



**Consultation on Bail and Release from Custody arrangements in Scotland  
Questions and Respondent Information Form - Response from Victim Support  
Scotland – 17 February 2022**

**Question 1**

Which of the following best reflects your view on the changes proposed above regarding when judges can refuse bail:

A) I agree with the proposed change, so that judges can only refuse bail if there are public safety reasons for doing so

B) I disagree with the proposal, and think the system should stay the same as it is now, so judges can refuse bail even if public safety is not one of their reasons for doing so

C) I am unsure

Please give reasons for your answer.

**Overall, we agree that decisions to refuse bail must be justified on public safety grounds, which we think should include victim safety. This may be in relation to the safety of one alleged victim.**

**Though we agree with and welcome statement 4.4 of the consultation document that “public safety becomes a necessary ground for refusing bail and victim safety is further emphasised as a relevant consideration”, it would be beneficial to have further clarification on what is considered a public safety reason, as well as explicit references to safety of victims.**

**What we want to see is an effective risk assessment process in place where there has been an alleged crime, reducing potential harm to a victim and/or the public. Regardless of the incident leading to a criminal conviction or not, there is a still a person/victim that has been wronged and therefore the impact of crime (both physically and psychologically) on this person needs taken into account. For example, spiking has been historically difficult to prove due to drugs being out of a victim’s system within 24-hours. We therefore believe that more clarification is required where individual victim safety would fall into public safety and what the implications are.**

**Question 2**

Which of the following best reflects your view on the changes proposed above regarding how judges consider victim protection when making decisions about bail:

A) I agree with the proposed change, so judges should have to have particular regard to the aim of protecting the victim(s) when making bail decisions.

B) I disagree with the proposal, and think the system should stay the same as it is now, where judges consider victim protection as part of the overall decision-making

C) I am unsure

Please give reasons for your answer.

**Victims are directly impacted by decisions surrounding bail and release of the accused; it is therefore imperative that judges aim to protect them and consider their needs when making such decisions. There are significant implications on victims' psychological as well as physical wellbeing when an accused person is bailed, including but not limited to fear of safety, threat of repeat victimisation, and emotional stress.**

**We know only too well how damaging and retriggering people's experience of coming through the justice system can be and therefore taking this into account with regards to bail conditions is paramount.**

**We believe that taking into account the victim's protection needs to be further emphasised as part of the court's consideration of bail.**

### Question 3

To what extent do you agree or disagree that the court should be empowered to make decisions on the question of bail in all cases using a simplified legal framework?

Strongly agree

Somewhat agree

**Somewhat disagree**

Strongly disagree

Please give reasons for your answer.

**We are aware of instances where offending behaviour continues when people are out on bail e.g. in domestic abuse cases.**

**We must have consistency across the justice system with regards to bail decisions. It is also important that there is transparency about decisions made and that the public/people affected by crime understand how the system works and decisions are made. We would however want reassurances and more detail of how a proposed simplified legal framework is robust and comprehensive to ensure that justice is being properly served.**

### Question 4

Judges must give the reasons when they decide to refuse bail to an accused person. Which of the following best reflects your view on how those reasons should be communicated:

A) I agree with the proposed change, so judges must give reasons both orally and in writing

B) I disagree with the proposal, and think judges should continue to give reasons orally only

C) I am unsure

Please give reasons for your answer.

It is always beneficial to the victim to have written evidence and transparency of information for decisions of bail. However, VSS would urge argue that we should go a step further and that written reasons for when bail is granted is also provided, not only when it is not. There are superfluous instances where the granting of bail by a perpetrator has led to the direct detriment of the victim, particularly because they are informed too late that their perpetrator has been released, and in instances where the perpetrator lives nearby to the victim.

Ann, someone supported by VSS, commented: "When bail was granted to the perpetrator, it made me and my mother's situation worse, as the offender ramped up her appalling behaviour. Bail is too easily granted as is and needs to be taken more seriously so perpetrators are held accountable, instead of having a slap-on-the-wrist punishment instead of jail time."

#### Question 5a

When a court is considering bail decisions, which of the following options do you consider preferable...

...in cases where the prosecution *opposes* bail:

-The court **may** ask for information from social work, but is not obligated to. Social work **may** decide whether to provide it

-The court **must** ask for information from social work. Social work **may** decide whether to provide it

-The court **must** ask for information from social work. Social work **must** provide it

Please give reasons for your answer.

Social work rarely have information regarding victims and therefore formal information sharing agreements would need to be put in place to allow this to happen properly.

In the interest of transparency, having justice social work involved has the potential to lead to more stringent measures in place surrounding bail decisions. However, the safety of the victim should be considered carefully in all of this. We would want third sector organisations available to support this.

