



Social Policy, Policy Development and Scrutiny Panel

West Lothian Civic Centre
Howden South Road
LIVINGSTON
EH54 6FF

29 December 2021

A meeting of the **Social Policy, Policy Development and Scrutiny Panel** of West Lothian Council will be held within the **MS Teams Virtual Meeting** on **Friday 7 January 2022** at **9:30am**.

For Chief Executive

BUSINESS

Public Session

1. Apologies for Absence
2. Declarations of Interest - Members must declare any interests they have in the items of business for consideration at the meeting, identifying the relevant agenda items and the nature of their interests.
3. Order of Business, including notice of urgent business and declarations of interest in any urgent business
4. Confirm Draft Minutes of Meeting of Social Policy, Policy Development and Scrutiny Panel held on Friday 22 October 2021 (herewith)
5. Multi-Agency Public Protection Arrangements - Annual Report
 - (a) Report by Head of Social Policy (herewith)
 - (b) Presentation
6. Scottish Government's Consultation on Bail and Release from Custody Arrangements in Scotland - Report by Head of Social Policy (herewith)
7. Unaccompanied Asylum-Seeking Children - West Lothian Position - Report by Head of Social Policy (herewith)

DATA LABEL: Public

8. Redesign of Intensive and Crisis Support Services - Families Together - Report by Head of Social Policy (herewith)
9. Adult Support and Protection Pre-Inspection Activity - Report by Head of Social Policy (herewith)
10. 2021/22 Financial Performance - Month 6 Monitoring Report - Report by Head of Finance and Property Services (herewith)
11. Workplan (herewith)

NOTE **For further information please contact Anastasia Dragona on tel. no. 01506 281601 or email anastasia.dragona@westlothian.gov.uk**

CODE OF CONDUCT AND DECLARATIONS OF INTEREST (2021)

This form is a reminder and an aid. It is not a substitute for understanding the Code of Conduct and guidance.

Interests must be declared at the meeting, in public.

Look at every item of business and consider if there is a connection.

If you see a connection, decide if it amounts to an interest by applying the objective test.

The objective test is whether or not a member of the public with knowledge of the relevant facts would reasonably regard your connection to a particular matter as being so significant that it would be considered as being likely to influence your discussion or decision-making.

If the connection does not amount to an interest then you have nothing to declare and no reason to withdraw.

If the connection amounts to an interest, declare it as soon as possible and leave the meeting when the agenda item comes up.

When you declare an interest, identify the agenda item and give enough information so that the public understands what it is and why you are declaring it.

Even if the connection does not amount to an interest you can make a statement about it for the purposes of transparency.

More detailed information is on the next page.

Look at each item on the agenda, consider if there is a “connection”, take advice if necessary from appropriate officers in plenty of time.

A connection is any link between the item of business and:-

- you
- a person you are associated with (e.g., employer, business partner, domestic partner, family member)
- a body or organisation you are associated with (e.g., outside body, community group, charity)

Anything in your Register of Interests is a connection unless one of the following exceptions applies.

A connection does not exist where:-

- you are a council tax payer, a rate payer, or a council house tenant, including at budget-setting meetings
- services delivered to the public are being considered, including at budget-setting meetings
- councillors’ remuneration, allowances, expenses, support services or pensions are being considered
- you are on an outside body through a council appointment or nomination unless it is for regulatory business or you have a personal conflict due to your connections, actions or legal obligations
- you hold a view in advance on a policy issue, have discussed that view, have expressed that view in public, or have asked for support for it

If you see a connection then you have to decide if it is an “interest” by applying the objective test.

The objective test is whether or not a member of the public with knowledge of the relevant facts would reasonably regard your connection to a particular matter as being so significant that it would be considered as being likely to influence your discussion or decision-making.

If the connection amounts to an interest then:-

- declare the interest in enough detail that members of the public will understand what it is
- leave the meeting room (physical or online) when that item is being considered
- do not contact colleagues participating in the item of business

Even if decide your connection is not an interest you can voluntarily make a statement about it for the record and for the purposes of transparency.

The relevant documents are:-

- [Councillors’ Code of Conduct, part 5](#)
- [Standards Commission Guidance, paragraphs 129-166](#)
- [Advice note for councillors on how to declare interests](#)

If you require assistance, contact:-

- Julie Whitelaw, Monitoring Officer, 01506 281626, julie.whitelaw@westlothian.gov.uk
- James Millar, Governance Manager, 01506 281613, james.millar@westlothian.gov.uk
- Carol Johnston, Chief Solicitor and Depute Monitoring Officer, 01506 281626, carol.johnston@westlothian.gov.uk
- Committee Services Team, 01506 281604, 01506 281621
committee.services@westlothian.gov.uk

MINUTE of MEETING of the SOCIAL POLICY, POLICY DEVELOPMENT AND SCRUTINY PANEL held within VIRTUAL MEETING ROOM, on 22 OCTOBER 2021.

Present – Councillors Angela Doran-Timson (Chair), George Paul, Damian Doran-Timson, Charles Kennedy, Dom McGuire and Moira Shemilt

Apologies – Councillor Tom Conn

1 DECLARATIONS OF INTEREST

There were no declarations of interest made.

2 MINUTES

The panel approved the minute of its meeting held on 17 September 2021 as a correct record.

3 THE PROMISE PLAN 21-24

The panel considered a report (copies of which had been circulated) and a presentation by the Head of Social Policy informing members of The Promise Plan 21-24 published on 31 March 2021, further to the report of September 2020 regarding The Promise.

It was recommended that the panel note the contents of the report.

Decision

To note the terms of the report and presentation.

4 SOCIAL POLICY CONTRACT ACTIVITY UPDATE

The panel considered a report (copies of which had been circulated) by the Head of Social Policy this report providing an update on contracting activity for the provision of care and support services for the period 1 April 2021 to 30 September 2021 in accordance with the council's Standing Orders and West Lothian HSCP's Health, Care and Support Services Procurement Procedures.

It was recommended that the panel:

1. Note the contacting activity for the provision of care and support services for the period 1 April 2021 to 30 September 2021; and
2. Recognise the ongoing development of clear contractual agreements between the council and providers of care and support

services.

Decision

To note the terms of the report.

5 PERFORMANCE REPORT - QUARTERLY INDICATORS

The panel considered a report (copies of which had been circulated) by the Head of Social Policy providing an update on the current level of performance for the quarterly indicators up to quarter 2 of 2021–22 that supported the Corporate Plan and were the responsibility of Social Policy and reportable to the Health and Care Policy Development and Scrutiny Panel.

It was recommended that the Panel note the performance information and determine if further action or enquiry was necessary for any of the performance indicators in the report.

Decision

To note the terms of the report.

6 TRANSFORMING YOUR COUNCIL REVIEW OF ADULT DAY CARE (INCLUDING COMMUNITY TRANSPORT)

The panel considered a report (copies of which had been circulated) by the Head of Social Policy providing an update to the proposal SJ1a for delivery of the savings associated with the review of adult day care including community transport and ancillary services.

It was recommended that the panel:

1. Note that the council at its budget setting meeting on 13 February 2018 had agreed to a measure (SJ1a) to review adult day care services with a saving of £755,000 to be delivered in 2020/21, and further note that the phasing had been amended at the budget setting meeting on 19 February 2019;
2. Note that following the TYC consultation in 2019 the revised model for adult day care requires to be based on the retention of the three existing day care centres;
3. Note that 2020/21 savings proposal of £507,493 (phase 1) of the project had been approved at Council Executive on 3 December 2019 and had since been delivered.
4. Note that extensive engagement with day care service users had been undertaken in 2019 with additional specific engagements in May and August 2021 in relation to community transport and ancillary service.

5. Note the proposal (phase 2) regarding changes to transport and ancillary support services for 2022/23 with associated savings of £248,000; and
6. Note intention to seek approval from Council Executive to progress 2022/23 savings proposal (phase 2).

Decision

1. To note the terms of the report.
2. To provide an update report which would include user feedback to a future meeting of the Social Policy PDSP.

7 CARE AT HOME SERVICES IN WEST LOTHIAN

The panel considered a report (copies of which had been circulated) by the Head of Social Policy providing an update on the situation with regard to the delivery of care at home services in West Lothian.

It was recommended that the panel note the contents of the report.

Decision

1. To note the terms of the report.
2. To provide an update report which would include an update on care home staffing to a future meeting of the Social Policy PDSP.

8 A RIGHTS-RESPECTING APPROACH TO JUSTICE FOR CHILDREN & YOUNG PEOPLE: SCOTLAND'S VISION AND PRIORITIES

The panel considered a report (copies of which had been circulated) by the Head of Social Policy informing members of the publication of the report *A Rights-Respecting Approach to Justice for Children and Young People: Scotland's Vision and Priorities* and the associated action plan for the period 2021 to 2022.

It was recommended that the panel note the contents of the report.

Decision

1. To note the terms of the report.
2. To provide a progress update report to a future meeting of the Social Policy PDSP.

9 IMPLEMENTATION - AGE OF CRIMINAL RESPONSIBILITY ACT (SCOTLAND) 2019

The panel considered a report (copies of which had been circulated) by the Head of Social Policy informing members of the Age of Criminal Responsibility (Scotland) Act 2019 and its implications.

It was recommended that the panel note the contents of the report.

Decision

To note the terms of the report.

10 CHILD PROTECTION ANNUAL REPORT UPDATE

The panel considered a report (copies of which had been circulated) by the Head of Social Policy updating members on the Child Protection Annual Report 2020-2021 and the accompanying Improvement Plan 2020-2022.

It was recommended that the panel:

1. Note the content of the Annual Report and Improvement Plan; and
2. Note that despite the challenges of working through a pandemic, multi-agency staff had adapted quickly to ensure that the most vulnerable children and young people in West Lothian were protected.

Decision

To note the terms of the report.

11 WORKPLAN

A workplan had been circulated for information.

Decision

To note the workplan.

DATA LABEL: PUBLIC



SOCIAL POLICY - POLICY DEVELOPMENT AND SCRUTINY PANEL

MULTI- AGENCY PUBLIC PROTECTION ARRANGEMENTS – ANNUAL REPORT

REPORT BY HEAD OF SOCIAL POLICY

A. PURPOSE OF REPORT

The purpose of the report is to update members on Multi Agency Public Protection Arrangements (MAPPA) Responsible Authority Annual Report 2020-21 and how these partners in this area adapted during the challenges of the pandemic.

B. RECOMMENDATION

The panel is asked to:

- I. Note the content of the MAPPA Responsible Authority Annual Report
- II. Note that despite the challenges of working through a pandemic multi-agency staff adapted quickly to ensure West Lothian Communities and Children were protected from risk of harm

C. SUMMARY OF IMPLICATIONS

I Council Values	<ul style="list-style-type: none">– Focusing on our customers' needs– Being honest, open and accountable– Making best use of resources– Working in partnership
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Management of Offenders etc. (Scotland) Act 2005 Sexual Offences Act 2003
III Implications for Scheme of Delegations to Officers	None
IV Impact on performance and performance Indicators	MAPPA has a suite of Key Performance Indicators to monitor progress and outcomes.
V Relevance to Single Outcome Agreement	We live in resilient, cohesive and safe communities People most at risk are protected and supported to achieve improved life chances
VI Resources - (Financial, Staffing and Property)	No additional cost - within existing resources

VII Consideration at PDSP None

VIII Other consultations None

D. TERMS OF REPORT

Overview

The Multi-Agency Public Protection Arrangements (MAPPA), are a set of statutory partnership working arrangements introduced in 2007 under Section 10 of the Management of Offenders etc. (Scotland) Act 2005 (the 2005 Act).

The purpose of MAPPA is public protection and the reduction of serious harm. In Scotland MAPPA brings together Responsible Authorities, to assess and manage the risk posed for certain categories of offender: Sex offenders who are subject to notification requirements under the Sexual Offences Act 2003; Mentally Disordered restricted patients; and other individuals who by reason of their conviction are assessed by the Responsible Authorities as posing a risk of serious harm to the public.

Former Community Justice Authorities ceased to exist on 31 March 2017, however, MAPPA continues to operate under the Management of Offenders etc (Scotland) Act 2005 and the boundaries previously covered by the Edinburgh, Lothian and Scottish Borders Community Justice Authority remain.

The responsible authorities represented are:

- West Lothian Council
- The City of Edinburgh Council
- East Lothian Council
- Midlothian Council
- Scottish Borders Council
- Police Scotland
- Scottish Prison Service
- NHS Lothian
- NHS Borders

A number of other agencies are under a duty to co-operate with the Responsible Authorities and include housing providers, the voluntary sector and the Children's Reporter.

MAPPA is supported by the Violent and Sex Offender Register (ViSOR) which is a Police based system. This is a UK-wide IT system which facilitates inter-agency communication and ensures that the Responsible Authorities contribute to the sharing of securely stored critical information about individuals subject to MAPPA. It improves the capacity for key responsible authorities to share intelligence and supports the immediate transfer of key information when these individuals move between areas.

Annual Report 2020 -2021

Responsible Authorities, to fulfil their statutory duties, must jointly prepare and publish MAPPA annual reports. The recent report for this Responsible Authority for 2020 to 2021 is in appendix 1.

The report highlights that it has been a challenging year for MAPPA in their work to protect the children, vulnerable individuals and the community. This included dramatically reducing face to face contact with partner agencies and placed a new reliance on technology, to ensure sharing of information and working collaboratively to manage the risk of harm presented by MAPPA managed offenders continued to a high standard.

The Council is the responsible authority for registered sex offenders who are subject to statutory supervision. The Council's Justice Services is responsible for the supervision of such offenders, but housing, adult social care and children and family's services also play a key role in the management of sex offenders in the community. Justice Services makes a significant contribution to public protection by supervising and managing registered sex offenders in accordance with the requirements of MAPPA and other public protection-related legislation.

The Council is responsible for ensuring the development of a strategic response to the housing of sex offenders but will include a range of housing providers.

Community Intervention Services for Sex Offenders (CISSO) is a service which supports the risk management through the delivery of community-based group treatment programmes and individual interventions, addressing the behaviour and attitudes associated with sexual offending. Groupwork was suspended throughout 2020, the team though focused on offering 1:1 assessments and interventions both remotely via the telephone and video-calling alongside face-to-face appointments in local offices.

Keeping Children Safe is the Community Disclosure Scheme provides that parents, carers and guardians of children under 18 can ask for information about a named person who may have contact with their child if they are concerned that he or she might have convictions for sexual offences against children (e.g. if a parent wants to find out more about a new partner). Police officers discuss the concerns of the applicant in a face-to-face meeting and offer advice and support.

MAPPA had active oversight from the Chief Officers Group (COG) in West Lothian in relation to the discharge of public protection duties during the pandemic.

Despite the challenging year a number of achievements of development practice took place these were:

- Online training and promoting of MAPPA
- Development of the use of electronic monitoring system (eSafe)
- Development of the use of Sexual Offences Prevention Orders (SOPO)

Re-offending by registered sex offenders is low, and our staff worked hard during the pandemic to reduce both the risk posed by these offenders and the likelihood of re-offending. It is impossible to eliminate risk and we recognise that the impact on a victim can be profound, long-lasting and reach into all aspects of their lives.

E. CONCLUSION

Undoubtedly, 2020-21 has been a challenging year for everyone. There was rapid adaptation of service delivery by multi-agency practitioners and managers in West Lothian to mitigate against the impact of COVID and MAPPA to adapt to manage risk and harm posed by certain offenders. All West Lothian children and communities have a right to be safe and protected. The work of the West Lothian Partners and the Responsible Authority continues with key and essential duties to be undertaken in

relation to MAPPA.

F. BACKGROUND REFERENCES

None.

Appendix 1: Edinburgh, the Lothians and Scottish Borders Multi-Agency Public Protection Arrangements Annual Report 2020-21

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Jo Macpherson, Head of Social Policy

Date: 7th January 2022

MAPPA

Edinburgh, the Lothians and Scottish
Borders Multi-Agency Public
Protection Arrangements

ANNUAL
REPORT
2020-2021

MAPPA

Edinburgh, the Lothians and Scottish
Borders Multi-Agency Public
Protection Arrangements

Contents

1	Foreword	2
2	Multi-Agency Public Protection Arrangements in Edinburgh, the Lothians and Scottish Borders	4
3	Roles and Responsibilities	6
4	Achievements in Developing Practice	10
5	Strategic Overview Arrangements	12
6	Statistical Information	14

1

Foreword

MAPPA

Edinburgh, the Lothians and Scottish
Borders Multi-Agency Public
Protection Arrangements

Foreword

The Multi Agency Public Protection Arrangements (MAPPA) brings together practitioners from different sectors and professions to provide an integrated way of working collectively to protect the public from serious harm. Multi-agency working could involve anyone whose job or voluntary work puts them in contact with offenders, children, vulnerable persons or groups. Our utmost priority is to keep the public safe, particularly the most vulnerable members of our communities.

At the start of the year (1 April 2020) due to the pandemic we had to find different ways to continue to work in collaboration with social work, police, health and prison service to ensure the protection of children, vulnerable individuals, and our communities. This included dramatically reducing our face to face contact with partner agencies and placed a new reliance on technology, to ensure that we continued to share information and worked collaboratively to manage the risk of harm presented by MAPPA managed offenders.

Re-offending by registered sex offenders is low, and our staff worked hard during the pandemic to reduce both the risk posed by these offenders and the likelihood of re-offending. It is impossible to eliminate risk and we recognise that the impact on a victim can be profound, long-lasting and reach into all aspects of their lives.

As MAPPA has developed over the years, we have refined and developed our processes and we are committed to strengthening our arrangements, ensuring best practice and effective inter agency working.

I wish to take this opportunity to thank staff from all agencies for their commitment, skills and achievements in working in this often very challenging area of public protection. I hope this annual report helps to illustrate the work undertaken by all agencies in our area and provides an insight into local public protection arrangements, which help to make our communities safer.

Jackie Irvine
Chair Edinburgh, the Lothians
and Scottish Borders
Strategic Oversight Group

2

What is MAPPA?

Multi-Agency Public Protection Arrangements in Edinburgh, the Lothians and Scottish Borders

Multi-Agency Public Protection Arrangements (MAPPA) provide a framework to manage the risk posed by registered sex offenders and restricted patients (mainly violent offenders, with a small number of sex offenders). On 31 March 2016, the Scottish Government published new MAPPA Guidance. This guidance reflects the new risk of serious harm category 3, for offenders who by reason of their conviction are subject to supervision in the community, and are assessed by the responsible authorities as posing a high or very high risk of serious harm to the public, which requires active multi-agency management at MAPPA Level 2 or 3.

MAPPA

Edinburgh, the Lothians and Scottish
Borders Multi-Agency Public
Protection Arrangements



MAPPA brings together professionals from the police, social work, housing, health and the Scottish Prison Service in Edinburgh, the Lothians and Scottish Borders. These agencies are known as the 'responsible authorities'. While the arrangements are co-ordinated by a central unit based in Edinburgh, the practical management of offenders remains the responsibility of these agencies at local level.

Community Justice Authorities ceased to exist on 31 March 2017, however, MAPPA continue to operate under the Management of Offenders etc (Scotland) Act 2005 and the boundaries previously covered by the Edinburgh, Lothian and Scottish Borders Community Justice Authority will remain. The area covered by our arrangements incorporates the local authority areas of the City of Edinburgh, East Lothian, Midlothian, West Lothian and the Scottish Borders, representing a mixture of urban and rural areas.

The responsible authorities represented are:

- » The City of Edinburgh Council
- » East Lothian Council
- » Midlothian Council
- » West Lothian Council
- » Scottish Borders Council
- » Police Scotland
- » Scottish Prison Service
- » NHS Lothian
- » NHS Borders

There are three MAPPA management levels to ensure that resources are focused where they are needed most to reduce the risk of harm. Over the course of this annual reporting year, we managed 899 registered sex offenders under MAPPA; 91.10% (819) at Level 1; 8.79% (79) at Level 2; and 0.11% (1) at Level 3.

Over the past year, there have been 72 online MAPPA Level 2 meetings across Edinburgh, the Lothians and Scottish Borders, which managed RSOs and serious risk of harm violent offenders. Each Level 2 meeting will consider a number of offenders. A Level 3 meeting will only consider one offender and there were 6 Level 3 meetings convened during the reporting year, of which 2 meetings related to an RSO and 4 meetings related to serious risk of harm violent offenders.

The 2020/21 MAPPA National Annual Report provides a picture of the main national developments in relation to MAPPA and can be viewed on the Scottish Government website under recent publications.

3

Roles and Responsibilities

MAPPA

Edinburgh, the Lothians and Scottish
Borders Multi-Agency Public
Protection Arrangements

The responsible authorities for each area are required to involve other key agencies in the management of offenders. This is an important part of MAPPA, involving the exchange of information and drawing on the collective knowledge and expertise of numerous agencies. The roles and responsibilities in relation to MAPPA in our local area are outlined below.

During the pandemic agencies have continued to monitor offenders in line within their respective roles and responsibilities taking cognisance of the need to protect the public from serious harm balanced against the prevailing COVID-19 health advice at that time.

Police Scotland is responsible for the enforcement of the notification and compliance requirements of the Sexual Offences Act 2003 (sex offender registration), and for policing activities, including risk assessment, preventative/monitoring strategies, coupled with investigation and prosecution of any registered sex offender who re-offends. Responsibilities include: maintaining an accurate record of those offenders resident in each local authority area subject to the notification requirements; the creation of risk management plans to mitigate or reduce risk; making enquiries where such persons fail to comply with the requirements placed on them and managing sex offenders whose current behaviour is of concern. Police Scotland is the lead responsible authority for those community-based registered sex offenders who are not subject to any other form of statutory supervision. These duties are carried out in partnership with all responsible authorities and 'duty to co-operate' agencies.

The local authority is the responsible authority for registered sex offenders who are subject to statutory supervision. The Council's justice social work service is responsible for the supervision of such offenders, but housing, adult social care and children and families services also play a key role in the management of sex offenders in the community.

Justice social work makes a significant contribution to public protection by supervising and managing registered sex offenders in accordance with the requirements of MAPPA and other public protection-related legislation.

Social workers supervise offenders on community payback orders and prisoners who have been released subject to formal supervision. Social workers are required to use accredited risk assessment tools, and in collaboration with other agencies, develop plans for the risk management and supervision of offenders. Social workers can request that additional requirements or conditions be placed on orders and licences by the courts and the Parole Board. These requirements and conditions can range from restrictions relating to accommodation and employment, to instructions to avoid certain locations or victims, or to attend counselling or treatment programmes. These requirements and conditions allow social workers to monitor and influence aspects of offenders behaviour, as breaches of requirements or conditions can lead to the court or Parole Board returning the offender to custody.

Each local authority in Edinburgh, the Lothians and Scottish Borders has a Sex Offender Liaison Officer (SOLO) or Lead Officer, in the justice social work service, who acts as a single point of contact for information relating to registered sex offenders. They are responsible for chairing risk management case conferences and liaising with other agencies as appropriate.

Local authority housing SOLOs are responsible for offenders access to housing, which includes accessing temporary accommodation and identification of suitable permanent housing.



Registered social landlords, as 'duty to co-operate' agencies, work with the local authority housing SOLO to identify positive housing solutions, which contribute to public protection.

The role of the housing service is to contribute to the 'responsible authorities' management of risk through:

- » providing suitable accommodation
- » contributing to environmental risk assessments to ensure accommodation is appropriate
- » liaising with the responsible authorities regarding the ongoing management and monitoring of the risk of the offender as a tenant, including any tenancy moves or evictions
- » having regard to community safety and having in place contingency plans for when a property is no longer suitable and/or the offender's safety is at risk.

