

Parole Reform in Scotland

**A consultation on proposals for
legislative change**

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Foreword



Consideration for release on parole to serve the remainder of a sentence in the community is an important part of our justice system. It plays a critical role in the reintegration and rehabilitation of offenders whilst ensuring that the primary factor in considering such release is, and must be, public protection.

The Parole Board for Scotland is responsible, in most cases, for making the important decision as to whether an individual is released or not based on a thorough consideration of risk. The members of the Parole Board for Scotland who make these decisions are drawn from a variety of backgrounds and their experience, skills and independence are central to the success of the Parole Board for Scotland.

This Government has committed to improve the effective rehabilitation and reintegration of people who have committed offences and to complete the implementation of the parole reform programme to modernise and improve support for the vital work of the Parole Board.

This programme will enhance efficiency and effectiveness by transforming the administrative justice elements surrounding parole while supporting victims and witnesses. Essentially, the programme is a combination of structural change, process change and technological improvement.

We have identified a number of areas that may require legislative changes that we believe will support that programme of change. This consultation seeks your views on those proposed changes. I hope you will take the opportunity to consider what is being proposed and to contribute to this consultation in order that we can continue to build a parole system that is modern and efficient and protect the public whilst supporting reintegration and rehabilitation of offenders.

A handwritten signature in black ink, appearing to read 'Michael Matheson'. The signature is fluid and cursive, with a long, sweeping underline.

MICHAEL MATHESON MSP
CABINET SECRETARY FOR JUSTICE

Overview

This consultation seeks your views on proposed amendments to primary legislation the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the Act”) and to secondary legislation the Parole Board (Scotland) Rules 2001 (“the Rules”).

The Scottish Government will publish the consultation responses it receives (except where respondents request confidentially). The responses will inform the final primary and secondary legislative changes.

Consultation queries and key dates

The Scottish Government published this consultation on 21 July 2017 with responses to be returned by 13 October 2017.

Should you have any queries on this consultation which you would like to discuss prior to submitting a formal response, or if you would wish to find out more about Parole Reform and the work being taken forward in this regard please email:

ParoleReform@gov.scot or you can write to:-

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Introduction

What is Parole?

Parole is a system that enables prisoners to be released on licence in the community under the supervision of a community based social worker. If a prisoner is released on parole, they are subject to be recalled to prison at any time if they breach the terms of their licence. Parole is only granted where the Parole Board for Scotland (“the Parole Board”) is satisfied that the risk presented by the prisoner can be managed in the community.

What is the Parole Board for Scotland?

The Parole Board is a Tribunal Non-Departmental Public Body (NDPB), it was formed in the Criminal Justice Act 1967 and has been retained by successive Acts of Parliament, including the Prisons (Scotland) Act 1989 and the Prisoners and Criminal Proceedings (Scotland) Act 1993 (as amended). Further relevant statutory provisions are contained in the Convention Rights (Compliance) (Scotland) Act 2001 and the Parole Board (Scotland) Rules 2001 (as amended).

Parole Board members are appointed by the Scottish Ministers. The Parole Board has a number of statutory functions but operates independently from the Scottish Government. Directions and recommendations made to Scottish Ministers by the Parole Board about early release of an offender are binding, with the exception of deportation cases and applications for compassionate release where the Parole Board will offer advice only.

Primary statutory powers and functions of the Parole Board

The main powers and functions of the Parole Board are to:

- Recommend the release of determinate sentence prisoners serving four years or more and make recommendations as to the licence conditions of such prisoners;
- Recommend the release of prisoners serving extended sentences¹ where the custodial term is 4 years or more, make recommendations as to the licence conditions of such prisoners and make recommendations regarding the licence conditions of extended sentence prisoners where the combined custodial and extension period is 4 years or more;

¹ Sentence imposed on persons under s.210A of the Criminal Procedure (Scotland) Act 1995 who have been convicted on indictment of sexual offences to a period of imprisonment, or violent offences to a period of imprisonment of four years or more. It is the aggregate of the term in custody which the courts would have otherwise passed on the person plus a further period for which the person is subject to a licence in the community. This type of sentence allows the courts to impose additional post-release supervision where they consider this necessary.

- Direct the release on licence of life prisoners, at a point after the expiry of the court imposed punishment part of the sentence and prisoners subject to an order for lifelong restriction (OLR)²;
- Recommend the recall to custody of prisoners who have been released on licence in circumstances where such action is considered to be in the public interest; and,
- Direct the release of a child (other than children detained without limit of time or for life) at any time.

The Parole Board may also direct the Scottish Ministers to re-release any prisoner who has been recalled to custody without a recommendation of the Parole Board or any prisoner who has been recalled with such a recommendation. The cases of life prisoners and extended sentence prisoners who are recalled to custody must be considered by a tribunal of the Parole Board.

The Parole Board advises the Scottish Ministers on the variation or addition of any conditions to be attached to prisoners' release licences.

The Parole Board also operates as a referral body in the case of alleged breaches of Home Detention Curfew (HDC)³ conditions.

