

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

ABOUT

Scottish Women's Aid ("SWA") is the lead organisation in Scotland working towards the prevention of domestic abuse and plays a vital role in campaigning and lobbying for effective responses to domestic abuse. SWA is the umbrella organisation for 34 local Women's Aid organisations across Scotland; they provide practical and emotional support to women, children and young people who experience domestic abuse. The services offered by our members include crisis intervention, advocacy, counselling, outreach and follow-on support and temporary refuge accommodation.

Introduction

Domestic abuse offending has serious and long-lasting consequences for women's enjoyment of their human rights, including their right to health and access to justice. Under international human rights law, governments must act with "due diligence" to protect women from, domestic abuse and other forms of gender-based violence. As highlighted by the UN Committee on the Elimination of all forms of Discrimination Against Women (CEDAW):

"The failure of a State party to take all appropriate measures to prevent acts of gender-based violence against women in cases in which its authorities are aware or should be aware of the risk of such violence, or the failure to investigate, to prosecute and punish perpetrators and to provide reparations to victims/survivors of such acts, provides tacit permission or encouragement to perpetrate acts of gender-based violence against women. Such failures or omissions constitute human rights violations".¹

Where an individual has been brought before the courts on a domestic abuse charge, the authorities are very well aware of the risk they may pose (or they should be well aware) and, therefore, decisions around bail are particularly important in upholding the government's human rights obligation to women experiencing domestic abuse.

In addition, the EU Directive² establishing minimum standards on the rights, support and protection of victims of crime, which was incorporated into Scots law via the Victims and Witnesses Scotland Act 2014, states that "*Victims of crime should be protected from secondary and repeat victimisation, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice...*"

These important human rights obligations need to be carefully balanced with the Government's obligations to protect the right to liberty and ensure that detention is only used as a last resort. Throughout the consultation document, there are references to decision making on who is suitable to benefit from the proposed reforms being done with regard to public safety and following risk assessments. SWA agrees that these are essential principles; however, we have serious

¹ UN Committee on the Elimination of all forms of Discrimination Against Women, General Recommendation 35 on Gender-Based Violence Against Women, para 24(b)

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN>

DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

concerns about the effectiveness of the processes currently in practice and what that would mean for the implementation of the proposed reforms.

We know from the experience of the Women's Aid network across Scotland that there are numerous problems with the current system of decision making. For the proposed reforms to not increase risk to victims of domestic abuse, it is essential that the following be in place:

- The court has all the necessary information from all relevant sources, including from victims and victim support organisations, with which to conduct its risk assessment
- All personnel involved in assessing what information is relevant to a risk assessment, and those conducting risk assessments must have a full understanding of the dynamics of domestic abuse and the ways that abusers may manipulate the criminal justice system in order to further their abuse
- As noted in research from the College of Policing and elsewhere, domestic-abuse-competent risk assessment must reflect the heightened danger when coercive and controlling behaviours are exhibited by abusers and avoid overemphasis on physical violence. This is a critical feature of system improvement needed to protect child and adult survivors of domestic abuse.

The consequences of inadequate risk assessments leading to decisions to release dangerous domestic abusers are potentially severe for women. Women in our services speak about learning that a partner/ex-partner is being released on bail; she feels unsafe so decides her only option is to leave her home to stay with friends or go into refuge (domestic abuse is the single biggest driver of women's homelessness in Scotland). A worst-case scenario of course is the murder of a woman and/or her children.

Putting in place a system that fulfils both victim's rights to protection from harm where the government is aware of the risk and the rights of accused persons to liberty as far as possible is crucial to get right. Rushing through changes risks undermining the safety of victims. *SWA urges careful consideration of how each of the proposed reforms will work in practice, in particular, ensuring that all decisions are taken by domestic-abuse-competent personnel who have access to all relevant information on risk.*

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.

We agree with the proposal that any decision to refuse bail must be justified on public safety grounds. However, it must be made explicit that public safety includes the safety of victims. We therefore call for specific references of this nature to be made throughout any proposed legislation and associated protocols, guidance and so forth.

SWA held a discussion forum with women using the services of local Women's Aid groups and with Women's Aid support workers. Survivor's comments included:

- *"Public safety is one expectation, but how will you measure what becomes public safety."*
- *"They might not be a threat to public safety but they are a threat to the victim".*
- *"someone might not pose a risk to the general public but absolutely be a risk to their victim and their children and their family"*

A Women's Aid worker made a prescient observation that "...We have a gold standard Equally Safe Strategy and law so need a gold standard criminal justice response to match this..."

