

# Bail & Release from Custody Bill

## SUBMISSION FROM SOCIAL WORK SCOTLAND

**13.09.2022**

Social Work Scotland is the professional body for social work leaders, working closely with our partners to shape policy and practice, and improve the quality and experience of social services. We welcome this opportunity to comment on the Bail and Release from Custody Bill.

### General approach (all sections)

**Do you have any comments on the general approach taken in the Bill to the following?**

- **The use of bail and remand**

Social Work Scotland (SWS) supports the general approach and its links both to the Scottish Government's Vision for Justice in Scotland strategy and Community Justice Strategy. The continuing high number of people in Scotland's prisons is well known, including the demographics and wider implications, particularly for families and children.

The use of custody for remand should be a last resort for the court – prison, both for remand and for convicted individuals, will always be necessary but must be restricted for those who pose a risk of serious harm for the reasons set out in the policy memorandum i.e. imprisonment damages the connections that prevent people from offending or reoffending, such as family relationships, accommodation and employment. Short-term imprisonment is not effective in addressing the underlying causes of offending.

However, a decision not to use custody must always be underpinned by appropriate risk assessment to ensure public protection and victims are kept safe.

- **Arrangements for the release of prisoners**

SWS supports the general approach to focus more on the rehabilitation and reintegration of individuals leaving custody for reasons referred to above.

In principle, although we do have reservations about some aspects of the proposals, increasing the options to test out peoples' readiness to be released from prison to inform The Parole Board for Scotland's decision making is welcome. Better testing should lead to better evidence of a person's readiness to be released and should, therefore, lead to better public protection and keeping victims' safe. Improving the coordination and provision of support is an integral part of helping people reintegrate into their community and reduce the risk of reoffending.

**Do you have any comments on the practical implementations of the proposed changes in the Bill, including resource implications?**

SWS anticipate some logistical, practical and financial considerations that will need to be considered in relation to the increased role of justice social work (JSW) in providing information to courts in respect of bail.

For example, some sheriff courts are located some distance from the JSW office and there is not always a JSW court officer present; criminal courts do not sit every day. This is particular the case in remoter rural and island local authorities. How will, therefore, JSW be able to fulfil the intention of the Bill that JSW must be able to provide information without impacting on the efficient running of court business?

In respect of reintegration licences, there are potentially practical implications relating to the release of prisoners that do not have access to their own accommodation. For example, in one authority JSW is currently unable to offer pre-release home leave, due to the authority transferring all of its housing stock. Homeless accommodation is limited and Registered Social Landlord's (RSLs) have historically not been willing to enter into arrangements for temporary home leave. They have been trying to make arrangements for the lease of a property for this purpose for some time, without any luck. The risk is that this will result in a post code lottery when considering reintegration licence release.

There is a related question of funding, too. The financial implications for Local Authorities are that SPS will pay for home leave accommodation only when the prisoner is residing there. This means JSW/the local authority would otherwise have to fund any gaps. In one authority a 2 bedroom property (sheltered accommodation) was reserved for the best part of one year with the intention that he would access this on home leaves and this would have been his permanent tenancy once he was released on licence. It was envisaged that on home leaves he would be supported to furnish the tenancy and create his own living environment. Unfortunately, the individual was downgraded to closed conditions and JSW will have to start planning again prior to his next parole review. Whilst this case is very much the exception, the costs are significant particularly where there are mental health, physical health and the risk of serious harm to be considered.

We are unclear what the arrangements will be for reintegration licences in respect of planning. Are they considered temporary licences? If so, who is expected to bear the accommodation costs; and how will this be provided in respect of homeless prisoners? This is not covered in the Financial Memorandum.

There is reference in the memorandum, however, to prison-based social work (PBSW) acknowledging “It is difficult to accurately assess what (the) additional requirements might be”. We agree but work related to reviewing the Memorandum of Understanding with SPS that underpins the latter’s purchase of PBSW as referred to (para 127, p22) has yet to start in earnest. There are current serious local authority concerns on the capacity of PBSW to deliver the level of service set out for PBSW in several prisons and we strongly emphasise that factoring in the implications of the impact of reintegration licences on PBSW is crucial.

The Financial Memorandum acknowledges several times that assessing the impact on local authorities is “challenging”. We agree. We continue to argue that the true cost of delivering the full suite of justice social work services is essentially unknown. Where unit costs are used as part of the current funding formula (50% of which is made up of workloads to determine the allocations to local authorities from the approximate £108m for JSW annually) these are predicated on historical calculations dating from 2016/17 and are calculated by dividing total recorded expenditure on, for example, bail supervision across the 8 now defunct Community Justice Authorities by the volume of those disposals.

