

Prison population and penal reform – working towards a sustainable prison population

Scottish Government Consultation 2026

Victim Support Scotland is a national organisation dedicated to supporting victims and witnesses of crime. As Scotland's largest victims' organisation, people impacted by crime have access to our services right across the country. We are a listening ear when people need to talk to someone about the impact of crime, we provide practical support such as when people need a safety plan to feel secure in their home and we give access to critical crime-related emergency funds in their time of need.

We play a crucial role in delivering victim-centred support, and this in turn drives our forceful and successful lobbying and campaigning for change within the criminal justice system. As an organisation rooted in the experiences of victims and witnesses, we aim to ensure that their voices are central to the development of policy and practice.

Background to the consultation:

[Prison population and penal reform - working towards a sustainable prison population: consultation - gov.scot](https://www.gov.scot/consultations/prison-population-and-penal-reform-working-towards-a-sustainable-prison-population-consultation)

This consultation seeks views on a set of proposed reforms to the criminal justice system in Scotland, building on the recommendations of the Sentencing and Penal Policy Commission and seeking to reduce the demand for prison places where appropriate.



Part 1: Delivering a more effective approach to custody: short sentences, remand and community sentences.

Section 1: Further strengthen and support the use of the presumption against short sentences

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

Answer:

Victim Support Scotland (VSS) believes that justice social work reports should be mandatory in all cases where a short custodial sentence is being considered.

Justice social work reports are important because they provide sentencers with essential information about an individual's circumstances, risks, needs and suitability for alternatives to custody. Each of these things are essential for evidence-based decision making. In our experience, where there is robust information sharing, it helps to provide assurance to victims and their families that there has been thorough consideration given in relation to decision making about a community sentence being imposed. Given the consideration of extending PASS from 12 months to 24 months, justice social work reports will become even more essential.

VSS firmly believes that victims' views should be collated and considered as a standard and mandatory aspect of a justice social work report where a short-term custodial sentence is being considered. Victims can provide additional and essential information in assessing risk. Often, not all offending behaviour will have been reported, meaning that an indictment will not include the entirety of risk. We suggest that collation of victim input could be carried out by the justice social worker as part of drafting their report. In doing so, this would offer victims an additional chance to opt in to a referral to victim support services to receive support ahead of and during sentencing. This is especially important where there is the prospect of a reduced prison sentence.

The prospect of a short custodial sentence can be daunting for victims and families. They often cause fear and concern about their safety, knowing that an offender will be returned to the community. In our experience, involving victims in the justice process is incredibly important and powerful. It can benefit victims and families in the following ways:

- Giving them a voice in the process, allowing them to explain how the crime has affected them and have their views heard.
- Supporting emotional recovery by being listened to and taken seriously improves feelings of respect.

- Improving trust in the criminal justice system, as participation can support victims and families to feel the system is responsive to their needs.
- Being involved in the process can give victims and families a sense of control of the situation and improve their feelings of safety.

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.

Answer:

Victims' Code for Scotland

The Victims' Code for Scotland is an essential document outlining the rights of victims interacting with the criminal justice system. It is of the utmost importance that the standards of service and rights outlined in it are upheld to the highest standard.

The following points, made in relation to the most effective ways to improve judicial and public confidence in community sentencing options, are essential in upholding the following rights outlined in the Code:

- Right to information
 - Requesting case specific information. From SCTS, victims have a right to request information regarding the final decision of a court in a trial, or any appeal arising from a trial and the reasons for it.
- Right to participation
 - The right to understand and be understood.
 - The right to interpretation and translation

Understanding of sentencing

Victim Support Scotland believes that public understanding of community sentencing is poor and more must be done to ensure that victims and families fully understand the content, availability and outcomes. We are concerned that there is a general lack of understanding of sentencing in Scotland, exacerbated by complex, but necessary, legal language and how sentences are reported in the media. We are concerned about the impact this may have on victims and their families.

We have seen cases where a perpetrator has received a sentence, but victims and their families have not fully understood what that sentence entails in practice. This is particularly evident in relation to community sentences, which some victims and families perceive as being a more lenient outcome for the offender.

We recommend the development of broader public communications to improve understanding of the range of sentencing options available within the Scottish justice system. To maximise accessibility and public engagement, such communications should be presented in clear, straightforward language, avoiding legal or technical terminology that may otherwise create confusion or act as a barrier to understanding. Furthermore, providing targeted training and guidance for support organisations would be highly beneficial. Enhancing practitioners' knowledge of sentencing processes and outcomes would enable them to offer more informed, comprehensive support to victims, witnesses and their families, helping to manage their expectations and improve their overall experience of the justice system.

More directly, victims and families have a right to understand how decisions are made, what factors are considered, and why certain outcomes have been reached in their individual case. The move to a presumption against PASS cannot lead to less transparency simply because a perpetrator is not given a custodial sentence. This transparency helps to build public trust and support victims' confidence in the justice process. Where a victim may not speak English or has a limited ability in English, they should be provided with a translator.

This communication should be delivered to victims and families when a sentence is delivered. The information given should include a clear explanation of what the sentence is called, the length of the sentence, the restrictions imposed as part of it and any orders the offender must complete as part of the sentence.

It would be most beneficial for this information to be delivered via a verbal conversation in the first instance, as this allows for questions to be asked. We emphasise the power of an intentional, supported conversation, as it allows victims and their families to feel heard and included in the justice process. This should then be followed up in a manner of communication selected by the victim or family. This could include a written letter, email, video call or phone call to ensure that they are processing the information that was given to them and so they can ask any questions that have arisen since the initial conversation.

Ensuring victims and families remain well informed throughout the justice process is essential to a trauma-informed criminal justice system and to the victim-centred approach.

Transparency of Justice Social Work Reports

VSS contends that whilst these reports will be confidential, there should be a way for the decision making contained within them to be communicable to victims and

families. We recognise that this must be done whilst maintaining confidentiality and offer the following suggestion.

A framework could be created to assist in community sentencing that clearly describes why certain conditions have or have not been imposed. Victims must be clear on the rationale for different sentence types.

National provision of community sentencing

A further way in which confidence in community sentencing could be strengthened is by ensuring that provisions for community sentencing are nationally available.

VSS is aware that not all programmes, that may be imposed as a requirement of a Community Payback Order, are consistently available across every local authority area in Scotland. This disparity can create uncertainty and confusion, particularly in cases where an individual is ordered to complete a specific programme that is not offered in the geographical area to which they return or are released.

The absence of clear information regarding how such situations are managed can lead to a lack of transparency and understanding for victims, families and support organisations alike. For example, it is unclear whether individuals are expected to travel to another local authority to undertake the programme, are directed to an alternative intervention, or are exempt from completing an equivalent programme altogether. Greater clarity and consistency in the communication of these arrangements would help to improve public understanding and confidence in the delivery of community-based sentences.

In addition to this, VSS has worked with families who felt they were given limited explanation or assurances in relation to a community sentence being imposed. They were not given a clear contact to speak to about any concerns, and they felt as though they were not entitled to knowledge about what would happen to the offender in their case.

We know from our support staff and volunteers operating in more rural areas of Scotland, such as Inverness and the surrounding areas, that many victims they have supported have felt lack of safety when perpetrators are released to rural communities. Additionally, we are concerned that there are already resourcing and capacity issues in more rural areas, such as supervision for community payback orders, and that community justice social workers are largely based in cities.

Victim Support Scotland maintains that it is unacceptable for victims, witnesses and their families in rural areas to face greater risks, or perceive themselves to be at greater risk, as a consequence of inadequate resourcing of services in their locality.

The proposals in this consultation will serve to increase pressure on rural services, where more prisoners may be released into rural communities. Steps must be taken to support delivery partners across the whole of Scotland to ensure they are equipped to deliver community sentences. VSS therefore contends that confidence in community sentences could be somewhat increased with national provision of services.

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

Answer:

Victim Support Scotland reiterates that there are many circumstances in which a custodial sentence remains the only appropriate sentencing option when considering the safety of victims and their families. In our answer to question four, we seek further clarity on this.

We are supportive of strengthening the legislative test but make some additional comments which are outlined in the answer to question four.

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

Victim Support Scotland contends that one way the legislative test could be strengthened could be to follow the UK Sentencing Act definition and include 'exceptional circumstances.'

