

Proposed Victims, Criminal Justice and Fatal Accident Inquiries (Scotland) Bill



Response from Scottish Women's Aid

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.

Aim and approach

1. Which of the following best expresses your view of the proposed Bill?

- Fully supportive
- **Partially supportive**
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

See our comments below

2. Do you think legislation is required, or are there other ways in which any of the Bill's aims could be achieved more effectively? Please explain the reasons for your response.

Not proven (pages 8 – 10) 35

3. Which of the following best expresses your view of the proposed removal of the "Not Proven" verdict in Scots Law?

- **Fully supportive**
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure
- No comment on this policy proposal – skip to next question

Please explain the reasons for your response.

SWA would support the removal of the not proven verdict leaving one verdict of acquittal and one of conviction. There is currently a parallel consultation from the Scottish Government on the issue of whether to remove the not proven verdict, the corroboration requirement and we would like to see expedited action on these issues, be it through the proposed Member's Bill or otherwise by the Scottish Government.

Michelle's law -Oral representations (pages 10 – 16)

4. Which of the following best expresses your view of the proposal that victims (or their families in cases where the victim is deceased) are allowed to make

representations in person when parole board hearings and temporary release applications are considered?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- **Unsure**
- No comment on this policy proposal – skip to next question

Please explain the reasons for your response. Please include any comments on the specific issues underlined in the consultation document on this proposal.

New Rule 26A¹ inserted by The Parole Board (Scotland) Amendment Rules 2021, sets out a procedure for a VNS registered victim (or family member of a victim), to request to attend a parole hearing in cases meeting three very specific situations- recalled extended sentence prisoners (where the prisoner is serving their extension period), life sentence and OLR prisoners (release and re-release on licence).

The Policy Note for the Rules² confirms that a registered victim cannot participate in the hearing and is there as an observer only, for very valid reasons, and goes on to explain this- “*The effect of this is that the victim is not a party to the case. The intention of this is to avoid, potential re-traumatisation, for example if the victim were able to be cross examined as a party at the hearing.*”

Firstly, the impact on a victim of physically being present at the hearing is a serious consideration that has to be undertaken by the PBS and the victim or representative themselves. In relation to the safety of women experiencing domestic abuse present at a PBS hearing or for temporary release, any prospect at all of the victim being questioned by the PBS, or, in the worst-case scenario, the perpetrator or their legal representative, is wholly unacceptable. This would be a major consideration in any recommendation to support widening the engagement of victims and their representatives and mitigates against “in-person” representations being made when a victim was present, physically or otherwise, at a hearing. A more appropriate method of involvement has to be considered.

We also note that while the new rule allows a supporter or supporters to accompany the registered victim, with permission from the PBS, they can also exclude the victim and/or supporter from any part of the hearing” *if it is in the public interest or the interests of justice to do so.*” These reasons are not defined and victims must be told why they have been excluded from a hearing, particularly if this is down to considerations of their safety in the process, which should, of course, then have a bearing on release decisions.

Exclusion zones (pages 11 – 12)

5. Which of the following best expresses your view of the proposal that victims should have the right to request exclusion zones are imposed on offenders on their release to offer more protection to victims and their families?

- **Fully supportive**
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed

¹ <https://www.legislation.gov.uk/ssi/2021/4/article/2/made>

² <https://www.legislation.gov.uk/ssi/2021/4/contents/made>

- **Fully opposed**
- **Unsure**
- **No comment on this policy proposal – skip to next question**

Please explain the reasons for your response. Please include any comments on the specific issues underlined in the consultation document on this proposal.

SWA support the proposal that where offenders, specifically perpetrators of domestic abuse, stalking and sexual offending, are being considered for temporary release or parole, the victim (or their family in cases where the victim is deceased) should be given a statutory right to request an exclusion zone be applied. Such safety consideration should rightly be part of the process involving representations by the victim/family, and evidence based risk assessment. We would comment as follows:-