How does the Parole Board consider cases?

The Parole Board considers prisoners for parole at, tribunals, oral hearings and casework meetings. For tribunal and oral hearings, Parole Board members normally sit as a panel of three, with the chairman of the panel required to be legally qualified for tribunals and oral hearings.

At casework meetings the prisoner will not be present and the Parole Board will consider the case on the basis of the dossier of papers supplied to them by Scottish Ministers. Tribunals and oral hearings are held with the prisoner present, or through live link (such as a video link) enabling a prisoner or witness to attend from a remote location.

Tribunals are held for the first and subsequent considerations of life prisoners, prisoners subject to an OLR and prisoners with an extended sentence, who have been recalled to prison in the extended part of their sentence.

² This is a sentence of imprisonment or detention for an indeterminate period that can be issued by the High Court under section 210F of the Criminal Procedure (Scotland) Act 1995. This provides for the lifelong supervision of certain high risk offenders, when released from custody.

³ This is a prisoner release scheme that enables Scottish Ministers under section 3AA(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 to consider releasing certain categories of prisoners on licence before the date they would be eligible for release under that Act. The primary aim is to ease reintegration of persons back into the community whilst restricting their movements in particular by virtue of a curfew condition which is monitored electronically by means of a tag.

All other cases are considered at casework meetings, although in certain cases the Parole Board may, if it considers that is in the interests of justice, deal with the case by way of an oral hearing.

Why are we proposing changes to the Parole system?

The Scottish Government has established the Parole Reform Programme Board which will in part deliver the manifesto commitment:-

“We will improve the effective rehabilitation and reintegration of people who have committed offences and complete the implementation of the parole reform project to modernise and improve support for the vital work of the Parole Board.”

The programme aims to **clarify** the role and status of the Parole Board, **simplify** and **modernise** processes and support consistency of approach. Some of these changes can be addressed administratively through the review of existing processes and by better collaborative working with other bodies involved in the process, but some of the proposed improvements may require legislative change.

What are we seeking your views on?

This consultation seeks your views on potential changes to legislation relating to the:-

- Governance of the Parole Board;
- Involvement of Scottish Ministers in the parole process;
- Tests that the Parole Board apply in determining whether to release;
- Timescales for subsequent reviews following initial consideration for parole;
- Way in which information is supplied to the Parole Board; and,
- Administrative procedures for considering cases as set out in the Parole Board (Scotland) Rules 2001 (“the Rules”).

Governance of the Parole Board

Current legislation says little about the status of the Parole Board and the governance arrangements that apply to it. We believe it is important that the Parole Board is both independent and seen to be independent. We are seeking views on ways to make the independence of the Parole Board, and the governance arrangements that apply to it clearer.

The legislation specifies the terms on which Parole Board members are appointed. We are seeking views on if these terms should be reviewed to ensure they are fit for purpose and broadly consistent with other similar bodies.

Involvement of Scottish Ministers in the Parole process

The Parole Board's recommendations and directions are binding in relation to all cases except deportation and compassionate release cases, where the Scottish Ministers currently make the final decision about release. We are seeking views on

whether Scottish Ministers should continue to make the final decision to release in deportation cases.

We are also seeking views on who should set licence conditions for extended sentence prisoners who have a total sentence of four years or more where the custodial sentence is less than four years. Currently the Parole Board sets licence conditions in such cases.

The legislation currently makes various references to “recommendations” and “directions”, and to “release” and “immediate release”. We are seeking views on the terminology and any need to clarify responsibility as to who is making the final decision as to whether to release or recall to custody. We are also seeking views on applicable timescales for Scottish Ministers to release a prisoner following a direction to do so by the Parole Board.

Where a prisoner has been released by the Scottish Ministers on a Home Detention Curfew (HDC) licence and this licence has then been revoked, the Scottish Ministers are currently required to refer to the Parole Board the case of any person who makes representations to them about the revocation. The Parole Board may direct, or decline to direct the Scottish Ministers to cancel that revocation. We are seeking views on whether time limits should be introduced by which a prisoner needs to make representation about the revocation of the licence.

Tests that the Parole Board apply in determining whether to release

There are currently different tests specified in the legislation that the Parole Board are required to use when determining whether to release a prisoner on parole licence or recall a prisoner to custody. We are seeking views on whether a common test should be applied and what that test should be.

Timescales for subsequent reviews following initial consideration for parole

Following an initial consideration there are currently different periods set for subsequent reviews by the Parole Board as to whether to release a prisoner on parole. We are seeking views on the review periods that should be applied.

Way in which information is supplied to the Parole Board

The Parole Board currently receives part of the information that it takes into account in making a decision whether to revoke a licence and re- release the prisoner or not, from Scottish Ministers. This information includes reports from other organisations such as local authority Social Work departments, Police Scotland and NHS Scotland. In some circumstances it may be more efficient for those organisations to supply some information directly to the Parole Board rather than via the Scottish Ministers. We are seeking views on whether organisations may be able, in certain circumstances, to submit information directly to the Parole Board rather than via the Scottish Ministers.