There are, however, many aspects of JSW that currently have no unit cost; this has led to additional targeted funding as referred to in the memorandum to support the development and expansion, for example, of bail-related services and alternatives to remand e.g. electronic monitoring assessments for bail. But this is no substitute for properly costing out what is required to deliver aspects of the Bill and then funding that in its entirety, including the cost of delivering justice social work services more widely – this is what is required if Scottish Government wish to establish consistency of service provision and the associated quality, performance and outcomes.

The Setting the Bar for Social Work in Scotland report (Prepared by Emma Miller and Karen Barrie for Social Work Scotland, May 2022 <https://socialworkscotland.org/reports/settingthebar/>) is clear that Social Work Scotland’s members have been reporting increasing concerns that social work workloads have become unmanageable, and that social workers in local authorities and health and social care partnerships are struggling under the weight of their caseloads. This led us to ask: can our workforce realistically work with people in the way that they’re trained to do, and in line with the aims of Scotland’s legislation and policy? How much work is too much for social workers? Where’s the line?

The picture that emerges from the ‘Setting the Bar’ research is serious, and demands attention now. It describes an ageing workforce – some 19% are reaching retirement

age – and a staff group who are struggling with administrative burdens, fearful of making mistakes, and living with the moral distress of having to work in a way which doesn't align with their professional values. One in 4 social workers graduating doesn't make it to 6 years in the job (Setting the Bar survey, SSSC data, 2022). This includes justice social work staff.

There are two main financial implications for local authorities in the Bill. For the enhanced role envisaged for justice social work in **the provision of information to the court**, the methodology and calculation of the annual cost (£2.512m) are not unreasonable as a means of trying to achieve this. However, this must be kept under review with further discussion and agreement in advance of any implementation if the Bill becomes law. The increase in inflation and energy costs already render the roughly estimated hourly cost of a social worker (£29) in the memorandum as unreliable. There may also be associated costs to be factored in e.g. space in court buildings is often limited and the increase in staffing that will be required may pose related problems.

In respect of the proposed introduction of the **reintegration licence for certain long-term prisoners**, the unit cost of statutory throughcare (£9,034) does provide, and notwithstanding our argument about the historical basis on which this is calculated, a “notional cost” (para 130m page 22) to work from. We accept that until there can be a root and branch review of how justice social work is funded to more accurately quantify this that this is the best way to currently assess the cost for this proposal.

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

**What are your views on the proposal to encourage input from justice social workers in relation to court decisions on whether pre-trial bail should be granted and under what conditions?**

SWS support this proposal as set out in the Bill, which reflects our consultation response.

It is likely in many instances that JSW will hold and be able to provide relevant information to the court about the accused, for example on addiction issues, the implications of remand for parental responsibilities and employment, progress on community orders, risk etc., which the court may find useful in informing and determining its decision.

As noted in the policy memorandum, to a degree courts already seek information from JSW, but this will improve consistency and equity of service provision with the right to provide information (orally or in writing).

## **Section 2: Grounds for refusing bail**

**What are your views on the proposal to narrow the grounds upon which a court may decide to refuse bail by:**

- **Adding a specific requirement that reasons for refusing bail may include that this is necessary in the interests of public safety (including the safety of the complainer) or to prevent a significant risk of prejudice to the interests of justice**
- **Limiting the circumstances in which grounds for the refusal of bail in summary procedure (less serious) cases may include a risk that the person might abscond or fail to appear)**

SWS agrees with the policy objectives set out in the memorandum that accused persons who do not pose a risk to public safety or the delivery of justice should be admitted to bail. Therefore, the reasons for refusing bail must be in the interests of public safety or preventing prejudice – we support the distinction drawn between the more serious solemn and summary proceedings. It will contribute to reducing the undue use and harmful and negative impact of custody on the accused person and their family whilst balancing the rights of victims and others to be protected.

Failing to attend court is not uncommon and is frustrating for justice stakeholders; and there may well be a detrimental impact on victims that is real and can be traumatic. We consider there must always be an option for the court to remand a person where it becomes apparent they will not comply with the direction of the court and in the interests of justice.

Social Work is the practice of promoting human rights and social justice through the duties, powers and rights set out within a detailed and complex legislative background. It is the comprehensive and specialist assessment of a person's circumstances and considerations of how best to support and protect individuals, victims and their community.

### **Section 3: Removal of bail restrictions**

**What are your views on the proposal to remove some existing restrictions on granting bail in solemn procedure (more serious) cases; thereby allowing the courts to simply apply the tests used in other cases?**

*The restrictions currently apply where a person, who is being prosecuted for certain offences, has a previous conviction for such an offence. In those cases, the law provides that bail should only be granted in exceptional circumstances. The relevant offences are ones involving drug trafficking, violence, sexual offending or domestic abuse.*

SWS supports this proposal as it would enhance the role of the court as the decision-maker within a simplified legal framework.

