

Justice Committee Inquiry Call for Views on the Management of Offenders Bill

Response from Social Work Scotland

Social Work Scotland is the professional leadership body for the social work and social care professions. We are a membership organisation which represents social workers and other professionals who lead and support social work across all sectors. We have members from NHS, local authorities, third and independent sectors.

Social Work Scotland welcomes the opportunity to respond to the Call for Views issued by the Justice Committee of the Scottish Parliament on proposed amendments to the Management of Offenders (Scotland) Act 2005 by the Bill.

Introduction

Social Work Scotland welcomes the amendments in section one of the bill which will provide greater reassurance and protection for victims. The expansion of EM may enable more people who have committed offences to be safely managed in the community and the amendments to the Rehabilitation of Offenders Act (1974) will improve employability and social inclusion.

Social Work Scotland takes cognisance of the research on the impact of imprisonment and associated barriers to social inclusion post-sentence, including disruption to social bonds, housing and, crucially, employability. We support the focus on prevention outlined in the Justice Vision and Priorities 2017, and recognise that parental imprisonment, for example, is an established adverse childhood experience (ACE), which can lead to intergenerational disadvantage and increased risk of offending and imprisonment.

The imprisonment rate in Scotland remains among the highest in Europe, and shorter sentences have been shown to be less effective than community alternatives in reducing rates of re-offending. Alongside this, sentence length has increased over the past decade. Social Work Scotland agree that there is a compelling need to reduce persistently high rates of imprisonment in Scotland, and use community-based options to seek more diversion from prison and decarceration.

We share the view that imprisonment should only be used for those who commit the most serious of offences or who pose a significant risk to the public. We welcome the development of creative measures which offer greater protection to victims by augmenting alternatives to custody. We recognise the need to address re-offending rates by supporting desistance and promoting recovery and reintegration. Sections one and two of the bill will support these aims while section three will help to clarify the role of the Parole Board for Scotland.

Part One of the Bill

1. Overall, do you support Part 1 of the Bill concerning the electronic monitoring of offenders?

Yes. Electronic monitoring (EM) is a versatile technology and the proliferation of its use beyond the current Radio Frequency (RF) method to include Global Positioning System (GPS) and Remote

Alcohol Monitoring (RAM) may provide an opportunity to improve monitoring and compliance and to promote desistance from offending.

The research on EM indicates that the extent to which it is effective in this endeavour is dependent on how it is used. Social Work Scotland believe that new forms of EM could be useful at different points in the justice system. In order to be effective their use should be tailored in such a way as to support identified individual goals. For this reason decisions regarding the imposition of EM should always be informed by a comprehensive professional Social Work assessment.

This requires careful consideration of the type of EM technology which is likely to be effective and the impact of this including how, why, and with whom its use would be appropriate. The provision of EM should in many, but not all, cases be used alongside supervision and support, to enhance opportunities for rehabilitation and promote longer term desistance. We consider this a particular consideration for work with women, as they generally tend to fare less well in the justice system and are more likely to have had a history of victimisation.

Careful risk assessment practice including home visits is essential in order to inform decision making in relation to EM curfew arrangements and this should include consideration of the impact on the individual, family, household members and victims.

In some cases, imposing EM may reduce the risk to the public whilst simultaneously increasing the risk to someone else within the household. This may be the case where there is evidence of domestic abuse, for example. We welcome the proposal that decision makers clearly indicate their reason(s) for imposing EM, in individual cases, in order that EM continues to be used proportionately and its use is clearly linked to reported supervision goals and public protection.

Overall Social Work Scotland is supportive of the proportionate use of the proposed EM technologies on a voluntary basis, when its use is informed by careful assessment by a suitably qualified social work professional and decisions regarding its application are taken by the judiciary or the Parole Board for Scotland. In most cases, in order to support desistance from offending, additional supervision and support would be required which must be adequately resourced. Social Work Scotland welcome the opportunity for further consultation on any emergent forms of EM which the bill would give ministers powers to introduce. We consider EM to have many potential uses but do not feel that this should not be viewed as a panacea.

2. The Scottish Government wishes electronic monitoring to play a greater role within the criminal justice system. Will the reforms in Part 1 of the Bill help enable this? If not, what further changes (legislative or non-legislative) are required?

The use of RF monitoring is well established and is associated with relatively high completion rates. Conducting initial demonstration projects in Scotland would provide evidence of the efficacy of novel forms of EM and this may help to inspire the confidence of the public, practitioners and the judiciary. Thereafter the provision of training and guidance based on established principles of good practice, including research from other relevant jurisdictions would promote the creative use of EM. Establishment of a mechanism for independent scrutiny of how EM is being used would provide safeguards and assurances regarding any potential misuse.