Administrative procedures for considering cases as set out in the Parole Board (Scotland) Rules 2001

The Rules set out a framework within which the Parole Board must operate in considering persons for release. The Rules were last amended in 2012. We are seeking views on possible changes to the Rules to increase the efficiency and effectiveness of the Parole Board.

Consultation Questions

The following questions are where appropriate accompanied with a brief background.

GOVERNANCE OF THE PAROLE BOARD

1. Independence of the Parole Board

The Parole Board is independent of Scottish Ministers, at present the legislation does not provide any statement about the Parole Board's independence or its accountability and governance structures.

It may be the case that a statement, specifically stating the Parole Board's independence and how it is governed, would reinforce public confidence in the operation of the Parole Board.

Question 1: Do you agree that there is a need to reinforce the independent nature of the Parole Board's decision making and clarify accountability?

Yes No

Question 1a: Please detail how you believe this would be best achieved.

Comments:

2. Appointment terms of duration

Currently the chairman and members of the Parole Board are appointed for terms of duration between six and seven years with no option for immediate reappointment.

These arrangements are out of step with other similar bodies that, for example, have a fixed five year appointment and permit immediate reappointment of members. The barrier on immediate reappointment for the Parole Board, results in valuable skills, knowledge and experience being lost, and unnecessary recruitment costs being incurred.

We are seeking views on whether the current provisions governing appointment and reappointment to the Parole Board remain fit for purpose.

Question 2: Do you agree that the current provisions governing appointment and reappointment to the Parole Board remain fit for purpose?

Yes No

Question 2a: Please give reasons for your answer to Question 2

Comments:

We consider this to be an appropriate time to allow the members to gain the necessary experience and knowledge to ensure appropriate decision making . The five year fix period , could be a barrier to this .

3. Removal of upper age restriction on membership of the Parole Board

Currently the appointment of a person as a member (including chairman) of the Parole Board shall not extend beyond the day when the person reaches the age of 75.

We propose to remove the upper age limit for Parole Board membership.

Question 3: Do you agree that the upper age restriction on membership of the Parole Board should be removed?

Yes No

Question 3a: If you have answered No, please give reasons for your answer to Question 3

Comments:

4. Prescribed membership of the Parole Board

Currently membership of the Parole Board must include a Lord Commissioner of Justiciary, a registered medical practitioner who is a psychiatrist, a person appearing to Scottish Ministers to have knowledge and experience of the supervision or aftercare of discharged prisoners and a person appearing to have made a study of the causes of delinquency or treatment of offenders.

We believe that in practice, as the number of members has grown to meet demand, the wide experience, knowledge and skills of Parole Board members has lessened the need for specific experience and knowledge to be prescribed.

We propose to review the requirement that membership of the Parole Board includes certain prescribed members.

Question 4: Do you agree that the current requirements regarding the membership of the Parole Board should be reviewed?

Yes

No

Question 4a: Please give reasons for your answer to Question 4

Comments:

It would be of assistance during deliberation to full understand the limitations available to statutory partners, in what can be undertaken during periods of release on license. Members of the board should have a knowledge base which allows them to fully consider the risks for some when released back into the community. In particular the public protection risk agenda.

5. Removal from remit of CESPL for Parole Board recruitment

In relation to the recruitment of Parole Board members, the Parole Board for Scotland falls under the remit of the Commissioner for Ethical Standards in Public Life in Scotland (CESPL) (which monitors how people are appointed to the boards of specified public bodies in Scotland).

We believe that the Parole Board's inclusion in the Commissioner's remit is anomalous. CESPL mainly covers the appointment of members to the management boards of certain public bodies.

We propose to remove the Parole Board, from the remit of CESPL.

Question 5: Do you agree that the Parole Board should be removed from the remit of CESPL?

Yes

No

Question 5a: Please give reasons for your answer to Question 5

Comments:

INVOLVEMENT OF SCOTTISH MINISTERS IN THE PAROLE PROCESS

6. Decision to release or not release in deportation cases

The final decision to release or not release long term prisoners who are liable to removal from United Kingdom in deportation cases on parole licence currently sits with Scottish Ministers.

This is inconsistent with all other decisions (with the exception of compassionate release decisions) where Scottish Ministers are either directed to release or not release, or are required to accept the recommendation of the Parole Board.

We propose that Scottish Ministers should not be involved in the decision to release or not to release prisoners who are liable to removal from the United Kingdom in deportation cases.

Question 6: Do you agree that Scottish Ministers should not be involved in the decision to release or not to release prisoners who are liable to removal from the United Kingdom in deportation cases?

Yes

No

Question 6a: Please give reasons for your answer to Question 6

Comments:

7. Setting licence conditions for extended sentence prisoners

Where a person receives an extended sentence and the custodial part of that sentence is less than four years but the extension period results in a total combined sentence above four years, Scottish Ministers may only impose licence conditions, as recommended by the Parole Board.

In the majority of other cases involving a custodial sentence which is less than four years, the responsibility for setting licence conditions lies with Scottish Ministers alone. In neither case does the Parole Board have a role in the decision to release the prisoner.