As with the answer to question 3, the suggestions outlined in this answer are essential in meeting the rights outlined in the Victims' Code, namely:

- Right to information
 - Requesting case specific information. From SCTS, victims have a right to request information regarding the final decision of a court in a trial, or any appeal arising from a trial and the reasons for it.
- Right to participation
 - The right to understand and be understood.
 - The right to interpretation and translation

Defined legislative test

In VSS's experience, the criminal justice system, and sentencing, is often misunderstood, complex and difficult for victims and families to navigate. A more

defined legislative test will reduce ambiguity and confusion for victims of crime and their families.

Transparency in sentencing is essential for victims to support their understanding of how and why a sentence has been imposed. This helps to promote greater confidence and trust in the criminal justice process and manage expectations. Clear explanations of the factors underpinning a sentencing decision can help to reduce uncertainty and help victims to feel that their experiences have been acknowledged.

We make it clear that it is important that a defined legislative test does not become a rigid, overarching test for every case. Whilst a consistent baseline for decision making is important, each case should continue to be assessed individually, according to the nature of the offence and the impacts it has caused. A single test risks oversimplifying decisions that are inherently complex and personal. Victims and families need to be confident that their individual experiences, fears, and ongoing risks are not reduced to a formulaic or one-size-fits-all assessment. The defined legislative test must therefore remain flexible.

Exceptional Circumstances

Relating back to consultation question 1, VSS states that guidance for justice social work reports must be clear on the conditions where such 'exceptional circumstances' have been met, and a custodial sentence is being recommended.

We would be supportive of the inclusion of '*providing a period of respite for victims of domestic abuse*' as an exceptional circumstance. Domestic abuse involves a sustained level of coercion and abuse, and we know that victims of domestic abuse are often at heightened risk whilst an offender serves a community sentence.

Additionally, we support the inclusion of '*in cases of wilful non-compliance with court orders*' as an exceptional circumstance, as non-compliance with court orders demonstrates a disregard for punishment and a willingness to endanger a victim.

We seek clarity as to what any additional 'exceptional circumstances' may be. Working to the proposal that the presumption against short sentences will be increased to sentences under twenty four months, currently, there are a number of serious crimes which could receive a sentence of two years. These include:

- Serious assault
- Domestic abuse
- Sexual assault

- Possession of indecent images of children
- Stalking

It is concerning, both for VSS and for victims, that offences within these categories may not be considered sufficiently serious to warrant a custodial sentence. If domestic abuse can be included in 'exceptional circumstance' we ask that any violent or sexual crime is also included in this. These crimes often involve a level of pre-meditation and can have serious long-lasting consequences for victims.

Communication

All communication to explain these reasons should be offered via several methods of communication, and the choice should be given to the victim or family about their preference on the method used - this should include the choice to receive communication via several methods. Whichever method is selected by the victim or family, it should be trauma-informed, timely and supported. These include:

- Letter/email written in a trauma-informed manner
- Supported conversation with a victim support organisation
- Phone call.

Additionally, as well as explaining the purpose of a community sentence, communications should clearly outline the reasons a court has decided not to apply 'exceptional circumstances.'

All communication should contain a clear offer of referral to victim support services. Victims should not be responsible for having to locate and initiate support on their own, if they have not already accessed it.

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.

Answer:

Victim Support Scotland is supportive of 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 have concluded these would not be suitable.

In line with our answer to question four, we report that victims often feel frustrated and distressed when they are unaware of the reasons behind a decision, leading to re-

traumatisation. Providing a clear rationale for the decision-making behind a short sentence will help to promote a transparent and trauma-informed justice system which acknowledges the needs of victims.

We seek clarity on whether victims will be able to access information about what other options were considered by the sentencer. We believe that victims should have access to this information, in line with the Victims' Code for Scotland which states that victims have a right to information, including the ability to request case specific information from SCTS.

Where victims can access descriptions of what other options were considered and why they were not suitable, these must be written in a trauma-informed manner – using plain and easy to understand language.

VSS seeks clarity as to why considerations and decisions for imposing a short-term custodial sentence are not currently written down, as suggested by this consultation. It seems pertinent that this important information provided, and any decision made, should be recorded.

Courts could look to develop a systematic way to incorporate this additional information during the existing process of writing up the rest of the notes for the case. Incorporating this into an already established process should help reduce the additional time this consultation suggests will be required.

Requiring sentencers to explain their decision making therefore reduces ambiguity for all involved in a sentencing. This supports the principles of trauma-informed practice and transparency that underpin a fair and compassionate justice system.

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?

Answer:

As a victim support organisation, our answer to question 5 is grounded in the experience of victims and ourselves as an organisation who supports them. Please see our answer on the potential impact on victims outlined in the answer to question 5.

Section 2: Extend the presumption against short sentences from 12 to 24 months

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

Answer:

Impact on victims

As a victim support charity, Victim Support Scotland continuously works to champion the rights of victims. Whilst we recognise that effectively delivered and monitored community sentences can be beneficial, it is important to recognise that prison brings a sense of security and safety for victims. We raise the following concerns in relation to extending PASS to 24 months.

Effects on reporting

We are concerned that extending the presumption against short periods of imprisonment from 12 months to 24 months may lead to a reduction in victims reporting crimes. This may foster feelings of ‘what is the point’ amongst victims, if they know that the perpetrator is unlikely to serve a lengthy sentence. This can leave victims, as well as the wider public, feeling that perpetrators go unpunished, as well as being in danger of affording them to continue committing crimes. Additionally, for victims in this situation, they can be left physically and psychologically harmed. Victims should feel empowered to report what has happened to them, and not the opposite.

Nature of crime

Currently, a number of crimes which have the potential to significantly impact victims can receive a sentence of up to 2 years. These include:

- Serious assault
- Sexual assault
- Possession of indecent images of children
- Stalking
- Domestic abuse

Victim Support Scotland is concerned that increasing the presumption against short term sentences from 12 to 24 months may cause a victim to feel as though justice has not been done. As mentioned above, victims of crimes such as domestic abuse or sexual assault may expect the perpetrator to be imprisoned for at least 2 years. If offenders receive community sentences, victims may feel that the harm to them has not been fully recognised and that the crime and their trauma is not being treated as seriously.

We also believe public confidence in the criminal justice system could be negatively impacted, especially in a time where there has been multiple, widely reported early and emergency early release schemes.

Rural Perspective

We again raise the perspective from our colleagues operating in rural areas of Scotland. As the intention behind increasing the presumption against short term sentences to under 24 months is to reduce custodial sentences and rely upon community sentences, there must be steps taken to ensure that rural areas of Scotland are more adequately resourced to support the delivery of community sentences.

Question 8. Please share any views you have on the proposal that if the presumption against short term 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.

Answer:

Victim Support Scotland understands and supports the need to improve efficiency within the court system to clear the backlog of cases and notes the implementation of summary case management. We offer the following points for consideration.

Totality of crime:

Whilst summary court can serve as a useful way to progress court proceedings more quickly, we are conscious of the need to ensure that the totality of the crime that has been committed is not lost within shortened proceedings. It is important that the full impact of the crime is laid out while pursuing a more efficient process. This can be important for victims in helping them to have their experience heard and validated.

Summary Case Management – victim engagement:

We note that COPFS has introduced enhanced engagement with victims of domestic abuse where the case is being heard via summary case management. Victim Support Scotland suggests that this enhanced engagement should be used to engage all victims whose case is being heard via summary case management, so that no victim is left without the highest level of support.

Communication with victims

Victims we have supported have told us that summary court can feel like a downgrade

in seriousness from solemn level. It is therefore essential that victims in these cases are adequately supported and communicated with to ensure they do not feel as though justice has not been achieved, simply because their case is being heard at summary instead of solemn level.

We reiterate the points we have made in relation to communication with victims in our answers to questions two and four. We also make the following suggestion.

Victims must be made aware why their case is being heard at summary level and provided with an explanation of the process that will follow. Victim Support Scotland suggests that a 'Roadmap' could be provided to a victim which outlines the specific process they will go through with the court. This method of sharing information will help to stop an overload of irrelevant information and scenarios being shared with the victim and causing unnecessary stress.

Finally, every piece of communication should contain a clear offer of referral to victim support services. This is in line with the Victims' Code for Scotland where it states that victims have a right to support, including access to support services. The responsibility for initiating support should rest with justice agencies, not with victims themselves.

Most referrals to victim support services operate an opt-in process due to consent requirements. We have seen ongoing reduction in referrals in both automatic referrals and opt-in approaches. Given the changes being proposed and the complexity attached, getting victims support to understand these processes has never been more important. If these proposals are adopted, we would like to see targets/measurement set for all criminal justice agencies regarding referrals. We would be happy to discuss this going forward, as we are conscious of the importance of victim choice, but this should not be a barrier to effective referrals.