We would therefore propose that the concept of victim safety is taken further and that offending related to domestic abuse, specifically a reference to the behaviours set out in the Domestic Abuse (Scotland) Act 2018 ("the 2018 Act"), with an explicit mention of coercive control, should be incorporated into the definition of public safety as a consideration for the court.

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.

SWA supports this principle. Use of bail in particular plays an important part in balancing the government's obligations to protect the rights of the accused to liberty and to uphold the rights of victims to protection from harms that the government is aware of, or should be aware of knows about. The implications for Governments in failing to act appropriately in terms of their obligations to victims are considerable and constitute potential violations of women's, children's and young people's human rights. Safety of victims must be central to all decision making on bail.

While we hope that making this change will improve how judges weigh safety of victims in their decision making, we note that there are problems in how current provisions on victim safety are implemented by the justice system, including provisions in the 2018 Act, where the court is required to have "*particular regard to the aim of ensuring the victim is protected from being subject of a further such offence by the convicted person*" and the presumption of the imposition of NHOs to protect the victim.

Survivors and Women's Aid support workers attending the discussion forum about these changes spoke about numerous problems with how the current system is working. The change to the legislation, and associated revision to protocols, guidance etc. needs to result in a system without these issues occurring.

“Why do we not have any say in what is happening to me. I am not being asked about the important things that are being missed” **Survivor quote**

“Sometimes we don’t know if he has been picked up or not; sometimes it takes 3 weeks and we get told we just have to go to court. There is not the communication between those who are dealing with the case and those who are victims. We didn’t know if we should leave the house or go to school, if we would be safe.” **Survivor quote**

“The man is a danger to the woman and the public and already hits the criteria for being remanded...what else has to happen before someone will remand this man?” **Quote from Women’s Aid worker**

Women’s Aid workers commented that the assessment, categories and criteria for safety should not only take into account physical abuse but also emotional and psychological abuse, an important consideration not only in relation to decisions around bail and remand in the first instance but also when the court is considering breaches of bail, a matter not discussed in the consultation paper but is an important matter requiring attention.

What is critical is that the court obtains all the necessary information from as many sources as possible, including formal risk assessment and relevant on risk and patterns of abusive behaviour from Women’s Aid workers supporting the women, children and young people involved as complainers, in order to make appropriate decisions.

The qualification and requirement of “sufficiency” in relation to public safety gives us concern. Sufficient public safety grounds should not be synonymous with physical violence. Risks associated with coercive control must be considered too.

In addition, decision making by courts in response to breaches of bail is crucial to women’s safety and confidence in the justice system. Women’s Aid support workers reported that since COVID, they are seeing dangerous and serial perpetrators being admitted to bail including after numerous breaches of previous bail conditions. Breach of bail was consistent and pernicious issue for women, with some perpetrators breaching bail conditions up to 18 times without sanction by the court. Women and workers routinely report that perpetrators were neither remanded after repeated breaches, nor were the bail conditions made more robust by the court. Women reported conditions that were unhelpful and did nothing to protect them- *“The conditions don’t really apply when they are put in place. They were no use to me in my situation.”* **Quote from survivor**

“...really, really disappointing; impact on the women when telling women yes, he’s out again. They are just in disbelief and it rocks their whole belief in the system. Leads to under-reporting because they have no faith.” **Quote from Women’s Aid worker**

“Women simply give up reporting breaches of bail because nothing is done, nothing happens- don’t get called by the Fiscal, nothing is done by the court. Women give up and don’t report because of this.” **Quote from Women’s Aid worker**

Another impact of inappropriate decision making on bail or bail conditions on women is them leaving their homes, or giving serious consideration to doing this, by seeking temporary emergency accommodation, refuge or having to move in with other family members because of a fear that their partner will breach bail conditions and return to abuse them.

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.