We propose that the Parole Board no longer recommend licence conditions in such cases. Instead we propose that Scottish Ministers would set licence conditions in these cases. The Parole Board would still be required to provide advice to Scottish Ministers should the Scottish Ministers request it.

Question 7: Do you agree that for extended sentence prisoners where the custodial part is less than four years, the Parole Board no longer recommends licence conditions and that Scottish Ministers should set licence conditions for those prisoners?

Yes

No

Question 7a: Please give reasons for your answer to Question 7

Comments:

The question posed would be how would the Scottish Ministers seek advice on the supervision of these conditions

8. Recommendations and direction of Parole Board decisions

At present the Parole Board may make “recommendations” and “directions” to the Scottish Ministers in effect these recommendations are binding to Scottish Ministers.

This may lead to a concern that Scottish Ministers are involved in the decision making process of the Parole Board and that decisions made by the Parole Board are not binding.

We propose to clarify that decisions of the Parole Board (other than in compassionate release cases (see also questions 7 and 7a. above)) are binding on Scottish Ministers.

Question 8: Do you agree that it should be clarified that decisions of the Parole Board (other than in compassionate release cases) are binding on Scottish Ministers?

Yes No

Question 8a: Please give reasons for your answer to Question 8

Comments:

9. Reference to 'immediate release' - initial consideration of release following recall

Where a prisoner has been released on licence and that licence is subsequently revoked, the Parole Board will consider the revocation of that licence. Upon their consideration of the case, where the Parole Board directs the immediate release of the prisoner, the legislation provides that the Scottish Ministers give effect to that direction.

In all other cases of prisoner release involving the Parole Board, Scottish Ministers will release the prisoner as soon as practically possible following a direction to do so by the Parole Board. The reference in relation to immediate release of recalled prisoners sets an expectation that can cause practical difficulties.

We propose that the release of a prisoner, whose licence has been revoked, should be as soon as practically possible, as in other cases involving the Parole Board.

Question 9: Do you agree that the release of a prisoner, whose licence has been revoked, should be as soon as practically possible as in other cases involving the Parole Board?

Yes No

Question 9a: Please give reasons for your answer to Question 9

Comments: Prima facie yes but there is a need for greater clarity around what is meant by 'practically possible'.

Social Work Scotland's position is that, in all cases, the timing of release should be aimed at facilitating the implementation of the Risk Management Plan (RMP). The Home Background Report (HBR) should outline the proposed content of the RMP and could possibly indicate the timeframe necessary for implementation if (re-)release is directed.

The Parole Board should be the final arbitrator of the actual date for release to avoid this being unduly delayed due to resourcing issues. Access to appropriate/manageable housing was regarded as a potential area of difficulty for example. There was also a view that we should be working to a pre-determined timescale that should be set by the Parole Board and should apply in all cases. This was felt to be a more transparent and fair way to proceed.

We believe that all parties should be informed of a Parole Board decision simultaneously to enable, where appropriate, RMPs to be actioned at the earliest opportunity.

10. Referrals to the Parole Board regarding the revocation of Home Detention Curfew (HDC) licences

Prisoners may currently make representations to the Scottish Ministers regarding the revocation of their HDC licence. The Scottish Ministers will then refer this to the Parole Board for consideration. There is no timescale within which the representations regarding the revocation of HDC must be submitted. The lack of a time limit for referrals means that the Parole Board may be asked to consider historical referrals where the revocation of the HDC licence has taken place a considerable time ago.

We propose to introduce a time limit of six months, from the point that the person is returned to custody, for the submission of representations to be made concerning the revocation of the HDC licence.

Question 10: Do you agree with the introduction of a time limit of six months from the point that the person is returned to custody, for the submission of representations to be made concerning the revocation of the HDC licence?

Yes

No

Question 10a: Please give reasons for your answer to Question 10

Comments:

TESTS THAT THE PAROLE BOARD APPLY IN DETERMINING WHETHER TO RELEASE

11. Tests for release

In terms of the decisions to be made by the Parole Board there are currently two tests which must be met before releasing or re-releasing certain categories of prisoners.

One of these tests is in relation to the release of life and OLR prisoners and provides that a direction to release cannot be made unless the Parole Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined. The second test is concerned with the re-release of extended sentence prisoners and provides that that a direction to re-release cannot be made unless the Parole Board is satisfied that it is no longer necessary for the protection of the public from serious harm that the prisoner should be confined .

There are no specific tests concerning decisions to be made by the Parole Board for the release, re-release or recall of other types of prisoners.

We propose to introduce a common test to be applied in all release, re-release and recall cases considered by the Parole Board.

Question 11. Do you agree that a common test should be applied in all release, re-release and recall cases considered by the Parole Board?

Yes No

Question 11a: Please give reasons for your answer to Question 11

Comments:

Social Work Scotland regard a common test as a suitable means of improving clarity, accountability and equity in this critical area of decision making.

Question 11b: Do you have views on what the common test to be applied should be?