Ensuring that accused/perpetrators are not being let out on bail when it may impact the safety and security of a victim of the crime is imperative.

#### Question 5b

When a court is considering bail decisions, which of the following options do you consider preferable...

...in cases where the prosecution *is not opposing* bail:

-The court **may** ask for information from social work, but is not obligated to. Social work **may** decide whether to provide it

-The court **must** ask for information from social work. Social work **may** decide whether to provide it

-The court **must** ask for information from social work. Social work **must** provide it

Please give reasons for your answer.

**As above, it is important there is transparency about decision making but also put victims' safety first.**

### Question 6

To what extent do you agree or disagree that courts should be required to consider Electronic Monitoring before deciding to refuse bail

Strongly agree

Somewhat agree

**Somewhat disagree**

Strongly disagree

Please give reasons for your answer.

**From a victims' perspective, we would have a concern about the 'additional time' that is mentioned required to consider Electronic Monitoring systems as the last decision-making aspect of bail decisions and this is adding to already lengthy proceedings within the justice system.**

**What should be taken into consideration when deciding whether or not to refuse bail is the security of the victims, witnesses and family members if the perpetrator is let out on bail. If it is the case that bail is granted, the proper use of Electronic Monitoring can help keep victims, witnesses and their family members safe.**

**Electronic Monitoring is far from a perfect system. Radio frequencies used in this system limit its effectiveness.**

**We also know that perpetrators take on more sophisticated methods of contacting their victims e.g. through social media, mobile contact etc. which falls outside of what Electronic Monitoring records.**

### Question 7

When a court decides to refuse bail, to what extent do you agree or disagree that they should have to record the reason they felt electronic monitoring was not adequate in this case?

**Strongly agree**

Somewhat agree

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

**VSS supports recording of reasons as to why a court decides to refuse or grant bail, including reasons surrounding electronic monitoring. Being able to have written testaments to this is imperative for the transparency of information; victims should be able to have access to the recorded reasons both to challenge them if they do not agree with it and in order to further understand what is happening in their case.**

### Question 8

To what extent do you agree or disagree that time spent on bail with electronic monitoring should be taken into account at sentencing?

Strongly agree

Somewhat agree

**Somewhat disagree**

Strongly disagree

**Please give reasons for your answer.**

**Decisions surrounding sentencing should take into account victim safety and protection, rather than time spent with electronic monitoring.**

### Question 9

If time on electronic monitoring *is* to be taken into account at sentencing, to what extent do you agree or disagree that there should be legislation to ensure it is applied consistently:

**Strongly agree**

Somewhat agree

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

**We believe there should be consistency across the justice system in terms of Electronic Monitoring and how this is used, this way people impacted by crime can understand decision making better.**

### Question 10

Based on the information above, please use this space if you would like to make any comments about the idea of a law in Scotland that would prevent **courts** from remanding someone if there is no real prospect that they will go on to receive a custodial sentence in the proceedings.

**We would have concerns about who would decide there to be 'no real prospect' of a custodial sentence, clarity is required here. Again, we would want robust risk assessments to reassure people (public/victims) that there is no threat to public safety in these instances.**

### Question 11

To what extent do you agree or disagree that legislation should explicitly require courts to take someone's age into account when deciding whether to grant them bail?

Strongly agree

Somewhat agree

**Somewhat disagree**

Strongly disagree

Please give reasons for your answer. If you agreed, *how* do you think age should be taken into account when deciding whether to grant someone bail?

**The safety of the victim should be at the forefront of consideration surrounding releasing a perpetrator/accused person on bail, rather than the age. It is imperative that there is equity within our justice system in that you should have access to the same level of support and information irrespective of the age of the perpetrator.**

**Mica, who was supported by VSS as she and her family were further victimised by a young person who was let out on bail, said:**

***"I was told the information that the perpetrator was being charged with sexual abuse and rape, but no information as to what was going to happen next. I didn't know if the perpetrator was being detained in a young offenders' institute or whether he was back at his home, just around the corner from me and my family. Turned out he was back at home, under absolutely no restrictions, which led to further physical and verbal harassment on my family for almost a year until I decided to move us out of the town I had lived in for 40 years. If proper restrictions had been put in place the perpetrator would not be allowed to enter our street or approach my family, and I firmly believe our lives would have been much easier."***

### Question 12

In principle, to what extent do you agree or disagree that courts should be required to take any potential impact on children into account when deciding whether to grant bail to an accused person?

Strongly agree

**Somewhat agree**

Somewhat disagree

Strongly disagree

Please give reasons for your answer. Do you have any comments on how such a requirement could best be brought in?