EM should be delivered using a partnership approach involving Police Scotland, justice social work departments and the 3rd sector. Surveillance should not be applied without adequate provision of support, where appropriate, to facilitate desistance from offending and promote rehabilitation in line with the government's Justice Vision and Priorities. The implications for social work service provision will have to be considered alongside and additional funding provided as necessary.

3. Do you have any views on any specific aspects of Part 1? – for instance, revisions to the list of circumstances in which electronic monitoring may be imposed or the creation of a power to enable future monitoring devices to contain GPS technology or technology that can measure alcohol or drug ingestion.

EM involves the restriction of liberty and it should only be imposed proportionately to balance the rights, risks and interests of all who may be affected by its use. Care should be taken to avoid “net widening” so that EM is not imposed on people who would not otherwise have received such an onerous disposal. The research on how its use is experienced indicates that EM is regarded as less severe than custody but it is still experienced as ‘painful’.

Social Work Scotland would therefore have reservations regarding the use of EM as an alternative to lower tariff disposals such as lower level financial penalty. Whilst this may, prima facie, appear to be less financially detrimental to other household members, there is a risk that a two-tier system would be created in which EM is used disproportionately with those on low incomes. EM would be stigmatising in these circumstances and this may undermine longer-term progress towards desistance in addition to the proposed aims of amendments to part 2 of the act.

We welcome the amendment which provides for a unified set of rules on the use of EM for (a) sentencing and (b) release from custody and anticipate that this will bring greater clarity.

Further guidance on the use of remote alcohol monitoring (RAM) and management of compliance should be based on evidence which recognises the principles of recovery and appropriate provision of support. It is important to acknowledge that the typical journey towards change may involve several lapses or relapses for example. The proportionality of restrictions would have to be carefully considered including whether the person’s social and treatment needs would be facilitated or impeded by any restriction.

Likewise guidance for GPS monitoring should involve clearly defined boundaries for buffer and exclusion zones. It is imperative that boundaries are unambiguous and clearly outlined for those subject to restriction. Sanctions or responses to either type of infringement would have to be clear in addition to how alleged and actual apparatus failure would be responded to, including issues such as signal failure or disputed accuracy in pinpointing location, acknowledging that both the person’s liberty and a victim’s safety may be compromised. Buffer zones may require to be broader depending on the precision of the technology introduced to minimise the likelihood of legal challenge. These potential difficulties will be of particular relevance in many rural locations where network coverage is patchy and access to a signal is intermittent at best.

Skilled assessment would be required in order to establish the pattern, nature, seriousness and likelihood of offending in addition to risk scenarios highlighting the likely impact of applying different types of monitoring. This would consider the risk of what, when, how, to whom and in what circumstances in line with the Framework for Risk Assessment Evaluation and Risk Management.

With regard to suitability assessment social workers will have to take account of the availability, strength and reliability of a signal. It is unlikely that this information will be readily available to social work staff in all areas. This is an issue in which those with the specialist knowledge of EM/GPS, and who are responsible for the monitoring equipment, must assist in informing the assessment process. We would also caution that this could potentially lead to differential availability and efficacy of GPS EM, culminating in the creation of a tiered system in which rural areas fare less well. Guidance should therefore cover how to counter any challenges rural localities are likely to face.

It is important to emphasise that EM will not be suitable for every individual and that it should only be used where it has been assessed as appropriate, and proportionate. Social Work Scotland do not feel that a compelling argument has been made for using EM with lower risk offenders or in response to less serious offences, which would normally attract a disposal such as a fine or structured deferred sentence.

Including the option of a restricted movement requirement (using EM) which may be imposed by the judiciary within a Community Payback Order (CPO) is a significant development as this could see the use of EM increase. CPOs are among the most used community sentences in Scotland, with some 19,100 CPOs imposed between 2016/17. An increase in the use of EM would involve

justice social workers carrying out more suitability assessments and supervising more monitored people. The use of EM in Scottish prisons as a condition of temporary release from prison may further increase the number of assessments completed jointly by community based and prison based social work and this may also impact on staffing levels/resources. In this event adequate funding would have to be provided.

Part Two of the Bill

4. Overall, do you support Part 2 of the Bill? The Scottish Government's view is that it will provide a more appropriate balance between the public's right to protection and a former offender's right to "move on" with their life, by, overall, reducing the legal need for disclosure. Do you agree?

Yes. Social Work Scotland support the bill's reform of the Rehabilitation of Offenders Act (1974) reducing the length of time most people with convictions will have to disclose an offence. The fact that, currently, sentences of longer than thirty months can never become spent impacts on post-release reintegration and employability. We agree that this should be reviewed in light of the sentencing trends indicating that the average length of a custodial sentence has increased by more than a quarter over the past decade (<http://www.gov.scot/Publications/2018/02/7427/39>).

