

Scottish Government consultation on Prison population and penal reform: working towards sustainability

Social Work Scotland response

20 August 2026

Introduction

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 and as a result those who receive those services. As an organisation and across our members we are committed to service improvement and ongoing development based on evidence and research on how we can best meet the needs of those we work with and particularly those who experience the greatest challenges and barriers to their wellbeing and lives.

The social work profession is based on the principles of human rights, reflecting the value of all individuals and upholding their rights. We welcome the opportunity to offer views on *Prison population and penal reform: working towards sustainability*.

Questions

Question 1: Please share any views you have on the proposal that justice social work reports should be mandatory in all cases where a short custodial sentence is being considered.

Social Work Scotland supports the proposal that Justice Social Work Reports (JSWRs) should be mandatory whenever a short custodial sentence is being considered with limited exceptions where recent and sufficiently comprehensive information is already available to the court. Courts should have access to the fullest possible information about an individual's circumstances, risks, needs and the availability of community-based alternatives before deciding whether imprisonment is necessary to protect the public.

JSWRs provide vital information about factors such as trauma, substance use, mental health, housing, family responsibilities and caring roles. They also enable courts to consider whether a robust community disposal could address offending behaviour more effectively than a short period of custody.

This proposal, then, could result in less short-term custodial sentences if viable community disposals can be identified instead. It is also noted that this proposal could potentially lead to less unsuitable community disposals being imposed. Unsuitable Orders is a driver of CPOs being returned to Court under breach, which can lead to short term custodial sentences being imposed for breach of Orders.

However, any move towards mandatory reports must be accompanied by sufficient capacity within Justice Social Work (JSW) services. Without appropriate resources, there is a risk that increased demand could affect the timeliness and quality of reports as well as potentially taking resources from other key JSW tasks. In 2024/25, JSW in Scotland completed almost 30,000 JSWR's, a 4% increase on the previous year and the highest number since 2016/17.

While a potential increase in JSWRs is welcome if it helps avoid unnecessary short term custodial sentences, it requires to be properly resourced if not to negatively impact on the delivery of wider JSW tasks. Work undertaken by COSLA in their submission to the Sentencing Commission estimated that the unit cost of providing a JSWR is £197.88. There is no estimate in the consultation paper of how many additional JSWRs this proposal could lead to, however this unit cost provides a guide to the likely additional expenditure that would be incurred for JSW in the event of an increase.

We also consider that greater transparency would be beneficial. Where a report is not obtained, or where custody is imposed despite a report identifying viable community

options, the reasons for that decision should be clearly recorded. It would be beneficial for future service improvement if these reasons could also be statistically aggregated.

Question 2: Please share any views you have regarding the most effective ways to improve judicial and public confidence in community sentencing options, including their content, local availability and outcomes.

Social Work Scotland believes that confidence in community sentencing is best improved through greater awareness, stronger evidence of impact and increased consistency of provision.

Community sentences are often not well understood by the public and, in some cases, by sentencers. Many involve intensive supervision, unpaid work, structured interventions and ongoing monitoring over extended periods. Greater efforts should be made to communicate and promote the content, requirements and outcomes of community disposals to the public and, importantly, to victims. Organisations such as Community Justice Scotland (CJS) play a key role in promoting the benefits of community justice overall, including community sentences.

There is also a need to challenge perceptions that community sentences are a lesser (or 'softer') response to offending behaviour. Evidence regarding reductions in reoffending, successful completion rates and positive outcomes for communities should be more widely shared in a national conversation.

There is a particular need for JSW and community justice more broadly to improve how it evidences the impact and positive outcomes being achieved for individuals and communities to support its positive promotion. This has been highlighted by the Care Inspectorate and through self-evaluation work. Progress is being made, for instance through Social Work Scotland members development of a performance framework to be tested but requires ongoing support and commitment from the Scottish Government to ensure this is sustainable in the longer term.

Confidence is also linked to consistency. Significant variation in access to programmes and interventions across Scotland can undermine confidence in community disposals. While scope for local approaches and innovation is vital, it is the view of Social Work Scotland members that sentencers and local communities should be able to rely on the availability of core interventions and support regardless of location.

Regular engagement between justice social work services and the judiciary can further strengthen understanding of available interventions and support informed sentencing decisions. Social Work Scotland members have highlighted that while current arrangements for liaison with local courts and the judiciary are effective in terms of dealing

with administrative and logistical matters, there is less scope for broader discussion around issues such as community sentencing, availability of local resources and developing joint local initiatives together. Having a forum to discuss strategic matters with the judiciary could help improve judicial understanding and confidence in community sentences and their delivery.

Question 3: Please share any views you have on the proposal that the legislative test in the presumption against short sentences should be strengthened.

Social Work Scotland supports the principle of strengthening the legislative test within the Presumption Against Short Sentences (PASS). The evidence indicates that short custodial sentences are often less effective than community-based interventions in supporting rehabilitation and reducing reoffending. Strengthening the legislative test could reinforce the expectation that custody should be used only where community alternatives cannot safely and effectively meet the objectives of sentencing and promote public protection.

That said, it is important to recognise that despite previous reforms this approach has not had the desired impact. Short custodial sentences have decreased but continue to be used regularly, suggesting that the existing framework has not fully achieved its intended purpose. Based on this previous experience legislative change alone is unlikely to achieve significant reductions in the use of custody. It is important to understand why short sentences continue to be imposed and whether factors such as perceived risk, local service availability or confidence in community alternatives are influencing sentencing decisions.

Any revised test should reinforce the principle that short term imprisonment should be reserved primarily for cases involving significant risk of harm and where public protection cannot be managed effectively in the community. Domestic abuse is an area where there is often an identified victim who is at risk of significant and/or imminent harm and where a short-term custodial sentence may be required for public protection if there is evidence that community disposals, including CPOs, electronic monitoring and Non Harassment Orders (NHOs), would not suffice.

Question 4: What do you consider would be the most effective way to strengthen the legislative test?

