

CONSULTATION QUESTIONS

Question 1: Should the presumption against short periods of imprisonment of three months or less be extended?

- Yes
- No

You may wish to provide information to support your views, for example, what do you consider to be the key factors for or against the proposal?

Victim Support Scotland is not convinced that extending the presumption against short periods of imprisonment would have any significant effect on sentencing practice, in and of itself. We note that the current presumption has had “little impact on sentencing decisions”¹ and would question whether a presumption against prison sentences of longer durations would provide different results.

This may be attributable to the fact that the legislation for the current (and any future) presumption² places a duty on courts only to pass a sentence of imprisonment of three months or less if they believe this to be “appropriate”. We do not view this as a significant departure from the general approach to judicial decision-making as independent and based on the facts of each case, with a custodial sentence often seen as a ‘last resort’.

To enable courts to pass the most appropriate sentence for each individual case, robust community disposals must be available in a consistent manner across the country. Most importantly, guidance should be provided to courts with clear direction on what factors should be taken into account in sentencing, including the weight given to each factor. VSS looks forward to the production of such guidance by the Scottish Sentencing Council, which was established earlier this year.

Question 2: If you agree that the presumption against short periods of imprisonment should be extended, what do you think would be an appropriate length?

- 6 months
- 9 months
- 12 months

¹ Scottish Government (2015) ‘Consultation on Proposals to Strengthen the Presumption against Short Periods of Imprisonment’, p.1

² s.17 of the Criminal Justice and Licensing (Scotland) Act 2010

Question 3: Do you have any specific concerns in relation to a proposed extension of the period covered by the presumption against short sentences?

It should be recognised that victims can often benefit from a custodial sentence being passed, mainly through the protection that this provides them from the offender. Custodial sentences are especially crucial in providing victims of domestic abuse some breathing space away from the control of the abuser to allow them to decide on their next steps, and to put safety measures in place in anticipation of the offender's return to the community.

Victim Support Scotland does not believe that community sentences as currently implemented provide the victim with an adequate level of protection from the accused. Where appropriate, case information should be shared between community justice partners to ensure that the victims' security and protection needs are considered at each stage of the process.

We question the contention that a reduction in short-term imprisonment would "free...up resources in the community"³. Rather, in order for community sentences to be a viable and effective alternative to short-term prison sentences, a substantial investment in community programmes is required. This would not only ensure that there are robust and appropriate community sentencing options available, but would also make certain that services have the capacity to deal with any resultant increase in the number of offenders given a community sentence.

It is essential that victims are informed of the outcome of their case, and that they are able to understand the sentence that has been passed, both in terms of what this means in practice and how the decision was made. In providing consistency and transparency, we believe that sentencing guidelines will have a positive impact on sentencing measures in Scotland; guidelines will also provide clarity for victims of crime, and we look forward to their introduction.

³ Scottish Government (2015) 'Consultation on Proposals to Strengthen the Presumption against Short Periods of Imprisonment', p.6

Question 4: Do you think there are any specific circumstances to which a sentencing judge should be required to have regard when considering the imposition of a custodial sentence?

When considering the sentence to impose, the sentencing judge should be provided with consistent and clear guidance. As is the case in England and Wales, sentencing guidelines should make clear that offence seriousness should be the central consideration for sentencing decisions; this includes looking at the offender's culpability, and any harm caused (or intended to be caused) by the offender. From a recent survey carried out by VSS, it is clear that victims believe that courts should take into account the severity and type of crime alongside the harm caused when deciding on the appropriateness of passing a community sentence. Processes should be in place to ensure that the victim has the chance to provide information on the harm caused to them, whether through the Crown Office and Procurator Fiscal Service or via a Victim Statement. Fundamentally, a custodial sentence should be imposed when there is a need to protect the public (including the victim) from harm.

Question 5: Do you think there are specific offences to which the presumption should not apply (i.e. offences which could still attract a short custodial sentence)?

Question 6: Do you think that there are any circumstances in which a custodial sentence should never be considered?

The option of a custodial sentence should be available to courts in every case, as per the sentencing powers available. Each case should be assessed on an individual basis. Again, sentencing guidelines would provide an important role in ensuring consistency and transparency in sentencing.

However, VSS agrees with Dr Cyrus Tata that custodial sentences should not be used solely for the purposes of rehabilitation or because there is a lack of robust community services that will meet the offender's needs⁴.

⁴ Scottish Justice Matters, 'Sentencing and the Allure of Imprisonment: Why Rehabilitation Should Not be a Ground for Custodial Sentencing', <http://scottishjusticematters.com/sentencing-allure-imprisonment/>

Question 7: Do you think that the Scottish Government should also consider legislative mechanisms to direct the use of remand? If so, do you have any views on what such a legislative mechanism might include?

Victim Support Scotland believes that appropriate use of remand plays an essential role in the protection of victims, witnesses and members of the general public. The period of time after a person has been charged with an offence can be particularly dangerous for victims and witnesses, who may be at risk of intimidation and retaliation. The protection of victims and witnesses should be a prominent factor in deciding whether or not the accused person should be remanded. Engagement with victims and witnesses should occur to ensure that an adequate risk assessment is conducted. In addition, the victim's safety concerns should be discussed with the victim to ensure that they are informed of the status of the offender and that adequate protection is in place.

Question 8: Do you have any additional comments on the use of short-term imprisonment?

Consultation on Proposals to Strengthen the Presumption against Short Periods of Imprisonment

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Victim Support Scotland

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Surname

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Forename

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3. Permissions - I am responding as...

Individual

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes **No**

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate

Yes **No**

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

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

Please tick as appropriate

Yes

No