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?

Answer:

As a victim support organisation, our answer to question 8 is grounded in the experience of victims and ourselves as an organisation who supports them. Please see our answer on the potential impact on victims outlined in the answer to question 8.

Section 3: Enhance and Strengthen Community Sentences

Background:

As part of community justice, some people who have broken the law can receive community-based sentences as a form of punishment imposed as an alternative to imprisonment. Community sentence is a collective term for sentences given by courts that are served in the community, often as an alternative to a custodial sentence. There is strong evidence that community sentences are more effective in reducing reoffending than short prison terms.

The most commonly imposed type of community sentence is the Community Payback Order (CPO), introduced in 2011. The legal framework for CPOs is set out in the Criminal Procedure (Scotland) Act 1995. They are intended to ensure that individuals who have committed an offence “pay back” to their communities and deal with the underlying causes of their offending behaviour. CPOs are typically made for a period of between six months up to a maximum of three years.

Types of CPO requirement

- **Unpaid work or other activity:** someone subject to a CPO can be ordered to carry out between 20 and 300 hours of unpaid work, identified by local services and communities. The “other activity” component of the requirement focuses on developing their interpersonal, educational and vocational skills to support long-term desistance from offending.
- **Supervision:** someone can be required to attend regular appointments with a justice social worker, who supports them to address the factors underlying their offending behaviour and supervises their compliance with the requirements of the CPO. This includes arranging referrals to other public and third sector services.
- **Compensation:** this is a requirement to pay money to victims for injuries or distress caused, or damage to property. The money is paid to the court who ensure it is then transferred to the named person.
- **Programmes:** attendance at a programme arranged by a social worker to deal with offending behaviour. The two main national, accredited programmes are Caledonian (domestic abuse) and MF2C (sexual offences). Local authority areas may also use local programmes which are not nationally accredited (e.g. these could focus on drug and alcohol misuse).
- **Residence:** requirement to stay at a certain address.
- **Conduct:** order to do certain things or not do certain things. Courts can only use this requirement if they consider that it will help secure or promote good behaviour by the person or stop them from committing more crimes.
- **Restricted movement:** the person can be required to remain at a specific address for up to 12 hours a day, and/or to stay away from a specific place or

class of places for up to 24 hours a day. This requirement can be imposed by the courts for either a period of up to 12 months for a person aged 18 or over, or for a period of up to three months for a person aged under 18, and compliance with the requirement can be electronically monitored.

- **Mental health treatment:** If the person has been diagnosed with a mental health condition that plays a role in their offending, they can receive support and treatment. This can include staying in hospital or attending medical clinics. It can also include getting counselling or any other treatment put forward by a doctor.
- **Drug treatment:** treatment might include being ordered to attend a clinic or hospital.
- **Alcohol treatment:** this could include an order to receive counselling or attend a clinic to receive treatment.

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.

Answer:

Victim Support Scotland understands and recognises the value of CPOs for some offences. We recognise the value that they aim to bring for offenders and the communities in which they carry out their payback. We are supportive of the continued use and expansion of community sentences for less serious offending, for example, not for people charged with or have a history of violence or sexual offences. We are clear that in order for this to be successful, robust funding and resources must be available to support effective operation.

As a victim support charity, it is our duty to draw attention to the issues highlighted to us by victims and their families, as well as the problems we see in service delivery in regard to community sentencing. Please see these below:

Operation of community sentences

There are victims and families supported by VSS that perceive Community Payback Orders (CPOs) as a "slap on the wrist" rather than a meaningful punishment in comparison to a custodial sentence. VSS considers that this perception may, in part, stem from a limited explanation of the requirements, restrictions and rehabilitative elements associated with a CPO, as well as concerns regarding the consistency and effectiveness with which breaches are managed and enforced.

Our support staff and volunteers have consistently conveyed the view that the current CPO system is already operating below an optimal standard. Consequently, extending or expanding current operations feels counterproductive. Before any further reforms are considered, particularly those that would place additional demands on community justice services, the existing framework must be adequately resourced and strengthened.

We also hear concerns that CPOs still have a significant reoffending rate at 28.6% for the 2022-23 offender cohort. We are conscious that this is significantly lower than the reconviction rates for offenders released from sentences of 1 year or less (53.2%), but we should still seek reductions in this result. Any of these proposals that are progressed must use key metrics to set, and monitor, and learn from results. There should also be transparency in results and, hopefully, the success of reducing reoffending can improve public confidence and result in fewer victims.¹

Case management plan

In reference to the paragraph which states:

‘A report from a justice social worker will give the court background information, such as any offences previously committed, the person’s risk of reoffending, their health, and their living situation along with a suggested preferred disposal to consider, and if the recommendation is a CPO, an initial case management plan.’

We seek clarity as to whether input from victims can be included in this 'case management plan'. As a victim support organisation, victim and family safety is a priority for us and as such, we would like to see a victim statement taken into consideration for this case management plan. Victim input at this stage could be vital in ensuring that all protections for victims and members of their family are considered and implemented as part of the community sentence. This is an important step in safety planning for a victim and their family, as well as contributing to increased feelings of safety and confidence, knowing that their concerns have been considered in the process.

Communication with victims

As noted throughout this consultation, there must be improved communication with victims and families where a CPO has been imposed. Currently, victims feel left in the

¹ [Reconviction Rates in Scotland: 2022 to 2023 Offender Cohort - gov.scot](https://gov.scot/Reconviction-Rates-in-Scotland-2022-to-2023-Offender-Cohort)

dark about what an offender is subject to under a CPO and who to contact with any concerns whilst an offender is completing a CPO.

Our key ask is for better communication in cases where CPOs have been imposed, which mirrors our asks in our answer to questions two and four where we outline trauma informed communication in relation to improving confidence in community sentences.

The consultation states - *'The Commission's engagement made clear victims' desire for improved information at key stages throughout the justice process.'* In line with our comments above and representations made to the Commission, VSS is supportive of this and reiterates that victims should have the right to information concerning their case, in line with the Victims' Code for Scotland in relation to the following rights:

- Right to information
 - o Requesting case-specific information.

Central to this is ensuring that support is signposted to victims at every available opportunity. This allows them to access the support they have a right to and require when a perpetrator is given a community sentence.

Victim-Centred Approach to Justice

Victim Support Scotland has and always will be steadfast in our belief and support of the Victim-Centred Approach to justice, which is designed to ensure that victims, their families as well as witnesses are treated with fairness, compassion and in a trauma-informed manner, where their safety and wellbeing is the priority. Under this approach, victims, families of victims and witnesses will have access to consistent, appropriate and timely information and support, are supported to understand their rights and have confidence that these rights will be upheld, and they can participate effectively. The provision of this support is underpinned by effective collaborative working across the justice system and sector.

We seek clarity on whether information with victims about community sentences would require a referral process. If this is the case, a robust information sharing agreement between all organisations and agencies involved must be put in place to protect data whilst ensuring victims receive information in line with the statement above.

Legislation

VSS contends that the legislation underpinning Community Payback Orders is appropriate. We are supportive of CPOs being imposed for some crimes with the appropriate requirements for the offender and the crime they have committed.

We are particularly supportive of the requirement for the court to receive a report from a justice social worker before an offender is sentenced to a CPO. Including a justice social work report should help to ensure that a holistic and robust evaluation of the offender has taken place to inform the decision to impose a CPO.

Geographical Barriers

As mentioned previously, VSS has seen cases in which certain CPO requirements are ordered, but there has been no resources or facilities in certain areas for an offender to carry these out. We note this is particularly true for more rural areas, where victims often already feel a decreased sense of safety due to the perception that there is less monitoring of offenders.

A clear protocol must be set for situations in which this arises. It should be made clear whether a different order requirement will be imposed on the offender, for example, an alternative in the current geographical area or the need to access the CPO in another area. Ultimately, the Scottish Government should take steps to ensure that neither of these options have to be chosen and that there are sufficient resources across Scotland for CPOs to be carried out.

We would not want a requirement to be dropped from a CPO because there is a lack of resources to support an offender to carry it out. Sadly, we note that this has been the case in at least one of cases we have supported. This not only impacts the offender fulfilling their full sentence, but it will also affect confidence in the criminal justice system and a victim's sense of safety and justice.

Breaches of CPOs

VSS is concerned to hear from service users that there have been breaches of CPOs by the offender in their case which have not been dealt with effectively. We note that breaches of CPOs when electronic monitoring is part of the order are particularly susceptible to breaches. Our support workers and volunteers note that offenders are often not deterred by electronic monitoring, and with a decreased Police response to breaches, have little fear in breaching their conditions.