- We agree that the PBS or prison governor evaluating such a request must be required to consider the safety/welfare of the victim/family and any risk to them through allowing the perpetrator to be present in any of the locations/premises/areas referred to. There should be a statutory, mandatory obligation/duty on the Prison Governor and PBS to undertake a risk assessment, speak to the victim and any support organisation working with them and obtain information from the police, social work and other justice sources to inform this consideration
- Note that our concerns around ensuring the confidentiality and safety of victims in relation to oral representations also apply to requests around exclusions of this nature
- When put in place to prevent the offender from entering “*the community of their victim*”, these “exclusion zones” should cover the victim’s home, homes of family and friends, workplace and children’s schools. In cases of temporary release, this would apply to applications for unescorted day release, home leave or temporary release for work.
- Consultees have been asked to consider whether there should be a statutory presumption that the PBS and/or prison governor accept this request. We would support a presumption that any “exclusion zone” request be accepted
- We would further comment that the Management of Offenders (Scotland) Act 2019 indicated an electronic monitoring requirement can be imposed upon an offender when they are released on licence, concerning their “*whereabouts in some way (including being at, or not being at a particular place)*.” These provisions concerning electronic monitoring may not yet be in force but this framework could be used and built upon to prevent the offender from entering into the area where the victim and/or their family live.

Safety and welfare of families (page 11)

6. Which of the following best expresses your view of the proposal that there should be an explicit requirement that the safety and welfare of victims and their families is considered during parole hearings and temporary release applications?

- **Fully supportive**
- **Partially supportive**
- **Neutral (neither support nor oppose)**
- **Partially opposed**
- **Fully opposed**
- **Unsure**
- **No comment on this policy proposal – skip to next question**

Please explain the reasons for your response. Please include any comments on the specific issues underlined in the consultation document on this proposal.

Firstly, we note that although Rule 8 of The Parole Board (Scotland) Rules 2001, stating the matters that the PBS may take into account by the Board, was amended by the 2021 Rules³ to now include consideration of “(e) the effect on the safety or security of any other person, including in particular any victim or any family member of a victim, were he or she to be released on licence, remain on licence, or be re-released on licence as the case may be”, that this remains a discretionary consideration.

It is not acceptable that the safety or security of a victim, or the family member of a victim, where a person is released on licence, remains on licence or is re-released on licence, is left to chance or random consideration and SWA therefore support an explicit requirement that this must be taken into account in every parole hearing and temporary release application.

Notification of decisions for all crimes (pages 14 – 15)

7. Which of the following best expresses your view that victims of crimes are given access to the reasons in full as to why the parole board or prison governor has come to a decision to release an offender?

- **Fully supportive**
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure
- No comment on this policy proposal – skip to next question

Please explain the reasons for your response. Please include any comments on the specific issues underlined in the consultation document on this proposal.

The PBS publish their release decisions on their website⁴ and there are a number of shortcomings and omissions around the information contained in the published decisions as follows:-

- The index offence is not always stated in the decisions, a matter important in relation to transparency, consistency and monitoring of release decisions, and how this is applied to specific offending. This is particularly important in relation to the release of sexual offenders and perpetrators of domestic abuse, particularly where the latter may be in prison for a different index offence but still pose a risk to women and children.
- The focus of the risk assessment is very much around the offender’s use of, propensity toward, and post- conviction use of, violence, which is not appropriate for domestic abuse offending and the role that other behaviours including coercive control play in this. Also, perpetrators’ opportunities to use violence against women in prison clearly limited so it is not at all clear how any “desistance” from use of violence in prison would be an indicator of future behaviour and offending towards a partner/ex-partner on release
 - ““While it acknowledged the serious nature of the index offence, the Board attached significant weight to the fact that the offender had not been involved in violence for a substantial number of years in custody.”
- It is clear from reading the decisions that social work recommendations against release were not always followed
 - “The Board acknowledged that social work did not support release, and instead preferred further testing in less secure conditions than at present. The Board noted

³ <https://www.legislation.gov.uk/ssi/2021/4/article/2/made>

⁴ <https://www.scottishparoleboard.scot/case-decisions>

that the offender had had substantial community access in the past, but that this was some time ago. The Board noted that the offender had been released and recalled on two occasions. While it acknowledged the serious nature of the index offence, the Board attached significant weight to the fact that the offender had not been involved in violence for a substantial number of years, either in custody or in the community. The Board further acknowledged that in the lengthy period since their recall to custody, the offender had made significant progress within the custodial environment in addressing the issues which had led to previous failings in the community."