Social Work Scotland considers that the most effective approach would be to require courts to demonstrate why available community-based interventions could not safely and effectively address the offending behaviour, manage risk and meet the purposes of sentencing. If these reasons are better understood this could support the direction of future service development and improvement.

A strengthened test should place greater emphasis on necessity and proportionality. The key question should be whether there is a compelling reason why the individual cannot be managed in the community, rather than whether imprisonment remains technically available as an option.

There may be merit in introducing a higher threshold, such as an exceptional circumstances test, provided this is supported by clear guidance to ensure consistency of application.

Transparency should also form part of any strengthened approach. Where a short custodial sentence is imposed, courts should clearly explain why community alternatives were considered unsuitable. Having this information available both locally and nationally would improve accountability and help develop a clearer understanding of the factors driving sentencing decisions across the justice system.

Legislative reform should be accompanied by continued and complementary development of community-based interventions and efforts to strengthen confidence in their use as discussed above and elsewhere in this response.

Question 5: Please share any views you have on the proposal that when sentencing a person to a short sentence, sentencers should have an obligation to set out in writing the specific details regarding what other options have been considered, and why they concluded these would not have been suitable.

Social Work Scotland supports this proposal. Requiring sentencers to provide written reasons for imposing a short custodial sentence would improve transparency, accountability and understanding of sentencing decision-making.

At present, there is limited information about why community alternatives are rejected in favour of custody. A requirement to record the alternatives considered and the reasons for their rejection would provide valuable insight into the operation of the presumption against short sentences.

Clear explanations would also support public confidence by demonstrating that community options have been actively considered before a custodial sentence is imposed.

The proposal would help identify patterns and trends in sentencing practice, including any barriers to the use of community disposals or gaps in service provision. This information – if aggregated - could support future policy development and service planning.

Any recording requirement should be proportionate and structured in a way that avoids creating unnecessary administrative burdens for courts.

Question 6: Do you have any other comments in relation to the potential impact on victims, equality or human rights of these measures to further strengthen and support the use of the presumption against short sentences?

Social Work Scotland considers that these proposals have the potential to support equality and human rights objectives while contributing to better long-term outcomes for individuals, families and communities.

Reducing the use of short custodial sentences may help mitigate some of the disproportionate impacts of imprisonment on people experiencing poverty, homelessness, trauma, substance use issues and mental ill-health. Community-based interventions are often better placed to address these challenges while maintaining access to support networks and services.

The proposals may also have positive impacts on children and families by reducing unnecessary disruption caused by imprisonment, particularly where individuals have caring responsibilities. The United Nations Convention on the Rights of the Child (UNCRC) make clear that children's interests should be considered in relation to decisions that impact on them at every stage of a parent or carers journey through the criminal justice system.

From a human rights perspective, strengthening the presumption supports the principle that deprivation of liberty should be used only where necessary and proportionate.

The impact on the victim and their safety must remain central to implementation. Reduced use of short sentences should not diminish protections for victims, and community disposals must continue to incorporate effective risk management, supervision and protective measures where required.

Victims understanding of, and confidence in, sentencing decisions is vital in ensuring there is confidence in community sentencing. That includes promotion of the reparation aspects of community sentences (such as Unpaid Work and Compensation Requirements); the rehabilitative interventions and their impact of recidivism that community sentences allow for and also the restrictive aspects of community sentences (such as and the use of electronic monitoring). Wherever possible, the advantages of a community sentence instead of a custodial sentence should be communicated clearly to victims of crime. This could potentially involve a letter to the victim that outlines what the community sentence entails; its potential benefits and also its robustness. Finally, careful consideration must be given to how these proposals impact on other work to reform the Victim Notification Scheme. See the response to question 20 for further details.

Question 7: Please share any views you have on the proposal that the presumption against short periods of imprisonment of 12 months or less be extended to 24 months or less.

Social Work Scotland recognises the rationale for extending the Presumption Against Short Sentences (PASS) from 12 months to 24 months. Extending the presumption could support greater use of interventions that address the underlying causes of offending behaviour and reduce reliance on relatively short periods of custody.

However, we have reservations about proceeding without a clearer understanding of how the current framework is operating. There remains limited evidence regarding why custodial sentences of less than 12 months continue to be imposed and what factors are influencing sentencing decisions. It is our view that a clearer evidence base is required prior to making further changes.

Specifically, before extending the presumption, there should be greater understanding of the characteristics of the cohort currently receiving these sentences; the reasons they are given custodial sentences rather than community based options and whether sufficient community alternatives are available to meet their risk and needs. It is the view of Social Work Scotland that this work requires to be done prior to this proposal being implemented.

As noted above, specific consideration is required in relation to offences of a domestic nature where a custodial sentence may be required to ensure the immediate safety of a victim. That said, this must be balanced with the longer term benefits of working with perpetrators of domestic abuse in the community where programme work and ongoing risk management be accessed, particularly considering there is still no specific programme available for domestic abuse within prison. A short-term sentence for perpetrators of domestic abuse should only be used where it is assessed that tools available in the community such as electronic monitoring, NHOs and CPOs with access to programmes such Caledonian System are not sufficient to protect the victim.

Any increase in the use of community disposals in place of custodial sentences must be reflected in resourcing provided to JSW. JSW services are already experiencing a steady increase in workload across a range of areas. For instance, the number of new CPOs imposed by the Courts was 16500 in 2024/25, a 14% increase from the year prior to the pandemic. As such, substantial increases in the number of individuals managed in the community by JSW would be very challenging in terms of capacity.

COSLA estimates that the cost to JSW to work with an individual over a 12 month period is around £5400. As an indicative figure then, if this proposal led to an additional 500 individuals being managed in the community by JSW this would cost an additional £2,680,000 per year. This is, of course, considerably lower than the cost of a short-term

prison sentence however JSW would have to be adequately resourced to ensure it has the capacity to deliver a community alternative.

The success of any extension will also depend on confidence in community disposals and the capacity of wider local services beyond JSW to support individuals who might otherwise have received custodial sentences.

Should this proposal be enacted, careful monitoring will also be required to identify any unintended consequences – such as sentence ‘inflation’ - and assess whether the reform achieves its intended outcomes.