Non-Harassment Orders

The Victims' Code for Scotland outlines that victims have a right to protection. The imposition of Non-Harassment Orders wherever they are requested is an essential step in supporting this right for victims.

For many victims of domestic abuse, the importance of non-harassment orders must not be underestimated. Non-harassment orders help to provide a sense of security and safety by protecting against further unwanted contact, intimidation, threats, or abusive behaviour. Knowing that clear conditions are in place and that breaches can result in legal consequences may give victims greater confidence to go about their daily lives without constant fear of harassment. Whilst non-harassment orders cannot remove all risk, it can act as an important safeguard that gives a victim a sense of control over a situation. Additionally, we know there are cases in which the offender finds ways to get around an NHO, such as by sending a family member to intimidate the victim.

Victim Support Scotland support workers and volunteers have raised concerns that NHOs are not currently being used and monitored as they should be. This has left victims vulnerable and exposed to further harm. VSS has encountered cases where victims are not informed of the conditions attached to an NHO when it is granted or given details on who to contact if there are any questions or issues with a non-harassment order, leaving them uncertain about the protections put in place for their safety.

Given this, there must be more efficient information sharing and stronger communication with victims where a non-harassment order is granted. Victims should be offered the opportunity for a verbal conversation to help them understand what the non-harassment order and its conditions mean. This allows them to ask any questions they may have then and there. Following this, the victim should be followed up with, in a method of their choosing, to check in and ensure they are still clear on the non-harassment order. If they have not received it already, the offer of support from a victim support organisation should also be given at this point.

We are further concerned at the following figures reported by our colleagues at ASSIST.

- In June 2026, ASSIST requested a NHO on behalf of 65 clients at sentencing diets. Of these, 58 requests (89%) were granted (this included 11 solemn cases and 47 summary cases). This meant that in seven cases (11%), victims who had explicitly asked for ongoing protection were informed that their request had not been granted (this included one solemn case and six summary cases).

Victim support organisations have raised concerns that there is no apparent reason for these figures not being higher, and that outcomes should be closer to 100% where an NHO has been requested.

In addition, we are also concerned that breaches of non-harassment orders are not being dealt with appropriately. VSS support workers and volunteers note that in cases they have supported where an NHO has been breached, there have been incidents where police response is slow, leaving the victim fearful of their and their family's safety.

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 sentences and justice social workers?

Answer:

Victim Support Scotland supports the Commission's view that CPOs should be more person-centred rather than based on specific requirements. VSS believes that making CPOs more focused on individual circumstances may be more beneficial in addressing the underlying causes of why the person committed the crime, and hopefully reducing the risk of reoffending. VSS is supportive of this as it may bring more benefits for victims and potential future victims.

In order to achieve this effectively, the Scottish Government must outline how it expects justice social work and delivery partners to support the implementation of this as well as learning from what has the best results in reducing re-offending. There must be robust funding and support allocated to ensure this change is delivered effectively and measured.

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. You may wish to consider:

- Removing any unnecessary or ineffective requirements
- Adding new or revised requirements
- Addressing practical or legislative barriers to the use of existing requirements
- Any other changes

Answer:

Victim Support Scotland is supportive of CPOs for some crimes but does not believe that they are appropriate for more serious crimes. We offer the following considerations.

Geographical Barriers

As mentioned previously, VSS has seen cases in which certain CPO requirements are ordered, but there are no resources or facilities in certain geographical areas for an offender to carry these out. We note this is particularly true for more rural areas, where victims often already feel less safe due to the perception that there is less monitoring of offenders.

There is a need for adequate resources for all CPO requirements to be implemented. Sadly, we note that in at least one of cases we have supported the requirements have not been able to be implemented. This not only impacts the offender fulfilling their full sentence, but it will also affect confidence in the criminal justice system and a victim's sense of safety and justice.

A clear protocol must be set for situations in which this arises. It should be made clear whether a different order requirement will be imposed on the offender, one that is available in the area they have been released to, or effective alternatives put in place. It cannot be dropped. The Scottish Government should take steps to ensure there are sufficient resources across Scotland for CPOs to be carried out.

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.

Answer:

Geographical Barriers

As mentioned previously, VSS has seen cases in which certain CPO requirements are ordered, but there are no resources or facilities in certain areas for an offender to carry these out. We note this is particularly true for more rural areas, where victims often already feel a decreased sense of safety due to the perception that there is less monitoring of offenders.

A clear protocol must be set for situations in which this arises. It should be made clear whether a different order requirement will be imposed on the offender – one that is available in the area they have been released to or whether steps will be taken to move the offender to a place in which there are resources to carry out this part of the CPO. Ultimately, the Scottish Government should take steps to ensure that neither of these options must be chosen and that there are sufficient resources across Scotland for CPOs to be carried out.

A specific requirement should not be dropped from a CPO because there is a lack of resources to support an offender to carry it out. This would impact both the offender, by removing their access to specific support they need. This in turn can affect a victim and

the wider public by potentially leaving the offender un-rehabilitated. Sadly, we note that this has been the case in at least one case we have supported. This not only impacts the offender fulfilling their full sentence, but it will also affect confidence in the criminal justice system and a victim's sense of safety and justice.

Drug and alcohol treatment orders

This consultation notes that drug and alcohol treatment orders are not imposed frequently. We are concerned that this is resulting in a number of offenders with underlying drug and alcohol addiction issues not receiving the comprehensive support they need to address these issues, which can contribute to offending behaviour. We note later in this consultation that we are supportive of the proposals in this consultation to evolve support into 'Substance Misuse Treatment Orders' in order to provide holistic support to offenders who require such support as part of the public health approach to substance use and justice.

At the core of these considerations needs to be the reality of the resources that can be available to implement these community-based sentences. It is easy to see the merits in all these options and provide supportive comments. If adequate resources are not in place, then local services become even more over-stretched, the desired outcomes of the community-based orders are not realised, possibly impacting public safety, and trust and confidence in the criminal justice system as a whole are further eroded.

Question 14. Please share any views you have on the introduction of an Enhanced Combination Order model in Scotland. In your response, please consider which elements (for example, psychological assessment or restorative approaches) would be most valuable, and any potential benefits or challenges.

Answer:

Victim Support Scotland is supportive of any measure which will benefit victims and lead to a decrease in victimisation. From the information provided in this consultation, the Enhanced Combination Order appears as though it would be beneficial in helping to achieve this. Further evidence would be required to evidence the impact this could have for Scotland, but we note the findings in the Northern Ireland Audit Office Report.²

Again, we are concerned about the pressures this change will place on existing services and delivery partners and are concerned that the Scottish Government have made no reference as to how they will address these additional pressures.

Victim Support Scotland supports the careful implementation of **victim-led** restorative

² [NI Audit Office Report - Reducing Adult Reoffending in NI 0.pdf](#)

justice. We suggest that crime type exclusions be considered when using restorative justice as a potential route, for example in cases of domestic abuse.

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.

Answer:

Victim Support Scotland reiterates our belief that community sentences are not appropriate for a number of crime types, particularly those involving violence against women and girls.

We seek clarity on the rationale for deciding that a justice social intervention is appropriate for addressing the underlying causes of offending behaviour. Considering this, we also seek clarity on the extent to which the impact of a justice social work intervention on victims might be.

The process for CPOs being available for those ‘on the cusp’ of offending is not clear. Who would already be known to authorities to make them eligible? What would be the basis for allocating a CPO to people who have not been convicted of a crime? The suggestion of ‘*CPOs could also be strengthened to make them more suitable for more serious offending*’ while also proposing their suitability for those ‘on the cusp of offending’ raises serious concerns about the underpinning rationale for these alternatives.

Given our concerns regarding public confidence in these alternatives to custody, any further confusion to the system should be avoided.

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.

Answer:

Victim Support Scotland is not supportive of the proposal to make CPOs available for ‘more serious offending behaviour.’

It is particularly concerning that the Scottish Government is considering imposing CPOs for crimes which could receive a custodial sentence of two years. For crimes such as violence against women and girls, including domestic abuse where there is sustained coercive control and prolonged physical, psychological, economic and sexual abuse and an immediate risk to the victim, support programmes should be funded and provided within a custodial setting.

As mentioned previously, we see cases in which offenders are undeterred by the orders placed on them as part of a community sentence and continue to commit offending behaviour towards victims. For some victims, they will only feel safe when an offender is given a custodial sentence.