The local authority is responsible for ensuring the development of a strategic response to the housing of sex offenders. However, in any local authority area there is likely to be a multiplicity of housing providers, and local authorities must involve and consult registered social landlords in their area when developing their strategic response.

It is the responsibility of the local authority to provide an initial single point of contact for accommodation requests from other responsible authorities. This single point of contact is the housing SOLO, whose role involves:

- » identifying the most appropriate housing provider, following risk assessment
- » ensuring that when an appropriate housing provider has been identified, they are included by the responsible authorities in liaison arrangements relevant to the identification of appropriate housing and the management of risk
- » liaising pro-actively with responsible authorities and housing providers regarding ongoing risk management and community safety issues.

NHS Lothian continues to play an important role in MAPPA locally, through being the responsible authority for mentally disordered restricted patients, and in fulfilling its wider duty to co-operate in the management of violent offenders and registered sex offenders.

NHS Lothian has a Public Protection structure (including child protection, adult protection and MAPPA), which is the responsibility of the Executive Nurse Director at Health Board level. There is a Director for Public Protection, a Clinical Nurse Manager, a MAPPA Health Liaison Officer, alongside Designated Consultants for MAPPA (who are consultant forensic mental health clinicians). The aim of the NHS Lothian structure and input is to provide governance for NHS Lothian's contribution to Public Protection and to ensure that health issues (including mental health, physical health, staff and patient safety, information sharing) that arise in relation to MAPPA cases are dealt with appropriately. The Director of Public Protection attends all level 3 MAPPA meetings; SOLS representatives attend all level 2 and level 3 MAPPA meetings; and the Health Liaison Officer attends all level 2 and some level 3 MAPPA meetings.

NHS Borders also makes an important contribution to MAPPA. A consultant clinical psychologist from the learning disability service and a nurse consultant from the vulnerable children and young people service attend all Level 2 meetings, and the associate director of nursing attends all Level 3 MAPPA meetings.

Community Intervention Services for Sex Offenders (CISSO)

This service continues to support the risk management of partner agencies through the delivery of community-based group treatment programmes and individual interventions, addressing the behaviour and attitudes associated with sexual offending. In addition, staff provide assessments and offer advice and consultation to criminal justice social workers in Edinburgh, the Lothians and Scottish Borders.

In response to the pandemic the project has adapted the ways in which it delivers services. With groupwork suspended throughout 2020, the team focused on offering 1:1 assessments and interventions both remotely via the telephone and video-calling alongside face-to-face appointments in locality offices. The project worked closely with the National Treatment Managers Delivery Group for MF:MC to consider interim ways in which interventions may be safely offered that reflected local needs and arrangements. In Edinburgh, one of the Justice Social Work buildings re-opened in September 2020, which allowed for face-to-face work to recommence in line with a priority system. In West Lothian, the group work room in Livingston was also made available to the team one-day per week for MF:MC work and CISSO were able to start seeing people as required in East Lothian, Scottish Borders and Midlothian. The priority was to continue programmed interventions with people who had commenced work on their sexual offending behaviour prior to the pandemic. Other work was prioritised for people who either had short timescales on Justice Social Work (JSW) supervision or were presenting with acute risk factors for sexual offending.

Work was also undertaken to be able to respond to an anticipated increase in technology-mediated sexual offending during lockdown restrictions. CISSO developed and contributed materials to a NOTA toolkit around technology-mediated offending.

Alongside other groupwork services in Edinburgh, CISSO has now embedded routine screening assessments of trauma and mental health into the induction process. This assessment combines use of a semi-structured interview alongside established measures of childhood experiences (adverse and benevolent); trauma and mental health in order to start building a collaborative formulation of a person's needs and strengths. This is an important part of the service moving

to operate at a Trauma Enhanced level under the NES Framework. Staff have also received additional training in the use of Psychological First Aid for people experienced distress and Safety and Stabilisation skills for people with complex trauma histories. The demand for this type of intervention has been significant due to the impact of the pandemic and also fits with current good practice approaches in working to address sexual offending behaviour.

Training delivery has also continued through the pandemic, albeit with a focus on essential training, including Risk Matrix 2000 / Stable & Acute 2007 and Moving Forwards: Making Changes facilitator training. Training has used a blended model of online resource packs; virtual delivery and face-to-face. It is anticipated that this blended model of delivery will allow for more flexible training events in the future.

Keeping Children Safe

The Community Disclosure Scheme provides that parents, carers and guardians of children under 18 can ask for information about a named person who may have contact with their child if they are concerned that he or she might have convictions for sexual offences against children (e.g. if a parent wants to find out more about a new partner). Police officers discuss the concerns of the applicant in a face-to-face meeting and offer advice and support.

In this reporting year, police in Edinburgh, the Lothians and Scottish Borders received 37 applications under this scheme.

Further information can be found at:
<https://www.scotland.police.uk/about-us/police-scotland/strategic-planning/children-and-young-people/safety-and-protection/>

4

Achievements in Developing Practice

MAPPA

Edinburgh, the Lothians and Scottish
Borders Multi-Agency Public
Protection Arrangements



Training and Promoting MAPPA

During this reporting year, we have held a number of on line multi-agency training events.

In October 2020, a Consultant Clinical Psychologist from the NHS Lothian SOLS and the MAPPA Co-ordinator facilitated an online workshop attended by the Detective Inspector and Detective Sergeants who manage officers who are based within the Lothian and Borders Sexual Offences Policing Unit. The aim of the workshop was to review practice and share learning relative to the assessment of risk.

In February and March 2021, Edinburgh, the Lothians and Scottish Borders Strategic Oversight Group commissioned three online training sessions delivered to police officers and justice social workers across the five council areas. The aim of the training was to enhance our understanding of risk formulation and scenario planning within the context of completing the National MAPPA risk management plan template. These events were well attended and very positive feedback was received.

In March 2021, officers from the Edinburgh Sex Offender Policing Unit (SOPU) delivered four online training sessions to justice social workers across the five council areas in Edinburgh, the Lothians and Scottish Borders in regards to the inspection of offender's devices, usage of same and specific guidance in regards to the mechanics of intrusively inspecting and retrieval of information. These sessions were well received by justice social workers and feedback was very positive.

Developing the use of remote electronic monitoring equipment

Due to advance in technology the internet can be accessed through a variety of devices. The monitoring of devices is the responsibility of the 'responsible authority'. Where the Parole Board or Court have granted a condition or requirement to monitor an offender's electronic

devices for example within a Community Payback Order or a Sexual Offences Prevention Order, then remote electronic monitoring of their internet enable devices can be considered.

eSafe is managed monitoring service that tracks the individual's use of their I.T. devices to detect signs of inappropriate and/or criminal behaviour. eSafe is only deployed in cases where it is an agreed strategy of the risk management plan. In all cases, installation and monitoring are undertaken with the knowledge of the offender. Where there is an initial detection of a potential offence or breach of the order then the lead agency will be informed. If there are concerns relative to imminent or ongoing contact offending or any concerns relative to a suicide risk or serious self-harm, eSafe will notify the police via the 999 system.

Police Scotland and all five local authorities within the Edinburgh, the Lothians and Scottish Borders are developing their use of remote electronic monitoring software.

Developing the use of Sexual Offences Prevention Orders (SOPO)

The SOPO is an order granted by the Court. It places conditions on an offender's behaviour, provides a power of arrest if breached and enhances the police role in managing such offenders. SOPOs could initially only contain prohibitive measures, however, a change in legislation in November 2011 allows for these orders to contain positive obligations as well as prohibitions.

For some offenders, the existence of a SOPO is enough to provide structure to their daily life, through which they may avoid further offending. On 31 March 2021, there were 82 SOPOs in place in our area.

5 Strategic Overview Arrangements

MAPPA

Edinburgh, the Lothians and Scottish
Borders Multi-Agency Public
Protection Arrangements



Edinburgh, the Lothians and Scottish Borders – Strategic Oversight Group

This group is responsible for the overview and co-ordination of the Multi-Agency Public Protection Arrangements, ensuring the sharing of best practice and learning from significant case reviews. The group also provides a strategic lead for developing local multi-agency policy and strategy in relation to shared priorities regarding the management of offenders.

Edinburgh, the Lothians and Scottish Borders – MAPPA Operational Group

This multi-agency operational group supports the work of the Strategic Oversight Group. Its remit is to share learning, develop best practice and ensure consistency of practice.

Offender Management/Reducing Re-offending Committees

These committees monitor the performance and quality of local service delivery; they provide strategic direction to local member agencies; and develop local policy and practice. These committees include representatives from all key agencies, a number of whom are also members of the local child and adult protection committees, ensuring effective communication across public protection.

NHS Lothian Public Protection Action Group (PPAG)

The main aim of this group is to ensure NHS Lothian discharges its responsibilities for Public Protection including MAPPA. This group provides a general forum to discuss important practice issues, in addition to developing good practice in relation to the management of high-risk offenders in the health care setting. PPAG reports to the NHS Board through the Healthcare Governance Committee.



6

Statistical Information

Unless stated, the statistics recorded are
for the reporting period 1 April 2020 to
31 March 2021.

MAPPA

Edinburgh, the Lothians and Scottish
Borders Multi-Agency Public
Protection Arrangements



Table 1: General

REGISTERED SEX OFFENDERS (RSOs)		No.
a) Number of:	I. at liberty and living in the area on 31 March	708
	II. per 100,000 population on 31 March	70
b) The number having a notification requirement who were reported for breaches of the requirements to notify		32

Table 2: Civil Orders applied and granted in relation to registered sex offenders

THE NUMBER OF	No.
a) Sexual Offences Prevention Orders (SOPOs) in force on 31 March	82
b) Risk of Sexual Harm Orders (RoSHO) in force on 31 March	1
c) Sex offenders convicted of breaching SOPO conditions between 1 April and 31 March	16
d) Number of people convicted of a breach of RoSHO between 1 April and 31 March	0
e) Foreign Travel Orders imposed by the courts between 1 April and 31 March	0
f) Notification Orders imposed by the courts between 1 April and 31 March	9

Table 3: Registered sex offenders by level, re-convictions and notifications

REGISTERED SEX OFFENDERS (RSOs)		No.
a) Number managed between 1 April and 31 March		899
I. Level 1 – Routine Risk Management		819
II. Level 2 – Multi-agency Risk Management		79
III. Level 3 – MAPPP		1
b) Convicted of a further Group 1 or 2 crime	I. MAPPA Level 1	13
	II. MAPPA Level 2	1
	III. MAPPP Level 3	0
c) Returned to custody for a breach of statutory conditions (including those returned to custody because of a conviction of Group 1 or 2 crime)		14
d) Indefinite registrations reviewed under the terms of the Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011 between 1 April and 31 March		24
e) Notification continuation orders issued under the terms of the Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011 between 1 April and 31 March		13
f) Notifications made to Jobcentre Plus under the terms of the Management of Offenders etc. (Scotland) Act, 2005 (Disclosure of Information) Order 2010 between 1 April and 31 March		207
g) Number of RSOs subject to formal disclosure		3

Table 4: Restricted Patients

RESTRICTED PATIENTS (RPs):		No.
a) Number of RPs;	I. Living in the area on 31 March	32
	II. During the reporting year	32
b) Number of RPs per order	I. CORO	32
	II. HD	0
	III. TTD	0
c) Number within hospital/ community;	I. State Hospital	8
	II. Other hospital no suspension of detention (SUS)	15
	III. Other hospital with unescorted SUS	7
	IV. Community (Conditional Discharge)	10
d) Number managed by category on 31 March (does not include patients from Lothian in the State Hospital)	Level 1 – Routine agency risk management	30
	Level 2 – multi-agency risk	2
	Level 3 – MAPPP	0
e) Number of RPs convicted of a further crime of Group 1 or 2 crime	I. MAPPA Level 1	0
	II. MAPPA Level 2	0
	III. MAPPP Level 3	0

RESTRICTED PATIENTS (RPs):		No.
f) Number on suspension of detention;	I. who did not abscond or offend	21
	II. who absconded	1
	III. who absconded and then offended	0
	IV. where absconding resulted in withdrawal of suspension of detention	1
g) Number on conditional discharge;	I. who did not breach conditions, not recalled or did not offend	10
	II. who breached conditions (resulting in letter from the Scottish Government)	0
	III. recalled by Scottish Ministers due to breaching conditions	0
	IV. recalled by Scottish Ministers for other reasons	0

**Table 5: Statistical Information –
other serious risk of harm offenders**

SERIOUS RISK OF HARM OFFENDERS:		No.
a) Number managed between 1 April and 31 March	1. MAPPA Level 2	18
	2. MAPPA Level 3	3
b) Number of offenders convicted of a further Group 1 or 2 crime	1. MAPPA Level 2	1
	2. MAPPA Level 3	0
c) Number of offenders returned to custody for a breach of statutory conditions (including those returned to custody because of a conviction of Group 1 or 2 crime)		2
d) Number of notifications made to DWP under the terms of the Management of Offenders etc (Scotland) act, 2005 (Disclosure of Information) Order 2010 between 1 April and 31 March		12

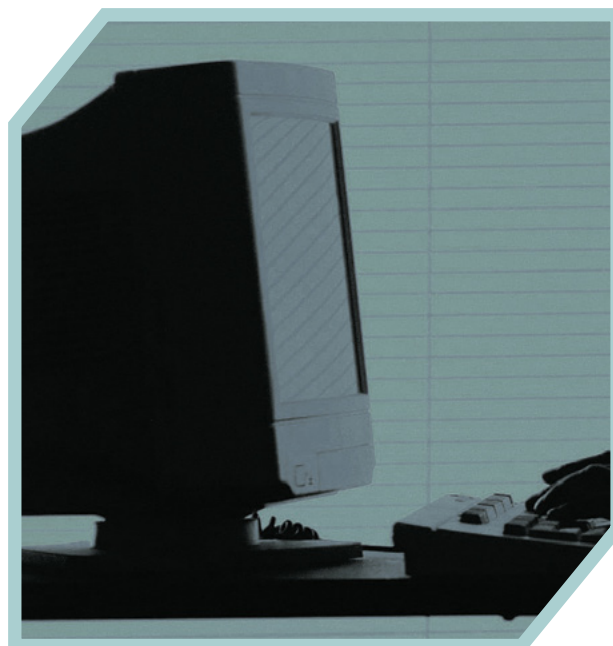


Table 6: Registered sex offenders managed in the community under statutory conditions and/or notification requirements on 31 March 2021

CONDITIONS	Number	Percentage
On statutory supervision	210	29.67
Subject to notification requirements only	498	70.33

MAPPA

Edinburgh, the Lothians and Scottish
Borders Multi-Agency Public
Protection Arrangements



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SOCIAL POLICY - POLICY DEVELOPMENT AND SCRUTINY PANEL

SCOTTISH GOVERNMENT CONSULTATION ON BAIL AND RELEASE FROM CUSTODY ARRANGEMENTS IN SCOTLAND

REPORT BY HEAD OF SOCIAL POLICY

A. PURPOSE OF REPORT

The purpose of the report is to inform the panel of the Scottish Government's consultation on Bail and Release from Custody Arrangements in Scotland and welcome members views and comments.

B. RECOMMENDATION

It is recommended that the Social Policy PDSP considers the draft response to the consultation which is intended to be submitted to the Council Executive for approval, prior to submission to the Scottish Government.

C. SUMMARY OF IMPLICATIONS

I Council Values	<ul style="list-style-type: none"> – Focusing on our customers' needs – Being honest, open and accountable – Making best use of resources – Working in partnership
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Criminal Procedure (Scotland) Act 1995 Prisoners and Criminal Proceedings (Scotland) Act 1993 European Convention on Human Rights
III Implications for Scheme of Delegations to Officers	None
IV Impact on performance and performance Indicators	None
V Relevance to Single Outcome Agreement	People most at risk are protected and supported to achieve improved life chances
VI Resources - (Financial, Staffing and Property)	No additional cost - within existing resources
VII Consideration at PDSP	None
VIII Other consultations	None

D. TERMS OF REPORT

The Scottish Government is undertaking a consultation on the use of remand and arrangements for the release from custody. The consultation was launched on 15th November 2021 and will remain active until 7th February 2022.

The aim of the consultation is to reassess what role prisons and the use of imprisonment should play in a just and fair society.

It is noted that the overarching aim for the Justice System in Scotland is to improve public safety, support victims and reduce rates of victimisation. Evidence shows that this is best achieved by reducing crime, reducing reoffending, and having fewer people experiencing crime. This consultation seeks views on how custody should be used in Scotland.

The reforms proposed are intended to change the way bail law operates to ensure that those who do not pose a risk of serious harm are managed safely in the community and are not remanded in custody. This is in response to the concerns which have been raised in relation to the increased remand population and the calls for action in this area.

The consultation also focuses on changes to the way release from prison custody processes operate with an emphasis on enabling better reintegration to communities. This includes a focus on the support provided to people leaving prison so that they don't reoffend. This recognises that, too often, we see people cycle back into the criminal justice system and into prison because they cannot access the support they need in the community.

Current Position in West Lothian

The vision of the West Lothian Community Justice Strategic Plan 2019-2024 is to make communities safer and more resilient and to support people with criminal convictions to change their behaviour and become valued citizens. The Plan sets out a clear commitment to effective partnership. Its principles cover utilising all available resources from the public, private and third sectors, individuals, groups and communities; working closely with individuals and communities to better understand their needs; making best use of talents and resources; supporting self-reliance; and building resilience.

The plan highlights the need for early intervention and prevention approaches and the proposed reforms would support achieving this vision.

Draft Response to the Consultation

Overall the West Lothian response to the consultation questions are positive and supportive of the proposed reform of the bail and release from custody arrangements.

It is noted however that consideration should be given to ensuring that there is appropriate adherence to existing processes and procedures rather than just developing fresh legislation.

We agree that judges should consider victim protection when making decisions about bail. We are supportive of the proposal to simplify the legal procedure and make the legal system more transparent. The draft response notes that it is our view that where bail is refused the judge should provide reasons.

We agree that Electronic Monitoring should be considered before refusing bail and that legislation should explicitly require courts to take account of the persons age when considering bail.

We agree that the Scottish Government should ban all prison releases on a Friday or the day before a public holiday to ensure that people leaving prison have greater opportunity to access support.

The full draft response is attached as appendix 1

E. CONCLUSION

West Lothian Council fully participated in the consultation process and agree the time is right to reassess the role that prisons and the use of imprisonment should play in a modern and progressive Scotland. A justice system which more effectively addresses the reasons why people offend and provides greater opportunities for rehabilitation benefits all of us and will lead to fewer victims in the future.

The proposals within this consultation are underpinned by a commitment to public safety and the protection of victims. Along with protection of victims being at the forefront of the operation of the reforms, the proposals are intended to lead to a reduction in the future risk of reoffending which will mean fewer victims in the future. This will be achieved by providing more opportunities for rehabilitation and improved support for reintegration, as well as considering whether remand can be used differently with an emphasis on protecting public safety.

F. BACKGROUND REFERENCES

None.

Appendix 1:	Consultation response on Bail and Release from Custody arrangements in Scotland
Appendix 2:	Consultation Document
Contact Person:	Tim Ward Senior Manager, Children and Families
Tel:	01506 281235
Email:	tim.ward@westlothian.gov.uk Jo Macpherson, Head of Social Policy
Date:	7 th January 2022

Consultation on Bail and Release from Custody arrangements in Scotland Questions and Respondent Information Form

Question 1

Which of the following best reflects your view on the changes proposed above regarding when judges can refuse bail:

A) I agree with the proposed change, so that judges can only refuse bail if there are public safety reasons for doing so

B) I disagree with the proposal, and think the system should stay the same as it is now, so judges can refuse bail even if public safety is not one of their reasons for doing so

C) I am unsure

Please give reasons for your answer.

While we agree with the principles, current reasons for refusal of bail are covered by different areas of legislation and public protection is paramount. In our experience some of the judiciary consider all factors while some do not. It is our view that rather than having fresh legislation, it would be preferable to ensure adherence to the existing process.

Question 2

Which of the following best reflects your view on the changes proposed above regarding how judges consider victim protection when making decisions about bail:

A) I agree with the proposed change, so judges should have to have particular regard to the aim of protecting the victim(s) when making bail decisions.

B) I disagree with the proposal, and think the system should stay the same as it is now, where judges consider victim protection as part of the overall decision-making

C) I am unsure

Please give reasons for your answer.

It is important that the victim is a focus within the agenda. Victims are not always part of the whole picture and this is to be welcomed. This is especially relevant where there is a risk to the general public or specific people/groups and in cases where there is a direct impact on individuals.

Question 3

To what extent do you agree or disagree that the court should be empowered to make decisions on the question of bail in all cases using a simplified legal framework?

Strongly agree

Somewhat agree
Somewhat disagree
Strongly disagree

Please give reasons for your answer.

Anything to simplify the legal procedure and make the legal system more transparent to the public is a positive move. It is also agreed that to remove the presumption in favour of remand in all cases detailed in S 23D of the 1995 Act which currently leaves little room for manoeuvre would be a good development unless there are exceptional circumstances. There will be many cases where it would be safe to grant bail although it would have fallen within this rule. The caveat however would be that it may not always be possible to establish the full circumstances at this early point.

Question 4

Judges must give the reasons when they decide to refuse bail to an accused person. Which of the following best reflects your view on how those reasons should be communicated:

A) I agree with the proposed change, so judges must give reasons both orally and in writing

B) I disagree with the proposal, and think judges should continue to give reasons orally only

C) I am unsure

Please give reasons for your answer.

The decision should be made orally and in writing for reasons which include the person not understanding them/being unable to take them in. While this already happens, the addition of something to standardise this process would be of benefit. Any future prejudice to the individual could be avoided by amending judicial procedures to ensure there is no information to bias the next stage of the process.

Question 5a

When a court is considering bail decisions, which of the following options do you consider preferable...

...in cases where the prosecution *opposes* bail:

-The court **may** ask for information from social work, but is not obligated to. Social work **may** decide whether to provide it

-The court **must** ask for information from social work. Social work **may** decide whether to provide it

-The court **must** ask for information from social work. Social work **must** provide it

Please give reasons for your answer.

Our view is that the court may ask for information and that social work should provide it (apologies but we had to amend the question here to give our response) however it would require an infrastructure to be in place, realistic timescales and to be suitably resourced. It is worth noting that not all local authorities have courts within their jurisdiction.

Question 5b

When a court is considering bail decisions, which of the following options do you consider preferable...

...in cases where the prosecution *is not opposing* bail:

- The court **may** ask for information from social work, but is not obligated to. Social work **may** decide whether to provide it
- The court **must** ask for information from social work. Social work **may** decide whether to provide it
- The court **must** ask for information from social work. Social work **must** provide it

Please give reasons for your answer.

Our view is that the court may ask for information and that social work should provide it (apologies but we had to amend the question here to give our response) however it would require an infrastructure to be in place, realistic timescales and to be suitably resourced. It is worth noting that not all local authorities have courts within their jurisdiction.

Question 6

To what extent do you agree or disagree that courts should be required to consider Electronic Monitoring before deciding to refuse bail

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

Courts should be obligated to consider EM before refusing bail if they think it had the potential to change the decision made.

Question 7

When a court decides to refuse bail, to what extent do you agree or disagree that they should have to record the reason they felt electronic monitoring was not adequate in this case?

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

It should be noted that bail with Electronic Monitoring has not yet been rolled out nationally. As with all reasons for refusing bail we would expect the sheriff to consider all options and to record the rationale.

Question 8

To what extent do you agree or disagree that time spent on bail with electronic monitoring should be taken into account at sentencing?

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

It is a more equitable process if the time spent on bail with EM is deducted against any subsequent sentence, appropriately calculated. A proportionate, agreed percentage of time should be deducted. This would of course be dependent on adherence to the EM.