Question 8: Please share any views you have on the proposal that if the presumption against short sentences is extended to 24 months or less, summary sentencing powers should also be increased so that the maximum custodial sentence is also 24 months.

Social Work Scotland recognises that this proposal is intended to align summary sentencing powers with any extension of the PASS and understands the rationale behind that.

However, we would urge caution and believe the implications of such a change require careful consideration. Increasing summary sentencing powers may have wider consequences for sentencing practice and could potentially create tensions with the broader policy objective of reducing reliance on imprisonment.

Consideration should be given to whether extending sentencing powers could unintentionally increase the use of longer custodial sentences in some cases. Any change should therefore be supported by evidence regarding likely impacts – intended and unintended - on sentencing behaviour and prison population trends.

If this proposal is pursued, ongoing monitoring and evaluation will be essential to understand its practical impact and ensure it supports, rather than undermines, the overall aims of penal reform.

Question 9: Do you have any other comments in relation to the potential impact on victims, equality or human rights of the proposals related to extending the Presumption Against Short Sentences (PASS) from 12 to 24 months?

Social Work Scotland considers that extending PASS has the potential to deliver positive equality and human rights outcomes, provided effective community-based alternatives are available.

In terms of equality, many individuals receiving custodial sentences in the 12 to 24 month range experience complex socio-economic disadvantage. Community-based interventions provide greater opportunities to address these issues while maintaining access to family, employment and support networks.

From a human rights perspective, extending the presumption is consistent with the principle that deprivation of liberty should be used only where necessary and proportionate.

Victim confidence will remain a critical consideration. Community disposals must be resourced appropriately in order that they can continue to manage risk effectively and JSW can maintain appropriate levels of supervision, monitoring and victim safety planning.

Question 10: Please share any views you have on how effective CPOs are in their current form and whether the legislation underpinning them is appropriate.

Social Work Scotland considers that Community Payback Orders (CPOs) remain the cornerstone of community sentencing in Scotland and provide an effective alternative to custody for many individuals. Their key strength lies in their flexibility, allowing courts to combine supervision, unpaid work, treatment and other interventions in a way that reflects individual risks, needs and circumstances.

The legislative framework is fundamentally sound and continues to provide a broad range of requirements that enable courts to balance rehabilitation, accountability and public protection. We do not consider that wholesale legislative reform is required.

However, some requirements appear to be underused, particularly those relating to mental health, substance use and residence. This suggests that barriers may lie less within the legislation itself and more within community justice partner's service availability, system complexity of implementation and local variations in provision availability.

CPOs already provide a significant level of intervention, supervision and accountability. Their success depends heavily on the professional skills and judgement of justice social workers, whose assessment, risk management and relationship-based practice are central to supporting desistance and reducing reoffending.

The effectiveness of CPOs is directly influenced by the availability of local services and interventions. Variations across Scotland can affect the options available to sentencers and consequently may impact confidence in some community disposals' effectiveness. Social Work Scotland members report that lack of access for our service users to whole population services – such as housing, addictions and mental health support – can undermine the effectiveness of CPOs when imposed. While we recognise the pressure on all parts of the system, there is potentially scope to utilise the duty to co-operate contained in the 2016

Community Justice (Scotland) Act to help ensure all necessary services are available and accessible to those serving community sentences.

Question 11: To what extent do you think the current framework allows sufficient flexibility to tailor CPOs to individual circumstances, including the roles of both sentencers and justice social workers?

Social Work Scotland considers that the current CPO framework provides a level of flexibility and, in principle, allows disposals to be tailored to individual circumstances, risks and needs. The range of available requirements supports person-centred and proportionate responses to offending behaviour.

A particular strength of the framework is the complementary role of sentencers and justice social workers. Sentencers determine the disposal and broader sentencing objectives, while justice social workers provide specialist assessment and recommendations regarding risk, need and appropriate interventions.

In practice, however, flexibility can be constrained by the availability of local services. The ability to tailor a CPO often depends on what interventions are available in a particular area rather than what is permitted within legislation. For example, mental health and substance recovery supports and accredited intervention programmes such as Caledonian and MF2C.

Social Work Scotland also recognises the concerns raised by the Sentencing and Penal Policy Commission regarding the relatively prescriptive nature of some existing requirements. In practice, individuals frequently present with multiple and interconnected needs that do not fit neatly within a single legislative category. The ability of justice social workers to respond flexibly to changes in circumstances, emerging needs, or progress made during an order can be limited by the current structure of some requirements. Greater flexibility in how interventions are delivered may help ensure that orders remain responsive over time and are focused on achieving positive outcomes rather than compliance with narrowly defined requirements.

Social Work Scotland members also highlighted the importance of professional judgement and relationship-based practice. Effective rehabilitation often depends on the ability of justice social workers to adapt interventions to the individual's circumstances, strengths and progress.

Future reforms should strengthen professional discretion and avoid creating additional procedural requirements that could reduce flexibility or encourage a more compliance-focused approach. See below for further details.

Question 12: Please share any views you have on how the current CPO legislative framework could be improved to ensure CPOs are a credible alternative to custodial sentences.

Social Work Scotland considers that the current CPO framework already provides a strong basis for community sentencing. The priority should be improving the operation of the framework rather than fundamentally redesigning it.

A key area for improvement is increasing flexibility in how interventions are delivered. Many individuals present with multiple and overlapping needs, and practitioners should be able to respond in a more holistic and person-centred manner while maintaining appropriate accountability. For instance, there may be scope to introduce more incentivisation into the system. One way of doing so would be through granting Supervising Officers the ability to alter (short of entirely removing) a Restriction of Movement Requirement in the same way as can be done through a licence. This would allow service users to be incentivised to engage meaningfully while also allowing for gradual testing of less restrictive measures based on structured professional judgement. See the response to question 17 for more detail.

There is also value in reviewing requirements that are used infrequently and understanding the barriers that limit their application, particularly those relating to mental health and substance use treatment. Improving access to treatment-focused interventions would strengthen the effectiveness of community disposals, however the availability of treatment is variable across the country.