Having this apply only to longer sentences will contribute to addressing disadvantage in areas such as education and employment which are so crucial to moving away from offending. People who have committed offences also face many financial disadvantages due to excessive disclosure requirements, for example being refused banking and insurance (often regardless of the type of offence) or having to pay premiums well in excess of the average cost.

This proposal will promote community inclusion, signalling to the community, and the person themselves, that punishment has ended. We know that having hope is central to establishing an identity which is incompatible with offending. It is important that as a society we signal to people that their punishment is finite and that it is possible for them to enjoy the rights and responsibilities of citizenship going forward.

5. Do you agree with the Scottish Government that other reforms in Part 2 will make the law on disclosure of convictions more intelligible, clear and coherent?

Yes. People who have committed offences sometimes report confusion regarding how long a previous sentence will continue to impact on their ability to move forward as a contributing member of society. The reforms will make the system simpler and clearer for service users and professionals alike.

6. Do you have any further views on law and policy around disclosure of convictions?

Social Work Scotland believe that the proposals in part two will likely lead to fewer disclosures and more rapid recognition of rehabilitation. This is balanced by continued protection for employers who will still be told about convictions that are recent and relevant. We agree that maintaining the current system for high level disclosures enables employers and vulnerable groups to have the same protections as before.

Part Three of the Bill

7. Do you support Part 3 of the Bill, which makes provision for the Parole Board for Scotland, in terms of its membership and appointment system; its functions and requirements in relation to prisoners, its independence, and its administration?

Yes. Social Work Scotland support the provisions made in part three of the bill. It would appear that the current provisions governing appointment and reappointment will be improved by the measures proposed.

A five year term with consideration for re-appointment alongside other candidates would provide an opportunity to select the best candidate for the role. This allows due consideration to be given to new applicants who may bring a fresh perspective to proceedings whilst enabling the retention of experienced members. Given the varied qualifications and experience of members, particularly in the field of mental health, Social Work Scotland does not regard specific representation by a psychiatrist or a member of the judiciary as necessary.

Social Work Scotland view removal of the upper age restriction as positive given our position on workplace discrimination including ageism. We also consider that the amendment of 'chairman' to gender neutral 'chairperson' is appropriate and this is also consistent with our values as an organisation.

In general the proposals are likely to increase public understanding of how the parole board functions as an independent tribunal by restating this statutorily. We agree that this will make the Board's governance and accountability more transparent.

We note that only minor amendments are proposed in relation to the functions and requirements of the Parole Board.

Social Work Scotland welcomes the amendment to remove the word 'immediately' in respect of all release directions following recall and replacement with 'without undue delay'. We appreciate the need for throughcare arrangements, such as housing, benefits or medical requirements, to be in place for those being liberated in order to support their resettlement in the community. In light of this we would propose that, in all cases, the timeframe for release should focus on implementation of the risk management plan in order that criminogenic needs are addressed. Information on the key features of risk management plans available in home background reports. Social Work Scotland regards the Parole Board for Scotland as the appropriate arbitrator in determining timeframes, and specifying the precise release date, in order to prevent unnecessary delay, for example due to housing issues.

8. Do you have any further views on the role, purpose and functions of the Parole Board?

We would also suggest that more could be done to improve the transparency around both processes and decision making. For example, we do not believe that the rationale behind parole decision making is always clear for those who use services or that the process is experienced by them as consistent. Timescales around notification of outcomes could be clarified and this should address all parties to the decision making process. Our experience indicates that there are occasions when community based social work services are notified at a very late stage which has implications for realisation of risk management plans.

Social Work Scotland would welcome introduction of a common test which could be applied in all release, re-release and recall cases considered by the Parole Board. This would assist in providing clarity, accountability and consistency in this critical area of decision making. A focus on the risk of serious harm that an individual presents and whether or not the risk can be safely managed in the community is crucial. This would complement policy intended to reduce the 'churn' through prisons,

increasing staff capacity to focus on interventions aimed at addressing the risk of harm whilst promoting individual wellbeing, successful re-integration and desistance from offending.

Finally, efforts to modernise processes should take account of the fact that many of the prisoners who will be affected are among the most vulnerable and disadvantaged. Thus there needs to be sensitivity to issues around mental illness, trauma and literacy. Often those serving lengthy sentences have difficulties due to institutionalisation. Most are unaware of technological advances and find the interface with technology intimidating as a result.

Social Work Scotland would welcome the opportunity to give evidence to Committee.

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