We do not support this proposal while the system for gathering information on risk, and assessing risk posed by accused to victims of domestic abuse does not function effectively and SWA routinely hears about women being subjected to abuse by perpetrators on bail. We consider the additional statutory provision in favour of remand (section 23D) is necessary as an additional safeguard to remind judges of the seriousness of domestic abuse offences for the reasons given by the then Justice Secretary when domestic abuse was added to section 23D:

*[These are] "important additions to the protections that the bill offers victims of domestic abuse. They are consistent with the approach that is taken elsewhere in the bill, where we have extended to victims of domestic abuse and related offences protections that our legal system already offers victims of sexual offences.... We want the availability of bail for repeat offenders who are accused of domestic abuse to be limited in a similar fashion and the link between domestic abuse offences and sexual or violent offences, which we have made elsewhere in the bill, to be made here, too."*³

We reiterate that all judges making bail decisions in domestic abuse cases need to fully understand the dynamics of domestic abuse and the potential consequences of their decisions for victims. Work has been done by the JIS in relation to delivering education and training⁴ to raise awareness amongst all judges of the 2018 Act. We would urge that education on institutional risk associated with the criminal justice system is added to the JIS portfolio, and that courses on both subjects continue to be delivered to all new judiciary and as regular refresher courses.

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.

³ Column 16 – Official Report Justice committee ; 21 November 2017

<https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=11218>

⁴ https://judiciary.scot/docs/librariesprovider3/judiciarydocuments/judicial-institute-publications/jifs---annual-report-2021.pdf?sfvrsn=2df77a34_2

During the consultation sessions SWA held with women and workers from local Women's Aid groups, lack of information available to women explaining the court's reasoning was a common and repeated issue of frustration and concern for women.

"Lack of transparency on bail decisions by the court- perpetrator bailed for the 14th time despite repeated breaches and can't give the woman any reasons for that- ...reasons for bail would help women". quote from Women's Aid worker

It is worthwhile noting that sheriffs are required, under the 2018 Act, to state in open court their reasons for not granting a NHO and why they think this is not necessary for the protection of women, children and young people but this does not always happen. We would observe that there is clearly much more work needed to also ensure that existing statutory requirements are routinely met.

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.

Women's Aid groups have raised issues around accuracy of information provided to the court, particularly around suitability for bail and conditions relating to the address of the complainer.

Our position is that where the court asks for information, particularly where the prosecution opposed bail, specialist domestic abuse support services such as Women's Aid groups would be able to provide meaningful and relevant information about the perpetrator's risk and particular issues of safety for women and children, noting that this would probably require information sharing protocols and processes to be put in place between them, the SCTS and the COPFS to facilitate this process without cause additional risks to victims.

As we have noted above, there are serious problems with how courts understand and assess domestic abuse perpetrator's patterns of behaviour and Women's Aid staff report numerous cases of repeated breaches of bail. Until there are improvements in provision of information about risk and routine domestic abuse competent decision-making, we will continue to have concerns how any changes to bail and bail supervision will operate and whether they would be effective in upholding the rights of victims of domestic abuse.

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.

Given that the court has the final decision on bail decisions and can choose to deny bail where the prosecution has not opposed bail, it is appropriate the court be able to seek information from social work and they provide this where they are able. This is particularly important in considerations of the use of bail supported by Electronic Monitoring as discussed in Question 6.

We would also reiterate our comments on the ability of Women's Aid groups to positively contribute to the information gathering process. Risk assessment informed by domestic abuse experts is good practice.

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.

We think it appropriate that the court could consider electronic monitoring but should not be required to do so before deciding to refuse bail. A requirement to consider EM before refusing bail would take additional time and we would be concerned about the court being compelled to release high-risk accused on bail pending collection of information about suitability for EM.

As we have noted before, public safety, including the safety of victims must be paramount in any decision around bail or remand and the particular nature of domestic abuse means there are additional considerations associated with EM. One of the most important limitations to be borne in mind is that EM, will not prevent perpetrators attempting non-physical contact, via telephone, email, social media, text messages, using family or acquaintances to harass and intimidate women or engineering "chance" encounters with women and children outside monitored areas.