Yes No

Question 11c: please give reasons for your answer to Question 11b

Comments:

Some were of the view that the test should be limited to (a) consideration of the risk of serious harm posed by prisoners and (b) whether or not custody remained necessary for public protection. Others felt that the test should not be limited to 'serious' harm per se. There was a consensus that a balance must be struck between public protection and providing opportunities for prisoners to address risk factors in order to reduce risk. Where prisoners have already had the opportunity to do so, decision-making should be informed by assessment of the prisoner's response to this. However, where no such opportunities have been made available, there is a need to give due consideration to doing so.

There is also the question of where the responsibility sits for this test i.e. is it for prisoners to prove they no longer present a risk or is it for Responsible Authorities such as CJSW, SPS, Police etc. to prove they cannot be managed safely in the community. Currently this is not felt to be sufficiently clear.

TIMESCALES FOR SUBSEQUENT REVIEWS FOLLOWING INITIAL CONSIDERATION FOR PAROLE

12. Review Periods

Currently Life and OLR prisoners, who are refused release on parole licence at first consideration, are subsequently considered for release on parole licence no later than every two years. Recalled prisoners serving extended sentences are entitled to require Scottish Ministers to refer their case for consideration by the Parole Board, initially at any time upon the revocations, and thereafter annually during the currency of the recall. In practice, such prisoners are considered annually. There are no specific parole review periods set out for other relevant categories of prisoners. In practice these prisoners cases are currently reviewed approximately on an annual basis.

We believe that it may be helpful to specify clear timescales for further reviews following initial consideration. Given the length of sentences involved, we believe the current two year review timescale for life and OLR prisoners is appropriate. For all other types of prisoners a one year timescale may be appropriate.

We propose to introduce clear timescales for all parole considerations following initial consideration.

Question 12: Do you agree that the current provisions whereby Life and OLR prisoners, following initial consideration, are considered for release on parole licence every two years are appropriate?

Yes

No

Question 12a: Please give reasons for your answer to Question 12

Comments: Yes on the proviso that there is flexibility and an opportunity to review such prisoners anytime during this two year period. We believe this can be conducive to sustaining prisoner motivation.

Question 12b: Do you agree that all prisoners, apart from Life and OLR prisoners, should be considered annually for parole following a first decision not to release on parole licence?

Yes X

No

Question 12c: Please give reasons for your answer to Question 12b

Comments: Yes provided there is flexibility in terms of the timing of reviews during the 12 month window. However, Social Work Scotland recognize that this will have implications in terms of workload/resourcing.

WAY IN WHICH INFORMATION IS SUPPLIED TO THE PAROLE BOARD

13. Referring Bodies

Where the Parole Board is to consider revocation of a licence, following a reported breach of licence conditions, the breach report is submitted by the supervising officer (social worker) to Scottish Ministers, who then refer this on to the Parole Board.

It is important that potential breaches of licence conditions by prisoners who are serving the end of their sentence in the community are considered quickly as there may be a risk to public safety. The process could be streamlined, and therefore risk to public safety reduced, by allowing local authority social workers to report licence breaches directly to the Parole Board for consideration and for suitably qualified professionals such as officers from Police Scotland and NHS medical staff to also provide any additional papers requested directly to the Parole Board.

We propose that, for cases where revocation of a licence or re-release of a prisoner is being considered by the Parole Board, local authority social workers may report licence breaches directly to the Parole Board for consideration, and that suitably qualified professionals such as local authority social workers, officers from Police Scotland and NHS medical staff may also directly provide any additional papers requested to the Parole Board.

Question 13: Do you agree that, for cases where revocation of a licence or re-release of a prisoner is being considered by the Parole Board, local authority social workers should be able to report licence breaches directly to the Parole Board for consideration and for suitably qualified professionals such as local authority social workers, officers from Police Scotland and NHS medical staff may also directly provide any additional papers requested to the Parole Board?

Yes

No

Question 13a: Please give reasons for your answer to Question 13

Comments:

Social Work Scotland fully support such a step on the grounds that it has the potential to expedite decision-making (by removing an extra layer of administration). This can be critical where the individual concerned, by virtue of their continued liberty, is presenting a risk of serious harm to the public.

As an aside we would ask that the criteria/tests applied for recall, particularly immediate recall, is made more transparent to those supervising licences in the community. This too would expedite decision making by enabling breach reports to target key areas, as well as supporting accountability and consistency.

Any changes in this area would also need to recognize work currently underway around the SWS led Breach Pilot, where the role of the CJSW supervising officer is pivotal to the process.

ADMINISTRATIVE PROCEDURES FOR CONSIDERING CASES

14. Use of live link

Currently the chairman of the tribunal or the chairman of the oral hearing may allow the use of a live link (such as a video link) in the taking of evidence of the prisoner concerned, or a witness. In order for the live link to be used it must be considered by the Parole Board, to be in the interests of justice to do so.

Use of live link results in significant administrative efficiencies for the Parole Board, although there may be occasions, for example where a prisoner has communication difficulties, where it is recognised that using live link would impact on the fairness of the proceedings.

