, employment and other supports,
- Improving the information available to the court when making the bail decision through the enhanced role of justice social work.
- Increased transparency of remand decisions through the recording of reasons for refusal of bail with an increased emphasis on custody as a last resort.
- Ending release from custody on a Friday or the day before a public holiday – so that there is an availability of services when needed, reducing the likelihood of reoffending and/or drug related death or other harm.
- Increasing throughcare support and pre-release support so that those leaving custody have their housing/ accommodation needs considered, can have support with applying for benefits or employment and assistance with medication or other health needs.
- Reducing the likelihood of reoffending, and therefore reducing the number of victims of crime in Scotland.

Sectors and groups affected

The legislation will affect all organisations involved in the delivery of the criminal justice system including Police Scotland; the Crown Office and Procurator Fiscal Service; the Scottish Courts and Tribunals Service; the Scottish Prison Service; as well as local authorities (Justice Social Work, Housing etc) and third sector organisations responsible for supporting individuals on bail and release from custody, and those supporting victims of crime.

Benefits

Option 1: 'Do nothing'

- No immediate additional cost to support current and new services
- No need for existing resources, guidance and/or systems to be updated

Option 2: 'Non –legislative option to encourage change through policy/ funding'

- No need for additional legislative process

Option 3: 'Introduce a Bail and Release from Custody Bill'

- Ensure consistency of approach nationally
- Will drive cultural change
- Will give Victim Support Organisations rights recognised by law

Costs

Give details of all costs (additional and savings) associated with each option you are considering. This should, where applicable, include non-monetary costs.

Option 1: 'Do nothing'

- This is likely to have longer term costs associated with increasing prison populations and continued rates of reoffending.
- The current level of reoffending has significant implications for Scottish society. The total economic and social cost of reoffending in Scotland is estimated at £4 billion a year².

Option 2: 'Non–legislative option to encourage change through policy/ funding'

- There would be costs associated with developing guidance and additional resource would be required to support certain services.

Option 3: 'Introduce a Bail and Release from Custody Bill'

(see table over page)

² [Costs of the criminal justice system in Scotland dataset: 2016-17 \(published December 2019\) - gov.scot \(www.gov.scot\)](http://www.gov.scot)

Organisation / Body	Policy	Costs / Saving
The Scottish Prison Service (SPS)	The overarching policy intent of refocusing the use of custody could encourage greater use of bail in future with reduced use of custody for remand	This may result in a saving for SPS in terms of prison population.
	Requiring the court to have regard to time spent on EM bail when sentencing	May lead to some notional savings for SPS if court considers time spent of EM bail applicable to time served when imposing a custodial sentence
	Banning of Friday (or day before a public holiday) Liberations	Some minor costs associated with updating IT systems.
	Long term prisoners reintegration licence	Some additional costs e.g. guidance and training for SPS staff.
	Providing VSOs with information about the release of prisoners	Some initial administrative set-up costs
Local Authorities (incl. Justice Social Work)	Having an enhanced role in respect of informing the court's decision-making on bail	Likely this may result in an increase in costs for local authorities, who receive ring-fenced funding for criminal justice social work.
	Banning of Friday (or day before a public holiday) Liberations	Overall this change is likely to bring some long-term efficiency savings as services are able to be provided on a more proactive basis rather than reactive basis.
	Placing specific duties on public bodies to engage with pre-release planning	<p>May result in an additional costs (such as staffing) to sufficiently engage in the planning process. The change proposed under this provision will not change the service(s) an individual will require.</p> <p>Overall this change is likely to bring some long-term efficiency savings</p>

Organisation / Body	Policy	Costs / Saving
		as services are able to be provided on a more proactive basis rather than reactive basis.
	Long term prisoners reintegration licence	May result in some additional supervision and throughcare provided by justice social work
The Scottish Courts and Tribunals Service (SCTS).	Requiring the court to record the reasons for the bail decision	Will add additional time to the work of the court clerk
	Changes to the information the court has to inform their decision-making	May add some limited time to the time taken by the court for bail decisions
Crown Office and Procurator Fiscal Service. (COPFS)	Training and updated guidance will be required as part of implementation of reforms to bail law.	These costs will be minimal with the necessary steps taken as part of the normal arrangements for training and guidance within Crown Office that arise on an ongoing basis.
Other Community Justice Partners as identified in the Community Justice Act 2016 (with some amendments)	Specific duties on these bodies to engage with pre-release planning	May result in an additional costs (such as staffing) to sufficiently engage in the planning process. The change proposed under this provision will not change the service(s) an individual will require. Overall this change is likely to bring some long-term efficiency savings as services are able to be provided on a more proactive basis rather than reactive basis.
	Banning of Friday (or day before a public holiday) Liberations	Overall this change is likely to bring some long-term efficiency savings as services are able to be provided on a more proactive basis rather than reactive basis.