To enhance confidence in CPOs as an alternative to custody, there should be greater consistency in access to interventions and specialist services across Scotland. Courts need confidence that recommended interventions can be delivered effectively regardless of location. That is not to say that identical approaches in every area are required, but rather that that necessary level of services and interventions are available.

As community sentences are used with more complex individuals, consideration should also be given to expanding access to intensive supervision, specialist programmes, GPS electronic monitoring and coordinated multi-agency support where required.

Legislative reform alone will not increase the credibility of CPOs. Effective implementation depends upon JSW having the proper resources to pursue effective relationship-based practice as well as the availability and accessibility of wider community resources.

Question 13: Please share any views you have on the extent to which CPOs provide sufficient support to address the underlying causes of offending behaviour and whether there are any barriers to ensuring support needs are met.

Social Work Scotland considers that Community Payback Orders (CPOs) provide a strong framework for addressing the underlying causes of offending behaviour and offer greater opportunities for rehabilitation than custody. Through supervision, structured interventions and access to partner agencies, CPOs can support individuals to address the underlying causes of offending and also improve broader circumstances and wellbeing.

The supervision requirement is particularly important. Justice social workers are able to undertake assessment, relationship-based practice and coordinated support that addresses the factors contributing to offending behaviour and supports long-term desistance.

However, the effectiveness of CPOs is heavily influenced by the availability of wider services. Justice social work cannot address issues such as addiction, poor mental health or homelessness in isolation. Effective rehabilitation depends on timely access to health services, housing support, employability provision and third sector services.

Variation in service provision across Scotland remains a significant barrier. Access to specialist interventions and treatment services differs between areas, which can limit the ability of practitioners to respond consistently to identified needs.

Many individuals subject to CPOs have multiple and interconnected needs. While the framework allows for a holistic response, workforce pressures and service capacity constraints can affect the availability and intensity of support. The effectiveness of CPOs therefore relies not only on the order itself but on the wider network of services available to support rehabilitation.

While CPOs remain the cornerstone of community sentences, they are not suitable for all individuals and there can be particular challenges in engaging individuals with the most complex needs and chaotic lifestyles with this type of disposal. For instance, work has been undertaken that shows that two of the main drivers for breach of CPOs are complex needs and unsuitable Orders. This can lead to short term sentences for this cohort, even if the severity of their offending and risk of harm does not merit it from a public protection perspective. For that reason, it is important that increased focus is given to other approaches for this cohort that can provide more intensive, flexible and multi-agency support and intervention. There are a number of local initiatives that can be built upon to achieve this, most notably problem solving courts that balance close Court oversight with a high level of support for the most complex cases.

Question 14: Please share any views you have on the introduction of an Enhanced Combination Order model in Scotland.

Social Work Scotland supports, in principle, exploration of an Enhanced Combination Order (ECO) model, particularly where it provides a more intensive and coordinated response for

individuals with complex and multiple needs. As outlined above, there is a need for different approaches for individuals with particularly high levels of complexity for whom CPOs may not meet their needs.

There is merit in considering whether a structured package of supervision, treatment and practical support could improve outcomes for individuals whose offending behaviour is linked to trauma, substance use, mental health difficulties, homelessness or social exclusion. Any such model should prioritise coordinated multi-agency working and access to the services most likely to support rehabilitation.

We are particularly interested in approaches that strengthen collaboration between justice social work, health services, housing providers, employability services and third sector organisations. For many individuals, successful rehabilitation depends on coordinated support rather than any single intervention.

Enhanced assessment processes, including access to specialist psychological input where appropriate, may also help ensure interventions are better tailored to individual circumstances. However, assessment must be linked to the availability of effective interventions if it is to improve outcomes. There is limited worth in a psychological assessment if the related support and intervention services are not available.

At the same time, care is required to avoid creating unnecessary complexity or duplication within the existing community sentencing framework. Scotland's current CPO framework already provides significant flexibility and there are positive examples of problem-solving courts providing bespoke, intensive and person centred approaches on a multi-agency basis.

Consideration should therefore be given to whether the most effective elements of an ECO model could be incorporated within existing community disposals rather than through the creation of a wholly separate sentence.

Question 15: Please share any views you have on the proposal to amend how CPOs are set out in law, so they are clearly framed as a sentence that can be used where justice social work intervention could address the underlying causes of offending behaviour.

Social Work Scotland supports the principle of amending the legislative framing of Community Payback Orders (CPOs) to better reflect their role in addressing the underlying causes of offending behaviour.

While CPOs are often viewed as alternatives to custody, their purpose extends far beyond avoiding imprisonment. They provide a structured framework through which justice social

work and partner agencies can address offending behaviour, reduce risk, promote accountability and support long-term desistance.

A clearer statutory articulation of this purpose could strengthen understanding of community sentencing among sentencers, policymakers and the public, while recognising the important role that justice social work plays in facilitating behavioural change and rehabilitation.

However, any reframing should maintain an appropriate balance between rehabilitation, accountability and public protection. CPOs should continue to be recognised as court-imposed sentences with enforceable requirements and consequences for non-compliance.

Any legislative amendment should also preserve professional discretion, allowing justice social workers to tailor interventions to assessed needs, strengths and risks.

Question 16: Please share any views you have on what changes, if any, would be required to make CPOs suitable and effective for more serious offending behaviour.

Social Work Scotland considers that CPOs already possess many of the features required to respond effectively to more serious offending behaviour. However, if they are to be used more frequently as alternatives to custody, further development will be required.

The most important requirement is access to a broader range of interventions and supports capable of addressing complex risks and needs. Individuals involved in more serious offending often require specialist treatment, behavioural programmes and coordinated multi-agency intervention.

There is also scope to expand the use of intensive supervision arrangements, accredited programmes, specialist interventions addressing harmful behaviour and electronic monitoring where appropriate. Such measures can strengthen public confidence while supporting rehabilitation and risk management.