We propose that a live link cannot be used where it would be unfair on the prisoner concerned, or the witness, to do so.

Question 14: Do you agree that a live link cannot be used where it would be unfair on the prisoner concerned, or the witness, to do so?

Yes No

Question 14a: Please give reasons for your answer to Question 14

Comments:

Drawing on the experience of those who are currently engaged in processes which support prisoner progression, we would suggest that there are some issues with using IT solutions in this context. In our experience IT provision for this purpose is frequently reported as being unreliable. There is also some indication that prisoners may find this technology intimidating. More importantly, using this technology may not be conducive to establishing a full and participatory discussion.

15. Removal of prescribed dossier contents

Scottish Ministers currently submit a dossier to the Parole Board containing any information they consider to be relevant to the case, including wherever practicable, the information and documents specified in the Parole Board (Scotland) Rules 2001 (“the Rules”).

We propose that, the prescribed set of documents is no longer necessary. Instead the general requirement that the Scottish Ministers should submit a dossier to the Parole Board containing any information the Scottish Ministers consider to be relevant to the case, is sufficient. The Parole Board is ultimately responsible for decisions it makes and knows what information is required in order to make those decisions. By moving to the proposed arrangements we will eliminate any unnecessary paperwork, and give the Parole Board the flexibility to determine what papers are relevant in any particular case. In practice it is anticipated that the Parole Board will agree with Scottish Ministers a default list of core documents they will require.

Question 15: Do you agree that the current list of prescribed documents required for the dossier in the Rules, is no longer relevant and the general requirement that the dossier contain all the information that Scottish Ministers consider to be relevant to the case is sufficient?

Yes No

Question 15a: Please give reasons for your answer to Question 15

Comments:

16. Issue of Guidance by the Chairman of the Parole Board

To improve consistency of approach and ensure common understanding we propose enabling the chairman of the Parole Board to issue guidance in relation to the procedure to be adopted in dealing with any case, and a requirement that all members of the Parole Board and all parties must have regard to this guidance.

Question 16: Do you agree that the chairman of the Parole Board should be able to issue guidance in relation to the procedure to be adopted in dealing with any case and that all members of the Parole Board and all parties must have regard to this guidance?

Yes

No

Question 16a: Please give reasons for your answer to Question 16

Comments:

17. Authorisation to attend hearings

Cases are currently considered by the Parole Board in three ways, casework meetings, tribunals and oral hearings. Observers may currently attend tribunal hearings with the authorisation of the chairman of the consideration, for example for training purposes.

We propose to enable the chairman of any consideration (casework meeting, tribunal and oral hearing) to authorise any person to attend.

Question 17: Do you agree that the chairman of any consideration (casework meeting, tribunal and oral hearing) should be able to authorise any person (for example, observers) to attend?

Yes No

Question 17a: Please give reasons for your answer to Question 17

Comments:

18. Written record of state of preparation

We propose that, before consideration of their case, the prisoner (or their representative) must submit a written record of their state of preparation to the Parole Board. This record of the state of preparation could include such matters as: - confirmation of receipt of dossier; confirmation of representative (if any); confirmation that they wish to participate in the parole process; confirmation of intention to seek release or otherwise (and review period if not); and, notification of any witnesses. This requirement would reduce unnecessary postponements and adjournments, help the prisoner to be fully prepared, and offer the opportunity for them to raise any issues of concern in advance.

Question 18: Do you agree that before consideration of their case the prisoner (or their representative) must submit a written record of their state of preparation to the Parole Board?

Yes No

Question 18a: Please give reasons for your answer to Question 18

Comments:

Social Work Scotland consider that an unintended consequence of this may be that it would act as an obstacle to accessing the parole process, specifically through:

- Prevalence of literacy issues amongst prisoners indicating a need for support to prepare such a record. There may also be a confidence issue for some.
- Difficulty identifying a support provider for this purpose. Current constraints around legal aid would suggest that assistance is unlikely to come from legal agents. Should this task fall to SPS, there is question as to whether this would present a conflict of interest.

We would wish to have some clarity on how this sits alongside current processes which require prisoners to sign a form issued by the SPS Court Desk indicating that they wish to be involved in the parole process.

19. Considerations for recalled extended sentence prisoners

Currently in the majority of cases where an individual has been recalled to custody by the Parole Board (or in some cases where the risk of serious harm is imminent to the public, recalled by Scottish Ministers) their consideration for release or not to release is generally considered at a casework meeting (paper-based with the individual concerned not present). One of the exceptions to this is individuals who are subject to an extended sentence, who have been recalled and are in their extension part of their sentence.

To ensure a more timeous decision we propose that those individuals who are subject to an extended sentence, have been recalled and are in their extension part of their sentence are also generally considered at a casework meeting.

Question 19: Do you agree that those individuals who have been recalled and are in their extension part of their sentence are generally considered at casework meetings?