The consultation states that a CPO could be strengthened for more serious offending through methods such as GPS or alcohol monitoring. From our experience in working with victims and families whose perpetrator has received monitoring, we know that monitoring, such as electronic tagging, often does not act as a deterrent for offenders to evade the conditions of monitoring. Additionally, as highlighted in the answer to a previous question, breaches are often not responded to, thus downplaying their seriousness for offenders even further.

Further to this, we question what would be determined to be 'more serious offending' that warrants these additional requirements to be added to a CPO. VSS is steadfast in our belief that every crime is serious and can have long-lasting effects on victims, and so we seek clarity on the rationale behind this decision making. If we assume that 'more serious offending' refers to crimes that result in serious effects for victims and families such as serious injury, sexual assault and death, VSS advocates that community sentencing is not appropriate for such crimes for the safety of victims and their families.

In VSS's experience, serious offending is usually defined by the penalty or sentence imposed. It is clear that how certain offences are viewed by the public and our legal system is based on the sentence that has been imposed. The clearest of these being custodial sentences, although these too can be confusing for the public due to the varying release points. We suggest that any CPO 'system' needs to have clear levels of offending types and risks associated. In addition, there must be nuance in the use of custodial sentences. Clearly, some individuals pose too much of a risk to be in the community, so a blanket presumption of up to 24 months is too blunt. As a result, guidelines must contain clear safeguards around the use of CPOs and when custody is warranted.

Overall, VSS does not believe that CPOs, with additional requirements or not, are suitable for more serious offending.

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. Please give reasons for your answer including any views for how this could be achieved in practice, as well as any alternative suggestions to enable incentivisation of good behaviour on CPOs.

Answer:

This proposal raises questions about the need to incentivise completion. We note that the successful completion rate for CPOs finished in 2024-25 was 71%.³ We therefore seek clarity on what target completion rates the Scottish Government would look for. Furthermore, given this consultation is proposing to offer CPOs for more serious offending, confidence in adherence to the conditions becomes very important.

Victim Support Scotland is not supportive of opportunities to incentivise good behaviour on CPOs.

For many victims we support, CPOs can feel 'light touch', and we are concerned that automatically incentivising offenders will serve to dilute confidence in justice further. Achieving a sense of justice is often important for a victim, helping them to feel a sense of power over a situation that has been largely out of their control.

Incentivising an offender for early discharge, reduction in unpaid work or supervision requirements will undoubtedly lead to this sense of justice for victims being adversely affected. In addition, this may also lead to an increase in feelings of alarm, fear and distress for victims and families if the offender has the opportunity to complete a community sentence more quickly and as such, be fully present back in the community.

Incentivising good behaviour may also feel like the offender is being rewarded, rather than the intended purposes of CPOs being punitive and rehabilitative. The balance is important especially when it is proposed as an alternative to a custodial sentence. VSS expresses concern that the emphasis is on 'reward' for an offender for apparent good behaviour but, as mentioned before, less emphasis on how breaches of community sentences will be dealt with effectively.

Moreover, we raise concerns that in some cases, such as stalking or domestic abuse, perpetrators can be particularly manipulative and may simply focus on completing a course or task faster, rather than meaningfully engage with the programme. Our colleagues at Action Against Stalking noted that they have often seen cases where perpetrators of stalking demonstrate periods of apparent compliance but then return to

³ [5. Community payback orders - Justice Social Work Statistics in Scotland: 2024-25 – Part 2 - gov.scot](#)

stalking behaviour. We therefore caution that completing a course or programme as part of a community sentence should not be equated with lessened risk.

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?

Answer:

Victim Support Scotland makes it clear that a breach of, or non-compliance with, a CPO risks increasing danger for victims and their families. As a victim support charity, our concerns lie with the safety of victims and their families.

There must be clearer communication channels for victims to use when they are aware of an offender breaching conditions of CPO. Currently, we have heard from victims that they are unsure of who to contact or how to do so. Or, where they do make contact regarding a breach, there are serious delays in responding to the breach. At the point in which a CPO is imposed for an offender, victims or families should be provided with clear information on the details of the sentences as well as who to contact in the event of a breach or non-compliance.

Where a breach involving contact with a victim or their family has occurred, there should be steps taken as part of the formal disciplinary process to speak with the victim or family member to take account of the impact this breach had on them. This discussion should be noted and considered in the event that the offender must return to court.

As this consultation proposes extending the use of CPOs, we contend that measures to deal with breaches must be a priority. After this consultation, if analysis of the responses submitted does not provide credible, workable solutions with proportionate resources for this aspect of CPO provision, then their extended use must be re-visited.

Question 19. Please share any views you have on retaining Drug Treatment and Testing Orders (DTTOs) as a distinct community disposal for addressing substance-related offending. Please give reasons for your answer including:

- Views on whether they should be reformed or replaced
- Views on the current effectiveness of DTTOs
- How they compare to alternative disposals, including Community Payback Orders (with or without treatment requirements)
- What a future community sentence for individuals whose offending is related to substance use should look like.

Answer:

Victim Support Scotland is supportive of the Sentencing and Penal Policy Commission suggestion to *"evolve the DTTO model into a Substance Misuse Treatment Order, enabling courts to address both drug and alcohol-related offending."* This will provide a comprehensive approach to supporting prisoners with drug and alcohol addiction issues whilst they carry out the punishment part of their community sentence.

We have heard from some victims that they just want the offender in their case to get help with their underlying issues, which may have been a contributing factor to their offending. To VSS, a Substance Misuse Treatment Order feels like a natural step in supporting this, on the basis that the services expected to provide this treatment are sufficiently funded and resourced. Expecting services as they currently are to take on more cases of drug or alcohol abuse would place a significant amount of pressure on them.

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

Answer:

As a victim support organisation, our answer to question 19 is grounded in the experience of victims and ourselves as an organisation who supports them. Please see our answer on the potential impact on victims outlined in the answer to question 19.

Section 4: Electronic Monitoring

Background:

Electronic monitoring (EM) plays an important role within the criminal justice system, to help support rehabilitation and reduce reoffending. The Scottish Government is committed to developing the electronic monitoring service, including exploring the use of new technologies such as GPS. Within the current legislative framework, electronic monitoring can be used in a wide range of circumstances including as part of a community order such as a CPO, as a condition of bail, or as part of a licence, for example, for home detention curfew (HDC), a scheme which allows certain prisoners to be released from custody early under strict conditions.

The use of GPS technology offers a number of potential benefits over radio frequency (RF) monitoring – in particular, the ability to monitor a range of geographical conditions and gather rich compliance data. Building on recent developments such as the introduction of GPS with HDC, and the move to use EM with bail, we have identified a number of areas for potential

legislative change that could be made via primary legislation and help set the enabling conditions for further EM development.

EM in Scotland currently primarily uses radio frequency technology to monitor an individual's compliance with conditions attached to certain court orders and forms of licence. Principally, those conditions relate to a curfew confining a monitored person to a specified place for up to 12 hours a day, or their remaining away from a specified place for 24 hours a day. Radio frequency monitoring performs an effective role in managing curfews. In recent years technological advances such as GPS (global positioning systems) have provided different capabilities, such as the ability to set much wider “exclusion zones” - areas that an individual is required not to enter as a condition of their licence. The use of GPS devices to monitor compliance with exclusion zone conditions has been adopted for use in some home detention curfew licences.

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.

Answer:

Victim Support Scotland agrees with this proposal. We are supportive of improving processes to deal more efficiently with issues that have arisen regarding electronic monitoring. It would be our hope that improving this process will allow for better protection of victims and their families.

More specifically, prisoners may become eligible for Home Detention Curfew (HDC) having served 15% of their sentence. In such circumstances, ensuring there are robust processes in place is therefore vital to ensure robust operation and monitoring of HDC.

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.

Answer:

Victim Support Scotland makes it clear that when an offender breaches an order or licence relating to an exclusion zone, victims and their families can be placed in a significant amount of danger. Often, it is the case that the offender has breached an order or licence relating to an exclusion zone in order to specifically target the victim of the original crime or their family. This poses a serious threat to victims and their families.

Subsequently, we are supportive of the proposal that there should be a power of arrest for breaching the order or licence relating to an exclusion zone. Every step must be taken to protect victims, witnesses, their families and the wider public from offenders who breach an order or licence in relation to an exclusion zone. Exclusion zones are ordered with the purpose of protecting victims of crime - where an offender has breached this order or condition, it shows a disregard for the justice process and a potential willingness to cause further harm to a victim.