- *"The offender had been released on licence and returned to custody on several occasions. It was of concern to the Board that within a month of their most recent recall, the offender accrued a misconduct report for their behaviour towards prison staff. It was clear from the dossier and witness evidence that the offender did not appear to fully grasp the importance of engaging fully with those involved in their risk management. They had shown disregard for many aspects of supervision and had breached conditions of their licence on a number of occasions. The offender was considered by both prison based and community based social work to be unmanageable in the community at this time. However, the Board was cognisant of the test which must be applied in consideration of this case. In that regard, the Board accepted that there had been no further incidents of violence or inappropriate sexual behaviour since the index offence. ...SUMMARY 8. Whilst the offender had undoubtedly evidenced challenging, uncooperative and at times, evasive behaviour the Board was not satisfied that it was necessary for the protection of the public from serious harm that they required to remain confined in custody at this time.*

As highlighted on page 13 of the consultation the summary of the PBS decision may not include details of the safety and welfare considerations that have been taken into account in the preparation of their report, particularly in specific relation to the safety of the victim and any representations or concerns raised by them, due to confidentiality issues. Similarly, information may also be withheld by the PBS from the summary if it is considered that publication "would be contrary to the public interest or the interests of justice."

- It is not at all clear how these factors are defined; the thresholds and tests applicable to and governing the withholding of information; the considerations of how "public interest" or "interests of justice" are balanced against transparency and the right of the victim and the public to be informed about decision relation to potentially dangerous offenders.
- The application of the test around risk assessment, and criteria taken into account, are not always clear and the considerations on the level of risk, being "serious or not serious" do not seem to be consistently applied
- In the absence of engagement with victims, or indication that their views had been sought or taken into account in relation to the "management of risk", it is also not at all clear how the PBS and social work could legitimately take the view that an offender's risk could be adequately and appropriately "managed" to ensure the safety of the victim. Of particular concern was the assessment as to whether the risk was "imminent" and in the light of the understanding of how perpetrators of domestic abuse manipulate criminal justice processes and those in them, this is an unacceptable margin of tolerance to apply
 - *"Both prison-based and community-based social work were of the view that the offender's risks could be managed in the community with additional licence conditions in place."*
 - *Prison based social work supported release and in doing so had considered all matters pertinent to the offender's risk, including the issue of serious harm and imminence. Their assessment was that the risk of serious harm was not imminent. The Board considered that the warning signs of the offender's risk escalating would be likely to be identified through the supports and supervision in place and concluded*

SWA agree that PBS or prison governor must ensure that victims of all crimes can, if they wish to receive them, receive the reasons in full as to why the PBS or prison governor has come to their decision to release a prisoner, whilst respecting the right to privacy for any relevant party and taking into account relevant data protection requirements. If release has not been directed, as the consultation suggests, trauma-informed, sensitive summary decision can be provided to the victim.

Under the Victims' Code in England and Wales, victims who have a statutory entitlement to the National Probation Service Victim Contact Scheme are entitled to submit a Victim Personal Statement (VPS) for Tariff Reviews and Parole Board reviews. The Victim Contact Scheme is a scheme similar to the Victim Notification Scheme, for victims of offenders convicted of a specified sexual or violent offence who are sentenced to 12 months or more imprisonment. Further consideration as to whether such an intervention, and on a wider scale would be of benefit to victims in Scotland should be explored, so therefore it would be useful to evaluate the impact and use of this particular aspect of the process in England and Wales.⁵

Suzanne's law (pages 16 – 17)

8. Which of the following best expresses your view of the proposed aims of implementing Suzanne's law, whereby an offender convicted of murder could be denied release on the grounds that they have failed to disclose the location of the victim's body?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure
- **No comment on this policy proposal – skip to next question**

Please explain the reasons for your response. Please include any comments on the specific issues underlined in the consultation document on this proposal.

Victim Statements (pages 17 – 18)

9. Which of the following best expresses your view of the proposal to allow all victims to make a Victim Statement to court?

- Fully supportive
- **Partially supportive**
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure
- **No comment on this policy proposal – skip to next question**

Please explain the reasons for your response. Please include any comments on the specific issues underlined in the consultation document on this proposal.

In February 2021, the Scottish Government published an analysis of their late 2019 consultation on proposals to improve and widen the scope of the existing Victim

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775844/review-of-the-pb-rules-and-rm.pdf

Statement Scheme.⁶ This indicated respondents' support for these reforms and SWA would like to see an urgent response from the Scottish Government as to how and when they intend to action, sooner rather than later, these reforms as part of their review of the criminal justice system's responses to victims.