Question 9

If time on electronic monitoring *is* to be taken into account at sentencing, to what extent do you agree or disagree that there should be legislation to ensure it is applied consistently:

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

It would be necessary to have legislation in place to ensure consistency, fairness and clarity around the rules and procedures.

Question 10

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.

It is not possible to predict the outcome of a criminal case, even although it may be highly likely, so any use or non-use of EM as a prediction of a non-custodial sentence would be inappropriate. Of course, in cases where there can be no custodial sentence as it is not an outcome permitted to the court by the legislation it

would be inappropriate for any EM to be used and this would be able to be drafted into the legislation.

Question 11

To what extent do you agree or disagree that legislation should explicitly require courts to take someone's age into account when deciding whether to grant them bail?

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Please give reasons for your answer. If you agreed, *how* do you think age should be taken into account when deciding whether to grant someone bail?

Age is relevant. It is important to understand the nature of young people in conflict with the law and the reasons behind their behaviours. Trauma informed practice is critical, reflected in researched interventions and informed by sources including the National Youth Justice Strategy, UNCRC and Scotland's "Promise."

It is also worth noting here that while young people are an important area as detailed above, we should also take age into account in every other case as well. For example, we may have a 30 year old who is operating at the age of a 12 year old so we need to be inclusive here.

Question 12

In principle, to what extent do you agree or disagree that courts should be required to take any potential impact on children into account when deciding whether to grant bail to an accused person?

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Please give reasons for your answer. Do you have any comments on how such a requirement could best be brought in?

While of course the wellbeing of children is critical and any effect on them would need to be considered, the question of inequality would need some discussion if those without children wouldn't have this provision. However, an assessment would be needed to see if ongoing contact with the individual is in the child/children's interests.

Question 13

To what extent do you agree or disagree that, in general, enabling a prisoner to serve part of their sentence in the community can help their reintegration?

Strongly agree

Somewhat agree

Somewhat disagree
Strongly disagree

Please give reasons for your answer.

This depends on the individual and the offence. There should be more opportunities in custody in relation to behavioural change. SPS should be required by law to give individuals the necessary supports to reduce reoffending and harm. Any prisoner who doesn't present an imminent risk of harm should be considered for HDC.

Question 14

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

A full package of support to monitor risk and need, to maximise safety for the community and desistance from offending. There must be support to address issues and to prepare adequately and appropriately for release. This should include accessing sustainable housing, appropriate health needs, benefits advice as well as supports for training/employability where appropriate to maximise the potential of the individual.

Question 15

Do you agree that through good behaviour, or completing education, training and rehabilitation programmes, prisoners should be able to demonstrate their suitability for...

a)...early release?

Yes / no / unsure

Where there are exceptional circumstances and the further deprivation of liberty is unnecessary and rehabilitation is complete. There may still need to be support packages in some cases to ensure access to any services required on return to the community.

b)...the ability to complete their sentence in the community?

Yes / no / unsure

With the poor outcomes associated with remaining in custody for longer, this should be considered to reintegrate individuals into their communities where possible at an earlier stage. The appropriate support package would require to be in place to manage risk and support desistance from offending.

Question 16

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?

Uniformity nationally across SPS would be necessary for equity. There would need to be an exclusion category and safeguards built in where someone is released early. It would be assumed that they did not present an imminent risk of harm and that they are eligible for access to voluntary throughcare via S27. Key partners would be required to sign up to support this process and a confirmed address would need to be identified. The provision of an assessment undertaken by SPS, similar to that done for HDC's would be a possible inclusion to facilitate this.

Question 17

Which of the following options in relation to automatic early release for short term prisoners would you say you most prefer?

- Automatic early release changes to earlier in the sentence, but the individual is initially subject to conditions and monitoring, until the half-way point
- Automatic early release changes to earlier in the sentence, nothing else changes
- No change: automatic early release remains half way through the sentence

Please give reasons for your answer.

Earlier reintegration and less isolation from society drive better outcomes for the individual. The time can be more usefully spent supporting better life chances and stability with the necessary supports around to facilitate this.

Question 18

Currently long-term prisoners can be considered for release by the Parole Board for Scotland once they have completed half of their sentence. Which of the following options would you say you most prefer?

- Change to allow some long-term prisoners to be considered by the Parole Board earlier if they are assessed as low risk
- Change to automatic consideration by Parole Board once one third of the sentence is served for all long-term prisoners
- No change: automatic consideration by Parole Board once half of sentence is served for all long-term prisoners

Please give reasons for your answer.

Currently the work needed to reduce the propensity to offend is often challenging to complete in the time available. Any changes would be wholly dependent on SPS having a robust response to impacting on offending behaviour and to be able to evidence change.

Question 19

Do you agree 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?

Yes / No / Unsure

Please give reasons for your answer. If you agree, what wider changes would be needed to ensure people leaving prison have access to the support they need?

While we currently have legislation that allows us to apply for certain categories to support risk management such as under MAPPA, we would support this development to include other categories. As the release time is the most vulnerable and important time to support stability, it would be beneficial to the access of essential services that the individual is released and met at the prison gates by the necessary support workers with a few working days in front of them.

Question 20

Below is a list of some of the features of the current HDC system, and potential changes that could help to increase usage of HDC (or similar). Please indicate your view on each of these potential changes.

a)- Prisoners must actively apply for HDC. Should HDC be considered automatically for some categories of prisoners instead?

-Yes / no / unsure

Please give reasons for your answer, or share any comments you would like to make on which categories of prisoner you think might be automatically considered

Determinate short term category. This would simplify the process and increase the possibilities for the numbers to increase where appropriate.

b) - The maximum length of time allowed on HDC is 6 months (or 1 quarter of the sentence). Do you think that this should:

-Be made longer

-Not change

Please give reasons for your answer, or share any comments you would like to make on how long you think is appropriate.

The concern here would be that if made longer, some could potentially be on HDC's for more lengthy periods.

c) - The minimum sentence for which HDC can be considered is 3 months. Should this limitation be removed?

-Yes / no / unsure

Please give reasons for your answer, or share any comments you would like to make on what sentence length you think is appropriate:

Where the appropriateness of this for an individual can be determined earlier

then it would be beneficial to introduce this. Given the presumption against short sentences however, if an individual is given a short sentence and released on HDC at an even earlier stage, it would beg the question as to why a custodial sentence was given in the first place rather than an RLO.

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?

-Yes / no / unsure

Please give reasons for your answer, or share any comments you would like to make on what criteria are relevant to whether someone should be eligible for HDC:

Where the risk of serious harm has never existed or it has reduced to very low there is room for revising some of the criteria. Within the multiple levels of different groups of offending and varying degrees of severity this could be re-visited.

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?

-Yes / no / unsure

Please give reasons for your answer, or share any comments you would like to make on the role of SPS in determining release on HDC:

Justice Services and key Community Justice partners cannot be wholly responsible unless there is a significant shift in funding. However, there may be opportunities for SPS to work with others for support such as third sector agencies.

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?

-Yes / no / unsure

Please give reasons for your answer.

Given that those released on HDC do not present an imminent risk of harm, there would be no need to up the tariff and involve the Parole Board.

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?

-Yes / no / unsure

Please give reasons for your answer, or share any comments you would like to make on what role the courts could have in determining the proportion of sentence an individual could serve in the community.

This is often unlikely to be predictable at the time of sentencing and extended sentencing laws already exist.

To what extent do you agree or disagree that the Scottish Government should consider whether information on individuals being released from custody can be shared with third sector victim support organisations, for example, to enable them to provide proactive support to victims and carry out safety planning?

Strongly agree
Somewhat agree
Somewhat disagree
Strongly disagree

None of the above

Please give reasons for your answer.

A number of procedures already exist for the sharing of information with victims and include: Victim Notification Scheme
MAPPA
MARAC
Domestic Abuse Disclosure Scheme.

Question 22

In addition to information on individuals being released, to what extent do you agree or disagree that victims and victims support organisations should be able to access further information?

Strongly agree
Somewhat agree
Somewhat disagree
Strongly disagree

Please give reasons for your answer. If you agree, please state what information should be provided and for what purpose.

The particular implications must be thought through as the risk is managed within the community. There is already a procedure in place supported by the Victim Notification Scheme and pro consultation process to obtain the views of victims and to factor their participation into the system.

Question 23

Which of the following best reflects your view on public service's engagement with pre-release planning for prisoners?

- Existing duties on public services to give all people access to essential services are sufficient to meet prison leavers' needs
- Existing duties are not sufficient; public services should have a specific duty to engage with pre-release planning

Please give reasons for your answer.

While everyone in custody will get a sentence management plan, we don't have a particular duty placed on Housing, Health and DWP to ensure that within a specific timescale, individuals will have all they need on their release. As the model of community justice from 2016 does place a requirement for services to be provided by each locality, more needs to be done here to ensure all play an increased role to improve this situation for the individuals concerned and their communities. It has of course to be recognised that there are some resources that are currently unavailable such as sufficient stocks of adequate, sustainable housing.

Question 24

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.

Planning should start for release from the beginning of any custodial sentence and that should be irrespective of the category (remand or serving prisoner.) Voluntary Throughcare delivered is key. In West Lothian this is provided by a third sector agency CGL in conjunction with Justice Services. Each individual on release should have a package that gives them maximum support to desist from reoffending. Community Justice Partners that can support any package would include Housing, Anti-Poverty agencies, Health, including Mental Health, services to support Training and Employment and access to Wellbeing and Lifestyle supports. A mixture of public, private and third sector agencies could all be considered.

Question 25

To what extent do you agree or disagree that support should be available to enable prisoners released direct from court to access local support services in their community?

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Please give reasons for your answer. If you agree, please explain how you envisage that support would look and which bodies you feel should be involved.

The important point here is not how long the individual is in custody for but what their needs are. Anyone in any kind of custody for any length of time can access S27. The resource is already in place and there is a statutory requirement to provide court services, to engage with other services and to interview the individual on release and see what supports are required. In West Lothian the vast majority of these interviews are carried out by Justice Services with third sector supports. It is important to ensure that this support takes place nationally to improve the likelihood of desistance from offending.

Question 26

To what extent do you agree or disagree that revised minimum standards for throughcare should incorporate a wider range of services?

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Please give reasons for your answer. If you agree, please list the services you think these standards should cover and what you think their role should be.

There have been a lot of changes since the National Standards for Throughcare were published and it is noted that they are in line to be refreshed. They will require to reflect the new Community Justice legislation with the inception of the revised local governance structures. In addition to the crucial role of Justice Services, the standards will need to reflect the increased onus on other partners within the Community Justice Partnership to support our work.

Question 27

To what extent do you agree or disagree that revised minimum standards for throughcare should differentiate between remand, short-term and long-term prisoners?

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Please give reasons for your answer. If you agree, please state how you think these standards should differ for each cohort.

These categories should all be distinct instead of one size fitting all. In the case of remand prisoners there has not even been a conviction. It is necessary to tailor categories appropriately for where they sit within the system. The individual risk and needs also requires to be looked at within each category rather than as a whole.

Question 28

To what extent do you agree or disagree that revised minimum standards for throughcare should be statutory?

Strongly agree

Somewhat agree

Somewhat disagree

Strongly agree

Please give reasons for your answer.

It is noted that we already have a set of national standards for throughcare that require to be updated by the Scottish Government as a matter of priority.

The existing National Strategy on Community Justice 2016 which is currently being refreshed, must also be prescriptive about partners community justice roles to ensure that they are carried out in addition to their own statutory obligations to their specific departments.

Question 29

Do you think other changes should be made to the way throughcare support is provided to people leaving remand/short-term/long-term prison sentences?

Yes / no / unsure

Please give reasons for your answer. If you think other changes should be made, can you provide details of what these changes could be?

There should be a national refresh of voluntary throughcare, underpinned by a statutory requirement for SPS and Justice Services to work together from the transition from custody to the community.

Question 30

Should other support mechanisms be introduced/formalised to better enable reintegration of those leaving custody?

Yes / no / unsure

Please give reasons for your answer. If you think other mechanisms should be introduced, can you provide detail of what these could be?

As noted above, there should be a statutory requirement for key agencies- Health, Housing, DWP to provide a service to individuals within a specific timescale and for it to be performance managed.

Question 31

To what extent do you agree or disagree with the introduction of an executive power of release, for use in exceptional circumstances?

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

While this is not something that will definitely arise, it is pragmatic to have a clause in legislation to cover this eventuality.

Question 32

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

Please provide details.

Examples could include another Public Health issue such as a repeat pandemic or exceptional conditions induced by due climate change or other.



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CONSULTATION ON BAIL AND RELEASE FROM CUSTODY ARRANGEMENTS

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:
<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

☐ Individual

X ☒ Organisation

Full name or organisation's name

West Lothian Council

Phone number

01506 281897

Address

Civic Centre,
Howden South Road,
Livingston

Postcode

EH54 6FF

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

X ☒ Publish response with name

☐ Publish response only (without name)

☐ Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

X ☐ Yes

☐ No

Consultation on Bail and Release from Custody arrangements in Scotland

November 2021



Scottish Government
Riaghaltas na h-Alba
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Consultation on Bail and Release from Custody arrangements in Scotland

Contents

1.	Ministerial Foreword	2
2.	Consultation Process.....	3
3.	Introduction.....	5
4.	Section 1: Bail.....	10
4.1	Introduction.....	10
4.2	Proposals.....	12
4.3	Background	13
4.4	Public safety becomes a necessary ground for refusing bail and victim safety is further emphasised as a relevant consideration	19
4.5	Empowering the court to rely, in all cases, on the general grounds relevant in reaching the decision to the question of bail	21
4.6	Requirement to give written reasons for remand decisions	22
4.7	Provision of information to inform decisions in relation to the question of bail	24
4.8	Electronic monitoring and bail.....	26
4.9	Other Views	28
5.	Section 2: Release from Custody	31
5.1	Introduction.....	31
5.2	Proposals.....	32
5.3	Background	32
5.4	Future approaches to release.....	36
5.4.1	Point at which prisoners can be released/considered for release	36
5.4.2	Opportunities to demonstrate suitability to be considered for earlier release	37
5.4.3	Release for determinate sentences.....	38
5.4.4	Flexible Release arrangements.....	40
5.4.5	Home Detention Curfew and electronically monitored release.....	41
5.5	Support and information for victims	43
5.6	Support for people leaving prison	45
5.6.1	Pre-release planning	46
5.6.2	Release direct from court	46
5.6.3	Throughcare support.....	47
5.7	Executive Release power	51
	RESPONDENT INFORMATION FORM	53

1. Ministerial Foreword

Scotland is a modern and progressive society. Our overarching aim for the Justice System in Scotland is to improve public safety, support victims and reduce rates of victimisation. Evidence shows that this is best achieved by reducing crime, reducing reoffending, and having fewer people experiencing crime. As part of that aim, this consultation asks important questions about how custody should be used in Scotland, now and in the future.



How we treat people who come into contact with the criminal justice system says a lot about who we are as a society. It is, of course, important that measures such as loss of liberty are there to protect the public. Keeping our communities safe and protecting victims must remain a priority for us all. However, we must also recognise the severe and multiple deprivation experienced by many people who come into contact with the criminal justice system – and the damaging impact that imprisonment can have on individuals, their families and wider communities. I am clear that the criminal justice system must balance protecting the public with providing real opportunities to support and rehabilitate those who offend. This consultation seeks views on how this could be done differently in future.

This is smart, compassionate justice that emphasises the need to protect victims, ensure public safety and give those who have offended the support they need to make different choices so they can make a positive contribution to our communities. We are seeking views on two particular parts of the justice system: bail/remand and release from custody to inform the development of legislation in this area.

The reforms we are proposing are intended to change the way 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. This is in response to the concerns which have been raised in relation to the increased remand population and the calls for action in this area. I share those concerns and I am determined that steps are taken to address this.

We are also consulting on changes to the way release from prison custody processes operate with an emphasis on enabling better reintegration. This includes a focus on the support provided to people leaving prison so that they don't reoffend. This recognises that, too often, we see people cycle back into the criminal justice system and into prison because they cannot access the support they need in the community. Collectively, we can do better.

These are complex issues, with no easy answers. But, if we want to see real change in the way we treat people in contact with the criminal justice system and better outcomes for individuals, their families, victims of crime and communities, then we need to be bold.

Thank you for reading this consultation, I would like to see as wide a range of responses as possible and your views will be critical in informing our next steps.

Keith Brown

Cabinet Secretary for Justice and Veterans

2. Consultation Process

Responding to this Consultation

The consultation will run for 12 weeks from the date of publication.

For the closing date and in order to respond to this consultation, please use the Scottish Government's consultation hub Citizen Space, which you can access online at <https://consult.gov.scot/justice/bailandreleasefromcustody>

You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date above.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form to:

Future of Custody Team
Community Justice Division
Scottish Government
Room GWR, St Andrews House
Regent Road
EDINBURGH, EH1 3DG

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we

have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at futureofcustody@gov.scot

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

3. Introduction

We want to reduce crime and reduce re-offending so that there are fewer victims. That is why we are seeking views on a range of proposed reforms relating to the law governing the use of bail and remand, and release from prison custody. This is the first stage in a longer-term consideration of how custody is used in Scotland both now and in the future.

The proposals within this consultation are underpinned by a commitment to public safety and the protection of victims. Along with protection of victims being at the forefront of the operation of the reforms, the proposals are intended to lead to a reduction in the future risk of reoffending which will mean fewer victims in the future. This will be achieved by providing more opportunities for rehabilitation and improved support for reintegration, as well as considering whether remand can be used differently with an emphasis on protecting public safety.

We recognise that prison is, and always will be, necessary for those who pose a risk of serious harm. However, we also recognise that imprisonment damages the connections that prevent people from offending or reoffending, such as family relationships, accommodation and employment. Short-term imprisonment, including remand, is not effective in addressing the underlying causes of offending.

We know that for those leaving prison, effective support to enable them to reintegrate and make positive connections in their communities helps to prevent reoffending and supports more positive outcomes for them and those around them.

We believe the time is right to reassess the role that prisons and the use of imprisonment should play in a modern and progressive Scotland. A justice system which more effectively addresses the reasons why people offend and provides greater opportunities for rehabilitation benefits all of us and will lead to fewer victims in the future.

The impact of the pandemic has forced us to look differently at how the justice system operates in Scotland. We have the opportunity to take a transformative approach, delivering better outcomes for everyone involved in the justice system, as well as for communities and public services.

In order to do that, we need to ask questions about how custody could and should be used in a just and fair society.

The use of bail/remand and arrangements around release from prison custody are two areas which we feel have the potential to contribute to this shift in how imprisonment is used. This consultation seeks as wide a range of views as possible on proposed reforms in these areas.

Our proposals are aimed at making a real difference to the lives of individuals affected by imprisonment and by doing so, we can reduce reoffending, leading to fewer victims in the future. As highlighted in the Hard Edges¹ report published in 2019, many people in contact with the criminal justice system have already

¹ Hard Edges Scotland, Lankelly Chase (2019) (<https://lankellychase.org.uk/publication/hard-edges-scotland/>)

experienced severe and multiple disadvantage, including homelessness, substance misuse, mental ill health and domestic violence or abuse. Individuals from the 10% most deprived areas are over-represented in prison arrivals by a factor of three² – a finding consistent across the last decade. Care experienced people are disproportionately represented within the prison population. Around a quarter of the prison population in Scotland report being in care as a child, rising to just under half when looking specifically at young people in custody.³

In the latest Addiction Prevalence Testing study carried out by the Scottish Prison Service in 2018/19, of the 1017 tests carried out on arrival in prison 71% were positive for illegal drugs (including cannabis)⁴. Scottish Prison Health Care Network Data also shows that 25% of prisoners are on some kind of Opioid Substitution Therapy (OST).

Research published earlier this year found that around 78% of women prisoners in Scotland have a history of significant head injury – most of which occurred in the context of domestic abuse which lasted over several years⁵

We also know that imprisonment has a wider impact than just on the individual. Almost two thirds of respondents (61%) to the most recent SPS Prisoner Survey reported having children themselves.⁶ There are an estimated 20,000 -27,000 children who are affected by parental imprisonment each year in Scotland⁷ – which is a recognised Adverse Childhood Experience (ACE) and is known to significantly impact long-term health and wellbeing and negatively affect both attainment in school and later life experiences.

The reforms we are proposing in this paper focus on the use of bail and remand, in recognition of the negative impact that short periods of imprisonment have – particularly for those who have not been convicted of a crime. The paper also considers arrangements for release from custody, with an emphasis on providing greater opportunities to support reintegration to reduce the risk of future offending and to enable people to move on towards more positive outcomes.

Everyone should have the right to feel safe in our communities, particularly those who have been victims of crime. We are committed to putting victims' rights at the heart of justice and strengthening how justice and wider public services support people who have been affected by crime.

Through the Victims Taskforce, individuals have told us⁸ that 'feeling safe' is a key concern following an experience of crime or during ongoing criminal justice

² Scottish Prison Population Statistics 2019-20 (<https://www.gov.scot/publications/scottish-prison-population-statistics-2019-20/pages/1/>)

³ SPS Prisoner Survey 2019 (<http://www.sps.gov.uk/Corporate/Publications/Publication-7196.aspx>)

⁴ SPS Addiction Prevalence Testing Stats 2018/19 (<https://www.scotpho.org.uk/behaviour/drugs/data/availability-and-prevalence>)

⁵ MacMillan Tom (2021) Associations between significant head injury and persisting disability and violent crime in women in prison in Scotland ([https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366\(21\)00082-1/fulltext](https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366(21)00082-1/fulltext))

⁶ 17th Prisoner Survey 2019 (<http://www.sps.gov.uk/Corporate/Publications/Publication-7196.aspx>)

⁷ McGillivray, C. (2016) Rendering Them Visible: A Review of Progress towards Increasing Awareness and Support of Prisoners' Families (<https://www.familiesoutside.org.uk/content/uploads/2016/04/Rendering-Them-Visible-FINAL.pdf>)

⁸ Themes from 'Victims Voices' feedback presented at the Victims Taskforce - December 2020 (<https://www.gov.scot/publications/victims-taskforce-papers-december-2020/>)

processes. Feedback around feeling safe has also arisen with regards to decisions to do with bail, and around prisoner release and parole.

Decisions on whether an individual is released on bail or remanded in custody can have a direct impact on victims, who may fear for their safety or the threat of repeat victimisation. In addition, there can be significant emotional and practical implications for victims as a result of the release of an individual from custody.

Victims have also told us about the importance of receiving adequate levels of information about what is happening at each stage of their experience of the justice system and what support is available to them. This includes information in relation to decisions on bail and remand and on the release of prisoners and parole decisions. A lack of clear information at the right times is a significant issue of concern for victims.

It is therefore important that this consultation considers issues relating to bail, remand and prisoner release from a victim's perspective and takes into account the views of both victims and organisations who support them.

This consultation focuses on proposed legislative reform. However, we know that legislation alone cannot deliver the changes we want to see – although it provides a clear signal of intent. Any legislative reforms must be supported by the availability of consistent, robust alternatives to remand and effective and timely reintegration support for those leaving custody across Scotland. The Scottish Government is already investing in these services and we intend to continue to expand their availability, working with partners across the sector.

The recently published Programme for Government⁹ committed to a substantial expansion of community justice services supporting diversion from prosecution, alternatives to remand, and community sentencing. Expanding the availability and consistency of justice services in the community is vital to enable further shifts away from disruptive and ineffective short custodial sentences and periods of remand.

Justice agencies are critical in supporting the aims of these proposed reforms. However, they cannot do this alone. Wider partners, including NHS, local government, third sector organisations and mainstream public services play a critical role - through their decision-making, resourcing and delivery of public services. This is in line with the Christie principles¹⁰ of integrating service provision, prioritising expenditure to prevent negative outcomes, reducing duplication and becoming more efficient and empowering individuals and communities.