## **Section 4: Stating and recording reasons for refusing bail**

**What are your views on the proposal to expand the current requirements for a court to state its reasons for refusing bail and require the recording of reasons?**

SWS agrees with the proposals in the Bill, which reflect our response to the consultation, and summarised in the policy memorandum (para 177).

As we said in our response:

"Currently, data simply doesn't exist that can be usefully analysed as to why judges refuse bail. Being able to gather and analyse this data would help to ensure an understanding of the reasons, how tests of public safety are being applied, for example, and promote consistency in decision making.

"The court arena is imposing and intimidating; it does not reflect a trauma-informed approach. Taking in information is difficult under such conditions. Recording information would reflect a greater human rights-based approach and be unambiguous and provide a point of reference."

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

**What are your views on the proposal to require a court, when imposing a custodial sentence, to have regard to any period the accused spent on bail subject to an electronically monitored curfew condition?**

*It would generally provide for one-half of the period to be deducted from the proposed sentence, whilst allowing a court to disregard some (or all) of the time on bail where it considers this appropriate.*

SWS support this proposal.

SWS are working with Scottish Government and other key stakeholders to ensure the assessment of electronic monitoring (EM) is available in all court jurisdictions as soon as possible. Whilst sounding a note of caution about what can be achieved through the various applications of the current model of EM (i.e. radio frequency), we support the additionality it brings, especially when linked to the provision of support, and its potential contribution to reducing the use of remand.

Given the punitive, restrictive and intrusive nature of EM it is right that the court considers this when imposing a prison sentence. There are important human rights and ethical considerations that must be recognised. We think the proposed time to be

deducted (one-half) is fair and proportionate and that it is right to provide guidance to the court in respect of how this is applied to ensure a degree of consistency and equity.

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

**What are your views on the proposal to improve access to services for prisoners upon release by bringing forward their release date where they would otherwise fall on certain days (e.g. Fridays).**

SWS strongly support this proposal.

As we argued in our consultation response, this will significantly improve the ability of services to plan for the reintegration of people leaving prison, not least in avoiding Friday releases with all the attendant complexity of transport arrangements disproportionately impacting on those returning to remote rural and island authorities and the limited provision of services over the weekend. At every turn our goal must be to maximise the chances of people successfully reintegrating into their local community and avoiding the cycle of short term prison sentences.

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

**What are your views on the proposal to replace the current possibility of release on home detention curfew (HDC) for long-term prisoners (those serving a fixed term of four years or more) with a new system of temporary release (referred to as a 'reintegration licence' in the policy memorandum)?**

*Release on reintegration licence:*

- *would include a curfew condition and be subject to supervision by justice social work*
- *could not occur earlier than 180 days before the half-way point of the sentence (the earliest point at which a long-term prisoner may be released on parole) and could last for up to 180 days*
- *could be used prior to the Parole Board deciding whether to grant release on parole as well as in the run-up to the start of parole where this has already been granted.*

SWS acknowledges the policy intention behind this proposal in providing increased opportunity for structured and monitored temporary release in the community to support successful reintegration for certain prisoners. Prison is an artificial environment. Therefore, the most effective means of testing whether a person can put into practice what they have learned during their time in prison, and whether any risk to the public or previous victims can be safely managed, is through controlled access to the community with safeguards in place e.g. supervision by justice social work.

However, we do not support the proposal of release on a reintegration licence in advance of their Parole Qualifying Date (PQD) as it is currently set out in the Bill.

There is an assumption that Scottish Ministers, in effect the Scottish Prison Service (SPS), will not decide to release a person on a reintegration licence if The Parole Board for Scotland (PBS), who must be consulted, advise against this. But this cannot be guaranteed and it may not always be the case; nor can it be ruled out that subsequent to a period on a reintegration licence determined by SPS, even when it is seemingly successful, that PBS may decide not to grant parole. An expectation will have been created in the prisoner's mind that then has to be managed. There is the potential for it to be counter-productive. Moreover, if PBS advised against a reintegration licence and SPS chose to proceed and this resulted in serious harm that would create its own complexity and narrative with potential accusations of a system that is not joined up in respect of the more serious prisoners within the prison estate.

To avoid this potential, we think this proposal needs further consideration. For example, consideration could be given to amending the Bill so that there has to be agreement between SPS and PBS in respect of a reintegration licence in advance of their PQD.

Conversely, we support fully the proposal that PBS on hearing a parole application may be of the view that release on a reintegration licence may provide the additional evidence that will support release on parole when the case is further called. There is consistency of both the material on which the decision is made and decision maker as it is firmly with PBS.