In order for this proposal to be effective, there must be significant investment in policing to equip officers to respond quickly to these breaches. It is often the case that a crime such as assault or even murder can be committed within seconds, and so, it is pertinent that police can respond quickly to a breach.

In addition, we have heard of cases in which an offender who is subject to an exclusion zone has manufactured ways to get around the order or condition. This has included sending members of their family into the area of the exclusion zone to target and intimidate a victim and/or their family. We firmly believe that the power of arrest should extend to offenders who have ordered a family member, friend or associate to enter an exclusion zone on their behalf with the purpose of targeting the victim or their family.

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.

Answer:

Victim Support Scotland is supportive of the proposal to expand the use of GPS monitoring for exclusion zones in principle. However, we are concerned that many offenders are not deterred by such restrictions. GPS monitoring for exclusion zones may serve to alert where an offender is at a certain time, but this does not stop them being near a previous victim or committing a further crime.

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?

Answer:

As a victim support organisation, our answer to question 23 is grounded in the experience of victims and ourselves as an organisation who supports them. Please see our answer on the potential impact on victims outlined in the answer to the questions above.

Section 5: Bail and Remand

Background:

The Criminal Procedure (Scotland) Act 1995 sets out a presumption in favour of bail for criminal cases so that typically an individual accused of a criminal offence can be allowed to remain in the community before their trial. The presumption sets out that an accused person is to be granted bail unless the court determines that there is good reason to refuse bail. The court may determine that there is good reason for refusing bail only if it considers certain grounds apply and having regard to the public interest, it is necessary to refuse bail in the interests of public safety or to prevent significant risk to the interests of justice. The court must consider bail in all cases regardless of whether an application is made.

The Act sets out a number of grounds which, taken individually or collectively, may give reason to the court to justify a decision to refuse bail in any given case. Grounds for refusal include a substantial risk of absconding or failure to appear; a substantial risk of committing further offences, interfering with witness or otherwise obstructing the course of justice. The public interest point relates to public safety and the prevention of a significant risk of prejudice to the interests of justice. The legal framework requires a court to have regard to material considerations including the nature of the offences and the “probable disposal of the case if the person were convicted of the offence.”

The decision to grant bail, or not, is an exercise of judicial discretion. If an individual accused of a criminal offence is not granted bail, they will be remanded to custody to await trial.

Numbers on remand

In recent years there has been an acknowledgement that the numbers of people being remanded to custody pending trial is high. In June 2018, the Scottish Parliament’s Justice Committee published a report ‘An Inquiry into the Use of Remand in Scotland’ that raised a number of concerns about the high use of remand in the justice system.

Today, the remand population is even higher. The share of the prison population on remand on an average day increased from 19% in 2019-20 to 22% in 2024-25. There was a spike in the number of people remanded to custody awaiting trial due to the onset of the Covid-19 pandemic in 2020.⁵⁸ Over half a decade later, the remand population remains considerably higher than before the pandemic.

In late 2019, the Scottish Government commissioned independent research into bail and remand decision making in Scotland with the aims of assisting the Scottish Government and other justice stakeholders to:

- better understand the process of bail decision making.
- better understand the current system’s strengths and weaknesses and hear what criminal justice stakeholders need to best be supported in their decision making.

- use this evidence to build on what is working well and inform improvements, if needed.

The main findings of the final report published in December 2023 were that the bail and remand decision making process is complex and time- pressured. The nature of the offence charged, and an individual's previous convictions, were the two factors "which perhaps carried the most weight in decisions to oppose bail (by COPFS) and to refuse bail (by sheriffs)." There was acknowledgement that the exercise of judicial discretion inevitably leads to a variation in attitude, perception and thus also outcome. Among all stakeholder groups the main reported process or system factor was time, specifically the lack of time for partners including judiciary, defence, and justice social work to collect and process all the necessary and appropriate evidence and information to inform case decisions. High volume of business compounded the issue, as did missing information, such as the absence of a detailed Standard Prosecution Report (SPR) which might require COPFS to spend considerable time trying to determine necessary information.

Following the consultation, the Bail and Release from Custody (Scotland) Act 2023 ("2023 Act") reframed the test which the court must apply when considering whether or not to grant bail to someone accused of or charged with an offence. The general presumption in favour of bail applies subject to particular exceptions. Section 1(2) of the 2023 Act also amended the 1995 Act to require the court to always give an opportunity to justice social workers to provide information to the court to inform the bail decision and the court is also required, when refusing or granting bail, to state and record particular reasons for that decision. The core bail provisions of the 2023 Act came into force in May 2025 and their impact on remand rates is not yet clear. The 2023 Act requires the Scottish Government to publish a report assessing the effectiveness of the new bail test three years after its implementation.

The Sentencing and Penal Policy Commission

In 2026, the Sentencing and Penal Policy Commission acknowledged that "sometimes people are remanded in custody because that is the only safe thing to do" while in its view also setting out the substantial harm that this can cause to individuals. For example, people held on remand may lose employment and housing and be unable to manage everyday responsibilities such as paying bills, which can strain family relations, and lead to financial hardship or homelessness. These impacts can be particularly acute for those with existing vulnerabilities such as mental health issues, addictions, or caring responsibilities, and suicide rates are notably higher than among sentenced prisoners. They also have wider societal harms through family breakdown, loss of employment, and homelessness.

The Commission also raised a concern that a large proportion of individuals remanded in prison before trial do not end up serving prison sentences or serve ineffective short-term sentences.

In the Commission's view, a stronger test would be whether the offence an individual is accused of has any real prospect of a custodial sentence of more than 24 months. This would mean that a court would be obliged to consider whether the offence that someone is charged

with has any real prospect of resulting in a custodial sentence of more than 24 months, and that that individual might receive such a sentence.

The Commission stated that specific exceptions would apply when the court is making remand considerations. As set out in paragraph 142, existing reasons for refusal of bail include absconding or failure to appear; a substantial risk of committing further offences, interfering with witness or otherwise obstructing the course of justice.

Strengthening the bail test

The Scottish Government agrees that there is further work to be done to reduce the use of remand. In considering the above proposal to strengthen the bail test, we are mindful that reducing the use of remand would require careful consideration to be given to ensuring victim safety and avoiding interference with witnesses. There is also a risk that failure to effectively deal with people who abscond or fail to appear could bring increased 'churn' into the system - when trials cannot go ahead because the accused is not present. This could result in increased delays and distress for victims of crime.

Improvements to the system of electronic monitoring could help mitigate these risks and provide communities and victims of crime with increased reassurance. Use of GPS capability may increase confidence in managing individuals in the community where risks relate to specific locations, while introducing alcohol monitoring could support bail supervision for individuals where alcohol is a driver of risk.

Improvements to the system of electronic monitoring could help mitigate these risks and provide communities and victims of crime with increased reassurance. Use of GPS capability may increase confidence in managing individuals in the community where risks relate to specific locations, while introducing alcohol monitoring could support bail supervision for individuals where alcohol is a driver of risk.

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.

- *Please give reasons for your answer, including whether there are any circumstances in which remand should remain available even where such a sentence is unlikely.*

Answer:

Victim Support Scotland is not supportive of this proposal.

VSS is extremely concerned that perpetrators who have committed serious violent, abusive and sexual crimes could receive bail as part of this proposal. As mentioned throughout this consultation response, crimes including serious assault, domestic abuse and sexual assault can and do receive prison sentences of under two years.

Strengthening the bail test by including the use of monitoring and GPS will not mitigate the danger to victims from perpetrators.

It is worrying that in Scotland between 2016-17 and 2023-24, there were 83 cases of murder or culpable homicide committed by an individual who was on bail at the time. This is alongside:

- 1,865 serious assaults or attempted murders
- 154 rapes or attempted rapes
- 244 sexual assaults

Additionally, there were 598 cases under the Domestic Abuse (Scotland) Act 2018 – this figure is from 2019-20 to 2023-24 as legislation did not come into force until then.⁴

In the year 2023-24 alone, there were 25,665 crimes committed by individuals on bail.⁵

Lived Experience:

We have heard from our colleagues at ASSIST about victims who have believed they would be attacked, subjected to non-fatal strangulation or killed by the perpetrator following their release on bail.

We are aware of a case which resulted in the death of a woman where the perpetrator is due to appear in court on two indictments, the first of which (murder) includes seventeen charges, all of which were committed whilst on bail. These charges, committed whilst on bail, include assault, behaving in an abusive manner, abduction and possession of a knife. This perpetrator had previous vehicle related convictions.