Social Work Scotland does not believe that making CPOs suitable for more serious offending necessarily requires making them more punitive. Confidence is more likely to be strengthened through effective supervision, robust risk management and demonstrated reductions in reoffending than through the addition of further restrictions or sanctions.

Continued engagement between justice social work and the judiciary will also be important in ensuring awareness and understanding of the scope and intensity of modern community interventions. See the response to question 2 for further details.

Question 17: Please share any views you have on the proposal that there should be more opportunities to incentivise good behaviour on CPOs through reductions in, or early discharge from, unpaid work or supervision requirements.

As stated in the response to question 12, Social Work Scotland supports the principle of recognising and incentivising positive progress during the course of a CPO. Appropriately designed incentives are consistent with evidence-informed approaches to rehabilitation and desistance and can support engagement and motivation.

Where an individual has complied with the order, addressed identified risks and demonstrated meaningful progress, there may be merit in allowing greater flexibility for JSW to reduce or conclude certain requirements. This can reinforce positive behaviour and ensure interventions remain proportionate. The example provided regarding Restriction of Movement Requirements in the response to question 12 is applicable here.

However, any expansion of early discharge or reduction of requirements must be balanced against the need to maintain the credibility of community sentences. Incentives should be based on demonstrable progress and professional assessment rather than applied automatically after a specified period.

Social Work Scotland considers that recommendations to Courts should be informed by structured professional judgement, with justice social workers assessing whether the objectives of the order have been achieved and whether further intervention remains necessary to address future offending risks.

Transparent criteria for early discharge or reduction of requirements will also be important in maintaining public confidence, as will effective governance and oversight.

Question 18: What changes, if any, do you believe are needed to improve breach processes for CPOs to ensure timely, proportionate, and consistent responses to non-compliance?

Social Work Scotland recognises that effective responses to non-compliance are essential to maintaining confidence in CPOs as credible community sentences.

We support measures that promote greater consistency in breach processes across Scotland. Clearer guidance regarding expectations and thresholds for formal breach action may improve consistency while still allowing practitioners to exercise professional judgement in individual cases.

Timeliness is also important. Delays between non-compliance and a formal response can weaken the effectiveness and credibility of community disposals. Where formal action is

required, processes should operate as quickly as possible. It may be, for instance, that specific breach courts are used to deal promptly with breach applications and to allow for communication between sentencers and JSW. The learning from problem solving courts is that such an approach has benefits in terms of engaging individuals subject to community sentences.

At the same time, breach arrangements should remain proportionate and responsive to circumstances and risk level. Non-compliance may be linked to factors such as mental ill-health, substance use, housing instability or other vulnerabilities. Distinctions should therefore be made between persistent or deliberate non-compliance and situations where support needs are contributing to disengagement.

Graduated responses can play an important role. Early intervention, additional support and efforts to re-engage individuals should remain available before formal breach action is pursued, while repeated or wilful non-compliance should result in timely escalation. The extent to which a graduated approach is taken and discretion shown must be informed by risk, with those who pose an imminent and significant risk of harm dealt with stringently.

Social Work Scotland does not support custody becoming the default response to breach and believes decisions should be informed by an individual's risk, progress, circumstances and the availability of alternative measures. An individual's journey towards an offence free lifestyle is often characterised by 'false starts' and provided the person's risk in the community remains manageable there should be efforts made to adapt the approach in the community rather than resort to custody as a default.

Question 19: Please share any views you have on retaining Drug Treatment and Testing Orders as a distinct community disposal for addressing substance-related offending.

Social Work Scotland strongly supports the continued provision of effective community-based interventions to address substance-related offending. However, we are not persuaded that the current evidence supports retaining Drug Treatment and Testing Orders (DTTOs) in their existing form as a distinct disposal.

Patterns of substance use have evolved significantly since DTTOs were introduced. Many individuals now present with a combination of poly drug use, alcohol use, mental health difficulties, trauma and social disadvantage, requiring a more integrated and holistic response.

There is merit in considering whether the objectives currently delivered through DTTOs could be incorporated into a strengthened community sentencing framework, particularly

within CPOs. This may allow for more flexible treatment provision and more personalised responses to complex needs.

Any reform should ensure that the most valuable features of DTTOs, including intensive support, structured intervention and judicial oversight where appropriate, are not lost. Individuals with severe and entrenched substance use problems will continue to require intensive interventions. There are examples locally of approaches based on problem solving courts and Structured Deferred Sentences (SDS) where these features are present and achieve positive outcomes out with the DTTO structure.

Future approaches should also reflect the reality of co-occurring alcohol and drug use and align with Scotland's wider public health approach to substance-related harm.

The key issue is not the existence of a separate disposal but ensuring timely and persistent access to effective, evidence-based treatment and recovery services, including residential rehabilitation that are resourced and capable of addressing substance-related offending.

Question 20: Do you have any other comments in relation to the potential impact on victims, equality or human rights of these proposals to enhance and strengthen community sentences?

Social Work Scotland considers that strengthening community sentences has the potential to improve outcomes for victims, support greater equality and advance human rights principles.

For victims, confidence in community disposals depends upon assurance and evidence that offending behaviour is being addressed effectively and that appropriate safeguards are in place where risks remain. There is a need to review, in consultation with victim groups, information sharing methods for victims. The current system focuses on custody, but consideration should be given to how more information can be provided to victims where a community sentence is imposed. This could increase victims' confidence in community disposals.

The proposals may also help address inequalities experienced by many people involved in the justice system, including poverty, homelessness, trauma, mental health difficulties and substance use issues. By enabling individuals to remain connected to families, employment and support networks, community-based interventions can reduce some of the disadvantages associated with offending and imprisonment.

From a human rights perspective, community sentences can provide a less restrictive means of achieving sentencing objectives while still delivering accountability and public

protection. They support rehabilitation and social inclusion while avoiding some of the harms associated with custody.

However, the extent to which these benefits are realised will depend on the availability of effective interventions and support services. Variations in access to services risk creating inequalities in outcomes and undermining confidence in community justice.