If we truly want to see reductions in reoffending and victimisation, with the associated damage they do to people and communities, then we need to drive a more decisive shift away from the use of custody, including for remand, towards community interventions which do more to address the underlying causes of offending. We also need to do more to ensure that consistent, timely services are available to support people on their release from prison – at the point that they need

⁹ A Fairer, Greener Scotland: Programme for Government 2021-22
(<https://www.gov.scot/publications/fairer-greener-scotland-programme-government-2021-22/>)

¹⁰ Christie Commission on the future delivery of public services
(2011)(<https://www.gov.scot/publications/commission-future-delivery-public-services/documents/>)

them. This is in line with the evidence of what works to reduce reoffending¹¹ – with a focus on holistic interventions that better address the underlying causes of offending.

The reforms proposed in this consultation intend to support those aims and we would welcome as wide a range of views as possible to inform how we take this forward.

This consultation provides the starting point for a wider debate on the future use of imprisonment in Scotland, including on matters of sentencing, albeit these are not the main focus of the suggested proposals laid out here.

Nevertheless, should you wish to provide views or suggestions in relation to sentencing, or on proposals relating to bail/remand or release from custody that are not already covered in this consultation, you are welcome to do so.

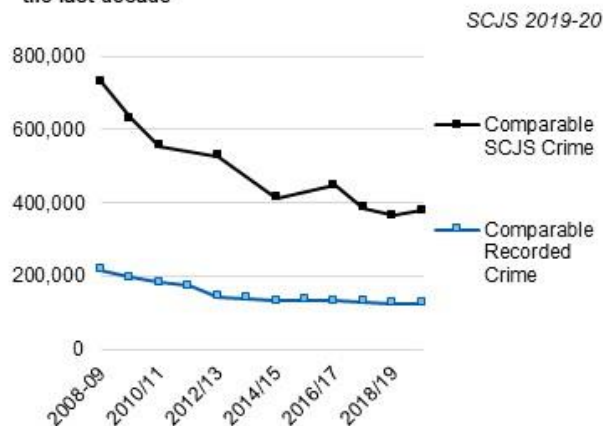
¹¹ <https://www.gov.scot/publications/works-reduce-reoffending-summary-evidence/>

Figure 1 – Remand in Scotland

Remand in Scotland

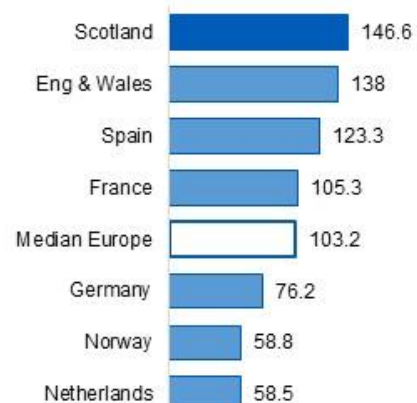


- The volume of crime in Scotland has continued to fall over the last decade

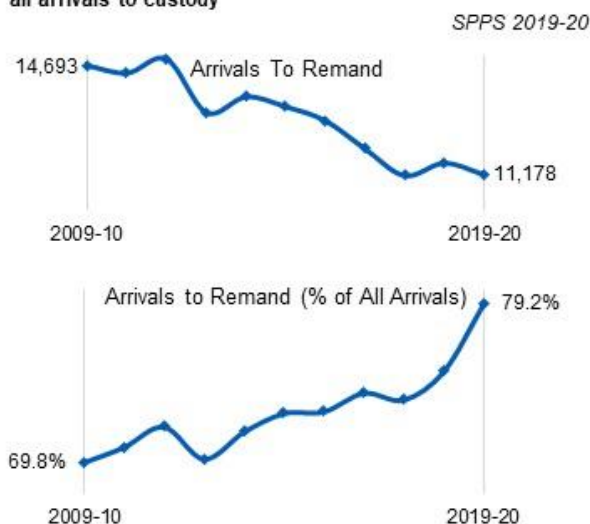


Trends show falling rates of crimes recorded by police (lower), and in the estimate of comparable offences, including unreported, from the Scottish Crime and Justice Survey (upper)

- Yet Scotland's rate of imprisonment (per 100k population) remains high relative to the rest of Western Europe



- The number of arrivals to remand has fallen since 2009-10, but arrivals to remand comprise an increasing majority of all arrivals to custody



- In August 2021, more than 1 in 4 prisoners were held on remand, compared to around 1 in 5 in 2019-20



Sources SCJS: Scottish Crime & Justice Survey 2019-20, <https://bit.ly/39c7UAq>
SPACE-I: Council of Europe prison population statistics, <https://bit.ly/2VNVcos>
SPPS: Scottish Government Prison Population Statistics 2019-20, <https://bit.ly/3kelARK>
SPS PR2: Scottish Prison Service Prisoner Records systems ad-hoc analysis

4. Section 1: Bail

4.1 Introduction

Decisions in relation to bail and remand is a key point in the criminal justice process. The bail proposals discussed are all focused on seeking to reduce the chances of future crimes being committed with the effect of fewer future victims of crime.

When a person has been accused of committing a criminal offence and a criminal justice process is underway, the question arises what should happen to that accused person as the criminal justice process proceeds.

Depending on the stage of the criminal justice process, decisions in this regard can be made by the police or the court. The person may be permitted to stay in the community – either with or without conditions – or the person may be held in some form of custody (remanded).

While it is often the case that accused persons are allowed to remain in the community without conditions (which is known as being ordained to appear), they may remain in the community with conditions. Prior to initial consideration by a court, this can be done through release by the police on an undertaking. Once a case is heard in court, release could occur through bail being granted by the court. They may also be remanded in some form of custody.

The following material explores the legal framework within which courts make decisions as to whether or not bail should be granted. This includes in relation to the operation of the legal framework for under 18s as well as for adults. Where a specific issue relates to under 18s, the text makes that clear. Otherwise, reference to the policies discussed should be taken to affect under 18s as well as adults unless the text indicates otherwise.

Associated with the legal framework for bail decisions, there is also material relating to the operation of certain processes once bail is granted¹².

The paper suggests reforms to be considered in the context of seeking to make the best and most appropriate use of custody, while continuing to take account of public safety.

In accordance with long-standing provisions of the law of Scotland, reinforced by the European Convention on Human Rights, individuals accused of any criminal offence can be allowed to remain in the community pending trial including by granting them bail. However, there are circumstances in which a presumption in favour of refusal of bail operates relating to those accused of certain serious offences and these are set out in the [Criminal Procedure \(Scotland\) Act 1995 \(the 1995 Act\)](#).

In addition, while all offences are such that a person can be bailed, the 1995 Act sets out a number of grounds which, taken individually or collectively, may give

¹² Undertakings are not part of the discussion of the current possible reforms.

reason to the court to justify a decision to refuse bail for an accused person in any given case. These grounds are:

- any substantial risk that the person might if granted bail—
 - abscond; or
 - fail to appear at a hearing of the court as required;
- any substantial risk of the person committing further offences if granted bail;
- any substantial risk that the person might if granted bail—
 - interfere with witnesses; or
 - otherwise obstruct the course of justice, in relation to themselves or any other person;
- any other substantial factor which appears to the court to justify keeping the person in custody.

When the court is assessing grounds that may be relevant in a given case for refusing to grant bail, the court must have regard to all material considerations including the following—

- the—
 - nature (including level of seriousness) of the offences before the court;
 - probable disposal of the case if the person were convicted of the offences;
- whether the person was subject to a bail order when the offences are alleged to have been committed;
- whether the offences which the court is considering are alleged to have been committed—
 - while the person was subject to another court order;
 - while the person was on release on licence or parole;
 - during a period for which sentence of the person was deferred;
- the character and previous behaviour of the person, in particular—
 - the nature of any previous convictions of the person;
 - whether the person has previously contravened a bail order or other court order (by committing an offence or otherwise);
 - whether the person has previously breached the terms of any release on licence or parole (by committing an offence or otherwise);
 - whether the person is serving or recently has served a sentence of imprisonment in connection with a matter referred to immediately above;
- the associations and community ties of the person.

All decisions by the court must be made in the public interest. The law makes clear that the public interest includes the interests of public safety. This will continue to underpin the operation of the bail system.

What this consultation considers are changes in this area of law, reflecting changes that have recently been made in how sentencing policy and practice operates in the courts, especially those courts that deal with less serious offending (the non-jury courts known as the summary courts). The focus of any changes is to reduce the future chances of crimes being committed with associated fewer victims of crime.

The changes reflect wider understanding about the lack of effectiveness of short periods in custody, in terms of addressing the underlying causes of offending behaviour.

The proposed changes also reflect development of the practice of management of risk in Scotland, and recognise that the grounds that are currently relevant in respect of refusal of bail by a court conflate a number of different types of risk which are capable of being managed in different ways rather than requiring loss of liberty through refusal of bail.

There is a new recently published vision for youth justice which, along with other policy approaches, is focused on keeping under 18s out of the criminal justice system as much as possible. Where interaction with the criminal justice system arises, the bail proposals discussed in this consultation help emphasise the importance of people, including young people, being kept out of custody if at all possible.

At the heart of the proposals being discussed on bail law reform is the question of what is an appropriate use of custody for individuals, especially for those not convicted of any criminal offence¹³. As can be seen above, bail law operates within the public interest. Through the proposals offered, this part of the consultation explores what the public interest may be in the bail system reflecting an approach in the use of custody which could result in a necessity for sufficient public safety grounds to arise in any given case before custody can be used.

Such an approach would allow for a greater appreciation that those who pose limited or no risks to public safety, but who may need effective support and supervision, can remain in the community. This would be done in such a way to ensure risks relating to breaching non-public safety bail conditions (e.g. attending trial) are addressed through support and supervision being provided. This would be instead of being remanded in custody.

4.2 Proposals

The reforms discussed in this paper are:-

- The need to protect public safety is 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;

¹³ Although the significant majority of those held on remand are pre-trial, the proposals will also apply to those convicted but not yet sentenced.

- 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.

4.3 Background

All persons accused of any criminal offence can be granted bail. This is set out in section 24 of the Criminal Procedure (Scotland) Act 1995 (the 1995 Act)¹⁴. This provision reflects the position in the European Convention on Human Rights (“the Convention”). Article 5(3) of the Convention states that “Everyone arrested or detained...shall be entitled to trial within a reasonable time, or to release pending trial”¹⁵. The Convention allows for remand however: the jurisprudence of the European Court of Human Rights establishes that detention may be justified by “relevant and sufficient” reasons¹⁶.

The Scottish Parliament enacted the Bail, Judicial Appointments etc. (Scotland) Act 2000¹⁷ to remove restrictions on bail from the law of Scotland so that judicial decision-making was an essential part of consideration in all cases¹⁸.

Decisions on whether or not bail is to be granted involve the exercise of judicial discretion. The exercise of that discretion is, however, taken in the context of bail requiring to be granted unless there is good reason to refuse bail (see section 23B of the 1995 Act).

A decision on whether to grant bail is informed by a list of grounds, laid out in statute, relevant as to why bail in any given case may be rejected. These grounds are set out above (and in section 23C of the 1995 Act).

In addition, the decision on whether to grant bail in certain cases is informed by specific provision for people accused of certain serious offences, in the circumstances set out in section 23D of the 1995 Act.

Despite all offences being bailable and bail requiring to be granted unless there is good reason not to (subject to section 23D), significant numbers of persons are remanded in Scotland.

In the Report of its Inquiry into the Use of Remand¹⁹, published in June 2018, the Scottish Parliament Justice Committee found that “the overwhelming view of witnesses was that, while the use of remand is necessary in certain circumstances, it is currently used too frequently”.

¹⁴ <https://www.legislation.gov.uk/ukpga/1995/46/section/24>

¹⁵ https://www.echr.coe.int/Documents/Convention_ENG.pdf

¹⁶ *Wemhoff v Germany*, (1979-80) 1 EHRR 55, Judgment, para 12; *Yagci and Sargin v Turkey*, (1995) 20 EHRR 505, para 50.

¹⁷ <http://www.legislation.gov.uk/asp/2000/9/contents>

¹⁸ This followed similar changes by the then UK Government in 1998 which adjusted section 25 of the Criminal Justice and Public Order Act 1994, which had imposed an absolute prohibition in England and Wales on bail on a charge of murder, attempted murder, manslaughter, rape, or attempted rape, where the accused had a prior conviction for such an offence, in light of Article 5(3).

¹⁹ <https://digitalpublications.parliament.scot/Committees/Report/J/2018/6/24/An-Inquiry-into-the-Use-of-Remand-in-Scotland#Executive-Summary>

As noted at Figure 1, the number of arrivals to remand has actually fallen since 2009-10 (from 14,751 to 11,246 in 2019-20), but the data shows that arrivals to remand comprise a rising majority of arrivals to custody over the same period. The figure was 69% in 2009-10 and 79% in 2019-20²⁰. This increase means four-fifths of all arrivals to custody are remand whereas a decade prior the equivalent proportion was much nearer to two-thirds.

While this change in proportion may be largely explained by the greater reduction in sentenced arrivals to custody over the same time period, it does highlight the pressure that remand places on the prison estate and its resources.

The number of under 18s in custody overall has dropped dramatically over the last 13 years down from 223 in 2008 to just 15 on the 31 July 2021. However, the number on remand remains high as a proportion of those in custody with 9 out of the 15 under 18s in custody being there on remand²¹.

In 2019-20 the proportion of the average daily prison population on remand in Scotland was around 19%. This figure is higher in Scotland than in many other jurisdictions. Comparisons across jurisdictions are not exact but published population snapshots from England and Wales suggest that the proportion of the prison population held on remand was between 11% and 12% in the same year²², much lower than Scotland.

The World Prison Brief ranks 57 European jurisdictions in terms of the percentage of all prisoners comprised of pre-trial (remand) detainees. When comparing with jurisdictions across the world, the picture is mixed with, in February 2020, Scotland number 35 in the list in the percentage of all prisoners comprised of pre-trial detainees. England and Wales was number 52²³.

Concern around about the impact that remand can have on individuals has heightened during the Covid pandemic, with the number of individuals held on remand in Scotland reaching historically high levels in 2020 and remaining so during 2021. While arrivals to custody have fallen further (both sentenced and remand) during the pandemic²⁴, the effect of the pandemic has generally been to increase both the percentage of prisoners on remand and the absolute numbers, with more individuals coming into the system than the relatively restricted number of trials that has taken place has been able to deal with in the same time-frame.

²⁰ <https://www.gov.scot/publications/scottish-prison-population-statistics-legal-status-2019-20/>

²¹ <https://www.gov.scot/publications/scottish-prison-population-statistics-2019-20/pages/3/>

²² <https://www.gov.scot/publications/scottish-prison-population-statistics-legal-status-2019-20/pages/4/> and <https://www.gov.uk/government/collections/offender-management-statistics-quarterly> both accessed 27 July 2021

²³ http://www.prisonstudies.org/highest-to-lowest/pre-trial-detainees?field_region_taxonomy_tid=14&=Apply, accessed 14 February 2020

²⁴ <https://www.gov.scot/publications/coronavirus-covid-19-justice-analytical-services-data-report-july-2021/> See the Scottish Government monthly reports on the Justice System during the Covid-19 pandemic

As at 31 March 2021, 26% of Scotland's prisoners were on remand, compared to 16% in England²⁵. Data accessed in July 2021 shows Scotland's ranking on the World Prison Brief is at number 27 while England and Wales is at 46.

In all the circumstances both pre-pandemic and through the pandemic, remand prisoners form a higher proportion of the custodial population in Scotland than in England and Wales and many other jurisdictions.

In the context of Scotland's high overall prison population (i.e. remand and sentenced), there is recognition of the need to explore whether steps can be taken to move towards appropriately refocusing the use of remand as part of the criminal justice process. Any refocusing would be to reduce the levels of crime in the future so as to result in fewer victims.

As noted above, the exact reasons for the high number of remand decisions in Scotland are complex and reflect a variety of factors, including the changing nature of offending. The Justice Committee report on the use of remand set out information about decision making in this respect²⁶, suggesting that generally a decision to remand is not made on the basis of any single one of the criteria set out as being grounds relevant to the bail decision, but rather where several of these criteria come into play at once.

In January 2020, the Scottish Government commissioned further exploratory research which is intended to highlight the specific reasons behind remand decisions. This research was paused due to the pandemic. However, fieldwork recommenced in Spring 2021 and is currently progressing in stages in line with ongoing restrictions.

Particular concern has been expressed in respect of persons remanded who either eventually receive a short sentence upon conviction or no prison sentence at all. For example, the Justice Committee reported that "*only 30% of women remanded in custody go on to receive a custodial sentence*"²⁷.

Looking further at custodial experiences or journeys that begin in remand, it has been shown that around one third of remand journeys in 2019-20 involve an individual entering and leaving custody as 'untried'²⁸. These remand-only journeys are typically associated with short periods in custody, with a median of 21 days in 2019-20²⁹.

Further insight is afforded through figures provided to the Justice Committee for the purposes of the Justice Committee's report by the Scottish Courts and Tribunals Service (SCTS). These data suggest that, in the period 2014–17, 28.9% of cases where the accused was remanded in sheriff solemn proceedings, and 57.2% of

²⁵ <https://www.gov.scot/publications/coronavirus-covid-19-justice-analytical-services-data-report-march-2021/pages/17/> and <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-october-to-december-2020> accessed 27 July 2021

²⁶ <https://digitalpublications.parliament.scot/Committees/Report/J/2018/6/24/An-Inquiry-into-the-Use-of-Remand-in-Scotland>, para 36ff

²⁷ <https://digitalpublications.parliament.scot/Committees/Report/J/2018/6/24/An-Inquiry-into-the-Use-of-Remand-in-Scotland>, para 42

²⁸ <https://www.gov.scot/publications/scottish-prison-population-statistics-legal-status-2019-20/>

²⁹ The exact final outcomes of these cases cannot be determined from the data held by the Scottish Government.

those where the accused was remanded in sheriff summary proceedings, did not give rise to a sentence of detention as an outcome of the case³⁰.

In the period 2014-17, by combining the figures above (and reflecting proportionately far more summary cases took place) more than half of those sentenced after being on remand in the criminal courts (excluding the High Court) did not receive a custodial sentence.

Some caution should be exercised in interpreting what this data may mean. One reason why the 'conversion rate' (i.e. the proportion of remand cases that lead to a custodial sentence upon conviction) may be seen as relatively low is because the courts take into consideration the time an individual may have already spent detained on remand, when it comes time for sentencing. The court may consider that the time spent on remand is sufficient for the crime of which they have been convicted and thus do not impose a custodial sentence which would have been imposed but for the period already spent on remand. Also, the court may still impose a custodial sentence but give a shorter sentence than it otherwise would have done.

The conversion rate in the Justice of the Peace court is particularly low, at 16.6% over the period 2014-17³¹. Thus, to some extent, at least, reducing the figures of those kept on remand through more accused persons being bailed could, in part, result in either higher numbers serving custodial sentences upon conviction than otherwise would have been the case, or serving longer custodial sentences than otherwise would have been the case, or a combination of both.

Nevertheless, it is recognised that the conversion rate is not a comparison of like-for-like. It can be recognised that decisions on whether to refuse bail are appropriately arrived at on different considerations from those of sentencing. Even where an accused person is not convicted or receives a shorter or different sentence, that does not mean that the decision initially to remand that person was not justified under the current operation of bail law.

It is an inevitable and appropriate part of any justice system that some people refused bail will ultimately not be convicted or, if convicted, will not receive a custodial sentence. The aim is to ensure that the refusal of bail (i.e. use of remand) is appropriate and proportionate at the point in proceedings the decision is made for remand to be used, consistent with the law and relative to the likely final outcome of the criminal proceedings.

The Justice Committee's report on its inquiry into remand was followed on 3 October 2018 by a Scottish Parliament debate³². As with the report itself, contributors to this debate discussed the numbers of persons held on remand, the difficulties faced by women in particular on remand, and a concern that remand was being over-used, particularly in cases where public safety was not a major issue and instead was being used to ensure that those with 'chaotic lifestyles' attended court for trial.

³⁰ https://www.parliament.scot/S5_JusticeCommittee/Inquiries/R-SCTSSupplementary.pdf

³¹ https://www.parliament.scot/S5_JusticeCommittee/Inquiries/R-SCTSSupplementary.pdf

³² OR at <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11709&i=106021>

The Committee report and the subsequent debate helped to inform the Scottish Government's decision to commission the research mentioned above, which is expected to provide additional evidence and insight on decision making in relation to remand and use of alternatives.

Young people

Specifically in relation to under 18s, there is recent bail and remand research from the Children and Young People's Centre for Justice³³. This was published in December 2020 and aimed to develop understanding of the use of remand, the decision-making process and the experience of under 18s, their families and practitioners.

This report highlighted issues that apply generally to those involved in bail proceedings e.g. ensuring the court had appropriate information. It also highlighted some specific findings such as young people requiring to be remanded should go to secure care and not to a young offenders institution.

There is also other evidence that suggests the availability and barriers to providing alternatives to remand have a particular resonance for those under 18 including a lack of credible alternatives that could manage levels of risk in the community.

Presumption Against Short Sentences

In June 2019, the Scottish Parliament approved the Presumption Against Short Periods of Imprisonment (Scotland) Order 2019³⁴ ("the 2019 Order"), which extended the previously-existing presumption against short sentences ("PASS") from 3 months or less to 12 months or less.

The effect of this legislation is that a court must not pass a sentence of imprisonment for 12 months or less on a person unless it considers that no other sentence is appropriate. The court must record the reasons for its sentencing decision, where it imposes a sentence of imprisonment of 12 months or less.

While the 2019 Order is relevant for all levels of court, it is most relevant in the summary courts given the general jurisdictional sentencing limit in the summary courts is, with certain very limited exceptions, 12 months. In other words, in almost every case heard in a summary court, there is a presumption against the imposition of a custodial sentence as a disposal.

In the course of his appearance before the Justice Committee to discuss the 2019 Order, on 11 June 2019, the then Cabinet Secretary for Justice Humza Yousaf MSP drew parallels with remand. He said:-

During the Committee's evidence-taking sessions, the issue of remand has been raised in recognition of the fact that its impact can be similar to that of short custodial sentences...Last year, following the committee's inquiry into the use of remand in Scotland, it made a number of recommendations and observed that, in summary cases, the conversion rate of remand to custodial sentences was relatively low. In responding to that report and in delivering

³³ <https://www.cycj.org.uk/resource/use-and-impact-of-bail-and-remand-in-scotland-with-children/>

³⁴ <http://www.legislation.gov.uk/ssi/2019/236/introduction/made>

our programme for government commitments on bail supervision, guidance and funding, we have taken action. However, we are open to considering on a cross-party basis further options that could help to respond to the high proportion of prisoners who are held on remand³⁵.

In view of the concerns about what appears to be the relatively high number of prisoners on remand especially in the summary courts, and the appreciation of the damaging effect of short periods of imprisonment which has led to the PASS, views are sought on a number of matters both directly and indirectly reflective of the underlying policy underpinning for the operation of PASS; namely that short periods in custody can be counterproductive unless they are absolutely justified. These matters are:-

- The need to protect public safety is 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 decided to refuse 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;
- Introducing a requirement for people leaving remand to receive support for the process of reintegration into 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.

As outlined above, this consultation considers changes in this area of law reflecting wider understanding about the lack of effectiveness of spending short periods in custody including the disruptiveness of such periods of custody for individuals and the lack of effectiveness in terms of outcomes in using custody for short periods.

At the heart of the proposals being discussed on bail law reform is the question of what is an appropriate use of custody for individuals not convicted of any criminal offence. As can be seen above, decisions on whether to grant or refuse bail take place in a framework that requires regard to be had to what is in the public interest. Through the proposals offered, this part of the consultation explores what the public interest may be in the bail system reflecting an approach in the use of custody which could result in a necessity for sufficient public safety grounds to arise in any given case before custody can be used.