SWA's response to that consultation supported extending eligibility to all solemn proceedings, and also the creation of a list of prescribed offences that would be eligible for a Victim Statement, even if the offences were tried as summary proceedings. This was to include the stalking offence; offences relating to forced marriage and breach of a FMPO; offences attracting the domestic abuse aggravator and the intimate image abuse offence, both under the 2016 legislation; the new domestic abuse offence under the 2018 Act and offences attracting the use of the child aggravation under the 2018 Act, which would allow children and young people experiencing domestic abuse and coercive control, eligibility to make a Victim Statement accordingly. We also suggested that the existing list of sexual offences be reviewed to cover new offences under the Sexual Offences (Scotland) Act 2009 and any offences repealed and/or replaced by offences under the 2009 Act.

Any reforms must go much further than simply extending access to the process and before work on these progresses, including considering whether family members could deliver statements, SWA would recommend consideration of the issues we raised in our consultation in relation to the mechanism of giving a Victim Statement. This also includes the protections needed to support victims make a Victim Statement and particular attention must be paid to the fact that it is open to the defence to question the victim, or their representative, on the contents of the Statement, which would have implications for family members representing victims, child victims and those who were victims of the offences noted above.

Notification of decision not to prosecute (pages 18 – 20)

10. Which of the following best expresses your view of the proposal for all victims to have the right to be notified of a decision not to prosecute their case?

- **Fully supportive**
- **Partially supportive**
- **Neutral (neither support nor oppose)**
- **Partially opposed**
- **Fully opposed**
- **Unsure**
- **No comment on this policy proposal – skip to next question**

Please explain the reasons for your response.

We support the proposal that all victims should have the right to be notified of a decision not to prosecute their case, or to discontinue a prosecution, information which rightly should already be provided to victims as a demonstration of a transparent, inclusive, trauma-informed and victim sensitive process. This would be of considerable assistance to women, children and young people experiencing domestic abuse, bring certainty about the process, allow them to access other protection under the civil law or the Domestic Abuse (Protection) (Scotland) Act 2021 and to allow them to exercise their right to seek the COPFS reconsider their decision.

Although victims of domestic abuse fall within the remit of the COPFS Victim Information and Advice (VIA) service whereby they should be automatically notified

⁶ <https://www.gov.scot/publications/widening-scope-current-victim-statement-scheme-consultation-analysis/documents>

of a decision not to prosecute, this does not always appear to happen or to happen timeously, so the timing of the information is also important. In this regard, we note, and welcome, the statement from the Lord Advocate in her evidence to the Criminal Justice Committee on 22nd December⁷ and follow-up letter⁸ to the Criminal Justice Committee that the Deputy Crown Agent Lindsey Miller will lead a review of the VIA service “..to ensure that the service can continue to deliver the high levels of support and advice to all victims and witnesses that it currently provides. Although that is a long-term programme of work, any measures that are identified by the review that could assist in the delivery of victim information services will be put in place in the interim while the review is on-going.”

Changes to Victim Notification Scheme (pages 20 – 23)

11. Which of the following best expresses your view of the proposals to increase uptake of the Victim Notification Scheme (VNS) and to make other improvements to the scheme?

- **Fully supportive**
- **Partially supportive**
- **Neutral (neither support nor oppose)**
- **Partially opposed**
- **Fully opposed**
- **Unsure**
- **No comment on this policy proposal – skip to next question**

Please explain the reasons for your response. Please include any comments on the specific issues underlined in the consultation document on this proposal.

SWA would support an opt-out system where all victims were included in the scheme as a matter of course, with safeguards to ensure individuals have clear opportunities to remove themselves from the system and therefore should not receive information they do not wish to see.