Question 21: Please share any views you have on the proposal that there should be a formal mechanism to enable bail cases with an electronic monitoring requirement to be brought back before the court or dealt with administratively in chambers. This would be used when administrative issues arise that may prevent the order being monitored, and currently require judicial consideration, but where there may be no evidence of criminality.

Social Work Scotland supports, in principle, the introduction of a formal mechanism to review electronically monitored bail cases where administrative or practical issues arise that affect the operation of monitoring arrangements.

The current process can create unnecessary delays where circumstances such as loss of accommodation, changes in household arrangements, installation difficulties or the identification of an unsuitable address require judicial consideration. A more streamlined mechanism would allow such issues to be addressed more quickly and efficiently, helping to maintain compliance and the effective operation of electronic monitoring.

Any new process should clearly distinguish between administrative matters and issues involving non-compliance, increased risk or criminal behaviour. Where there is no evidence of wilful breach or heightened risk, it may be appropriate for matters to be dealt with administratively or in chambers rather than through a full court hearing.

Appropriate safeguards will be essential. Clear criteria should define which matters can be dealt with administratively and which require formal judicial scrutiny.

Particular care should be taken where bail conditions include exclusion zones or other measures intended to protect victims, particularly those who have been subject to domestic abuse. Any proposed changes should be subject to appropriate assessment to ensure that victim safety is not compromised.

Greater flexibility in addressing administrative issues has the potential to improve compliance, reduce unnecessary delays and strengthen confidence in electronic monitoring as an effective alternative to remand.

Question 22: Please share any views you have on the proposal that there should be a power of arrest for breaching the order or licence relating to an exclusion zone.

Social Work Scotland recognises the rationale for introducing a power of arrest for breaches of electronically monitored exclusion zones, particularly where such conditions have been imposed to protect victims or manage identified risks.

We support consideration of a power of arrest in principle, provided it is clearly defined, proportionate and linked to public protection objectives. Where an exclusion zone has been imposed to protect a victim, prevent further offending or manage a significant risk of harm, there should be an effective mechanism available to respond promptly to deliberate breaches. This may increase confidence in electronic monitoring among victims, courts and other decision-makers.

However, we would caution against a blanket approach whereby every breach automatically results in arrest. Any response should distinguish between deliberate breaches, accidental breaches, technical failures and situations where there is little or no evidence of increased risk. Responses should be informed by the circumstances of the breach and the level of risk presented.

The introduction of any arrest power should be accompanied by clear operational guidance for police, courts and monitoring providers. This should set out when arrest is appropriate, how breaches will be assessed and how information will be shared between relevant agencies. Consistent application will be important in maintaining confidence in the system.

The proposal may be particularly beneficial in cases involving domestic abuse, stalking or persistent offending, where victims may require reassurance that exclusion zone conditions are meaningful and enforceable.

Any new power should remain consistent with principles of proportionality and human rights. The use of arrest should be justified by the seriousness of the breach and the level of risk presented, rather than becoming a routine response to all instances of non-compliance.

Question 23: Please share any views you have on the proposal that there should be other improvements to the system of electronic monitoring either to help facilitate any of the other reforms in this paper, or more broadly.

Social Work Scotland supports the continued development of electronic monitoring as part of a broader package of community justice interventions. Electronic monitoring can contribute to public protection, victim safety and confidence in community-based

alternatives to custody, particularly in the context of wider reforms relating to remand, community sentencing and release arrangements.

However, electronic monitoring should be viewed as a tool that supports supervision and rehabilitation rather than as a stand-alone intervention. While it can assist with monitoring compliance and managing risk, it does not address the underlying causes of offending behaviour. Its greatest value is realised when combined with justice social work intervention and access to appropriate support services.

We support the continued development of GPS technology and the additional flexibility it offers in managing risk within the community. GPS monitoring can strengthen the use of exclusion zones, support victim safety and provide courts with additional confidence in community-based disposals.

As electronic monitoring expands, there should be clear national guidance to support consistent decision-making regarding its use, integration with other interventions and responses to breaches. Consistency of practice will be important in maintaining confidence among sentencers, practitioners and the public.

Future developments should also be informed by evidence. Ongoing evaluation of compliance, reoffending, victim outcomes and wider impacts will help ensure that electronic monitoring is being used effectively and proportionately.

There may also be opportunities to use electronic monitoring more creatively to support alternatives to remand, more intensive community-based disposals and enhanced victim protection measures, provided its use remains targeted and proportionate.

Question 24: Do you have any other comments in relation to the potential impact of these electronic monitoring proposals on victims, equality or human rights?

Social Work Scotland considers that the proposed expansion of electronic monitoring has the potential to strengthen community-based alternatives to custody while supporting victim safety and public protection.

From a victim perspective, electronic monitoring may increase public safety and also confidence in community disposals through the use of exclusion zones and more effective monitoring of restrictions imposed by the courts. This may be particularly valuable in cases involving domestic abuse, stalking or other offences where ongoing safety concerns exist. Electronic monitoring may also provide sentencers with greater confidence to manage individuals safely within the community where custody might otherwise have been considered.

However, electronic monitoring should not be viewed as a substitute for effective risk assessment, information sharing and professional oversight. While technology can support compliance and risk management, it does not prevent offending behaviour in itself and should form part of a wider public protection framework.

From a human rights perspective, electronic monitoring can provide a less restrictive alternative to remand or imprisonment, allowing individuals to maintain family relationships, employment and engagement with support services while remaining subject to appropriate controls. However, monitoring constitutes a restriction on liberty and privacy and must therefore be proportionate, justified and subject to appropriate legal safeguards.

Particular attention should be paid to avoiding "net widening", whereby electronic monitoring is imposed in cases that would previously have attracted a less restrictive response. Its use should be targeted towards circumstances where it provides a clear benefit in supporting public protection, victim safety or compliance with court-imposed conditions.

Question 25: Please share any views you have on the proposal that people should not be remanded to custody unless they have a reasonable prospect of a custodial sentence of 24 months or more.

Social Work Scotland supports the principle that remand should be used only where it is necessary, proportionate and justified by risk. We are therefore supportive of efforts to reduce the use of remand where there is little realistic prospect of a significant custodial sentence following conviction.