Such an approach would allow for a greater appreciation that those who pose limited or no risks to public safety, but who may need effective support and supervision can remain in the community. This would be done in such a way to ensure risks relating to breaching non-public safety bail conditions (e.g. attending

³⁵ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12181&mode=pdf> Col 3

trial) are addressed through support and supervision being provided. This would be instead of being remanded in custody.

4.4 Public safety becomes a necessary ground for refusing bail and victim safety is further emphasised as a relevant consideration

One of the grounds relevant for the question of bail, set out in section 23C(1)(a) of the 1995 Act, is a substantial risk that the person might, if granted bail, abscond or fail to appear.

It is recognised that where bail is refused, the court is likely to have a range of reasons for doing so. Nevertheless, research by Professor Neil Hutton cited in the Justice Committee's report showed that out of 60 cases examined, a single reason for remand was given in five cases. Three of those cases was where the accused was of no fixed abode, and one of those cases was that he was likely to abscond³⁶.

From this limited data, it would appear that a ground unrelated to public safety may be the only factor in at least a small number of cases where bail is refused. Failure to attend without reasonable excuse is a separate criminal offence – in which there would be separate consideration of whether an accused should remain in the community or be remanded in custody. Separately, the continuation of bail for the original offence would be for the court to determine.

It is proposed that use of remand should be adjusted so that any decision to refuse bail must be justified on public safety grounds.

The ground set out in section 23C(1)(a) of the 1995 Act relating to absconding or failure to appear is not directly related to public protection or safety and instead is focussed on the efficient operation of the justice system. There is obvious merit in helping ensure achievement of the efficient operation of the justice system. Helping ensure trials take place with the accused person in attendance benefits users of the criminal justice system including victims. However, this must be balanced against the negative impact of undue use of remand, given what is known about the disruptiveness of short periods of custody and, in this context, deprivation of liberty being imposed on those not convicted of any offence.

As such, it is proposed that judges should never refuse bail if their reasons for doing so are only related to the efficient operation of the courts, and the individual concerned does not pose a significant risk to public safety if they remain in the community.

In many cases, this will require enhanced support for individuals to remain in the community through the use of bail supervision schemes and the introduction of electronic monitoring for bail. This proposed policy reflects views expressed in the Justice Committee report about the use of remand, and in the subsequent parliamentary debate on the Committee's report.

While these are matters for the court, there are statutory powers available for trials to proceed in the absence of an accused. It may be a consequence of the proposal

³⁶ <https://digitalpublications.parliament.scot/Committees/Report/J/2018/6/24/An-Inquiry-into-the-Use-of-Remand-in-Scotland#Data-on-the-reasons-for-remand>, paras 55 and 56.

above that the court may seek to consider proceeding with trials in the absence of the accused in a greater number of cases.

In summary, it is proposed that it will no longer be appropriate that the court decide to refuse bail solely on the basis of reasons unrelated to public safety. The proposal would still allow such grounds to be included with other, public safety related grounds which, when taken together, mean the court considers refusal of bail is necessary in a given case.

Question 1

Which of the following best reflects your view on the changes proposed above regarding when judges can refuse bail:

A) I agree with the proposed change, so that judges can only refuse bail if there are public safety reasons for doing so

B) I disagree with the proposal, and think the system should stay the same as it is now, so judges can refuse bail even if public safety is not one of their reasons for doing so

C) I am unsure

Please give reasons for your answer.

As noted above, all crimes are bailable. In any given case, bail is to be granted to an accused person except where grounds exist relevant to the question of bail and such grounds, along with regard to the public interest, mean there is good reason to refuse bail³⁷.

When the court is considering the question of bail, the court is required to consider the extent to which the public interest could, if bail were granted, be safeguarded by the imposition of bail conditions. The public interest includes the interests of public safety.

In order to further emphasise the importance of considering the safety of the victims against whom offence(s) have allegedly been committed, a possible additional element could be added to the requirements falling on the court. Where public safety is being assessed as part of the wider consideration of the public interest, it is proposed to require the court to have particular regard to the aim of protection of the victim(s) of the offence(s) with which the accused person is charged.

While references to public safety in the current law would include the victim(s) against whom offence(s) have allegedly been committed, a new requirement for the court to have particular regard to the protection of victims would help ensure that the interests of victims were further emphasised as part of the court's consideration of whether public safety grounds require a decision to refuse bail. This is

³⁷ This is subject to provision in section 23D of the 1995 Act which provides that bail is only to be granted in exceptional circumstances in respect of individuals charged with certain offences where prior convictions for such offences exist.

particularly relevant for certain crime types where there is more likely to be an identified victim.

In summary, it is proposed that the court would be required to have particular regard to the aim of protecting victim(s) against whom offences have allegedly been committed when assessing the interests of public safety and the wider public interest.

Question 2

Which of the following best reflects your view on the changes proposed above regarding how judges consider victim protection when making decisions about bail:

- A) I agree with the proposed change, so judges should have to have particular regard to the aim of protecting the victim(s) when making bail decisions.
- B) I disagree with the proposal, and think the system should stay the same as it is now, where judges consider victim protection as part of the overall decision-making
- C) I am unsure

Please give reasons for your answer.

4.5 Empowering the court to rely, in all cases, on the general grounds relevant in reaching the decision to the question of bail

A key long-standing aspect of the criminal justice system in Scotland is that decision-making is undertaken by the independent agencies and bodies involved in the administration of justice. The criminal court sits at the heart of decision-making on the question of bail with the responsibility residing with the court informed by the facts and circumstances of the case before them and relevant views from key parties such as the prosecution, defence and justice social work.

The importance of this independent decision-making has been regularly emphasised over many years. The then Scottish Executive were clear in their 'Bail and Remand Action Plan' published in 2005 that independent court decision-making was an essential feature of the bail system while MSPs on all parties have commented on the importance of not unduly fettering the discretion of the court in a variety of criminal court contexts including the bail decision.

In line with this approach, the legal framework within which the independent court makes their decision on the question of bail lays out general grounds relevant to this question. These grounds are relevant for all bail decisions to be made.

While all offences are bailable, with legislation setting out general grounds on which a court may determine that there is a good reason for refusing bail, there is also current additional statutory provision operating in respect of accused persons who meet certain criteria relating to the seriousness of the offence with which they are accused. This provision creates a presumption in favour of remand in relevant cases (section 23D of the 1995 Act). A decision to grant bail in these cases can be justified; however only if 'exceptional circumstances' exist.

Case law has indicated that this existing additional statutory provision operates within the context of the general grounds relevant to the question of bail. The courts have indicated that: ‘... *What the court is required to do is assess all the information before it with a view to determining whether there is good reason for refusing bail having regard to the relevant risks and the relevant level of these risks as identified in section 23C*’³⁸.

As part of a simplification of the legal framework so as not to unduly fetter the discretion of the court in their decision-making, it is possible for section 23D to be removed. This would enhance the role of the court as the decision-maker within a simplified legal framework whereby if grounds exist relevant to the question of bail, they will inform each and every bail decision made the court without the need for additional statutory provision relating only to specific types of cases.

In summary, this proposal is to adjust the bail law framework to further empower the court to simply consider the question of bail in the same way for all cases using the general grounds relevant for the question of bail contained in provisions in section 23C.

Question 3

To what extent do you agree or disagree that the court should be empowered to make decisions on the question of bail in all cases using a simplified legal framework?

Strongly agree
Somewhat agree
Somewhat disagree
Strongly disagree

Please give reasons for your answer.

4.6 Requirement to give written reasons for remand decisions

It is a requirement that whenever a court grants or refuses bail, it shall state its reasons (section 24(2A) of the 1995 Act). Reasons by the court are given orally.

There is reason to believe this is not a very efficient way of transmitting information. The *Evaluation of the Impact of Bail Reforms on Summary Justice Reform* published in 2012³⁹ found that accused individuals did not always listen to, or if they did listen, fully understand, what was being said to them.⁴⁰

The 1995 Act seeks to ensure the PASS is adopted by requiring a court to, as well as stating its reasons, set out *in writing* its reasons for any departure from the PASS.

³⁸ *MM v Procurator Fiscal* 2009 S.C.C.R 847, at page 858

³⁹

<https://www.webarchive.org.uk/wayback/archive/20161007190437/http://www.gov.scot/Publications/2012/03/5346/6>

⁴⁰ *Ib.*, ch. 4

In the same way as is required when departing from the PASS, it is suggested that courts refusing bail for accused persons should be required to state their reasons for coming to the conclusion that no other method of dealing with the person is appropriate, and entering those reasons in the record. This will reflect appropriately the seriousness of a decision to place someone in custody even though they have not yet been convicted of a crime.

To put this into context, there is more generally a move towards setting out reasoning of decisions made by the court. For example, the *Post-Corroboration Safeguards Review* chaired by Lord Bonomy recommended in April 2015 that, “It should be mandatory for the presiding judge to deliver orally in open court, and have minuted, brief reasons for the verdict, whether conviction or acquittal, including on the sustaining of a no case to answer submission, in every summary case”⁴¹.

There is a suggestion that recording reasons may potentially be prejudicial to the accused. The SCTS provided a written submission to the Justice Committee’s inquiry where it observed that recording reasons could be prejudicial to the accused at a future diet⁴². It is understood this is because reference might be made in court minutes to a schedule of previous convictions prior to a trial.

It is recognised that this objection has force in the case of bail decisions that it does not have in that of sentencing decisions. However, it is suggested steps could be taken to ensure any information prejudicial to the accused is not seen by the jury in a solemn case. In addition, for summary cases, there is no danger of a jury being influenced by reference to a schedule of previous convictions, since there is no jury. It is expected courts do nothing other than to take the presumption of innocence very seriously indeed and, as such, it is not considered a reason not to proceed with this proposal.

In summary, it is proposed courts should be required to provide written reasons for decisions to refuse bail for an accused person and for these reasons to be recorded.

Question 4

Judges must give the reasons when they decide to refuse bail to an accused person. Which of the following best reflects your view on how those reasons should be communicated:

- A) I agree with the proposed change, so judges must give reasons both orally and in writing
- B) I disagree with the proposal, and think judges should continue to give reasons orally only
- C) I am unsure

Please give reasons for your answer.

⁴¹ <https://www2.gov.scot/Resource/0047/00475400.pdf>, ch. 14.

⁴² https://www.parliament.scot/S5_JusticeCommittee/Inquiries/R-SCTS.pdf, p1

4.7 Provision of information to inform decisions in relation to the question of bail

There was a considerable focus in the inquiry undertaken by the Justice Committee on the importance of justice social work's involvement in informing decisions on the use of bail. This was to help ensure all appropriate information was available to help inform the decision.

It is proposed that justice social work services should be added to those persons from whom, under section 23B(6) of the 1995 Act, a court can request information for the purpose of determining a question of bail.

At present information may, in statutory terms, be requested only from the prosecution and/or the defence. Under section 23B(7) of the 1995 Act, it is up to those parties to determine whether to provide information if requested.

While, in practice, it is understood some courts will on occasion seek information from justice social work, it is considered that explicit inclusion in statute would act as a clear prompt for the court to consider input from justice social work before making their bail decision.

This would be relevant in all cases, but could be especially relevant where a court was able to be assured that an element of bail supervision could be available and this information may help adjust how a court may otherwise decide the question of bail.

In addition to adding justice social work services, alongside the prosecution and defence, as those the court *may* seek information from, it is proposed to recast this as a requirement that the court *must* ask for this information. It would remain up to the relevant parties (prosecution, defence and – if added – justice social work) whether they were able to provide information relevant to the bail question in a given case. This change in emphasis would make clear that while the decision on bail remains for the court, there is a statutory requirement that key interests of the prosecution, defence and justice social work would always be asked for their views before the court makes its decision.

In cases where the prosecution oppose bail, it is proposed that there would be a requirement that justice social work always offer information to the court to inform the question of bail.

In suggesting this, it is expected that greater engagement and communication would benefit consideration being given on whether bail is appropriate in a given case. This would be directly required in respect of information provided to the court, but would also likely arise from this requirement through closer engagement and communication between the prosecution and justice social work prior to the court's consideration of the question of bail. While such engagement and communication may already occur in some occasions, engagement and communication could assist both the prosecution in informing their decision whether to oppose bail and justice social work as to what information they provide to the court.

It is worth noting that the Scottish Government encourages consultation with justice social work in relevant cases. For example, the current guidance on bail supervision, published in January 2019, recommends regular judicial engagement. This guidance is currently being reviewed (due for publication later this year), and will reinforce the importance of judicial engagement. The Scottish Government is providing £1.65m over three years across local authorities to encourage greater availability of bail, supervised by justice social work, as an alternative to remand. (N.B. Future funding to further incentivise the development of bail supervision services will be subject to review and consideration as part of budget setting processes).

In summary, it is proposed adding justice social work as a party the court seeks information from prior to making their bail decision in a case. It is proposed to require the court to always ask justice social work (and the prosecution and defence) in every case. In cases where the prosecution will be opposing bail, it is proposed that justice social work are required to provide information to the court.

Question 5a

Based on the information above, when a court is considering bail decisions, which of the following options do you consider preferable...

...in cases where the prosecution *opposes* bail:

- The court **may** ask for information from social work, but is not obligated to. Social work **may** decide whether to provide it
- The court **must** ask for information from social work. Social work **may** decide whether to provide it
- The court **must** ask for information from social work. Social work **must** provide it

Please give reasons for your answer.

Question 5b

Based on the information above, when a court is considering bail decisions, which of the following options do you consider preferable...

...in cases where the prosecution *is not opposing* bail:

- The court **may** ask for information from social work, but is not obligated to. Social work **may** decide whether to provide it
- The court **must** ask for information from social work. Social work **may** decide whether to provide it
- The court **must** ask for information from social work. Social work **must** provide it

Please give reasons for your answer.

4.8 Electronic monitoring and bail

Electronic monitoring (EM) is an established part of the justice system in Scotland and allows a reliable way of monitoring compliance with a range of orders and licences. The Scottish Government's intention is to expand the use of EM more generally, both in terms of policy of its use and through deploying newly available technology such as satellite tracking – GPS. Where an order or licence contains a particular requirement or condition, such as a curfew, then electronic monitoring can provide an enhanced capability for the monitoring of that aspect of the order or licence. The use of electronic monitoring can help support the underpinning aims of those orders and licences, across a diverse range of policy use.

It is proposed that there is an explicit requirement that the use of EM be considered, before a court decides to refuse bail in any case. The use of EM to monitor compliance with bail conditions may alleviate any concerns with granting bail in a particular case.

With the existing requirement that bail should be refused only if there are good reasons while having regard to the public interest, it is considered that an explicit requirement to consider the use of EM before a refusal of bail decision could operate as a final step before such a decision can be confirmed. Use of EM would only be expected to be considered where it was available and the circumstances were assessed as suitable.

Linked to a court providing written reasons for a refusal of bail, it is also proposed that, in any provision requiring the consideration of EM, similar wording could be used requiring reasons to be given by the court where bail is refused despite the availability of EM to monitor compliance with bail conditions.

In short, it is proposed that an explicit requirement is added requiring consideration to be given to use of EM for bail prior to a decision to refuse bail and, where EM for bail is not deemed appropriate and bail is refused, for the court to explain why the possibility of EM was not taken up.

It is acknowledged obtaining information about the suitability of a person and/or a household for EM may impact on the operation of courts considering bail and, in particular, require greater input from justice social work. This is in line with a determination for relevant information to be available for the court to inform their decision relating to bail.

As such, it is considered some additional time to assess suitability may be beneficial if that is considered necessary in a case. There is work being progressed through the implementation project for EM bail whereby justice social work offers an assessment of suitability for EM bail in cases where the prosecution intend to oppose bail. This work will benefit the court in having as much relevant information as possible available when ultimately determining whether to make use of EM bail when releasing an accused person on bail.

Question 6

To what extent do you agree or disagree that courts should be required to consider Electronic Monitoring before deciding to refuse bail

Strongly agree
Somewhat agree
Somewhat disagree
Strongly disagree

Please give reasons for your answer.

Question 7

When a court decides to refuse bail, to what extent do you agree or disagree that they should have to record the reason they felt electronic monitoring was not adequate in this case?

Strongly agree
Somewhat agree
Somewhat disagree
Strongly disagree

Please give reasons for your answer.

As part of the implementation of the Management of Offenders (Scotland) Act 2019 (“the 2019 Act”), a number of new uses of electronic monitoring, including use with bail, are due to be introduced. Where the use of bail interacts with other areas of the criminal justice system/process, there may be benefit in further considering whether additional legislative provision would support the policy aim of making greater and more effective use of EM within the criminal justice system.

The most significant of these relate to sentencing powers. Courts have a broad ability to take into account a range of factors at the point of sentencing. At present, time spent on remand can be one of those factors. Periods of bail subject to conditions that are electronically monitored, as a new feature, may be something that courts take into account at sentencing. Current case law suggests that periods of bail subject to curfew conditions can be considered in “exceptional circumstances” (McGill v HM Advocate, 2014 S.C.C.R. 46.)

When electronic monitoring is used to monitor compliance with a bail condition such as a curfew, that bail condition may be considered as being more restrictive than it would have been without such monitoring.

In some other jurisdictions such as England and Wales, there exists a statutory provision whereby periods of time spent on bail subject to an electronically monitored curfew condition are credited against the eventual sentence: generally 2 days on an electronically monitored curfew condition equates to 1 day time served in custody.⁴³

⁴³ See section 325 of the Sentencing Act 2020 - <https://www.legislation.gov.uk/ukpga/2020/17/section/325>. The provision applies in respect of bail

The approach of legislating in this area would provide for a consistent approach to be taken to these questions and help to ensure no unfairness would arise in how courts determine the relevance of time spent on bail subject to electronically monitored conditions for sentencing purposes.

Question 8

To what extent do you agree or disagree that time spent on bail with electronic monitoring should be taken into account at sentencing?

Strongly agree
Somewhat agree
Somewhat disagree
Strongly disagree

Please give reasons for your answer.

Question 9

If time on electronic monitoring *is* to be taken into account at sentencing, to what extent do you agree or disagree that there should be legislation to ensure it is applied consistently:

Strongly agree
Somewhat agree
Somewhat disagree
Strongly disagree

Please give reasons for your answer.

4.9 Other Views

The Scottish Government would welcome any other views consultees may wish to offer on some other issues as detailed below.

Prospect of a custodial sentence

In England and Wales, schedule 11 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012⁴⁴ made various changes to the Bail Act 1976⁴⁵. The effect is, in various circumstances where the Bail Act 1976 would permit the use of remand, it is not permitted where *“it appears to the court that there is no real prospect that the defendant will be sentenced to a custodial sentence in the proceedings”*.

This policy is not proposed among the suggestions in this paper, as in practice it does not appear to have led to a notable reduction in the number of untried persons

subject to a “qualifying curfew condition”, which means a curfew condition requiring the person granted bail to remain at one or more specified places for a total of not less than 9 hours in any given day (see section 326 of the Act).

⁴⁴ <http://www.legislation.gov.uk/ukpga/2012/10/contents/enacted>

⁴⁵ <http://www.legislation.gov.uk/ukpga/1976/63/contents>

on remand⁴⁶. It is also worth noting that the proportion of the remanded prison population in England and Wales who have been charged with a summary offence has been more than double the proportion imprisoned as a result of actually committing a summary offence⁴⁷. It is not necessarily a straightforward exercise to forecast the development and outcome of a criminal case.

Question 10

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.

Young people affected by the decision of bail

Currently the age of the accused is not a specific statutory consideration for decisions on the grant or refusal of bail. While consideration of the age of the accused may indirectly be relevant when, for example, considering previous convictions (as young people may generally have fewer, if any, previous convictions), it may be that age should be more explicitly included as a ground relevant to the bail decision. This is relevant in connection with the incorporation of the UNCRC into Scots law and, more generally, in seeking to advance children's rights such as through Promise Scotland⁴⁸.

Question 11

To what extent do you agree or disagree that legislation should explicitly require courts to take someone's age into account when deciding whether to grant them bail?

Strongly agree
Somewhat agree
Somewhat disagree
Strongly disagree

Please give reasons for your answer. If you agreed, *how* do you think age should be taken into account when deciding whether to grant someone bail?

Some decisions made within the justice system impact on children, for example a decision to refuse bail for someone with caring responsibilities for children. It has been suggested that issues of this nature should be taken into account when decisions are made. It is not clear exactly how these factors could be included explicitly within the grounds relevant to the bail decision, but views would be welcome on the principle of such a step and, if in support, any details on how it could be achieved.

⁴⁶ http://www.transformjustice.org.uk/wp-content/uploads/2018/03/TJ_March_13.03-1.pdf, p8

⁴⁷ *Ib.*, p9

⁴⁸ <https://thepromise.scot/change-programme-one-pdf.pdf#:~:text=The%20promise%20identified%20which%20organisations%20that%20have%20the,t here%20are%20connections%20that%20need%20to%20be%20made.>

Question 12

In principle, to what extent do you agree or disagree that courts should be required to take any potential impact on children into account when deciding whether to grant bail to an accused person?

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Please give reasons for your answer. Do you have any comments on how such a requirement could best be brought in?

5. Section 2: Release from Custody

5.1 Introduction

This consultation seeks views on proposed reforms to the mechanisms governing release from custody, including how support for those leaving custody could and should be provided. As with the reforms relating to bail law, the underlying aim of these proposals is to reduce reoffending, leading to fewer victims in future.

We also recognise that for victims of crime, particularly where there is a risk of re-victimisation, the point at which the person who committed a crime against them is released can be a stressful and frightening time. Ensuring that victims and support organisations have the information they need to undertake proactive safety planning where necessary is important in empowering them to make decisions. We are therefore seeking views on how to support that information flow.

The vast majority of people currently detained in prison will return to our communities at some point, and so it is essential that effective release processes which focus on supporting successful reintegration are in place.

This benefits the individual by giving them the best possible opportunity to form positive connections with their community, access housing and employment and continue to receive support for addiction and mental health problems.

It also benefits society. By providing more effective support to people leaving custody, they are given their best chance to move on from offending behaviour which keeps our communities safer.

Conversely, if an individual's release isn't planned for, if they can't access services which meet their needs, keep them and others safe and support them to make positive choices, then we are not setting them up to successfully reintegrate into the community and they are likely to reoffend and cycle back through the justice system. Nobody benefits from that.

Therefore this consultation seeks views on a range of options to improve support for people leaving prison, with a focus on reducing reoffending. It also seeks views on the point at which release should take place and whether, in some circumstances, more people serving custodial sentences could be supported to serve part of their sentence in the community with the aim of enabling their reintegration.

We are also seeking views on whether Scottish Ministers should have an executive release function which would enable them to release groups of eligible prisoners in response to exceptional circumstances – with the aim of ensuring the ongoing security and good order of prisons and the health and wellbeing of prisoners and prison staff.

5.2 Proposals

The reforms discussed in this paper are:-

- 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;
- 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 power of executive release to enable Scottish Ministers to release groups of prisoners in exceptional circumstances.

5.3 Background

The current system in Scotland broadly separates out different lengths of custodial sentence into three categories so that they are enforced in different ways and are subject to different release processes:

- Determinate short-term – fixed sentences of less than 4 years;
- Determinate long-term – fixed sentences of 4 years or more; and
- Indeterminate – life sentences, Orders for Lifelong Restriction.

The proposals in this consultation relate to determinate sentenced prisoners only.