Reform to VNS is much needed, especially for victims whose perpetrator is serving a sentence of under 18 months as they are not eligible to access the “full” VNS in relation to obtaining information but this reform needs to go beyond simply eligibility to cover the process itself

- Provision of information to victims around impending release, including temporary release, or consideration of release needs to be timely, thus allowing them, and specialist support organisations, ample time and opportunity to feed into the process, have clarity around the risk assessment process and that information on victim safety has been taken into account and allowing women to access appropriate support, protective orders and safety planning
- Victims should receive regular updates about their case and the onus must be on the SPS to engage with them, ensure that contact information is current, including options for text or email communication
- We note from the consultation, the loophole whereby victims are not told about the offender’s release date if the offender is then convicted of a separate crime which leads to an extended sentence. The victim is then told their data is destroyed and so they will not be contacted again. This means the victim will not necessarily be told when the criminal in their case will be released, which requires to be rectified and is particularly important in relation to the release of sexual offenders and perpetrators of domestic abuse,

⁷ <https://www.parlamaid-alba.scot/chamber-and-committees/official-report/what-was-said-in-parliament/%20CJ-22-12-2021?meeting=13499>

⁸ <https://www.parlamaid-alba.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-criminal-justice-committee/correspondence/2022/court-backlogs-victim-support-discontinuations-and-evidence-by-commission>

particularly where the latter may be in prison for a different index offence but still pose a risk to women and children

During Portfolio Questions on 22 December 2021⁹, the Cabinet Secretary for Justice indicated that the Scottish Government “... *will commence the review of the victim notification scheme early next year...*” as agreed by the Victims’ Task Force. He further stated the Review was to be “...*led by an independent chairperson, supported by a working group of representatives of the organisations that operate the scheme and victims’ organisations...*” with the remit of the review likely to include “...*the possible extension to the scheme’s scope, information sharing between agencies and links with the task force’s work on developing a victim-centred approach.*” To avoid duplication of Parliamentary and organisational time and effort, SWA call for this work to be progressed without delay.

Fatal Accident Inquiries (pages 23 – 25)

12. Which of the following best expresses your view of the proposal to set maximum timescales for Fatal Accident Inquiries (FAIs)? 39

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure
- **No comment on this policy proposal – skip to next question**

Please explain the reasons for your response.

13. Which of the following best expresses your view of the proposal to expand the list of circumstances where deaths are automatically investigated through the fatal accident inquiry process?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure
- **No comment on this policy proposal – skip to next question**

Please explain the reasons for your response. Please include any comments on the specific issues underlined in the consultation document on this proposal.

Financial implications (pages 25 – 26)

14. Taking into account all those likely to be affected (including public sector bodies, businesses and individuals etc), is the proposed Bill likely to lead to:

- a significant increase in costs
- some increase in costs
- no overall change in costs
- some reduction in costs
- a significant reduction in costs
- unsure

Please indicate where you would expect the impact identified to fall (including public sector bodies, businesses and individuals etc). You may also wish to

⁹ <https://www.parliament.scot/chamber-and-committees/official-report/what-was-said-in-parliament/meeting-of-parliament-22-12-2021?meeting=13494&iob=122466>

suggest ways in which the aims of the Bill could be delivered more cost-effectively.

Equalities (pages 27 – 28)

15. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation?

- **Positive**

- Slightly positive
- Neutral (neither positive nor negative)
- Slightly negative
- Negative
- Unsure

Please explain the reasons for your response. Where any negative impacts are identified, you may also wish to suggest ways in which these could be minimised or avoided.

SWA considers that the proposed reforms will impact positively on women experiencing gender-based violence and abuse and will support their access to justice and participation in the criminal justice process.

Sustainability (pages 28 – 29)

16. In terms of assessing the proposed Bill's potential impact on sustainable development, you may wish to consider how it relates to the following principles:

- living within environmental limits
- ensuring a strong, healthy and just society
- achieving a sustainable economy
- promoting effective, participative systems of governance
- ensuring policy is developed on the basis of strong scientific evidence.

With these principles in mind, do you consider that the Bill can be delivered sustainably?

- ☐ Yes
- ☐ No
- ☐ Unsure

Please explain the reasons for your response.

General

17. Do you have any other additional comments or suggestions on the proposed Bill (which have not already been covered in any of your responses to earlier questions)?

All this work cannot be done in isolation or piecemeal and must be joined up as part of the Scottish Government work on a victim-centred and victim- trauma –based approach to criminal justice reform. This includes progressing matters not touched by this proposed Bill such as progress on the Lord Justice Clerk's Review Group Report and wider work around information given to victims, such as that around bail, details of guilty plea made by an abuser and prescription of the minimum standards for victims and witnesses.