The growth in Scotland's remand population and the increasing time spent on remand are matters of significant concern. Remand represents a substantial deprivation of liberty for individuals who have not been convicted of an offence and can lead to loss of housing, employment, family relationships and access to support services. Greater alignment between remand decisions and likely sentencing outcomes would support a more proportionate approach and help ensure that custody remains a measure of last resort.

However, Social Work Scotland would caution against applying a purely sentence-based threshold without consideration of wider risk factors and individual circumstances. Decisions regarding remand must continue to take account of public protection, victim safety and the risk of interference with witnesses or victims.

Risk must remain central to decision-making. There may be exceptional cases where an individual presents a significant and immediate risk despite the fact that any likely sentence would fall below the proposed threshold. Courts should retain the ability to remand in such

circumstances where there is clear evidence that risks cannot be managed through bail conditions or community-based measures.

Question 26: Do you have any other comments in relation to the potential impact of this bail and remand proposal on victims, equality or human rights?

Social Work Scotland considers that proposals to reduce the use of remand have important implications for victims, equality and human rights.

From a human rights perspective, reducing unnecessary remand is consistent with the principle that deprivation of liberty should occur only where it is necessary and proportionate. Individuals held on remand have not been convicted of an offence, yet may experience significant disruption to their lives, including loss of housing, employment, family relationships and access to support services. Reducing unnecessary use of remand may therefore help minimise these harms and support a more proportionate approach to pre-trial detention.

There is also evidence that short term periods of remand of only a few days are often used when access to accommodation or accesses to necessary services or specialist assessment are not available. These decisions are not risk based but need based and should not occur. Social Work Scotland is aware of the work on this specific area and will continue to contribute to find a solution.

The proposal may also contribute positively to equality outcomes. People held on remand frequently experience poverty, homelessness, mental ill-health, substance use issues and social exclusion. Avoiding unnecessary periods in custody may help individuals maintain access to services, accommodation and support networks.

However, public and victim confidence must remain central. Victims should be assured that decisions to grant bail are informed by robust risk assessment and that effective measures remain available to manage identified risks within the community. It is of note that while use of Bail Supervision has increased steadily – in 2024/25 it was its highest level in the past 10 years – Social Work Scotland members inform there remains a relatively low conversion rate between assessments carried out and Bail Supervision imposed. If the use of remand is to be reduced, it is vital that we understand why this conversion rate remains low and what can be done to increase its use. We are aware of Scottish Government work in this area and will continue to contribute to it.

Particular attention should be given to offences involving domestic abuse, stalking, sexual offending and other circumstances where victims may experience ongoing fear or safety concerns. Appropriate protective measures and supervision arrangements should remain available in such cases.

Question 27: Please share any views you have on the proposal that the automatic release point for long-term prisoners (excluding those on extended sentences) should be amended to the two thirds point. Please include what the potential impacts could be on reoffending and rehabilitation into the community.

Social Work Scotland recognises the rationale for increasing the proportion of a sentence spent under supervision in the community and is broadly supportive of this proposal and approaches that promote managed reintegration from custody.

Successful reintegration is central to reducing reoffending. Factors such as stable housing, employment, positive relationships and access to health and support services are most effectively addressed in the community. Increasing the period during which individuals are subject to supervision following release may provide greater opportunities to support these protective factors and respond to emerging concerns at an earlier stage.

There is merit in a model that places greater emphasis on supervised transition from custody to community rather than a longer period spent in prison immediately prior to release. Rehabilitation is often achieved through a combination of support, supervision and practical assistance during reintegration rather than custody alone. Extending the period of community supervision has the potential to improve continuity between prison-based and community-based interventions and support longer-term desistance from offending. Six months is often not long enough to fully support reintegration back into the community and promote long term desistance and this proposal would allow for a longer period of time to work with individuals and manage their risk.

However, the benefits for rehabilitation and reoffending will depend on the capacity of community justice services to provide meaningful supervision and support. JSW services are already under a great deal of strain with both the volume and the complexity of caseloads increasing. For instance, in 2024/25, there were 1000 individuals released from custody under statutory supervision – the highest level in 10 years. There has also been an increase in TARLs and HBRs, which are now at their highest rate in 10 years. This proposal will mean a significant increase in this area of work and it is essential for the success of this proposal that JSW are properly resourced to manage their risks and support their rehabilitation.

It is not possible for Social Work Scotland to provide reliable figures on how much the additional workload related to this proposal may cost, due to the lengths of time individuals will serve under supervision in the community varying significantly. However, it is noted that the consultation document states that had this proposal been implemented in February 2026, 630 people would have been eligible for immediate release. As mentioned above, COSLA estimate that the cost to JSW to work with an individual over a 12 month period is around £5400. If we assume that those eligible for immediate release serve on average an additional 12 months in the community than they would have done under the current

arrangements, this would cost JSW in the region of £3.4 million. This is inevitably an indicative figure only however is included here as an indication of the costs involved in managing an increased number of individuals in the community.

Of course, it costs considerably less to manage people in the community rather than to incarcerate them and there must be a long-term rebalancing of resources away from expensive and often ineffective custodial options. In the immediate future, though, it is essential that any changes to the current release regime is matched by increase in resources for JSW for this proposal to be successful in terms of reducing the prison population while promoting public protection.

A related point is that as well as the additional resources required to manage more long-term prisoners in the community, consideration should be given to releases being carried out in a phased and manageable manner in order to avoid overwhelming JSW and other community-based services. While the need to gain approval by the Parole Board for management plans and licence conditions will provide some time for services to plan for release, it is vital that there is not a sudden large influx of long-term prisoners into the community.

It is also important to note that individuals being released from custody require support from a myriad of service, not just JSW. Changes to release arrangements alone will not improve outcomes unless individuals have access to housing, healthcare, substance use treatment, employability support and other services that support successful reintegration.