Determinate short-term sentences

Almost all persons serving determinate short-term sentences are automatically released at the half-way point of their sentence⁴⁹. Most are released unconditionally. Depending on their offence and the sentence imposed, some of

⁴⁹ Prisoners and Criminal Proceedings (Scotland) Act 1993
(<https://www.legislation.gov.uk/ukpga/1993/9?wrap=true>)

those persons released at the half-way point will be required to comply with conditions and supervision.

Persons serving determinate short-term sentences may access voluntary throughcare services if they wish to and these are provided by a range of sources. They can request throughcare support from their local authority if they wish (which local authorities have a statutory duty to provide⁵⁰, although the scope and form of support service may vary), or they can accept support offered by a range of third sector organisations (including the national third sector throughcare mentoring services funded directly by the Scottish Government).

Determinate long-term sentences

Almost all persons serving determinate long-term sentences can be considered by the Parole Board for Scotland for release from the half-way point of their sentence.⁵¹ The Parole Board may recommend release if they feel that the individual does not pose an unacceptable risk to the public. If the Board does not recommend release, the individual's case generally returns to the Board for consideration every 12 months until their liberation date.

If an individual is still in custody with 6 months left on their sentence, they are automatically released under licence conditions until their sentence end date (to ensure that they will be subject to supervision in the community for at least that period of time).

There is an exception to this however where a prisoner is serving an extended sentence. An extended sentence is imposed by the court and consists of a custodial sentence and a period of supervision in the community after the custodial sentence has expired. Such a sentence is imposed where the court considers that a specific enhanced risk arises with the person which requires extended supervision. For these individuals, there is no automatic early release at all and instead they will serve their entire custodial sentence in custody if release is not recommended by the Parole Board.

Local Authorities have a statutory responsibility to provide supervision by Justice Social Work officials for those released from sentences of 4 years or more (either determinate long-term or indeterminate), and/or who are sentenced to post-release orders by the court (e.g Supervised Release Orders)⁵². This supervision will confirm whether the individual is fulfilling the conditions of their parole or post-

⁵⁰ www.legislation.gov.uk/ukpga/1968/49 Section 27(1)(c) provides that 'It shall be a function of every local authority under this Part of this Act to provide a service for the following purposes, that is to say: the provision of advice, guidance and assistance for persons in their area who, within 12 months of their release from prison or any other form of detention, request such advice, guidance or assistance'

⁵¹ Prisoners and Criminal Proceedings (Scotland) Act 1993
(<https://www.legislation.gov.uk/ukpga/1993/9?wrap=true>)

⁵² www.legislation.gov.uk/ukpga/1968/49 Section 27(1)(b)(ii) provides that that It shall be a function of every local authority under this Part of this Act to provide a service for the following purposes, that is to say the supervision of, and the provision of advice, guidance and assistance for(ii)persons in their area who, following on release from prison or any other form of detention, are required to be under supervision under any enactment or by the terms of an order or licence of the Secretary of State or of a condition or requirement imposed in pursuance of any enactment

release order – and may also provide advice and support to the individual on other issues relating to throughcare.

Indeterminate sentences

Prisoners serving indeterminate sentences must serve the punishment part imposed by the court at the point of sentencing before being eligible to be considered by the Parole Board for release.⁵³ There is no automatic early release for indeterminate sentences with release only ever occurring on a discretionary basis at the direction of the Parole Board. Individuals released as part of serving indeterminate sentences will be subject to licence conditions supervised by local authority justice social work. This consultation does not seek views on the release mechanisms relating to individuals serving indeterminate sentences.

Home Detention Curfew

In certain circumstances and ahead of the forms of release described above, some prisoners may be released to serve part of their sentence in the community. Home Detention Curfew (HDC) is the main mechanism for this and provides a route for appropriately assessed individuals to serve a proportion of their custodial sentence in the community on licence conditions, including a curfew condition, which is electronically monitored.

The principal purpose behind HDC is to provide those leaving prison with a managed return to their communities ahead of release under one of the forms described above. HDC provides structure, through curfew and monitoring and by doing so can support compliance with release conditions and encourage successful reintegration.

Home Detention Curfew is available to short and long term prisoners provided they:

- (in the case of short-term prisoners) Are serving sentences of three months or more;
- Have served one quarter (25%) of their sentence;
- Are not subject to the following statutory exclusions:
 - Individuals who are required to register as sex offenders;
 - Individuals who are subject to an Extended Sentence;
 - Individuals who are subject to a Supervised Release Order;
 - Individuals who are subject to a Hospital Direction (including Transfer for Treatment);
 - Individuals who are convicted of terrorist offences under section 1AB of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”);
 - Individuals who have been confirmed as “to be deported” by the UKBA.
 - Individuals who are serving a non-offence term (if the individual pays the balance of the financial penalty imposed or serves the non-offence term he/she will cease to be excluded)

⁵³ Prisoners and Criminal Proceedings (Scotland) Act 1993
(<https://www.legislation.gov.uk/ukpga/1993/9?wrap=true>)

- For long-term prisoners (and in addition to the criteria noted above), have been pre-approved for release on parole at the half-way point of their sentence by the Parole Board for Scotland.

Provided the above conditions are met, individuals can be considered for release on HDC following an assessment of risk undertaken by the Scottish Prison Service, in co-operation with social work officials for the area the prisoner wishes to be released to. HDC is granted in the period leading up to the halfway stage of a prisoner's sentence. The minimum period for which a prisoner can be released on HDC is 14 days and the maximum period is 180 days.

HDC therefore provides a critical release mechanism and is an approach used in other jurisdictions. The approach to HDC in Scotland was reviewed in 2019 and substantial additional risk assessment mechanisms were introduced at that stage.

The numbers of prisoners currently released on HDC in Scotland is consistently low – around 50 at any given time.⁵⁴ Prisoners are not required to apply for HDC if they do not wish to, and at present there is no scope to arrange for HDC unless the prisoner can indicate the address they will live at following release. Given the important role supported release can have in enabling successful reintegration, we believe the time is right to consider how we use HDC and whether a different approach is needed in future.

Flexible release

The date of a prisoners' earliest date of liberation may fall on any day of the week, but prisoners are not released from custody on weekend days or public holidays. Those whose scheduled liberation date falls on those days will have their release date automatically moved to the first available earlier day. Most commonly, this sees prisoners whose release date falls on a Saturday or Sunday being released on the Friday before.

Previous concerns had been raised amongst some justice organisations and community based services that some individuals released from prison on Friday (or other dates prior to public holidays or weekend days) may be comparatively disadvantaged, as mainstream public services may be less available, or unavailable, to them.

In response, the Scottish Government introduced provisions within the [Prisoners \(Control of Release\) \(Scotland\) Act 2015](#) (which came into force on February 2016). That Act amended the 1993 Act to provide a discretion to bring forward a prisoner's release date by up to two days where it would benefit their reintegration into the community. For example, from a Friday to a Wednesday. This is applied on a case by case basis, with SPS accepting applications from external organisations seeking a change to the release date of an individual. These applications require the organisation to state the reasons why the change will make a practical improvement in the circumstances of the individual's release.

The number of prisoners whose release date is moved under this legislation is low and there have been calls to review this process to ensure that more prisoners can

⁵⁴ SPS Prison Population (<https://www.sps.gov.uk/Corporate/Information/SPSPopulation.aspx>)

access it – for example by removing the application process and imposing a blanket ban on release on a Friday or the day before a public holiday.

This consultation seeks views on how this approach could be reviewed to ensure the safety and successful reintegration of those leaving prison.

5.4 Future approaches to release

Mechanisms relating to release from custody are complex and must strike the balance between the need to protect the public, to reflect the underlying purpose of the sentence imposed and to provide the best opportunity for rehabilitation and successful reintegration. The intention of any amendments to the existing system would be to ensure that rehabilitation and successful reintegration remain a priority, to reduce the risk of reoffending and future victimisation. Consideration must be given to how the individual's management in custody and the point of eventual release can produce the best outcomes for individuals and communities.

This consultation asks for your views on what could be done differently and what the opportunities are for change.

5.4.1 Point at which prisoners can be released/considered for release

Some of those being held in custody either may have never posed any risk of serious harm to the public or may no longer present a risk of serious harm to the public but, due to the current release arrangements, will continue to be held and may not become eligible for release, or consideration for release by the Parole Board for Scotland, for many years. This reflects arrangements whereby the time spent in custody for different lengths of determinate sentences generally require a minimum of one half of the sentence to be spent in custody as a punishment (through loss of liberty) for offending behaviour.

Having different processes around release from custody which were more flexible and risk based could create circumstances where certain prisoners who do not or no longer pose a risk of serious harm could be permitted to serve the remainder of their sentence in the community. This would produce a structured basis for prisoners to complete their sentence, and still allow a punishment to be imposed (through loss of liberty) but would support better reintegration in order to reduce the risk of future reoffending.

Question 13

To what extent do you agree or disagree that, in general, enabling a prisoner to serve part of their sentence in the community can help their reintegration?

Strongly agree
Somewhat agree
Somewhat disagree
Strongly disagree

Please give reasons for your answer.

Question 14

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

5.4.2 Opportunities to demonstrate suitability to be considered for earlier release

In some other jurisdictions, prisoners can demonstrate their readiness for earlier release through good behaviour, or to “earn” the right to be considered for earlier release through successfully completing relevant programmes and other activities available to them – such as participating effectively with counselling or groupwork to address factors contributing to their previous offending, education (such as support for literacy and numeracy) and life skills classes or vocational training.

This consultation asks for your views on a proposed approach, where engagement in, and progress on, these programmes, training and other relevant activities could be used to demonstrate potential readiness for release. This evidence could then help inform decisions regarding:

- whether long term prisoner cases would be heard earlier by the Parole Board;
- whether short-term prisoners would be released in advance of the half-way point of their sentence;
- whether prisoners would be presumed suitable for release on EM.

Such an approach would balance the continuing need to punish an individual through loss of liberty, with flexibility for a positive response to dynamic efforts by the individual in custody to the reasons why they committed their offence. The flexibility could be used where such engagement by the individual means the extent of the punishment originally imposed (i.e. the length of the loss of liberty) no longer requires to be as lengthy to reflect the progress made by the individual.

Designing such an approach would require complex considerations and, for short-term prisoners, would need to take clear account of any risks posed by the individual. Long-term prisoners would still have their case considered by the Parole Board, who already take engagement and progress on programmes etc into consideration. Eligibility for such processes could be restricted, either by excluding certain types of prisoner, or through individual assessment. It would also require sufficient resource for the Prison service and partners to ensure that timely access to the required programmes and services was available to all prisoners.

However, such a model could provide increased support for rehabilitation and improve prisoners' motivation to engage with services to address the underlying causes of their offending behaviour. It could also provide a mechanism so that those who do not, or no longer pose a risk of serious harm could be considered for earlier release, or to serve the remainder of their sentence in the community.

Question 15

Do you agree that through good behaviour, or completing education, training and rehabilitation programmes, prisoners should be able to demonstrate their suitability for...

a)...early release?

Yes / no / unsure

b)...the ability to complete their sentence in the community?

Yes / no / unsure

Please give reasons for your answers.

Question 16

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?

5.4.3 Release for determinate sentences

As noted above, there are different release mechanisms depending on the length of sentence a prisoner is serving.

Almost all prisoners serving less than four years are released automatically at the halfway point of their sentence. Those prisoners serving four years or more are eligible to have their case considered by the Parole Board at the halfway point of their sentence. At that point, the Parole Board may recommend release if they feel that the individual does not pose an unacceptable risk to the public.

The operation of release reflects punishment (through loss of liberty) in each custodial sentence imposed. The trigger point of the halfway point of sentence for, at the very least, consideration of release can be interpreted as the punishment element of the sentence (i.e. the period when loss of liberty has to occur).

Since these periods have been established, further policy has developed as to the principles and purposes of sentencing. In particular, the Scottish Sentencing Council has developed a sentencing guideline⁵⁵. This guideline clearly lays the different purposes of sentencing which, while including punishment, extends well beyond those narrow confines.

Alongside punishment, purposes of sentencing are protection of the public, rehabilitation of offenders, giving the offender the opportunity to make amends and expressing disapproval for the offending behaviour. These purposes may carry

⁵⁵ [guideline-principles-and-purposes-of-sentencing.pdf \(scottishsentencingcouncil.org.uk\)](https://www.scottishsentencingcouncil.org.uk/guideline-principles-and-purposes-of-sentencing.pdf) – Guideline applying since 26 November 2018.

different weights in cases with different facts and circumstances. Looking afresh at the release point for different determinate sentences allows reflection of this important work by the Scottish Sentencing Council which can inform the consideration to release points from sentences.

There is no fundamental reason why this need for an expression of punishment through release policy must be set at half of the custodial sentence to be served prior to consideration for release or release itself. It could be a different proportion and certainly the work of the Scottish Sentencing Council makes clear punishment is only one of 5 core purposes of sentencing.

This consultation seeks views as to whether release law could be adjusted so the points at which a prisoner is automatically released (for short-term prisoners) or considered for release (for long-term prisoners) could be altered in some or all cases.

A more flexible system which allows for greater discretionary decision-making, informed by any risks posed by an individual, with a greater emphasis on supporting their readiness for release may be more effective in supporting reintegration.

For example, what this could mean in practice is that short-term prisoners could be automatically released earlier than the half-way point of their sentence, e.g. at the 1/3 point.

Under this approach, individuals who meet certain criteria could be released from custody earlier than half-way but be subject to post-release conditions (and have those conditions monitored using electronic monitoring) until the half-way point of their sentence when they would be unconditionally released - although they would be subject to recall to custody if they commit another offence before their sentence end date.

This option could allow better opportunities for monitored reintegration by ensuring more prisoners were released in a gradual, structured fashion. This could be further supported by providing the individual with specific throughcare support to address their needs, and to make links to services in their community.

Alternatively, such release could happen unconditionally (i.e. without any conditions) and would operate in the same way as currently, just at an earlier point in the sentence.

Question 17

Which of the following options in relation to automatic early release for short term prisoners would you say you most prefer?

- Automatic early release changes to earlier in the sentence, but the individual is initially subject to conditions and monitoring, until the half-way point
- Automatic early release changes to earlier in the sentence, nothing else changes
- No change: automatic early release remains half way through the sentence

Please give reasons for your answer.

Similarly, a prisoner serving a sentence of four years or more could have their case brought before the Parole Board for consideration before the half-way point of their sentence. This could either be done on the basis of risk assessments carried out in custody which indicate that the individual no longer poses a risk of serious harm. Or could be done more automatically, by amending legislation so that cases are considered by the Parole Board at the 1/3 point of the sentence (or a different fraction) rather than at halfway. The Parole Board would still have responsibility for deciding whether or not to direct release, but the first consideration would take place at an earlier point in the sentence.

Question 18

Currently long-term prisoners can be considered for release by the Parole Board for Scotland once they have completed half of their sentence. Which of the following options would you say you most prefer?

- Change to allow some long-term prisoners to be considered by the Parole Board earlier if they are assessed as low risk
- Change to automatic consideration by Parole Board once one third of the sentence is served for all long-term prisoners
- No change: automatic consideration by Parole Board once half of sentence is served for all long-term prisoners

Please give reasons for your answer.

5.4.4 Flexible Release arrangements

The flexible release provisions inserted into the 1993 Act by the [Prisoners \(Control of Release\) \(Scotland\) Act 2015](#) are intended to support the successful reintegration of people leaving prison by enabling organisations who provide support to the individual to submit an application to SPS to have the release date moved by up to 2 days.

In practice, this is used infrequently and there have been calls, from the Drugs Deaths Taskforce amongst others, to expand the use of this approach by imposing a blanket ban on release on a Friday or the day before a public holiday in order that people leaving prison can access the services they need at the point of release⁵⁶. This recognises the vulnerability of people leaving custody which can manifest in a number of ways, from difficulty accessing accommodation or benefits to drug-related or other harms.

This consultation seeks therefore views on whether such a blanket ban should be imposed. And what changes would need to be made to ensure that the relevant services were available at the point of liberation from custody recognising that, even if an individual was released earlier in the week, they may still experience the same difficulties or harms if the services they need are not available.

⁵⁶Scottish Drugs Death Taskforce: Report on Drug Law Reform (Sep 2021)
(<https://drugdeathstaskforce.scot/media/1248/drug-law-reform-report-sept-6th-21.pdf>)

Question 19

Do you agree 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?

Yes / No / Unsure

Please give reasons for your answer. If you agree, what wider changes would be needed to ensure people leaving prison have access to the support they need?

5.4.5 Home Detention Curfew and electronically monitored release

In some other jurisdictions, sentences can be automatically split between custody and community sections (with community sections being administered as home detention, and/or community sentencing).

As we are considering reforms to release arrangements, it would be valuable to consider whether greater use could be made of electronic monitoring as a way of ensuring compliance with conditions of release so that certain prisoners could serve a proportion of their sentence in the community.

As detailed above, at present Home Detention Curfew (HDC) provides the main mechanism for eligible determinate sentenced prisoners to serve a proportion of their sentence in the community, subject to licence conditions which include curfew – monitored using electronic monitoring devices. By creating a structured release process, HDC is intended to support a prisoner's rehabilitation and reintegration at the end of their sentence.

Decisions about whether to release an individual on HDC are for SPS, on the basis of risk assessment and in consultation with partners. Under the current process, participation in HDC is optional, and depends on prisoners actively making an application, regardless of their suitability. HDC is also currently limited to six months or the last quarter of the prisoners sentence – whichever is less. The assessment process for HDC has been amended in the last two years, with the intention of providing a detailed case-by-case assessment of each application.. At the moment, around 50 prisoners are released on HDC at any one time, when previously the numbers were around 200, so the current impact of this mechanism is limited. Therefore, the time is right to consider whether the current system should be amended or replaced.

Scottish Ministers currently have powers to amend the statutory framework for HDC via subordinate legislation⁵⁷. This could include shortening the minimum length of sentence to which HDC can be applied (currently 3 months), or increasing the maximum period a prisoner can spend on HDC (currently 180 days). These powers would also allow adjustments to be made to the list of statutory exclusions from HDC (as listed at section 3.3 above).

⁵⁷ See s.3AA(6) of the 1993 Act - [Prisoners and Criminal Proceedings \(Scotland\) Act 1993 \(legislation.gov.uk\)](#).

Beyond that, changes could also be made to the decision-making process in relation to HDC and the level of risk assessment required. This would not require legislation.

This consultation seeks views on whether HDC should be amended or replaced. And, more broadly, seeks views on when and how decisions about the length of time an individual spends in the community at the end of their sentence should be taken and by who.

One option could be to replace the current model of HDC and move towards a model where certain categories of prisoner are presumed suitable unless there was a specific reason why this should not take place (e.g. known risk to an individual(s). This could continue to be a mechanism which is administered by the Prison Service or which could be administered by another body (e.g. Parole Board for Scotland).

An alternative could be that decisions on the proportion of a custodial sentence which could be served in the community (subject to conditions and monitored by EM) are no longer taken by SPS but are taken by the courts at the point of sentencing.

This approach would involve the courts determining the proportion of a custodial sentence which an individual would serve in prison, and what proportion they would in the community whilst subject to conditions, including a curfew (compliance with which could be electronically monitored) or conditions on their behaviour, activity or location. For example, the court could decide that an individual could serve 1/3 of their sentence in custody and 2/3 in the community subject to conditions. This determination could be made by the court at the point of sentencing with the option to return the individual to court to have the conditions varied up or down if circumstances change (for example, on the basis of risk assessment conducted in custody). This approach to review is currently used for Supervised Release Orders.

Question 20

Below is a list of some of the features of the current HDC system, and potential changes that could help to increase usage of HDC (or similar). Please indicate your view on each of these potential changes.

a) - Prisoners must actively apply for HDC. Should HDC be considered automatically for some categories of prisoners instead?

-Yes / no / unsure

Please give reasons for your answer, or share any comments you would like to make on which categories of prisoner you think might be automatically considered.

b) - The maximum length of time allowed on HDC is 6 months (or 1 quarter of the sentence). Do you think that this should:

-Be made longer

-Not change

Please give reasons for your answer, or share any comments you would like to make on how long you think is appropriate.

(Question 20 continued)

c) - The minimum sentence for which HDC can be considered is 3 months. Should this limitation be removed?

-Yes / no / unsure

Please give reasons for your answer, or share any comments you would like to make on what sentence length you think is appropriate:

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?

-Yes / no / unsure

Please give reasons for your answer, or share any comments you would like to make on what criteria are relevant to whether someone should be eligible for HDC:

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?

-Yes / no / unsure

Please give reasons for your answer, or share any comments you would like to make on the role of SPS in determining release on HDC:

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?

-Yes / no / unsure

Please give reasons for your answer.

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?

-Yes / no / unsure

Please give reasons for your answer, or share any comments you would like to make on what role the courts could have in determining the proportion of sentence an individual could serve in the community.

5.5 Support and information for victims

There are processes in place whereby information relating to the release of an individual from custody can be shared by SPS with local authorities and ultimately Justice Social Work departments. This is to enable local authorities to carry out statutory duties such as providing housing support to individuals in the community and enable Justice Social Work departments to deliver mandatory supervision and voluntary throughcare to those leaving custody.

Information about the release of individuals from custody is not routinely shared with other organisations, and any proposals to do so would need to comply with UK data protection laws.

Some victim support organisations have proposed that they could benefit from receiving notification of individuals being released to enable effective safety planning with victims, either on a routine basis or in relation to specific cases in which they are providing support. This would enable these organisations to ensure that they could provide effective support at the right time and in an informed fashion. It would also provide reassurance to the victim. However as it would involve sharing personal data with a third party, the legal basis and operational practice required to enable this information sharing would have to be carefully considered.

An additional consideration relates to the Victim Notification Scheme (VNS). The VNS enables eligible victims who are registered with the Scheme to receive certain information about an individual in custody, such as the date of release or when they become eligible for temporary release. In addition to this information, VNS letters, which are issued by SPS, provide information on support services which victims can access if they choose to.

Some victim support organisations have suggested that the VNS could take a more trauma-informed approach to victim care and support. For example, by victim support organisations potentially being provided with advance notice of an individual's release (or when they are eligible for temporary release) enabling them to proactively contact the victim and offer emotional and practical support.

The Scottish Government has committed to undertake a review of the VNS to investigate where improvements could be made. The review may enable potential changes to the sharing of information on the release of individual's from custody to be explored in detail. In advance of the review, however, this consultation seeks views on the potential for further information to be shared with victims and victim support organisations, and the wider considerations that would need to be taken into account.

Question 21

To what extent do you agree or disagree that the Scottish Government should consider whether information on individuals being released from custody can be shared with third sector victim support organisations, for example, to enable them to provide proactive support to victims and carry out safety planning?

Strongly agree
Somewhat agree
Somewhat disagree
Strongly disagree

Please give reasons for your answer.

Question 22

In addition to information on individuals being released, to what extent do you agree or disagree that victims and victims support organisations should be able to access further information?

Strongly agree
Somewhat agree
Somewhat disagree
Strongly disagree

Please give reasons for your answer. If you agree, please state what information should be provided and for what purpose.

5.6 Support for people leaving prison

Whenever it is necessary to place an individual in custody, we believe it is important that they should be guided and supported to assist their reintegration upon their release, to enable their continued rehabilitation and help them desist from future offending. This will be a key part of their time in prison, and efforts to reintegrate them back into the community should begin whilst in custody, and continued after their release. While justice social work services have a key part to play in these processes and do a huge amount of work to support those leaving custody, wider public and third sector services also have essential roles to play. This includes ensuring that each individual's needs for support with housing, welfare and benefits, employability and employment, health, addictions or mental health support are recognised and addressed, both whilst in custody and after release. The availability, scope and delivery of such services are not within the direct control of justice social work services or other justice bodies.