Yes No

Question 19a: Please give reasons for your answer to Question 19

Comments: The majority view was that the tribunal processes should be kept for reasons stated below;

Whilst we appreciate that such individuals are serving determinate sentences, they can also be among the most risky in terms of the risk of serious harm that they present to the public. Thus the transparency around decision making for these individuals is important, along with the robustness of the process of the case management meeting and consideration should be given as to the sufficient in this regard.

To ensure that of casework meetings continue to be a robust process.

20. Composition of Parole Board members for oral hearings and tribunals

Currently a casework meeting can sit with a minimum of two Parole Board members but oral hearings and tribunals are required at the outset to sit with three Parole Board members (this can be reduced to two in certain circumstances, such as in the event of the death or incapacity or unavailability of a member appointed the tribunal or oral hearing). We are seeking views as to whether the minimum number of members required for oral hearings and tribunals should be changed to two members.

Question 20: Do you agree that oral hearing and tribunal considerations should mirror that of casework meetings, so that they could be conducted with two Parole Board members?

Yes No

Question 20a: Please give reasons for your answer to Question 20

Comments:

21. Breach Considerations - Imminent Risk of Serious Harm to the Public

Where a supervising officer (local authority social worker) believes an individual who has been released on licence has breached the conditions of their licence and that the Parole Board should consider recalling them to custody the officer submits a breach report to Scottish Ministers. A decision to recall that individual in such a case requires two members of the Parole Board (in exceptional circumstances these two members may decide an oral hearing is required, requiring three members).

We are proposing that if there is an imminent risk of serious harm to the public a single Parole Board member can take a decision to recall. In exceptional circumstances this single member may still decide that an oral hearing requiring three members is required.

Question 21: Do you agree that a single Parole Board member could take a decision on a recall consideration?

Yes

No

Question 21a: If you have answered No, please give reasons for your answer to Question 21

Comments:

As a key stakeholder in the recall process, we have often been frustrated by, not only by the time taken to make decisions, but also the lack of clarity and transparency around decision making in this area. Some were content for a single Parole Board member to make such a decision as long as it was made within 24 hours of submission of the Breach Report and was thereafter reviewed by at least two Parole Board members within three working days. This would include both decisions to recall and not to recall.

Others felt that, given the critical nature of this area of decision making, this should not be left to one person.

Question 22: Please tell us about any potential impacts, either positive or negative, that you consider any of the proposals in this consultation may have on anyone (including custody or community facing) or any organisation affected by the parole process.

Comments:

We believe that the focus of decision making on prisoner progression and recall should be limited to initial consideration of the risk of serious harm that the individual presents and whether or not this can be safely managed in the community. This would complement a policy journey which aims to remove the 'churn' within prisons. This would increase the capacity of staff to focus on interventions aimed at reducing risk, particularly that associated with harm and promoting re-integration and desistance.

We would contend that any changes introduced should be balanced with quality assurance activity to ensure aims are achieved and unintended consequences identified and acted upon.

We would also suggest that there is much that could be done to improve the transparency around both processes and decision making. For example, we do not believe that the rationale behind decision making is always clear and, at times, for those who service the process consistent. Timescales around notification of outcomes also needs to be clarified and this should include all parties to the decision making process. Our experience indicates that sometimes community social work are only latterly informed of decisions, which has implications for production of risk management plans.

Finally, efforts to modernise processes etc. do not sufficiently reflect the fact that many of the prisoners who will be affected are among the most vulnerable and disadvantaged in our society. Thus there needs to be responsivity to mental health issues, trauma and literacy issues. In addition, those affected are often serving lengthy sentences which, in addition to problems of institutionalisation, can mean that they have missed out on technological advances.

Responding to this consultation

This consultation commenced on 21 July 2017 and will run for 12 weeks. If you wish to respond to the consultation, please provide your response by **13 October 2017**.

Please respond to this consultation using the Scottish Government's consultation platform Citizen Space. You can view and respond to this consultation online at <https://consult.scotland.gov.uk/justice/parole-reform-in-scotland>.

Please note you can save and respond your consultation responses during the period the consultation is open but ensure that your completed response is submitted before the closing date of **13 October 2017**

If you are unable to respond online, please complete the **Respondent Information Form** and email it to ParoleReform@gov.scot.

If you do not have access to e-mail, you may still submit your response by post with your completed Respondent Information form by sending it to:

Avril Coats
Parole Reform (X-Spur)
The Scottish Government
Saughton House
Edinburgh
EH11 3XD

Handling your response

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

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

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>.

If you use Citizen Space to respond, you will receive a copy of your response via email.

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

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to ParoleReform@gov.scot

Scottish Government consultation process

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

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

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>).

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

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

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



RESPONDENT INFORMATION FORM

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

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

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

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

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

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

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

- Yes
 No

CONSULTATION PAPER QUESTIONS

Parole Reform in Scotland – A consultation on proposals for legislative change

Question 1: Do you agree that there is a need to reinforce the independent nature of the Parole Board’s decision making and clarify accountability?

Yes No

Question 1a: Please detail how you believe this would be best achieved.

Comments:

Question 2: Do you agree that the current provisions governing appointment and reappointment to the Parole Board remain fit for purpose?

