



Law Society
of Scotland

Written evidence

Bail and Release from Custody (Scotland) Bill

September 2022



Nevertheless, the proposals in this Bill are welcomed as they contain some significant improvement to the current arrangements.

We note the findings of Scottish Crime and Justice Survey 2019/20, which found that 35% of the public were confident that appropriate sentences are given which fit the crime⁴. As the survey report notes, it is unclear whether this indicates that sentences are too lenient or too severe, which would need to be explored in a future survey. It is crucial that there is public confidence in the justice system and its outcomes. The proposals regarding release from custody, if implemented, will need to be adequately communicated to the public and accompanied by research to understand whether the objectives of these reforms are being achieved.

⁴ [Scottish Crime and Justice Survey 2019/20: Main Findings \(www.gov.scot\)](http://www.gov.scot)

Consultation questions

Section 1: Input from justice social work in relation to bail decisions.

What are your views on this proposal?

We welcome this proposal and note that there is reference within the consultation paper to additional funding requirements. We state that there should be no doubt that these proposals will require substantial additional funding and personnel.

Section 2: Grounds for refusing bail.

What are your views on this proposal?

We note that each case appearing before the court is different in its own facts and circumstances. We note that judges currently give consideration to these matters and grant bail in each case on the basis of their own particular merits.

Section 3: Removal of bail restrictions.

What are your views on this proposal?

We note and welcome the proposal to abolish section 23D of the Criminal Procedure (Scotland) Act 1995.

Section 4: Stating and recording reasons for refusing bail.

What are your views on this proposal?

Each case appearing before the court is different. We note that judges currently give consideration to these matters and grant bail in each case on the basis of their own particular merits. We appreciate that any requirement for Judges to provide written reasons for remand decisions will create additional time and pressure constraints on custody courts. Conversely, given that a person's liberty is to be taken from them, it does seem appropriate that written reasons for this should be provided. As such we agree with the proposals set out in the Bill.

Section 5: Consideration of time spent on electronically monitored bail in sentencing.

What are your views on this proposal?

We are of the firm view that time spent on electronically monitored bail should be taken into account at the point of sentencing. Often an accused can be on bail, with stringent conditions attached, for many months. Electronic monitoring whilst on bail is the equivalent of a Restriction of Liberty Order (ROLO).

Section 6: Prisoners not to be released on certain days of the week.

What are your views on this proposal?

We believe that the proposals set out in the Bill are appropriate step provided that no person exceeds the duration of their sentence as a result.

Section 7: Release of long-term prisoners on reintegration licence

What are your views on this proposal?

We note that good behaviour, completion of education or rehabilitation programmes demonstrate an individual's suitability for early release, or to complete their sentence in the community. It remains important that each individual's circumstances are determined on their own merit, and that these activities do not become a 'tick box' exercise to demonstrate suitability.

Section 8: Emergency power to release prisoners early.

What are your views on this proposal?

We agree that there should be an emergency power of release. This should not be as broad a power as in England and Wales, where 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. Rather, this should be allowed in exceptional circumstances in which it would otherwise not be possible to safely manage the prison estate. This could include circumstances such as faced during the pandemic, or fire, flooding or other emergencies noted in the Bill.

Section 9: Duty to engage in planning for the release of prisoners.

What are your views on this proposal?

We have no comment to make here.

Section 10: Throughcare support for prisoners.

What are your views on this proposal?

We note from the Bill that there should be a general duty on public services, to ensure the public and third sector services are aware of and able to meet the needs of individuals on release. So often those who serve short sentences are released without any form of support package available to them. As such, we welcome this proposal. However, we do note that this will depend on providing Public Services with adequate funding and personnel.

We welcome the inclusion of the standards to be placed in legislation. This may assist in ensuring that services are available locally across Scotland, but also to standards set nationally, to ensure a consistent approach.

Section 11: Provision of information to victim support organisations.

What are your views on this proposal?

We are of the view that there would need to be clarity around what information was to be shared. We consider that wider data sharing would need to be carefully considered, to ensure that there is a lawful basis for the processing, that the information shared is proportionate and that this information is held only for so long as is relevant for that processing.

Do you have any other views on the Bill?

We have no comment to make here.



For further information, please contact:

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