The [Community Justice \(Scotland\) Act 2016](#) recognises that there are many different bodies (public, private and third sector) that must be involved in the planning, design and delivery of services for people who have committed offences. This includes national organisations such as the Scottish Prison Service (SPS) and local bodies such as Community Justice Partnerships, Alcohol and Drug Partnerships and local authority justice social work departments – working alongside universal public services – with shared responsibility for the planning and delivery of community justice priorities. The third sector also plays an important role by providing specialist services aimed at reducing re-offending. This shared responsibility is underpinned by the duty of public services to provide essential services to members of the public that require them, such as providing access to benefits, accommodation to individuals who are unintentionally homeless, or the provision of healthcare. This includes individuals being released from custody, who may be in particular need and be particularly vulnerable.

Structured reintegration back into the community gives the opportunity for those who have offended to realise their potential and turn their lives around, creating a safer and fairer society for all.

5.6.1 Pre-release planning

In preparation for an individual's release, SPS will offer to engage with each prisoner in pre-release planning. Where the individual wishes to do so, SPS will offer to work with them to identify their support needs, and which public services they will need to engage with on release— and then to assist them in making contact with public and third sector services. The longer that the individual is in prison, the more scope there is to plan for release.

Periods of remands and short custodial sentences offer much less scope for pre-release planning. In contrast, those serving longer sentences can be involved in more detailed preparations (including temporary releases, and time in the open estate) alongside the work of the Parole Board, and the role of justice social work in supervising the individuals' compliance with release conditions and any other post-release orders.

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 however. There are good practice examples of services engaging in pre-release planning but this is not a consistent picture. This consultation seeks views on whether a further duty which specifically highlights the need for public bodies to engage with pre-release planning for those leaving custody would be beneficial in supporting successful reintegration.

Question 23

Which of the following best reflects your view on public service's engagement with pre-release planning for prisoners?

- Existing duties on public services to give all people access to essential services are sufficient to meet prison leavers' needs
- Existing duties are not sufficient; public services should have a specific duty to engage with pre-release planning

Please give reasons for your answer.

Question 24

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.

5.6.2 Release direct from court

In some instances, for example where an individual has been serving a period of remand and does not receive a custodial sentence (they are either found not guilty, sentenced to time already served, or to a community sentence), they may be released direct from court, or will be released immediately afterwards from prison. In these instances, the limited opportunity for pre-release planning and the lack of notice before an individual is released means that sometimes they cannot link to or access the services they need in their communities.

In these examples, the individual is not necessarily subject to any supervision by justice social work or other statutory requirements and so it is difficult for SPS to take action to provide the individual's details to relevant local services. This can mean that individuals released in this way may not, for example, have support to access local housing or health services on release.

SPS have tried to address this by agreeing with GeoAMEY that they will provide liberation packs to those individuals released at court. These information packs relate to the local area within which the individual is being liberated. However, without structured support available at that time, some of these individuals may not link to the services they need, potentially putting themselves and others at risk.

This consultation seeks views on whether a specific support service should be available to those who are released direct from court (or immediately from custody). This service could liaise both with SPS in terms of any assessed needs (e.g. health, housing, benefits) and risks, along with any previous contact with community services which could be re-established. The service could help refer individuals onto the correct services in their local communities.

Alternatively, rather than a separate support service, there could be scope to draw upon the general duties of public services (or a new specific duty to address the needs of individuals leaving custody – as discussed above) – to ensure that public and third sector services are aware of and able to meet the needs of individuals released from custody at short notice by the court.

Question 25

To what extent do you agree or disagree that support should be available to enable prisoners released direct from court to access local support services in their community?

Strongly agree
Somewhat agree
Somewhat disagree
Strongly disagree

Please give reasons for your answer. If you agree, please explain how you envisage that support would look and which bodies you feel should be involved.

5.6.3 Throughcare support

Throughcare is the coordinated provision of support to a person beginning when they first enter prison, throughout their period of imprisonment and during their transition back into the community. Part of this work is delivered alongside the statutory supervision of certain prisoners undertaken by Justice Social Work. There are also a broader range of throughcare activities delivered by local authority (including, but not limited to, Justice Social Work), NHS and third sector organisations which engage with other prisoners on a voluntary basis, before and after their release.

This consultation is not seeking views on the statutory duties of Justice Social Work to supervise individuals after release to determine if they are complying with

conditions of release or other orders – but is focused on other activities to advise, guide or otherwise support the individual's reintegration.

Voluntary throughcare support may be provided by dedicated services, which can provide direct support as well as helping link an individuals to the community-based services they need, or by community-based universal services proactively reaching into prisons to engage with prisoners prior to their release and continuing to engage with them thereafter. It may also be delivered through a combination of these two approaches.

Effective throughcare can support an individual's successful reintegration by offering guidance and advice to assist their continued rehabilitation and desistance – as well as assistance with practical problems, such as access to accommodation, healthcare, social supports, education or employability support etc on release. The support provided should be based on the specific needs of the individual.

Local authorities (via justice social work) currently have a duty to provide voluntary support to prisoners leaving custody following a period of remand or a short-term sentence should the individual request it (with the exception of short-term sex offenders who are released on licence at the half-way point of their sentence and so are subject to statutory supervision on release).

This support is provided under the terms of section 27(1)(c) of the Social Work (Scotland) Act 1968⁵⁸ (the 1968 Act) which states that local authorities are responsible for 'the provision of advice, guidance or assistance for persons in their area who, within 12 months of their release from prison, or any other form of detention request such advice, guidance or assistance'.

Local Authorities must also provide statutory supervision for prisoners leaving long-term sentences as set out in section 27(1)(b) of the 1968 Act. This is based on ensuring that the individual is complying with the conditions of their release, and any other post-release orders – but beyond that can involve advising and guiding individuals how to engage with other agencies which will help them resolve any problems, and help them to resettlement in the community.

As well as requesting throughcare support from their local authority, short term prisoners may also receive throughcare assistance from a range of third sector services – including from the national prisoner throughcare mentoring services delivered by the third sector and funded by the Scottish Government.

Both local authority-led and third sector services for short term prisoners are voluntary, and there is no requirement for individuals serving short sentences to access or comply with pre-release planning, or to engage with any throughcare service after their release if they do not wish to do so. However, ensuring that consistent support is available to those who ask for it, no matter where they live, is important in ensuring equity.

There are existing national standards for the provision of throughcare⁵⁹ – both to prisoners who are required to engage with these services as part of a licence or because they request such a service. These standards were published in 2004 and

⁵⁸ [Social Work \(Scotland\) Act 1968 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1968/6/section/27)

⁵⁹ <https://www.webarchive.org.uk/wayback/archive/20150219131557/http://www.gov.scot/Publication/s/2004/12/20473/49295>

were intended to ensure that a consistently good quality of service is provided across Scotland. Under these standards, the term 'throughcare' is used to describe the provision of a range of social work and associated services to prisoners and their families from the point of sentence or remand, during imprisonment and following release into the community.

These existing standards are very focused on the role of justice social work in delivering throughcare. Given the evidence which shows that individualised holistic interventions which address multiple criminogenic needs are more effective at reducing reoffending, this consultation seeks views as to whether revised minimum standards for throughcare should encompass a broader range of services.

This builds on the examples of other structures that have been developed to support greater consistency and equity of access to services, and the promotion of good practice. For example, the Sustainable Housing for Everyone on Release (SHORE) standards⁶⁰ which were published in 2016 and aim to ensure that the housing needs of individuals in prison are handled in a consistent way across Scotland, and the Medication Assisted Treatment standards⁶¹ which support the consistent delivery of safe, accessible, high-quality drug treatment across Scotland.

The Justice Committee's inquiry into the use of remand in Scotland in 2018⁶² highlighted an absence of support when people are released from remand. As noted previously, between 2014-17, more than half of those sentenced after being on remand did not receive a custodial sentence. Short periods of imprisonment, including on remand, are extremely disruptive and break links with housing, employment, family and wider community support.

Therefore, ensuring that consistent support is available for prisoners leaving remand, including in cases where release occurs straight from court, would be beneficial in supporting successful reintegration and reducing the risk of re-offending.

This consultation also seeks views on whether revised minimum standards for thoroughfare should differentiate remand, short-term and long-term prisoners to ensure that the most appropriate and relevant support is provided.

⁶⁰ SHORE standards (<https://www.sps.gov.uk/Corporate/Publications/Publication-5363.aspx>)

⁶¹ Medication Assisted Treatment (MAT) Standards: access, choice, support (<https://www.gov.scot/publications/medication-assisted-treatment-mat-standards-scotland-access-choice-support/>)

⁶² <https://sp-bpr-en-prod-cdnep.azureedge.net/published/J/2018/6/24/An-Inquiry-into-the-Use-of-Remand-in-Scotland/JS052018R07.pdf>

Question 26

To what extent do you agree or disagree that revised minimum standards for throughcare should incorporate a wider range of services?

Strongly agree
Somewhat agree
Somewhat disagree
Strongly disagree

Please give reasons for your answer. If you agree, please list the services you think these standards should cover and what you think their role should be.

Question 27

To what extent do you agree or disagree that revised minimum standards for throughcare should differentiate between remand, short-term and long-term prisoners?

Strongly agree
Somewhat agree
Somewhat disagree
Strongly disagree

Please give reasons for your answer. If you agree, please state how you think these standards should differ for each cohort.

Question 28

To what extent do you agree or disagree that revised minimum standards for throughcare should be statutory?

Strongly agree
Somewhat agree
Somewhat disagree
Strongly agree

Please give reasons for your answer.

Question 29

Do you think other changes should be made to the way throughcare support is provided to people leaving remand/short-term/long-term prison sentences?

Yes / no / unsure

Please give reasons for your answer. If you think other changes should be made, can you provide details of what these changes could be?

Question 30

Should other support mechanisms be introduced/formalised to better enable reintegration of those leaving custody?

Yes / no / unsure

Please give reasons for your answer. If you think other mechanisms should be introduced, can you provide detail of what these could be?

5.7 Executive Release power

Scottish Ministers do not currently have a general executive power that would allow them to permanently release groups of prisoners, even in an emergency situation which puts the security and good order of prisons and the safety and wellbeing of prison staff and prisoners at risk. Such a power exists in England and Wales under Section 32 of the Criminal Justice Act 1982⁶³ which empowers the Secretary of State to order that specified persons who are serving a sentence of imprisonment are to be released from prison earlier than they would otherwise be released. The power can only be exercised if the Secretary of State is satisfied that it is necessary to do so in order to make the best use of the places available for detention.

An “Executive release” provision would provide Ministers with the power to direct the release of a specified, limited group of prisoners if certain conditions are met. It is intended to provide a mechanism to enable release of a number of prisoners in response to exceptional circumstances when they can no longer be managed safely in the prison estate.

The risk of the absence of such a power was highlighted early in the Covid-19 pandemic, when emergency legislation had to be swiftly sought to enable Ministers to order a limited early release of prisoners to support security and good order in prisons, and protect the health and welfare of prisoners and prison staff in response to the effects coronavirus was having.

There are limitations in how this emergency power could be used, with certain categories of prisoners who are not eligible for release, and the requirement for Ministers to put the full regulations for any process before the Parliament for approval. Any use of the power must be necessary and proportionate to the effects coronavirus is having or is likely to have on prisons.

This power has been used once (at the time of writing) in May 2020 and provided for the release of 350 short term prisoners who were nearing the end of their sentence (all with 90 days or less to serve).

However, the provision in the [Coronavirus \(Scotland\) Act 2020](https://www.legislation.gov.uk/ukpga/2020/7/section/1) only allows for the release of prisoners during and as a result of the coronavirus pandemic. Should it ever be necessary to release a group of prisoners in response to exceptional circumstances which put the security and good order of a prison or prisons at risk (such as another public health emergency, or catastrophic damage to a prison due

⁶³ <https://www.legislation.gov.uk/ukpga/1982/48/section/32>

to fire or flooding, resulting in it being unsafe for habitation or overcrowding), the powers under this Act would not be available.

Scottish Ministers do have powers in terms of [section 39\(6\) of the Prisons \(Scotland\) Act 1989](#) to create a regime of temporary release for sentenced prisoners, which could theoretically be activated in such an emergency. However, the prisoners would be required to return to prison at a later date to complete the remainder of their sentences, and it would not be permissible to run this temporary release up to the scheduled end of a prisoners' sentence. In light of this, these temporary release arrangements would be likely to create substantial practical problems for the prison, and badly disrupt the lives of the released prisoners – at a time when the priority would be to reduce operational demands on the prison service and enable them to respond to the underlying crisis.

It is essential that our prisons are safe and well run – to ensure the well-being of prisoners and staff. In circumstances where prisons become unsafe and put those living and working there at risk, it is the duty of Government to act to restore good order and enable the prison authorities to manage the situation effectively.

We are therefore seeking views on whether a wider executive release power should be available, should Scottish Ministers be required to react immediately in exceptional circumstances. This could include, for example, a prison (or part of a prison) becoming uninhabitable due to fire or flood, or a prison becoming unsafe due to overcrowding.

The intention is that this power would only be used in exceptional circumstances such as those outlined above, where it would be a contingency measure to ensure the safe operation of the prison estate.

Question 31

To what extent do you agree or disagree with the introduction of an executive power of release, for use in exceptional circumstances?

Strongly agree
Somewhat agree
Somewhat disagree
Strongly disagree

Please give reasons for your answer.

Question 32

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

Please provide details.



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CONSULTATION ON BAIL AND RELEASE FROM CUSTODY ARRANGEMENTS

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Full name or organisation's name

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The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

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The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

☐ Yes

☐ No



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SOCIAL POLICY - POLICY DEVELOPMENT AND SCRUTINY PANEL

UNACCOMPANIED ASYLUM SEEKING CHILDREN – WEST LOTHIAN POSITION

REPORT BY HEAD OF SOCIAL POLICY

A. PURPOSE OF REPORT

The purpose of the report is to advise the Social Policy PDSP of the current position in relation to Human Trafficking and Unaccompanied Asylum Seeking Children (UASC) in West Lothian.

B. RECOMMENDATION

It is recommended that the Panel:

1. Notes the position in relation to UASC in West Lothian.
2. Notes the introduction of a mandatory National Transfer Scheme (NTS) in the UK

C. SUMMARY OF IMPLICATIONS

I	Council Values	<p>Focusing on our customers' needs.</p> <p>Being honest, open and accountable.</p> <p>Making best use of our resources.</p> <p>Working in partnership</p>
II	Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	<p>Human Trafficking and Exploitation (Scotland) Act 2015</p> <p>Immigration Act 2016</p> <p>Social Work (Scotland) Act 1968</p> <p>Children and Young People (Scotland) Act 2014</p>
III	Implications for Scheme of Delegations to Officers	No implications.
IV	Impact on performance and performance Indicators	N/A
V	Relevance to Single Outcome Agreement	<p>Children have the best start in life</p> <p>People most at risk are protected and supported to achieve improved life chances</p>
VI	Resources - (Financial,	None

Staffing and Property)

VII Consideration at PDSP	None
VIII Other consultations	COSLA regarding the change from a voluntary National Transfer Scheme (NTS) to a mandatory NTS

D. TERMS OF REPORT

D.1 Background

West Lothian has a history of providing support to children and young people who were either Unaccompanied Asylum-Seeking Children (UASC) or subject to trafficking.

In 2020-21, 15 UASC were being looked after in West Lothian. For the most part young people in these circumstances are accommodated in the Council's internal residential provision to enable staff to complete a human rights and age assessment if necessary. They are treated the same as any looked after child and is subject to the same child protection and looked after child processes. Staff are trained in these assessments and also utilise interpreters as required.

Young people have previously tended to be discovered either in illicit premises where young people are working for little or no pay or they are discovered by police having been let out of vehicles on secluded roads where the young person walks into a residential area.

In addition to UASC identified in West Lothian, there was a UK wide Voluntary National Transfer Scheme (NTS) whereby children and young people who arrived disproportionately in one UK Local Authority area could be moved on a voluntary basis to another area to be cared for and receive the placements that they critically need.

West Lothian voluntarily participated in this scheme but did not receive any UASC on a voluntary basis. and welcomed the first two UASC into its care as a part of the new mandatory NTS scheme on 16 December 2021

D.2 Changes to the National Transfer Scheme

Following consultation in 2020 a new NTS rota was introduced in Scotland from October 2021, based on the same weighted approach being taken in the English regions. This has resulted in a commitment for Scottish councils to take 45 young people out of every 'cycle' of 650 requiring placements through the NTS.

Not all local authorities agreed to voluntarily participate in the new NTS which had an impact on participating local authorities as they were asked to identify additional suitable placements.

On 23 November the UK Government served notice on councils across the UK that they will now be required to participate in the National Transfer Scheme (NTS) for unaccompanied asylum-seeking children (UASC).

It is understood that this decision has been taken as a result of the scale of arrivals of UASC via small boats on the English Channel. The Minister has stated that there is a need to make the scheme mandatory in order that every local authority in the UK plays its part in managing this crisis.

Under the mandatory rota, Scotland has been allocated 44 UASC placements per 652 cases, and all local authorities have received notification of their allocation.

Under the previous scheme West Lothian was originally allocated 2 UASC placements per 650, under the new mandatory NTS this has changed to 1 UASC per 652.

E. CONCLUSION

West Lothian has experienced a number of instances of human trafficking in recent years and provides a good level of care and support to those young people.

Under the new mandatory NTS scheme, West Lothian welcomed its first two UASC into its care on 16 December 2021.

In the design of its services, Social Policy is making allowances for UASC and is working with its accommodation providers in how young people can transition into independent living.

F. BACKGROUND REFERENCES

Appendices: None

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Date: 7th January 2022

DATA LABEL: PUBLIC



SOCIAL POLICY - POLICY DEVELOPMENT AND SCRUTINY PANEL

REDESIGN OF INTENSIVE & CRISIS SUPPORT SERVICES - FAMILIES TOGETHER

REPORT BY HEAD OF SOCIAL POLICY

A. PURPOSE OF REPORT

The purpose of the report is to inform the Panel of the redesign of intensive and crisis support services in West Lothian and the evaluation the Families Together Service.

B. RECOMMENDATION

It is recommended that the Panel notes the work that has been undertaken through the redesign of intensive and crisis support services in West Lothian and the evaluation of the Families Together Service

C. SUMMARY OF IMPLICATIONS

I Council Values	<ul style="list-style-type: none"> • Focusing on our customers' needs. • Being honest, open and accountable. • Making best use of our resources. • Working in partnership
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	<p>Children and Young People (Scotland) Act 2014</p> <p>The Looked After Children (Scotland) Regulations 2009</p> <p>Children's Hearing (Scotland) Act 2011</p>
III Implications for Scheme of Delegations to Officers	No implications.
IV Impact on performance and performance Indicators	There is a robust suite of both high level and management performance indicators covering both looked after children and child protection Achieving a shift in the balance of care
V Relevance to Single Outcome Agreement	<p>Significantly reducing the number of young people accommodated at a time of crisis</p> <p>People most at risk are protected and supported to achieve improved life chances</p>
VI Resources - (Financial, Staffing and Property)	None
VII Consideration at PDSP	None

VIII Other consultations None

D. TERMS OF REPORT

D.1 Background

As part of the Transforming Your Council (TYC) Programme Social Policy is required to make efficiencies of £3.635 million. The intensive and crisis support element and introduction of the Families Together Service has been designed to help deliver savings connected to shifting the balance of care (such as reducing the number of children and young people accommodated within residential schools, etc).

D.2 Overview

In recent years West Lothian Council has been successful in reducing the number of children and young people entering external resources such as secure care, residential schools and education day provision. However, in order to achieve further reductions, and to deliver efficiencies, significant service redesign was required. This has involved a further change in the balance of care for looked after children as well as a robust multi-agency approach to early intervention and prevention.

In November 2018, it was agreed that the preferred model for the delivery of Intensive and Crisis Support in West Lothian would be multi-disciplinary with key disciplines co-located and to enable them to can work effectively together to ensure that children at risk of accommodation receive immediate access to the correct type of support.

Learning from the success of similar initiatives in other areas, it was agreed that the team would include staff from the following disciplines alongside family support workers and managers:

- Speech and Language Therapy
- Mental Health Staff – ideally a psychologist and mental health link worker
- Outreach Teaching staff
- Outreach Foster carers
- Family Group Decision Making

The new service is central to achieving the following two key aims:

1. Achieving a shift in the balance of care
2. Significantly reducing the number of young people accommodated at a time of crisis

In the new model services users are assessed by need, rather than by age. Although a significant proportion of crisis work is with teenagers, the eligibility criteria for the service is “children who are assessed as in crisis or are likely to be accommodated if appropriate immediate intensive support is not provided”. The new model builds on the success of the existing Whole Family Support Service, which offered intensive support using a family intervention approach.

In order to resource a team of the size and skill base required, increased financial support was required to provide intensive support.

The long-term intension is to fund an intensive support and crisis intervention service through the transfer funds from savings made elsewhere, for example within the residential units. The support is required to be delivered in a way which reduces the number of children accommodated in residential care. The plan was that the unused residential accommodation could potentially provide a base for the new service to operate from while a room would be dedicated for safe space overnight provision. Outreach foster care and emergency foster care provision would be built into the model so that a range

of crisis supports would be employed with the view to retain children at home and return them swiftly should a period of respite be required.

D.3 Challenges

It was recognised that the development of this new model had a range of associated challenges and risks. These included the possibility that the new team would not be able to prevent all crisis accommodations or avoid escalation to out of authority placements, alongside the fact that the three residential houses were at capacity.

D.4 Investment and development

In order to progress this workstream, a one-year bridging arrangement was agreed to create capacity within the residential houses and develop the approach skills and experience of staff in supporting this cohort of children and young people.

It was also agreed to significantly increase the capacity of the Whole Family Support Service to focus on crisis work, children at imminent risk of accommodation and those accommodated in a crisis. The intention was that this team would be trained and supported to respond to situations which currently result in young people being accommodated in a crisis and supporting children to return home quickly if they are accommodated in a crisis, thus providing the opportunity to test the model locally and work to reduce the numbers of children in the residential houses.

Funding was also made available for Family Group Decision Making Co-ordinators to help identify supports within extended family networks.

The intention was that the learning from the team would be used to identify the specific skill set and mix of disciplines required to create a robust Intensive and Crisis Support Service specific to the needs of West Lothian.

Based on the predicted levels of support required to avoid crisis accommodations, drawn from estimates from practice teams and experience within the Whole Family Support Service. The following additional staff were recruited:

- 1 Team Manager (Band I)
- 9 Family Support Workers (Band F)
- 2 FGDM co-ordinators

The staff were recruited and the team formed in December 2019.

D.5 Families Together

The approach used by the team is Family Intervention: an intensive keyworker approach. Each worker works intensively and creatively with a small caseload of young people and their parents/carers, supporting them to improve relationships, build resilience, change negative behaviours, improve educational engagement and live successfully within the community.

Families Together consists of 18 Family Support Workers from a range of professional disciplines. In addition, the team is co-located alongside 3 Family Support Workers from the Looked After Children Attainment Team, a joint Education and Social Policy initiative, funded by the Scottish Government, which aims to improve the educational outcomes for West Lothian's, Looked After Children. It was hoped that this culture of joint work between Education and Social Policy would extend across Families Together.

The team was initially managed by 2 Full Time Team Managers and this recently increased to three managers.

The Family Support Workers work across West Lothian, with two main bases at Strathbrock Homeless Unit and Letham Young Persons Centre. The service is open from 0730 – 2200 during the week and 0900 – 2300 at weekends.