Finally, it is vital that services that promote long term rehabilitation and desistance – such as rehabilitative programmes and mental health and addictions support – are available and accessible within a custodial setting so that individuals are better prepared for release. It is hoped that efforts to reduce the overall prison population, including this proposal, will mean the SPS can more effectively deliver these supports and intervention in the shorter custodial part of sentences.

Question 28: Please share any views you have on the proposal that if amending the automatic release point for long-term prisoners to the two thirds point, those subject to extended sentences should be included.

As outlined in the response to the previous question, Social Work Scotland recognises that the rationale for increasing time spent under supervision in the community is to support rehabilitation and reintegration and are supportive of this aim.

The arguments put forward in the above answer are as relevant to the cohort of individuals who are subject to extended sentence as they are to the wider long term prison population. It must be borne in mind that extended Sentences are imposed where the court has

identified an ongoing need for supervision because of the risk presented by the individual following release. As such, it is of particular importance that earlier release arrangements for this group should be accompanied by robust assessment and accompanied by appropriate licence conditions, supervision and monitoring arrangements. Increased time spent in the community should enhance public protection rather than weaken it.

Victim confidence must also remain a key consideration. Where there are identifiable victims, particularly in cases involving serious violence, domestic abuse or sexual offending, effective arrangements for victim safety planning, information sharing and victim notification will remain essential.

Question 29: Please share any views you have on the proposal to amend the definition of short-term prisoners from “less than four years” to “less than five years”.

Social Work Scotland understands the rationale for amending the definition of a short-term prisoner from less than four years to less than five years, particularly in the context of wider reforms designed to increase opportunities for supervised reintegration in the community. However, we believe more consideration requires to be given to this proposal and its potential impact on public safety, particularly in relation to this group of individuals no longer being subject to statutory supervision on release. As it stands, the rationale for the change and the potential benefits – beyond a reduction in the prison population - are not clear enough.

The primary consideration should be whether the change contributes to improved rehabilitation, reduced reoffending and more effective transitions from custody to community. Social Work Scotland members highlighted that successful reintegration depends on effective throughcare, early release planning and access to services such as housing, healthcare, substance use treatment and employability support. While there are voluntary throughcare services delivered by JSW and also the third sector, the take up of these services can be somewhat limited and such arrangements are clearly less robust in terms of supervision and risk management. Effectively moving a number of individuals from statutory to voluntary throughcare may have negative implications for rehabilitation and public protection.

Finally, the potential for unintended consequences must be taken into account when considering this proposal, most notably the possibility of sentences being inflated as a result. A specific concern is the relationship this proposal has with Supervised Release Orders (SROs) which can currently be imposed on individuals serving short term sentences of four years or less. If SROs were to be available up to five years, there would potentially be an increase in the numbers imposed. Social Work Scotland members raised concerns

that SROs in their current delivery are often inadequate when managing complex and high-risk individuals and so any potential increase in their use would be of concern.

Question 30: Do you have any other comments in relation to the potential impact of these proposals regarding prisoner release arrangements on victims, equality or human rights?

From a human rights perspective, the proposals are broadly consistent with the principle that restrictions on liberty should be proportionate and that rehabilitation should remain a central objective of the justice system.

The proposals may also contribute positively to equality outcomes. People leaving prison frequently experience poverty, homelessness, trauma, poor mental health and substance use difficulties. Earlier engagement with community services and structured post-release support may help address these barriers and improve longer-term outcomes.

However, the benefits of these reforms will depend on the availability of appropriate services and support within the community.

In relation to victims, confidence in any changes to release arrangements will depend on assurance that public protection remains central. Robust assessment, effective licence conditions, appropriate supervision and clear risk management arrangements will be essential. Particular attention should be given to cases involving serious violence, domestic abuse and sexual offending, where victims may continue to experience concerns about safety following release.

Question 31: Do you have any comments on the overall package of reforms contained within this consultation, potential interactions, and whether taken together they would help work towards achieving a sustainable prison population?

Social Work Scotland welcomes the overall direction of the reforms set out in this consultation. Taken together, the proposals represent a significant attempt to reduce reliance on custody, strengthen community-based responses, improve reintegration from prison and promote a more preventative and rehabilitative approach to justice.

We consider that the reforms should not be viewed as a series of separate measures. The proposals relating to the Presumption Against Short Sentences, Community Payback Orders, electronic monitoring, bail and remand, and release arrangements are closely interconnected. The success of each individual reform will depend on how effectively the wider package operates as a whole.

The proposals reflect growing recognition that imprisonment alone is often insufficient to address the factors associated with offending behaviour. Many individuals who come into contact with the justice system experience poverty, trauma, homelessness, substance use issues, poor mental health and social exclusion. Measures that support rehabilitation, address underlying needs and promote successful reintegration are more likely to contribute to long-term reductions in offending and improvements in community safety.

Social Work Scotland believes the package has the potential to contribute to a more sustainable prison population. Reducing the use of short custodial sentences, strengthening community disposals, increasing the use of alternatives to remand and supporting more effective transitions from custody to the community should, collectively, reduce pressure on the prison system.

However, the reforms will only achieve their intended outcomes if community justice services have the capacity to respond to increased demand. Several proposals would result in more individuals being supervised, supported and managed in the community. This will require sufficient provision of justice social work services, treatment programmes, housing support, employability services, mental health services and wider community-based support and interventions.

We also believe that improved integrated data, monitoring and evaluation of both activities and outcomes reaching across the justice system and partners will be essential. Given the scale of the proposed changes, there should be close assessment of their impact on prison populations, sentencing practice, remand use, reoffending, victim safety, public confidence and community justice capacity. This will help identify where further adjustments or investment may be required.

Social Work Scotland supports the ambition of creating a more sustainable prison population through a balanced approach that combines effective community interventions, rehabilitation, reintegration and public protection. The reforms provide a strong foundation for achieving this objective, provided they are implemented as part of a coordinated system-wide programme and supported by the resources necessary to deliver meaningful change.

For further information, please do not hesitate to contact:

Euan Lloyd

Policy and Practice Lead, Justice Social Work

Social Work Scotland

Euan.lloyd@socialworkscotland.org