Organisation / Body	Policy	Costs / Saving
Third Sector throughcare providers	Revising throughcare standards	May have resource implications for third sector organisations delivering this
Victim Support Organisations (VSOs)	Providing VSOs with information about the release of prisoners	May result in additional costs in order to facilitate the processing of this data as well as guidance for staff.
Scottish Administration	Introducing wider power of executive release	Would incur administrative costs if/ when this is used, these would be significantly lower than the administrative costs of creating a new power of executive release when required for each exceptional circumstance
	Long term prisoners reintegration licence	Associated costs of electronic monitoring of those released on licence.
	Revising throughcare standards	Scottish Government may provide some initial funding to support the establishment of clear throughcare pathways, in line with the standards, in each local authority area.
Police Scotland (PS)	Monitoring adherence to bail conditions is an existing part of Police Scotland's overall responsibilities.	If in the future there are more people on bail and less people on remand, PS will have a continuing and larger role in respect of accused persons and monitoring adherence to bail conditions.
Parole Board for Scotland	Long term prisoners reintegration licence - assessing cases considered for release on a reintegration licence	Costs for training and guidance and assessment of case.

N.B Decision-making will remain with the independent court and so it is not possible to fully cost the impact of bail reforms.

In general terms, it is anticipated that over the longer-term, greater use of non-custodial options within the criminal justice system will lead to reductions in offending and re-offending. Taking a longer term view, it is hoped these positive impacts in terms of offending and re-offending will help reduce levels of crime, future victimisation and ultimately require less criminal justice system time (police, prosecutors and the courts).

Scottish Firms Impact Test

Is this measure likely to impact on international trade and investment?

No.

Given the impact will largely fall on public and third sectors, it was not considered necessary for Scottish Government officials to carry out face to face discussions with businesses about the legislation. The measures are not likely to impact on international trade or investment.

Competition Assessment

The Bill is not expected to have any impact on competition. It will not limit the number or range of suppliers, limit the ability of stakeholders to compete, limit suppliers' incentives to compete vigorously or limit choices and information available to consumers. As such a competition assessment has not been completed.

Consumer Assessment

The Bill will have no negative impact on consumers. Following implementation, local authorities and the third sector will likely see an increase in the number of cases they handle, however they will receive appropriate funding to offset this increase. The Consumer and Competition Policy Unit have reviewed this BRIA and confirmed they anticipate no direct impact on the availability/price of goods and services etc.

Test run of business forms

The Scottish Government considers that it could be beneficial for a standard form to be developed to enable Victim Support Organisations (VSOs) to request information about a prisoner's release from SPS. The Scottish Government is committed to developing that form in collaboration with VSOs and the SPS to support the successful implementation of this aspect of this Bill. It also expects conversations about this form to include discussion on the benefits of agreeing its terms in any data sharing agreement or other document required to support the sharing of information about a prisoner's release.

Digital Impact Test

The Bill has no provisions specifically relating to digital/online content. There is no evidence that the provisions will have a disproportionate impact either on offline or on-line businesses.

The Bill has provisions which relates to the sharing of information. Both in terms of the bail decision, pre-release planning duty and sharing release information with VSOs.

The Digital Economy Team were contacted and agree with our assessment.

Legal Aid Impact Test

This section has been discussed with colleagues in the Scottish Government's Access to Justice team who are content that the legal aid implications have been given due consideration.

While the bail measures in the bill refocus the legal framework in which bail decisions are made, the proposed legislation will not add new substantive procedures or rights of appeal to a court or tribunal which may lead people to consult a solicitor in addition to the core points at which accused persons currently seek legal advice or representation when entering the criminal justice process. No new court hearings are required through the provisions.

Accordingly, the measures in the Bill are not expected to increase the number of people granted criminal legal aid and issued with a legal aid certificate and there is therefore no anticipated impact on legal aid.

Enforcement, sanctions and monitoring

The Bill will make changes to primary legislation governing the operation of the Scottish criminal justice system, including the courts, the police and COPFS. This will then be enforced by the police, courts and COPFS as part of their operating functions.

Implementation and delivery plan

The Scottish Government intends to take forward this legislation in the current Parliamentary Session. If passed, it is expected implementation will begin from 2024- 2025 at the earliest.

A review of the legislation will be carried within 10 years of the Bill coming into effect.

Summary and recommendation

Option 3 is recommended: to introduce a Bail and Release from Custody Bill.

Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1. Do Nothing	<ul style="list-style-type: none"> No need for existing resources, guidance and/or systems to be updated 	<ul style="list-style-type: none"> Funding would be maintained at current level
2. Non-legislative route (policy only)	<ul style="list-style-type: none"> No need for additional legislative process 	<ul style="list-style-type: none"> There would be costs associated with developing guidance and additional resource would be required to support certain services.
3. Introduce Bill	<ul style="list-style-type: none"> Ensure consistency of approach nationally Will drive cultural change Will give Victim Support Organisations rights recognised by law. 	<ul style="list-style-type: none"> Likely additional costs and workload for JSW. Some additional cost for the court to record reasoning for bail decision Some Placing specific duties additional time and staffing required from public bodies engaging in pre-release planning.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland

Signed:



Date:

1/6/22

Minister's name: Keith Brown

Minister's title: Cabinet Secretary for Justice and Veterans

Scottish Government Contact point: Hannah Broadley



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