SWA responded to the Scottish Government's 2017 consultation on the use of Electronic Monitoring as a condition of bail and we would reiterate the following

- EM technology as an add on to support release on bail cannot and should not replace remand for persistent and dangerous perpetrators of domestic abuse, stalking and other acts of violence against women.
- Where devices require to be placed in their home to monitor any "away from" conditions, women must be fully consulted, agree to this and should under no circumstances be pressured by agencies to agree to this simply as a benefit to the abuser as some women may not wish to have such an intrusion into their lives and homes.
- Some women welcome what could be perceived as an additional step to ensure perpetrators' compliance with bail conditions, or EM *where safe and part of a comprehensive safety plan by police and court* as an alternative to incarceration, especially when the accused is providing financial support to children and their mothers. The critical factor is the competence of risk

assessment throughout decision making, supported by swift and robust responses to breaches.

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.

Where courts record that EM was not suitable due to concerns about victim safety, it may be useful in bolstering women's confidence in the ability of the system to protect them and demonstrate understanding of the impact of domestic abuse on their safety. Statistically, it could also be used to support judicial decision making and training on the use of EM and appropriateness in cases involving domestic abuse and other gender-based violence.

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.

While time spent on bail with EM may be considered more restrictive, the reasons for that restriction are based on the risk that the accused poses to public safety or victim safety, especially in relation to domestic abuse. Rather than this being a disadvantage for the accused, it is a consequence of needing to protect victims. Conversely, the accused could be seen to be benefitting because they have been allowed into the public domain instead of being remanded in prison pre-trial.

Consequently, we would not support that time spent on bail with EM by those assessed as posing a risk be taken into account when sentencing.

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.

As stated above, we do not agree with the principle of "taking account" of time in this way but should this go forward, legislative control would be necessary.

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.

We agree that this is not a proposal that should be given consideration and would oppose any such developments in the future

We reiterate that victim safety must be the paramount consideration for all decision making on remand, and agree with the consultation paper statement that *“It is not necessarily a straightforward exercise to forecast the development and outcome of a criminal case”*. This type of sentencing prediction should not be made at bail hearings.

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?

Again, the primary consideration in decisions around bail and remand should be public safety including the safety of victims, regardless of the age of the accused. The response young women victims receive from the system, which often minimises the harm they experience, is likely to influence their confidence in the criminal justice system. A robust response by the system to young perpetrators’ behaviour may positively influence their future conduct. Only after an effective risk assessment has been conducted, it may be appropriate for age to be a factor in decision making.

By way of an example, an online survey conducted by Scottish Women’s Aid and YWCA Scotland on the experiences of young women in Scotland attracted 454 responses from young women aged 12 – 25, 36% of whom responded that they had been in an intimate relationship with someone who was abusive or harmed them physically or emotionally.

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?

We consider this a human rights principle that children’s needs always be considered, needs both for protection and for support. In domestic abuse cases, it is very important that the court consider child victims as victims of abuse and not merely as witnesses. Decisions on bail and bail conditions need to be made with regard to the safety of children. Court officials responsible for gathering information must be aware of existing and potential risk to children and reflect that in information provided. Failure to do so places children and their mothers at heightened risk at a time when domestic murders are most likely.

Women supported by the Women’s Aid network who attended the group discussion said:

- *“...there was no consultation. It should definitely consider children and their feelings. My ex saw my children as a threat and they were at risk...”*

- *“I was protected with a NHO but my two daughters are not. He is as much a risk to them as he was to me. “*

Women’s Aid workers commented in relation to the information the court receives to inform decisions around bail *“... what about evidence of the impact on children and need to protect children...” and that “a man with no Parental Responsibilities and Rights has bail conditions allowing access to the children; a method of manipulation, even though the court was told that the perpetrator had no Parental Responsibilities and Rights.”*

Surely, it goes without saying that courts must make decisions on bail and remand having regard to the best interests of the child, which includes their safety.

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.

We agree that this could be useful and suitable for some categories of prisoner and could help them access relevant support. For example, nearly all women prisoners have experienced domestic abuse or other forms of gender-based violence, and serving part of their sentence in the community may help them receive support to recover from that trauma. However, we have concerns about the implications of this for domestic abuse offenders.

The consultation paper talks about having processes for release which are more “flexible and risk based” – we would need to be confident that risk was being assessed appropriately in domestic abuse cases and that victim safety was paramount in all decision making on serving a sentence in the community.