## **Section 8: Emergency power to release prisoners early**

**What are your views on the proposal to give the Scottish Government a regulation making power to release groups of prisoners in emergency situations?**

*This proposed regulation could be used in relation to those serving custodial sentences, with various restrictions, but would not apply to prisoners held on remand. Examples of emergency situations that this proposed power could apply to include situations where the spread of an infection might present significant harm to health, or an event leads to part of a prison becoming unusable.*

SWS considers this proposal to be reasonable and proportionate and, therefore, support it. It would provide a contingency should an operational emergency arise within the Scottish prison estate.

## **Section 9: Duty to engage in planning for the release for prisoners**

**What are your views on the proposal to introduce a duty for statutory partners to engage in planning for the release for prisoners?**



*This proposed duty seeks to facilitate the development, management and delivery of release plans for prisoners, both sentenced and remand. The proposal suggests that a release plan would deal with:*

- *the preparation of the prisoner for release*
- *measures to facilitate the prisoner's reintegration into the community and access to relevant general services (e.g. housing, employment, health and social welfare).*

SWS support this proposal which should lead to greater consistency. It reflects the position we set out in our consultation response. We argued that successful reintegration requires a broad range of partners, including the Third Sector, to contribute equally and meaningfully, but too often justice social work is expected to shoulder the burden of driving the agenda and providing the resource; and too often other public services are not being held accountable for contributing meaningfully to meet prison leavers' needs.

SWS supports unequivocally the policy objective of improving the provision of support for people leaving prison that underpin this proposal. It will improve the chances of people successfully making the transition back into their community and reoffending – one less incident of reoffending means one less victim.

Importantly, and reflected to an extent in the Bill, planning for release must happen at an early point in an individual's sentence. This is particularly relevant for short-term and remand prisoners as they are not subject to statutory supervision by justice social work and the majority do not request voluntary throughcare from the local authority; and the inclusion of the latter in the proposal is most welcome.

## **Section 10: Throughcare support for prisoners**

**What are your views on the proposal to require the Scottish Government to publish, and keep under review, minimum standards applying to throughcare support for both sentenced and remand prisoners?**

*The proposed standards would replace existing Throughcare Standards which are focused on service provided by justice social work, and instead cover a broader range of services, provided in custody and during transition back into the community, which can help in the successful reintegration of people on release.*

Justice social work services have delivered services in accordance with the National outcomes and standards for social work services in the criminal justice system (Scottish Government, 2010) and associated guidance since the early 1990s. Work is currently underway to re-write and modernise the National Objectives for Social Work Services in the Criminal Justice System: Standards – Throughcare (Scottish Government, 2004) which are outdated and unfit for purpose. This covers guidance for long-term prisoners and those subject to statutory supervision and the voluntary Throughcare service provided by local authorities. We fully support this work.

National standards bring consistency and coordination; they are an easy reference point and set clear expectations. Our expectation is that the setting of minimum standards for identified public bodies by placing a duty on identified partners to engage with release planning for all prisoners, particularly short-term prisoners, will similarly lead to improvements and provide a means to measure and benchmark performance. Importantly, we welcome their application for remand prisoners, too often a neglected aspect of the justice system in respect of support on their return to the community.

## **Section 11: Provision of information to victim support organisations**

**What are your views on the proposal that certain information about prisoners that can be given to a victim (e.g. on the planned release of the prisoner) can also be given to a victim support organisation helping the victim?**

If we aspire to truly “hear the voices of victims” (Vision for Justice in Scotland, Scottish Government, 2022 p7) and support them to heal and recover then collectively agencies need to deliver policy and practice in a tangible, meaningful and trauma-informed way. SWS argued strongly for the provision of certain information and to provide this to victim support organisations (VSOs) in our consultation response. We continue to hold this position because it should enable to proactively plan and provide support to victims and improve safety planning.

The specific points at which information can be provided to the victim or qualifying person are set out under section 17 of the Criminal Justice (Scotland) Act 2003. Given the possibility under the Bail and Release from Custody (Scotland) Bill for prisoners to be released by Scottish Ministers (in effect the Scottish Prison Service) for up to 180 days in advance of their pre-qualifying date subject to a reintegration licence, we think consideration should be given to ensuring this point should be added – this is a lengthy period of time and whilst we support the intention to test out a person in respect of their readiness for release, in effect it would have the same impact on a victim as a person being released post-parole qualifying date by The Parole Board for Scotland. This equally applies to a reintegration licence agreed by the latter at a parole hearing. We think would close a likely loophole and provide further support and protection to victims.

### **All sections: Any other views**

**Do you have any other views on the Bill?**

Social Work Scotland has no further views on the Bill.

For further information, please do not hesitate to contact:

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