Yes No

Question 2a: Please give reasons for your answer to Question 2

Comments:

Question 3: Do you agree that the upper age restriction on membership of the Parole Board should be removed?

Yes No

Question 3a: If you have answered No, please give reasons for your answer to Question 3

Comments:

Question 4: Do you agree that the current requirements regarding the membership of the Parole Board should be reviewed?

Yes

No

Question 4a: Please give reasons for your answer to Question 4

Comments:

Question 5: Do you agree that the Parole Board should be removed from the remit of CESPL?

Yes

No

Question 5a: Please give reasons for your answer to Question 5

Comments:

Question 6: Do you agree that Scottish Ministers should not be involved in the decision to release or not to release prisoners who are liable to removal from the United Kingdom in deportation cases?

Yes

No

Question 6a: Please give reasons for your answer to Question 6

Comments:

Question 7: Do you agree that for extended sentence prisoners where the custodial part is less than four years, the Parole Board no longer recommends licence conditions and that Scottish Ministers should set licence conditions for those prisoners?

Yes

No

Question 7a: Please give reasons for your answer to Question 7

Comments:

Question 8: Do you agree that it should be clarified that decisions of the Parole Board (other than in compassionate release cases) are binding on Scottish Ministers?

Yes

No

Question 8a: Please give reasons for your answer to Question 8

Comments:

Question 9: Do you agree that the release of a prisoner, whose licence has been revoked, should be as soon as practically possible as in other cases involving the Parole Board?

Yes

No

Question 9a: Please give reasons for your answer to Question 9

Comments:

Question 10: Do you agree with the introduction of a time limit of six months from the point that the person is returned to custody, for the submission of representations to be made concerning the revocation of the HDC licence?

Yes

No

Question 10a: Please give reasons for your answer to Question 10

Comments:

Question 11. Do you agree that a common test should be applied in all release, re-release and recall cases considered by the Parole Board?

Yes

No

Question 11a: Please give reasons for your answer to Question 11

Comments:

Question 11b: Do you have views on what the common test to be applied should be?

Yes

No

Question 11c: please give reasons for your answer to Question 11b

Comments:

Question 12: Do you agree that the current provisions whereby Life and OLR prisoners, following initial consideration, are considered for release on parole licence every two years are appropriate?

Yes

No

Question 12a: Please give reasons for your answer to Question 12

Comments:

Question 12b: Do you agree that all prisoners, apart from Life and OLR prisoners, should be considered annually for parole following a first decision not to release on parole licence?

Yes

No

Question 12c: Please give reasons for your answer to Question 12b

Comments:

Question 13: Do you agree that, for cases where revocation of a licence or re-release of a prisoner is being considered by the Parole Board, local authority social workers should be able to report licence breaches directly to the Parole Board for consideration and for suitably qualified professionals such as local authority social workers, officers from Police Scotland and NHS medical staff may also directly provide any additional papers requested to the Parole Board?

Yes

No

Question 13a: Please give reasons for your answer to Question 13

Comments:

Question 14: Do you agree that a live link cannot be used where it would be unfair on the prisoner concerned, or the witness, to do so?

Yes

No

Question 14a: Please give reasons for your answer to Question 14

Comments:

Question 15: Do you agree that the current list of prescribed documents required for the dossier in the Rules, is no longer relevant and the general requirement that the dossier contain all the information that Scottish Ministers consider to be relevant to the case is sufficient?

Yes

No

Question 15a: Please give reasons for your answer to Question 15

Comments:

Question 16: Do you agree that the chairman of the Parole Board should be able to issue guidance in relation to the procedure to be adopted in dealing with any case and that all members of the Parole Board and all parties must have regard to this guidance?

Yes

No

Question 16a: Please give reasons for your answer to Question 16

Comments:

Question 17: Do you agree that the chairman of any consideration (casework meeting, tribunal and oral hearing) should be able to authorise any person (for example, observers) to attend?

Yes

No

Question 17a: Please give reasons for your answer to Question 17

Comments:

Question 18: Do you agree that before consideration of their case the prisoner (or their representative) must submit a written record of their state of preparation to the Parole Board?

Yes

No

Question 18a: Please give reasons for your answer to Question 18

Comments:

Question 19: Do you agree that those individuals who have been recalled and are in their extension part of their sentence are generally considered at casework meetings?

Yes

No

Question 19a: Please give reasons for your answer to Question 19

Comments:

Question 20: Do you agree that oral hearing and tribunal considerations should mirror that of casework meetings, so that they could be conducted with two Parole Board members?

Yes

No

Question 20a: Please give reasons for your answer to Question 20

Comments:

Question 21: Do you agree that a single Parole Board member could take a decision on a recall consideration?

Yes

No

Question 21a: If you have answered No, please give reasons for your answer to Question 21

Comments:

Question 22: Please tell us about any potential impacts, either positive or negative, that you consider any of the proposals in this consultation may have on anyone (including custody or community facing) or any organisation affected by the parole process.

Comments:



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