Reintegration and desistance for perpetrators of domestic abuse and crimes of gender-based violence often do not operate in the same way as for those offenders serving custodial sentences for different crimes. Perpetrators of domestic abuse continue to present a risk of some degree to women, children and young people for long periods following involvement in the criminal justice system and this must be taken into account when determining suitability for this. In addition, where is the independent evaluation of the impact of community disposals in domestic abuse cases? We have consistently raised concerns about use of community disposals and lack of appropriate safeguards, risk assessment, and monitoring in domestic abuse cases. The lack of evidence supporting this disposal in domestic abuse cases is appalling, and any move to increase such disposals is unacceptable without research findings that identify risks and rewards of the existing system of community disposals.

In relation to release of perpetrators subject to Home Detention Curfew (HDC), release on HDC is undertaken by the Scottish Prison Service (SPS) in co-operation with social work services and clarity is needed on the model of risk assessment undertaken in to the risk they continue to pose to partner or ex-partners and children. Better information should be provided to the SPS on the nature of the index offence so that they are aware of the potential threat that an offender poses to a specific victim(s) in relation to domestic abuse, sexual offences, HBV and

stalking. Similarly, the Parole Board must have procedures in place before they make any recommendations on release including SPS consideration of HDC.

Intelligence should be obtained from Police Scotland and information should be obtained from victims who have signed up to the Victim Notification Scheme (VNS) and any support agencies they are engaged with, as the SPS and Social Work may not have a full and accurate picture of the risk posed by the perpetrator, particularly since the assessment focuses primarily on the suitability of the accommodation to which the offender is being released. Full cognisance and documentation of the views of the victim in relation to the return of the perpetrator to the home are critical. This must include taking into account the views and safety concerns of victims along with intelligence on the offence and offender's history of offending from CJSW, the police and those supporting victims of crime, including court advocacy organisations.

Victims should be made aware ahead of time that a prisoner is going to be released to serve the remainder of the sentence in the community. The means of notifying victims needs to be looked at, since the VNS requires women to "opt in" before they can receive any information and many do not do this. Consideration should be given to making this an "opt out" as part of the discussions around ensuring victims have timely access to appropriate information on release.

The most commonly used assessment in relation to perpetrators is the Spousal Assault Risk Assessment Guide ("SARA") which has significant limitations; the risk assessment tools used in assessing risk around suitability for referral to the Caledonian Programme may also be helpful. We would welcome discussion on, and consideration of, the best method of considering risk in this context and the most appropriate and relevant models that could be applied, including those mentioned above.

- Victims must receive clear information on the terms of the release, sentence and EM, in addition to a clear pathway for alerting the police and CJSW to breaches.
- CJSW and those SPS personnel making release decisions receive training on the dynamics of domestic abuse, the changes in law under the new Domestic Abuse (Scotland) Act 2018, and the various risk assessment models.
- Accountability and evaluation infrastructure must be put in place.

Question 14

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

Women's Aid workers commented that they see little or no consideration of the impact of the abuse on women, and their protection in relation to consideration of perpetrators' "rehabilitation" and "reintegration."

This therefore requires a robust response to any further offending after release and use of NHOs of sufficient length and with appropriate protective conditions.

Women participating in discussions on this consultation commented on the need for appropriate programmes for perpetrators both in prison and on release from custody so consideration could be given to developing an appropriate model, based

on the Caledonian System, with integrated support workers working to support the safety of women and children as part of this.

SWA considers that there is a need for greater communication and engagement by community justice services with local Women's Aid services and other specialist domestic abuse services to help monitor perpetrators' behaviours and their impact on the safety of victims.

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.

We are not clear exactly which "rehabilitation programmes" to address domestic abuse are offered by the SPS to perpetrators of domestic abuse and what work is done in prisons on this matter, if any. As noted above, changing the behaviour of domestic abuse perpetrators is different to changing other criminal behaviours.

We note that the consultation paper refers to improving "prisoners' *motivation to engage with services to address the underlying causes of their offending behaviour.*" Our experience is that many domestic abusers are skilled at manipulating systems in order to minimise their behaviour and find opportunities to engage in further abuse. Any consideration of domestic abuse offenders for early release or serving part of their sentence in the community should be based on appropriate risk assessments that mirror the research on domestic abuse recidivism.

The aim of any programmes working with domestic abuse offenders should be based on the sound understanding of domestic abuse contained within the Caledonian Programme and delivered by professionals with a similar understanding and expertise. Any other type of education, training and rehabilitation such as is used to address general offending and desistance is unlikely to be effective, and may result in harm to victims. The purpose of any such programmes is to challenge perpetrators' thinking, attitudes and responsibility for the perpetration of violence against women.