D.6 Evaluation of Families Together

An evaluation of the Families together was completed in December 2020 the evaluation noted the following:

D.7 Referrals

The Families Together Screening Group received a total of 116 referrals for consideration between 01/01/2020 and 02/11/2020 as detailed below:

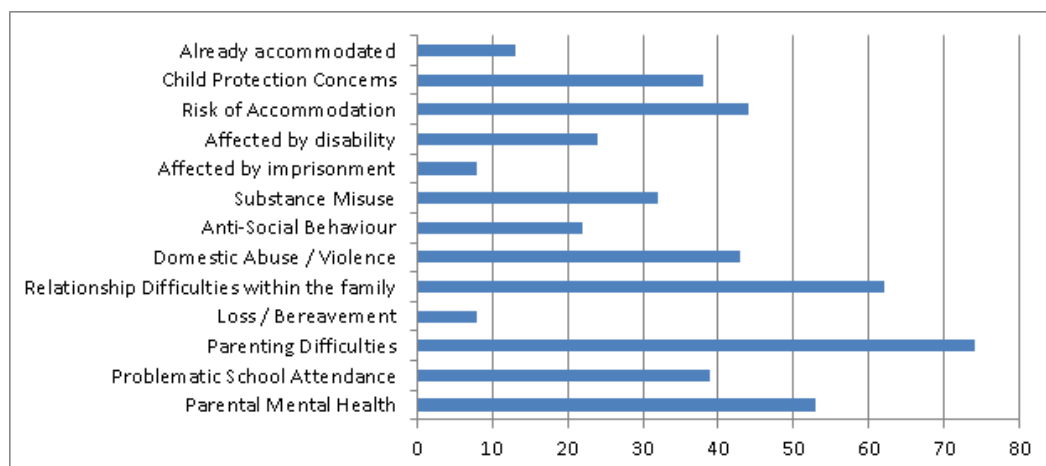
Breakdown of Referral sources		Breakdown of Referral Outcome	
Children & Families North Team	28	Families Together	62
Children & Families South Team	20	Children 1 st (FGDM & COZ)	10
Duty & Child Protection Team	19	Early Years Services	5
Education	14	Early Intervention Services	4
CDS	8	CDS	3
Health	7	MHWB	4
CAMHS	5	Circle	2
Youth Justice	4	YAP	2
Early Intervention Services	2	More Info Required	12
Early Years Services	2	Referral not Appropriate	3
Other	7	Other	9
Total	116	Total	116

D.8 Caseload

- Between 01/01/2020 and 02/11/2020 Families Together supported a total of 146 families at various stages of intervention.
- Between 01/01/2020 and 02/11/2020 Families Together ended their involvement with 40 families, 29 families reached the end of a period of intensive family support, and 10 families were closed after a short period of support: of these 2 required support only for a brief period, 5 decided they did not want Families Together support, 1 was assessed as an inappropriate referral, 1 was moved to secure accommodation and 1 was supported during the move to another placement.
- Families Together are supporting a total of 20 families who were referred in a crisis, this represents 33 children between ages of 2-16. These cases are included in the current families receiving support
- The average length of interventions is around 265 days, roughly 8 and a half months
- There were 46 crisis referrals over the evaluation timeframe. A sample of 20 cases was undertaken.
- Of the 20 children; 11 children were deemed at risk of accommodation out with their family at point of referral. None were brought into alternative care provision during the period of Families Together involvement

D.9 Presenting Issues

The key presenting issues are detailed below:



D.10 Outcomes

The key outcome achieved was that children at risk of accommodation have remained at home as detailed below:

- OPEN CASES - 46 out of 52 (88%) children who were at risk of accommodation have remained at home. 7 children became accommodated, 6 of which children were at risk and 1 that was not considered a risk at the beginning of intervention
- CLOSED CASES - 29 out of 33 (90%) children who were at risk of accommodation have remained at home
- Children already accommodated were returned home:
- OPEN CASES - 5 out of 12 (41%) children who were accommodated at entry were successfully returned home, 7 children currently remain in accommodation.
- CLOSED CASES - 2 out of 2 (100%) children who were accommodated at entry were successfully returned home during Families Together involvement.

D.11 Shifting the Balance of Care

The table below shows that the service was successful in supporting a shift in the balance of care, with a significant reduction in the number of young people, aged 11plus starting to be Looked After.

Young People Starting to be Looked After – Age 11 Plus

	Dec 18 – Dec 19	Dec 19 – Dec 20
Residential School	1	1
Residential Unit	7	1
Secure Accommodation	1	1
Foster Care	9	6
Friends/Relatives/Kinship	14	8
TOTAL	32	17

D.12 Crisis Work

Families Together workers reported that they had adopted different models of crisis intervention on a case to case basis. When dealing with a crisis where the child was in danger of becoming accommodated a strength-based model of intervention was

adopted, and was most effective where families were encouraged to look at their skills and strengths to come up with shared solutions, plans and goals.

Once the initial crisis passed the team shifted their focus onto more intensive interventions with the onus being on longer term plans to enable the families to identify their abilities, strengths and skills. This was done with a supportive and nurturing approach to enhance the family's ability to manage their issues in a positive manner.

The evaluation notes that there was a clear understanding of the needs of young people and that working on a 1-1 basis helped with personal safety and the consequences, self-esteem and confidence. It was also noted that the consistency of allocated Family Support Worker was key to establishing good relationship with families and achieving positive outcomes.

It was noted that Families Together worked extensively with the Duty and Child Protection Team, Practice Team's and SCET (Social Care Emergency Team). A shared planner was used to track all of the duty work and to ensure a shared understanding of what was required.

The evaluation highlighted the importance of responding at crisis point as it allowed for intensive work to begin early and help with reflection on issues and behaviours. It is noted that this resulted in service users being more open to accessing and accepting support and guidance.

The key positive outcomes resulting from this work included:

- lower levels of children and young People escalating into Foster Care or Residential houses
- children and young people being supported to remain cared for by their own parents or family members with support and relationships developed and repaired;
- families feeling supported and developing coping skills and confidence, and families feeling empowered.

D.13 Intensive Support

In keeping with Family Intervention principles, Whole Family Support Service staff were allocated 5 to 8 families each, at various stages of intervention and intensity.

This family intervention approach is still applied, however in order to ensure that staff had adequate space to respond effectively to the crisis referrals, caseloads were limited to 6 families per worker.

There has been a lot of valuable learning during the pilot period. Clearer referral criteria are in place and the service works closely with SCET to establish good joint working practice and avoid duplication.

Feedback from stakeholders and families notes that the flexible working hours are crucial to the success of the service, as is the creativity and flexibility of the staff in responding to assessed need.

The evaluation notes that a range of approaches are used including crisis intervention and task centre work and that building robust relationships is essential to the success of positive outcomes for any family.

Letham young person's unit has been furnished to include a chill out/sensory room, art room, games room, kindles, x box, guitars, tv, nail kit, house corner and toys etc. Letham has been used as a Space for children/young people/families to relax, reflect

, talk through issues; or focus on an activity such as art, games, baking. It will also be used for focussed work with allocated families and rooms can be booked by other professionals e.g. Social Work, LAC Teachers, Champions Board etc.

D.14 Family Group Decision Making

Since April 2020 Children First have been contracted to deliver a combined FGDM and Kinship Care and Support service in West Lothian to children, young people and families affected by Mental Health issues.

This service is enhanced by the provision of advocacy, emotional wellbeing support, support with the family plan, money advice and in particular kinship care support, as required by The Children and Young people (Scotland) Act 2014-part 13 Section 71.

D.15 Referral's

The Family Wellbeing Service has recorded the following data in relation to FGDM, Kinship Support, YP MHWB.

Quarter 1 1st April – 30th June 2020

FGDM	Kinship Care Support	Early Intervention – Young People
16 Family referrals (19 children)	9 family referrals (13 children and 11 carers)	3 referrals for young people including support for 4 parents
21 children work toward family meeting/review	22 families continued support (30 children)	13 ongoing interventions with YP including family work with 12 parents
2 family meeting and 1 review	43 children remained or continued in kinship care	2 teenagers returned home following family meetings 1 teenager remained in care of local authority
2 family referrals closed, 1 did not want FGDM, 1 child remained with family	2 family referrals were closed	1 intervention was closed

Quarter 2 1st July – 30th September 2020

FGDM	Kinship Care Support
22 new family referrals (39 children)	6 Referrals (8 carers and 6 children)
27 children worked towards family meeting from previous quarter	21 families continued support (24 carers and 29 children)
13 Family meetings (10 initial, 3 reviews)	1 support to family was closed – support not required family settled.
8 referrals closed - all children remained within family	

D.16 Overview of the findings of the Evaluation

The evaluation noted that the number of children in residential care has remained low throughout the period of the pilot and highlighted that the team were generally successful in supporting children to remain at home (88% of children referred who were assessed as at risk of accommodation and 100% of those referred in a crisis).

It did highlight however, that parenting skills and practical skills did not improve at the rate that they did normally within WFSS. It is likely that this is due to the reduction of home visiting caused by COVID restrictions and the reduction in time spent with allocated families due to the high level of duty and crisis work undertaken over recent months.

It also noted that Letham had been used successfully as a cooking off space provision for families in crisis but that there was no overnight use of Letham for children at risk of accommodation. The main reason for the lack of overnight use was staff availability at short notice.

The evaluation notes that parenting difficulties, relationship difficulties and poor parental mental health are the most significant issues affecting all families referred.

E. CONCLUSION AND FUTURE DEVELOPMENTS

The investment in Families Together has been beneficial to children, young people and their families in West Lothian. The service has been well received by partner agencies. The service has been effective in assisting to reduce the numbers of children and young people accommodated in residential resources or out with their local communities. Family Group Decision Making has been intrinsic to the success of the service.

Following positive evaluation of the pilot, Families Together is currently in the process of recruiting, so there will be twenty permanent family support worker posts and there will continue to be three team managers. Letham has now been utilised as an overnight provision for young people, which has prevented accommodation. The plan is to have standby staff availability so there are assurances of being able to staff Letham overnight when required.

F. BACKGROUND REFERENCES

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Jo MacPherson, Head of Social Policy

Date: 7th January 2022

DATA LABEL: PUBLIC



SOCIAL POLICY - POLICY DEVELOPMENT AND SCRUTINY PANEL

ADULT SUPPORT AND PROTECTION PRE-INSPECTION ACTIVITY

REPORT BY HEAD OF SOCIAL POLICY

A. PURPOSE OF REPORT

The purpose of this Report is to update the Development and Scrutiny panel on the range of activity related to Adult Support and Protection including preparation for the forthcoming planned inspection.

B. RECOMMENDATION

It is recommended that the Social Policy, Policy Development and Scrutiny panel

1. Notes the range of activity currently being undertaken in respect of Adult Support and Protection;
2. Notes that whilst a date has yet to be set for the forthcoming joint inspection that a range of pre-inspection activity has been completed in anticipation of this.

C. SUMMARY OF IMPLICATIONS

I Council Values

- Focusing on our customers' needs
- Being honest, open and accountable
- Making best use of our resources
- Working in partnership
- Providing equality of opportunity
- Developing employees

II Policy and Legal

In compliance with the Code of Corporate Governance

Adult Support and Protection (Scotland) Act 2007

III Implications for Scheme of Delegations to Officers

None

IV Impact on performance and performance Indicators

None

V Relevance to Single

The indicators support the outcomes in the

	Outcome Agreement	Single Outcome Agreement
VI	Resources - (Financial, Staffing and Property)	All commitments are consistent with the Council's budget decisions
VII	Consideration at PDSP	N/A
VIII	Details of consultations	N/A

D. TERMS OF REPORT

D1 Background

Public protection encompasses many different strategic approaches and responses to keeping children and adults safe within our communities. There are six main areas to public protection and these include:

- Child Protection
- Adults Support & Protection
- Multi-Agency Public Protection Arrangements (MAPPA)
- Alcohol & Drug Partnerships
- Violence against Women and Girls
- Suicide Prevention.

D1.1 There are a number of key pieces of legislation that support officers in undertaking their duties, the main piece of legislation being the Adult Support and Protection (Scotland) Act 2007. This sets out the definition of an adult at risk and the types of harm an adult at risk may be exposed to.

D1.2 This legislation also states that each council has a statutory duty to establish an Adult Protection Committee (APC).

D1.3 The West Lothian Adult Protection Committee (APC) has a leadership role in working with partners to ensure the continuous improvement of adult protection services in West Lothian. The Committee provides clear links with wider adult support services and reinforces and develops, through joint multi-agency practice, the integration of adult support and protection services across West Lothian.

D.2 The Adult Support and Protection (ASP) Programme.

The Adult Support and Protection Programme, led by the Care Inspectorate, in collaboration with Her Majesty's Constabulary Scotland (HMICS) and Health Improvement Scotland, was temporarily suspended due to the impact of Covid-19. In March 2021 the Cabinet Secretary for Health and Sport asked for the programme for inspection to resume and, following a review of the programme, include consideration of how each partnership responded to the pandemic and kept adults safe.

D.2.1 The purpose of joint inspection is to seek assurance that adults at risk of harm in Scotland are supported and protected by existing national and local adult support and protection arrangements. The inspection programme is one element of an overall Scottish Government improvement plan.

D.2.2 The ASP Joint Inspection Programme Partners will focus on assessing the delivery of key processes and leadership for Adult Support and Protection within each local authority and then reporting on their findings.

D.2.3 It should be noted that the ASP Joint Inspection Programme Partners have made a change to their notifications for inspection. Inspection Partners had previously provided simultaneous advanced notification of inspection to a number of partnership areas. For the next 3 months, they will notify and work with specified partnership areas for the purpose of inspection. This takes into consideration the anticipated and unanticipated pressures that partnerships will experience over the coming winter months.

D.2.4 There is an expectation that all outstanding local partnership inspections will be completed within the next 2 years. At this time there is no date set for the inspection in West Lothian however, a range of pre-inspection work is already underway in preparation for the inspection.

D.3 Pre-Inspection Activity

In preparation for the inspection partners in West Lothian will prepare a multi-agency position statement and collate key documents to use as evidence to demonstrate what and how local Adult Support and Protection arrangements operate.

D3.1 A wide range of activities have also been undertaken in preparation for the inspection, these include:

- activities within the WLHSCP to raise awareness about the purpose of the inspection including its format, purpose and Quality Indicators;
- undertaking a multi-agency self-evaluation exercise with practitioners
- undertaking a multi-agency audit of those adult support and protection cases which progressed to an adult protection meeting held
- reviewing its Adult Support and Protection policies and procedures
- the delivery an Adult Support and Protection presentation to elected members
- the development of a schedule of staff engagement activities linked to bite size skills – based sessions scheduled to acknowledge areas of strength and areas for continuous improvement;
- the development of a quarterly ASP newsletter to all in the WLHSCP about the findings from completed pre-inspection activity.

E. CONCLUSION

There is a range of multi-agency activity that has either been completed or planned in the coming three months (January – March 2022), all of which is aligned to the Joint Inspection of Adult Support and Protection Quality Indicator Framework. The action plan and risk log are reviewed at fortnightly meetings with the three inspection leads and the Lead Officer. The Lead Officer also provides six-weekly reports to both the chair of the Adult Protection Committees and Quality Assurance sub-committee on progress and outstanding actions or areas of concern.

F. BACKGROUND REFERENCES

The ASP Joint Inspection Programme Partners change to their notifications for inspection update can be found on the Care Inspectorate website:<https://www.careinspectorate.com/index.php/joint-inspections/adult-support-and-protection>.

Winter edition of the West Lothian Adult Protection Committee - Adult Support and Protection Newsletter:
[ASP Dec 2021 Newsletter](#)

Appendices/Attachments: None

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Jo Macpherson, Head of Social Policy

Date: 7th January 2022

DATA LABEL: PUBLIC



SOCIAL POLICY DEVELOPMENT AND SCRUTINY PANEL

2021/22 FINANCIAL PERFORMANCE – MONTH 6 MONITORING REPORT

REPORT BY HEAD OF FINANCE AND PROPERTY SERVICES

A. PURPOSE OF REPORT

To provide the Panel with an update on the financial performance of the Social Policy portfolio.

B. RECOMMENDATION

It is recommended that the Panel:

1. Notes the financial performance of the Social Policy portfolio as at month 6;
2. Notes that the Social Policy portfolio position at month 6 is part of the overall council budget position which was reported to Council Executive on 16 November 2021;
3. Notes any actions required to be taken by Heads of Service and budget holders to manage spend within available resources.

C. SUMMARY OF IMPLICATIONS

I Council Values	Focusing on customers' needs, being honest, open and accountable, making best use of resources, working in partnership.
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Local Government (Scotland) Act 1973, Section 95; Local Government in Scotland Act 2003, section 1-14.
III Implications for Scheme of Delegations to Officers	No implications at this stage.
IV Impact on performance and performance indicators	Effective budget management is an essential element of service performance. Additional financial reporting provides elected members with information to allow for proper scrutiny of performance of services.
V Relevance to Single Outcome Agreement	The revenue budget provides resources necessary to help deliver the Single Outcome Agreement. Effective prioritisation of resources is essential to achieving key outcomes.
VI Resources – (Financial, Staffing and Property)	A projected underspend of £0.230 million is the position for the Social Policy portfolio revenue budget in 2021/22 based on the month 6 monitoring.
VII Consideration at PDSP	A financial performance report is presented to the Panel twice yearly on an ongoing basis.
VIII Other Consultations	Depute Chief Executives, Head of Social Policy,

D. TERMS OF REPORT

D.1 Introduction

This report provides an update on the general fund revenue financial performance in respect of the Social Policy Policy Development and Scrutiny Panel (PDSP) portfolio of services. The council's revenue budget is operationally managed at a Head of Service level, and the financial position included within this report formed part of the overall council position which was reported to Council Executive on 16 November 2021. This report also includes the position on the delivery of approved budget reduction measures relevant to the Social Policy portfolio for 2021/22.

The budget monitoring process is undertaken in line with the council's budgetary control framework and procedures, which place particular focus on a risk based and pro-active approach to budget monitoring.

This report focuses on the financial performance of council services which further enhances the information presented to elected members to allow scrutiny of service and financial performance. The report contains reference to key performance measures for service areas which are contained within Service Management Plans and referenced in the 2019/20 Local Government Benchmarking Framework (LGBF) data-set. LGBF data for 2020/21 will be collated by the Improvement Service and will be made available later in the financial year. The cost information for the LGBF for 2020/21 and 2021/22 will be materially impacted by Covid-19 related changes to expenditure and income.

D.2 Financial Information for 2021/22 Month 6 Position

The table below summarises the position in relation to service expenditure for the portfolio area. As part of the monitoring exercise, a number of key risks and service pressures have been identified and these are noted in the narrative for the relevant service area.

Service	Budget £'000	Month 6 Forecast £'000	Variance £'000
IJB Functions			
Care Homes & HWC	11,478	11,935	457
Occupational Therapy	1,692	1,445	(247)
Mental Health	4,258	4,125	(133)
Older People	29,338	28,813	(525)
Reablement/Crisis Care	3,995	4,213	218
Learning Disabilities	20,665	20,850	185
Physical Disabilities	7,407	7,452	45
Net IJB Variance	78,833	78,833	0
Non-IJB Functions			
Criminal Justice	3,153	2,955	(198)
Child Care & Protection	16,196	16,762	566
Placement Services	8,440	8,439	(1)
Early Years Change Fund	103	20	(83)
Child & Family Support	4,337	3,748	(589)
Support	2,178	2,253	75
Net Non-IJB Variance	34,407	34,177	(230)
Net Social Policy Position	113,240	113,010	(230)

D.3 Summary of Main Issues in Service Expenditure Budgets and Impact on Performance

D.3.1 General Fund Revenue – Social Policy

The forecast position for IJB delegated functions is breakeven, and the forecast position for non-IJB social care functions is an underspend of £230,000.

There remain a number of pressure areas in IJB delegated functions, which are offset by underspends and future savings. Internal care homes for older people continue to be a recurring pressure, where additional agency and locum costs are being incurred to cover for staff absence and vacancies. Internal care at home services also have high agency costs in order to support hospital discharges and reduce the level of unmet need. In both areas there is a focus on recruitment in order to reduce costs.

In external care homes, the opening of a new elderly care home in Livingston is expected to increase costs in this area, and allowance for this has been built into the forecast. There is also high demand for care at home services for elderly and learning disabilities in particular, with higher than expected growth in this area.

Additional costs relating to Covid-19 included in the IJB Mobilisation Plan for social care are currently forecast to be in the region of £5.912 million for 2021/22, which includes sustainability and PPE payments for care providers, lost income and staff costs for sickness cover and remobilisation.

This is being closely monitored with actual additional costs still subject to uncertainty around the ongoing implications of Covid-19 over the remainder of 2021/22.

The forecast reflects the assumption that additional Covid-19 costs will be fully funded through IJB reserves and additional funding from the Scottish Government.

For Non-IJB areas, there is a recurring pressure in external residential schools. This is due to a high number of placements over the last financial year, where there was a lack of alternative options.

There is also a pressure in Continuing Care, where there are young adults who would normally transition from the Child Disability Service to an adult resource, but this has been affected by delays to the opening of the new complex care unit in Livingston. This is being managed in the short term through staffing underspends relating to future savings

D.3.2 General Fund Revenue – Monitoring of approved budget reductions

For the Social Policy portfolio, savings in 2021/22 have been delivered in full and good progress is being made to deliver the remaining reduction measures within the portfolio area in 2022/23.

E. SUMMARISED BUDGET POSITION FOR 2021/22

The net expenditure forecast position at month 6 is £0.230 million less than the budget within the General Fund Revenue budget for the Social Policy portfolio. The position for the Social Policy portfolio is part of the overall council outturn forecast for 2021/22, which is a breakeven position, and this was reported to Council Executive on 16 November 2021.

F. FUTURE BUDGET ISSUES AND RISKS

There remains significant risks and uncertainties associated with the financial assumptions in the council's budget which continue to be monitored, including the continuing impact of Covid-19 and the recovery from it.

Looking ahead, there remains risk and uncertainty around the financial position and it is essential that savings are progressed to implementation and where material pressures remain, mitigating actions are taken to ensure existing pressures are managed on a recurring basis. Future pay awards will also be a key risk going forward.

Specifically for the Social Policy portfolio, the key risks and uncertainties include the impact of Covid-19 on the market for external suppliers and a potential increase in the requirement for Social Care. Sickness absence levels and above inflationary contractual price changes are risks that can affect services across the portfolio area and are monitored closely.

The council's risk based approach to budget monitoring will ensure that effective action is taken to manage risks during the course of the financial year. Officers will continue to provide updates on risks as part of the quarterly budget monitoring reporting to Council Executive at period 4, 6 and 9.

G. CONCLUSION

The forecast position for the Social Policy portfolio is an underspend of £0.230 million. As noted, the position for the Social Policy portfolio is part of the overall breakeven outturn forecast for 2021/22 which was reported to Council Executive on 16 November 2021.

H. BACKGROUND REFERENCES

1. Council Executive 2021/22 General Fund Revenue Budget – Month 6 Monitoring Report – 16 November 2021
2. Local Government Benchmarking Framework

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Donald Forrest

Head of Finance and Property Services

Date: 7 January 2022

Social Policy – Policy Development and Scrutiny Plan – Workplan

Title	Responsible Officer	Date of PDSP	Notes/Comments
4th March			
Financial Performance Report	FMU	4 th April	
Performance Report Q3	Tim Ward/ Susan Mitchell/ Pamela Main/ Robin Allen	4 th April	
17th June			
Social Policy Contracts Activity Report	Pamela Main	17 th June	
Social Policy Management Plan	Jo MacPherson	17 th June	
Duty of Candour Annual Report	Pamela Main	17 th June	
Children's Social Work Statistics	Susan Mitchell/ Tim Ward	17 th June	
Financial Performance Report	FMU	17 th June	
Performance Report Q4 and Annual	Tim Ward/ Susan Mitchell/ Pamela Main/ Robin Allen	17 th June	