One family member supported by VSS states:

“The man who murdered my partner was out on bail for serious assault, bail for serious assault is a serious misjudgement. How can the people making these decisions live with themselves? Those committing these crimes have no consequences, the families are the ones who must face the consequences. Why do the accused’s rights matter more than the lives of our loved ones? I’ll never be able to see my partner again, where is our right to be safe from violence?”

These cases show the serious impact releasing violent offenders on bail can have, whether or not there is a prospect of them receiving a custodial sentence of two years or more. Remanding perpetrators in custody, particularly people charged with crimes of

⁴ [Number of bail breaches and impact monitoring by Scottish Government: FOI release - gov.scot](#)

⁵ [Number of bail breaches and impact monitoring by Scottish Government: FOI release - gov.scot](#)

violence against women and girls, is therefore essential for the protection of not only the previous victims, but also the wider public.

We also believe that offenders who have a history of failing to attend court should be remanded in custody to reflect this history of disregard for the law. Repeated failure to attend court not only shows a disregard for the court process but also prolongs the suffering of the victim and family.

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?

Answer:

As a victim support organisation, our answer to question 25 is grounded in the experience of victims and ourselves as an organisation who supports them. Please see our answer on the potential impact on victims outlined in the answer to the questions above.

We offer the following additional comments. There must be better communication with victims when there has been a variation to bail conditions for an offender. We have heard from colleagues across the victim support sector about cases where changes to bail conditions have allowed perpetrators to be in closer proximity to victims or their families without the victim being informed. As a result, victims are unable to take appropriate steps to protect themselves and their family members. In some cases, this has increased risks and led to further harassment of family members by the perpetrator.

Experiences such as these can be highly distressing and dangerous for victims and their families. They can also undermine confidence in the justice system by preventing victims from making informed decisions about their safety. Furthermore, where victims are not notified of such changes, it can create a perception that the needs of the perpetrator and their family are being prioritised over the safety and wellbeing of victims.

Part 2: Prisoner release arrangements

Section 6: Automatic early release for long term prisoners

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.

Answer:

Victim Support Scotland has concerns about the proposal that the automatic release point for long term prisoners should be amended to the two thirds point.

We query whether these changes, and the theoretical enhanced support and supervision in the community, will provide any reductions in re-offending (and fewer victims). The argument has been given that this earlier release point would allow for managed return to communities and enhance rehabilitation. Long-term prisoner reoffending within a year of release has remained low (10%) and there is no evidence that the 2016 changes had any impact on this. It could, therefore, be argued that the primary rationale for this is a reduction in prisoner population and not a desire to improve rates of recidivism.⁶

We feel that there are wider implications of these changes and these are outlined below.

Impact on victims

Victims and families frequently tell us that they feel anger, distress and fear when they learn that their perpetrator may be released earlier than expected. Many also perceive sentences as lenient and find the sentencing and release process complex and confusing. Our answer to this question centres around the impact of these proposals on victims.

We are concerned that a potential impact of amending the automatic release point for long term prisoners may lead to a reduction in victims reporting crimes. Reducing the automatic release point may foster feelings of ‘what is the point’ amongst victims if they know that the perpetrator will not serve the expected length of sentence imposed. This can leave victims, as well as the wider public, in danger where perpetrators go unpunished, allowing them to potentially continue committing crimes.

Furthermore, there is growing sentiment among victims that they are being made to feel responsible for the current pressures on prison capacity. It is apparent that many victims feel as though early release (in any capacity) acts as a secondary punishment for the victim, after having to endure the investigation, trial and sentencing. This can leave victims and their families experiencing heightened fear and distress, while further undermining their confidence in a justice system in which many already feel their needs are secondary to those of the offender.

⁶ [Reconviction Rates in Scotland: 2022 to 2023 Offender Cohort - gov.scot](#)

Parole

Victim Support Scotland notes that a release point at two-thirds of a sentence represents a modest extension beyond parole at 50% or a potential subsequent parole hearing following this. We are concerned that amending the automatic release point to two-thirds would result in an offender disengaging with the process of parole.

The opportunity to participate in a parole hearing can hold significance for victims and families - it allows for their voices to be heard, supports them in ensuring their experiences are acknowledged, and enables public safety to be evaluated. Where prisoners may become disengaged with the parole process because they know they will be automatically released, these opportunities for victims and families are removed.

We seek clarity as to how victims' and families' voices and experiences will be considered at the two-thirds release point. If their rehabilitation is to continue in the community, as opposed to in custody, we would like consideration to be given to how victims' views are heard and taken into account in risk assessments.

Additionally, automatic release of any long-term prisoner at two-thirds who had been denied parole at 50% or any subsequent point after, is concerning. Parole is denied for serious, valid reasons following risk assessment and consideration of public safety. Disregarding these findings due to earlier automatic release is both concerning and distressing for victims and their families. VSS urges the Scottish Government to reassess the eligibility criteria for automatic release to ensure that prisoners who have been denied parole remain in custody until they are deemed safe for release.

Sexual and Violent Offences – including domestic abuse

Victim Support Scotland is concerned and disappointed that these proposals do not include an exclusion for sexual and cases of domestic abuse. These offences are calculated crimes that involve a high level of intent. Releasing prisoners convicted of serious sexual and violent crimes who have not been effectively rehabilitated is seriously concerning.

Through our experience of supporting victims of crime, we know that these crimes are often an indicator of future and escalating harm. Releasing perpetrators of sexual abuse and violent crime, including domestic abuse who have not been rehabilitated, will serve to increase this risk. We note comments made by Farah Nazeer, Chief Executive of Women's Aid in relation to reforms in England and Wales:

"We're releasing prisoners early when they won't have had proper rehabilitation. Probation is probably not able to manage them effectively. They're going to be angry. Where do you think they're going to go first? It's absolutely appalling,"

Though similar changes were announced for England and Wales (at the time of writing these have been paused), the Prime Minister announced that prisoners who have committed rape, grooming, and serious child sex offences will now be excluded from the earlier automatic release scheme

These reforms contradict the Scottish Government’s commitment to tackling violence against women and girls and the First Minister’s pledge on August 2nd 2026 of ‘personal leadership’ to tackle domestic abuse, in light of two recent deaths of women in Scotland being investigated as murder committed by a partner or ex-partner.⁸

If these changes are to go ahead, we ask that the Scottish Government implements the same exemptions present in previous Scottish government release schemes, as well as those that have been agreed in England and Wales. Additionally, we advocate for these exemptions to extend to serious violent crimes. We further ask that exemptions are extended to more broad instances of domestic abuse, given its sustained and targeted nature, and other violent offences which can and do result in life changing consequences or death. What may be considered is a process similar to a parole board hearing for certain offences at the automatic release point. This would allow for adequate assessment of certain offenders and the potential risk they may pose if released.

Governor's Veto

VSS is disappointed that there appears to be no provisions in the proposals for a Governor’s veto to be considered to prevent the release of individuals who may pose a risk. This is disappointing considering the Governor's veto was available during emergency early release, where it served as a crucial additional safeguard for victims.

Communication and the Victim Notification Scheme Reform

Trauma-informed communication with victims and families going through any criminal justice process is critical. It supports victims to feel respected, informed and better able to engage with the criminal justice process.

Victim Support Scotland has consistently raised concerns about the delayed implementation of reforms to the Victim Notification Scheme. We have advocated for the swift implementation of the reforms to the Victim Notification Scheme outlined in

⁷ [More women will die if domestic abusers leave prison early, victim’s parents warn | Domestic violence | The Guardian](#)

⁸ [Swinney pledges ‘personal leadership’ on domestic abuse after scale ‘laid bare’ | STV News](#)

the 2023 Independent Review (over three years ago). These reforms are essential in ensuring that victims and their families have access to the information they require to feel safe and informed. Victim Support Scotland cautions that victims continue to be at risk of not being informed about a prisoner's release eligibility, parole eligibility, or offered support, if they are not currently signed up to the Victim Notification Scheme.

Current uptake of the VNS remains low and whilst we appreciate that victims who are signed up are contacted through the details available, it remains that the majority of victims who are eligible to be signed up, are not signed up and therefore not informed. Therefore, the changes recommended for the Victim Notification Scheme made over three years ago are critical and a requirement for adhering to the Victims' Code for Scotland in relation to the right to information.