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?

We have no comment to make

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.

We have different concerns with all of these options. The current system of automatic release half way through the sentence is not well understood by victims. This undermines their ability to do effective safety planning and may undermine confidence in the justice system.

Survivors have expressed dismay when learning that the perpetrator has been released from prison half-way through their sentence. *"Women don't know or understand how early release can be given and previous time served on remand can be taken off the sentence- women think that if the perpetrator has been given a custodial sentence of 12 months, then they will be safe for 12 months."* **quote from Women's Aid worker**

Although the proposal talks about having flexible decision making informed by risk posed by an individual, our key point made throughout this consultation has been that the system (barring specialist domestic abuse services) does not conduct effective, domestic-abuse-competent risk assessments thereby putting children and women at risk of harm. Our experience of risk assessments across the system does not give us confidence that those cleared for earlier release would not pose a risk to victims. We reiterate that the government's human rights obligations related to gender-based violence, including domestic abuse, are to protect victims from harm that the government knows or should know about. Harm to a victim from an abuser released following an inadequate risk assessment is likely to constitute a human rights violation.

While we can see merit in the proposal that those prisoners who do not pose a risk could be released earlier subject to monitoring, we have serious concerns that this would not work effectively in practice for domestic abuse offenders.

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.

As with our answer to the previous question, while we can see merit in the proposal for categories of prisoner who do not pose a risk, we are not confident that the system would work in practice **in domestic abuse cases**. The impact on women experiencing domestic abuse of inadequate risk assessments leading to release of someone who then caused harm is serious. Considering changing the current

system should only happen after it can be demonstrated that the system across Scotland is producing effective risk assessments and that those making decisions using those risk assessments fully understand the dynamics of domestic abuse.

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?

We support this proposal for the protection of women, children and young people experiencing domestic abuse, as it means that perpetrators of domestic abuse will be more likely to have access to CJSW either that day, or the next, as opposed to waiting two days over a weekend. Further, this will allow police and CJSW to respond immediately should the abuse continue post-release.

In relation to notice, we consider that the revised procedures introduced as a part of the COVID response, whereby local authority housing and criminal justice social work are given several weeks' advance notice of prison releases, should apply also to women experiencing domestic abuse, who should be similarly advised.

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.

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** /

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.

20(a) SWA considers that it could be appropriate for some categories of prisoner to be automatically considered for HDC, for example, those whose crimes did not have a direct victim. Any decisions on whether someone whose crime involved a victim was suitable for HDC should be based on effective risk assessments.

20(d) - we note from the HDC Guidance for Agencies that, in addition to the statutory exclusions, there is a presumption against granting HDC to imprisoned individuals who fall into certain listed categories, including where the index offence involved an act of violence, possession or use of an offensive weapon or blade. The list of specific offences “*indicative of these points and there may exist a presumption*” includes threats and cruel and unnatural treatment of children but not the offence under the 2018 Act. SWA considers that it would be appropriate to add the 2018 Act to this list.

20(e) It is our understanding that when SPS make decisions to release prisoners on HDC following a risk assessment, this “*engagement with community partners*” does not involve routine engagement with Women’s Aid and other specialist domestic abuse services. Women’s Aid may come to know through ad hoc contact with CJSW. Lack of information on potential and actual release dates and when this actually happens, has been cited by Women’s Aid workers as a major risk for child and adult survivors and a significant hindrance to effective and timely safety planning.

“Need for joined up systems so WA can feed into systems around bail and early release.” **Quote from Women’s Aid worker**

We have also referred above in our response to the shortcomings of the VNS in relation to this being an “opt in” service and would also comment that the arrangements for victims of offenders sentenced to less than 18 months, where

they are entitled to know only of the release or escape of the offender and cannot join the VNS, needs revisited.

20(g) SWA does not think decisions about the length of time an individual would serve in the community at the end of their custodial sentence should be set by the court at the time of sentencing. The court at time of sentences would not be able to predict the future risk the offender may pose.

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.