The changes proposed in this consultation will require significant investment into the VNS to ensure it is reformed to the recommendations made over three years ago. We understand that these reforms are due to be consulted on again in Autumn 2026, which further adds delay to essential reforms. Overall, it is disappointing that legislation which concerns offenders and prisoners is fast tracked, with truncated consultation periods, while legislation designed to offer some marginal protection victims, witnesses and their families is delayed and slowly implemented.

System Readiness

We raise concerns about the system's readiness for the influx of people being released into the community. The consultation recognises that it is expected that the changes will have an impact on delivery partners as well as housing but makes no indication of how the Scottish Government intends to support delivery partners in dealing with increased demand.

The proposal to make this retrospective to the 2016 changes, increases the number of prisoners to be released with no timescale for services to be ready to put in place vital safeguards and supports. VSS contends that the proposals in this consultation are shifting the pressures currently on the prison system to community delivery partners such as Justice Social Work, Police Scotland, housing and homelessness services, health services and other voluntary sector partners.

In response to the 2024 consultation on the 'Long-term prisoner release process,' VSS noted the experience of a person supported by VSS who had been affected by assault, housebreaking and antisocial behaviour:

"I wish there was better monitoring when prisoners are released and thoughtfulness about where they are placed when put back in the community ...[M]y former neighbour did the same to another neighbour a couple of years

after he broke into my house... He was someone with a violent crime history. He should have been better monitored”.

This experience highlights that there are already pressures on community delivery partners, particularly in terms of housing. We are therefore concerned that these experiences will become more widespread with an influx of long-term prisoners being released, requiring housing, support and supervision.

In addition, we ask that adequate resourcing must not only focus on rehabilitation for offenders but also prioritise victim safety. This includes the availability of support services, resourcing of social work, liaison with victim support organisations, and tailored support for survivors of domestic abuse and sexual crimes.

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.

Answer:

The proposal to extend the automatic release point to prisoners on extended sentences is particularly concerning to VSS given the gravity of the crimes they have perpetrated and the risks these individuals represent.

The original justification for extended sentences was that certain violent and sexual offenders posed a continuing risk of serious harm that could not be adequately managed through ordinary release arrangements. Extended sentences were therefore designed to provide enhanced post-release supervision and Parole Board oversight in the interests of public protection.

We can see no evidence in this consultation document that would suggest there are viable alternatives to manage such high-risk offenders.

Extended sentences are designed and imposed as they are to reflect the severity of the crime committed and the need for additional supervision of an offender. These sentences are imposed on sex offenders or on violent offenders who receive a custodial sentence of four years or more.

We therefore reiterate our concern that there are no exemptions for serious and violent offenders included in these proposals. VSS contends that reducing the time in prison and extending the supervision time for individuals on an extended sentence is not appropriate and may serve to dilute these sentences even further for victims of these crimes.

Any proposal to bring forward the automatic release point for prisoners serving long term or extended sentences risks creating the following negative effects for victims and families:

- **Reduced confidence in the criminal justice system.** Where sentences for long term and extended sentence prisoners are reduced, victims and families may feel as though the seriousness of the crime committed is being undermined and that the sentence no longer reflects the gravity of the crime. We know that earlier release can trigger feelings of diminished accountability and disregard for suffering caused, particularly for families who have lost a loved one.
- **Increased anxiety and fear.** Learning that an offender will be released earlier than previously expected can and will cause significant distress, particularly for victims of serious violent or sexual offences or for families who have lost a loved one. Victims and families in this situation may then also fear further harm or unwanted contact.
- **Disruption to recovery and trauma.** Victims and families often engage in their own timeline of healing following crime. This often includes safety preparation and seeking increased support around an offender's release date. Earlier release can trigger uncertainty and disrupt this healing process.
- **Lack of information.** If the victim is not signed up to the Victim Notification Scheme, they may not be aware of any change to the sentence the prisoner is serving in their case.

Section 7: Short-term prisoner definition

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”.

Answer:

Victim Support Scotland is concerned about the proposal to amend the definition of a short-term prisoner from less than four years to less than five years.

Firstly, a number of offences that result in the loss of life, including culpable homicide and causing death by careless or dangerous driving, can attract custodial sentences of less than five years. The scope of this proposal could also encompass offences such as attempted murder, which may involve a deliberate and premeditated intention to cause fatal harm. Given these examples, VSS is concerned about increasing the duration of a short-term sentence from four to five years.

VSS further notes that changes to sentencing expectations can be profoundly distressing for victims and bereaved families. Through our experience of supporting

victims and families, we believe that reclassifying certain offences, including cases involving a loss of life, as a 'short-term sentence' is likely to cause significant concern and upset. For many victims and families, such a change may be perceived as lowering the gravity of the offence and the long-term impact it has had.

Furthermore, backdating this change to cover prisoners currently serving sentences of up to five years will be especially traumatising as these prisoners will now be due to be released earlier than they would have been and what the victim and family have prepared for. For example, the most significant change will be for prisoners serving a sentence of 5 years and who would have served their entire sentence less 6 months, will now be released at 30%.

VSS considers that this change is not trauma informed and is not in keeping with the victim-centred approach to justice.

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?

Answer:

As a victim support organisation, our answer to question 29 is grounded in the experience of victims and ourselves as an organisation who supports them.

Victims' human rights require the state to take reasonable measures to protect individuals from foreseeable serious harm. Accordingly, any reform of automatic release arrangements must be assessed against public protection duties as well as offender rehabilitation objectives. The consultation document explicitly shows how these proposals will affect prisoner numbers which would suggest the balance is in favour of this policy objective.

Please see our answer on the potential impact on victims outlined in the answer to the question above.

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?

Answer:

Victim Support Scotland highlights that the topic of penal reform and prison population, and the issues raised by it, do not exist separately to other areas within the justice system. Taking a compartmentalised approach to penal reform and prison population

separate to these other issues risks missing critical aspects that will negatively impact all involved.

From a victim's perspective, any change to the criminal justice system and processes must be looked at in conjunction with one another. Recently, reform plans have included:

- The passage of the Victims, Witnesses and Justice Reform (Scotland) Act 2025
- The passage of the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Act 2025
- Part 2 of the Domestic Abuse (Protection) (Scotland) Act 2021
- Voices in Justice: Parole Reform in Scotland Consultation
- The future of secure care and the single point of contact (SPOC) for victims in the Children's Hearings System Consultation
- Undertaking domestic homicide and suicide reviews: draft statutory guidance consultation
- Consultation on change to release point for short-term prisoners (STP30)
- Improving protections in the justice system for women and girls: consultation
- Scottish Sentencing Council Consultation on the Draft Sentencing Guidelines for Domestic Abuse
- Statutory Guidance for Victims of Human Trafficking Consultation
- Legal Aid Reform Consultation
- Sentencing and Penal Policy Commission Report
- Victim Notification Scheme Reform

Victim Support Scotland is disappointed that these reforms and subsequent legislation have preceded implementation of legislation concerning victims, most notably, further implementation of the Victims, Witnesses and Justice Reform (Scotland) Act 2025. Moreover, the Victims, Witnesses and Justice Reform (Scotland) Act 2025 was passed in order to make the justice system more trauma informed for victims, but the Scottish Government continues to pass legislation with profound effects on victims without the protections in the 2025 Act.

In conclusion, as the Scottish Government considers these proposals and implements some or all of them, it is essential that victims are supported to understand the changes and their potential impact. These are complex issues and people need dedicated victim-focused support to aid understanding. The continued decline in referrals to victim support services, through both automatic and opt-in routes, remains a significant concern. As a result, we urge the Scottish Government to introduce clear referral targets or performance measures for criminal justice agencies.

We recognise the potential benefits of some of the proposals set out in this consultation and their aims. However, we remain concerned about the availability of resources to deliver them effectively and safely. The Scottish Government must do what it can to ensure adequate resources are in place so that local services are not overburdened, leading to unsafe operation of community sentencing. This will serve to further erode public trust and confidence in the criminal justice system where changes fall short of expectations or there is a lack of safety.

Additional remarks not in relation to the package of reforms but in relation to the consultation itself.

Victim Support Scotland expresses concern and disappointment in the short response time given for this consultation given the seriousness and potential impact of the reforms that are being consulted on.

Unfortunately, due to the reduced response time for this consultation we have not been able to include as much evidence and lived experience as we would have hoped and usually would have. We also want to highlight our concern that, due to this reduced response time, we may not have had time to fully scrutinise our own response to secure further evidence or views. This shortened period of consultation may have resulted in minor errors in our response. We welcome further scrutiny, discussion, and engagement to ensure provisions are made for victims in a consultation seeking to achieve a sustainable prison population and a safer Scotland.