Lack of information around release has been cited as another major issue for women experiencing domestic abuse, as commented on by Women's Aid workers:

- *Early release- women aren't being told about perpetrator's release. Women don't know that the perp is out and then see him in the supermarket*
- *Women's Aid also not being advised while other agencies are. Women's Aid can undertake safety planning, ensure that a safety net is there for the woman and her family but there is a reluctance to engage with/inform Women's Aid*

We fully support that information about release of perpetrators of domestic abuse being routinely shared with specialist organisations such as local Women's Aid groups supporting the partners/ex-partners of the abuser. This will support engagement with the woman around safety planning and any other arrangements she wishes to make.

We agree with the comments on page 44 of the consultation paper on the benefits of receiving this information to enable effective safety planning with victims and targeted, planned support at the right time. Data protection considerations would have to be addressed, but those are not unsurmountable.

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.

We agree with the consultation paper, on page 44, that the VNS could take a more trauma-informed approach to victim care and support and would wish to engage with the Scottish Government further on the suggestion that this could take the form of providing victim support organisations, like Women's Aid, with advance notice of an individual's release, enabling them to proactively contact the victim and offer emotional and practical support.

We would wish to consult further with our network around the service implications for them and impact on women and their engagement with services making proactive approaches.

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.

In response to Questions 23 and 24, public services should have a duty to engage in pre-release planning around safety for victims, particularly women experiencing domestic abuse. This may involve the mechanisms for transferring tenancies contained within the Domestic Abuse (Protection) (Scotland) Act 2021; securing alternative accommodation for women or advance engagement from Social Work and Housing to contact women experiencing domestic abuse to give advance notice and help with safety planning.

Third party organisation such as Women's Aid and other specialist domestic abuse and GBV services, such as Rape Crisis and court advocacy services should be included in any pre planning to support women.

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.

We agree that it would be good to have support services available to those released direct from court. It could help with victim safety, for example, an abuser sentenced to time served who is released from court and has access to housing may be less likely to try to return to the woman's home because they have alternative accommodation arranged. Having different services available means there are more professionals involved with the individual who may identify further abusive behaviour at an earlier stage than if the individual was released and not subject to any monitoring or offered any support services. Staff of those support services should be domestic-abuse aware and liaise with the police and CJSW around the perpetrator's whereabouts and any concerning behaviour.

Support should also encompass services to support women experiencing domestic abuse on the release of the perpetrator direct from court since they may need immediate support with safety planning.

Information sharing with women on court proceedings, remand, sentencing etc. is important, as are links with police, CJSW and support organisations such as local Women's Aid groups.

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.

Standards for throughcare should be determined by crime type and irrespective of the length of their sentence or time spent on remand. All prisoners, including perpetrators of domestic abuse should be subject to throughcare.

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 disagree
Please give reasons for your answer.

This is particularly important in relation to perpetrators of domestic abuse where minimum standards for throughcare should be statutory, given the risks to survivors.

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?

To properly address risk assessment in relation to safety planning and managing perpetrators of domestic abuse-related offending, pre-planning is an absolute necessity and must involve engagement with specialist organisations and other services supporting women and children.

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?

We would support any appropriate and proportionate mechanisms that better address, manage and assess risk posed by perpetrators and allow better support and safety planning for women and children.

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.

We recognise that an executive power to release prisoners in exceptional circumstances may be needed; however, we highlight that even in emergencies, the government's obligations to protect public safety, including victim safety, remain in place. This means that any exercise of executive powers would need to be subject to robust risk assessments for those prisoners being considered for release, and a comprehensive equality impact assessment undertaken by officials with gender and domestic abuse competence.

When powers to release were proposed in the Coronavirus (Scotland) Act 2020, these included safeguards that no one serving a life sentence or time for a sexual crime would be released. SWA was concerned at the prospect of early release of those in prison for domestic abuse related offences who may continue to pose a risk to women and children. We urged careful planning and risk assessment, including communication with SWA and other victims' organisations to ensure robust safety arrangements and timely notification of victims. Given that in an emergency situation, time pressures may inhibit effective risk assessment processes and giving victims adequate notification, SWA considers that adding domestic abuse offenders to the category of prisoners who would not be released would be appropriate.

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.

See our response above.



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?

☒ Organisation

Full name or organisation's name

Scottish Women's Aid

Phone number

0131 226 6606

Address

2nd Floor, 132 Rose Street, Edinburgh

Postcode

EH2 3JD

Email

Louise.iohnson@womensaid.scot

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

☒ Publish response with 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?

☒ Yes ☐ No