**Again, victim's safety needs to be paramount here when considering bail decisions and the impact on children.**

**In cases of domestic violence, if one parent or caretaker is guilty of abusing another parent/caretaker, they should not be let out on bail, even if they play a part in childrearing, because that poses a threat to the victim. The argument that a child will be impacted if the perpetrator is a parent in prison ignores the impact that a child will also be impacted if their other parent is being victimised. It is important that a**

child's safety and protection is taken into consideration at all times, as well as the safety of the victim (as outlined above).

### Question 13

To what extent do you agree or disagree that, in general, enabling a prisoner to serve part of their sentence in the community can help their reintegration?

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

**We agree this would be useful for some category of prisoners to help reintegration. However, the focus of a sentence should be victim and community safety over reintegration. Victims and their families should also be able to have a say in what justice looks like for them.**

### Question 15

Do you agree that through good behaviour, or completing education, training and rehabilitation programmes, prisoners should be able to demonstrate their suitability for...

a)...early release?

Yes / **no** / unsure

b)...the ability to complete their sentence in the community?

Yes / **no** / unsure

Please give reasons for your answers.

**Once again, victim safety is the most important factor when considering the release of a perpetrator from prison. It is also helpful to have further information on what constitutes the education, training and rehabilitation programmes prisoners take part in, as well as, and most importantly, if those providing the trainings are consider risk assessments at all times.**

When asked about this issue, people using VSS services responded with the following:

***"Consideration of recidivism rates for particular crimes. Can safety of the victims be guaranteed? In the cases of domestic abuse, specialist risk assessment for all parties should be mandatory before release."***

***"Bail should not be granted in any case of a Category A crime in my opinion, especially not with repeat offenders and even more so if the perpetrator lives within close proximity of their victim and the victim's family. There has to be a way around causing the victim even more distress in their daily lives."***

***"The impact of the decision on the victim and the victim's family."***

### Question 16

Do you have any comments on how you envisage such a process operating in the Scottish justice system?

Who should be eligible to earn opportunities in this way?

What risks do you see with this approach, or what safeguards do you feel would need to be in place?

**Robust risk assessments must be in place to ensure public safety. Also transparency of decision making.**

### Question 17

Which of the following options in relation to automatic early release for short term prisoners would you say you most prefer?

- Automatic early release changes to earlier in the sentence, but the individual is initially subject to conditions and monitoring, until the half-way point
- Automatic early release changes to earlier in the sentence, nothing else changes
- **No change: automatic early release remains half way through the sentence**

Please give reasons for your answer.

**Amending timescales of prison sentences can be alarming for victims, particularly when we have an outdated Victim Notification Scheme that is not fit-for-purpose or responsive to the needs of people impacted by trauma. We have heard of too many instances where our justice system does more harm than good to people affected by crime, therefore would not want to see further reductions to sentences.**

### Question 18

Currently long-term prisoners can be considered for release by the Parole Board for Scotland once they have completed half of their sentence. Which of the following options would you say you most prefer?

- Change to allow some long-term prisoners to be considered by the Parole Board earlier if they are assessed as low risk
- Change to automatic consideration by Parole Board once one third of the sentence is served for all long-term prisoners
- **No change: automatic consideration by Parole Board once half of sentence is served for all long-term prisoners**

Please give reasons for your answer.

**As mentioned above, early release of prisoners can be alarming for victims and our concern is that their health and wellbeing is not further jeopardised.**

### Question 19



Do you agree that the Scottish Government should ban all prison releases on a Friday (or the day before a public holiday), so people leaving prison have greater opportunity to access support?

**Yes** / No / Unsure

Please give reasons for your answer. If you agree, what wider changes would be needed to ensure people leaving prison have access to the support they need?

**Victims of crime will also benefit greatly from a ban on prison releases on a Friday or a day before a public holiday, as the release of a perpetrator can directly impact a victim's wellbeing. Victims, witnesses and their families will also need support available on the day of release and having that day fall on a date that would make accessing support more difficult is discouraged, therefore VSS supports this proposal.**

### Question 21

To what extent do you agree or disagree that the Scottish Government should consider whether information on individuals being released from custody can be shared with third sector victim support organisations, for example, to enable them to provide proactive support to victims and carry out safety planning?

**Strongly agree**

Somewhat agree

Somewhat disagree

Strongly disagree

**See below**

### Question 22

In addition to information on individuals being released, to what extent do you agree or disagree that victims and victims support organisations should be able to access further information?

**Strongly agree**

Somewhat agree

Somewhat disagree

Strongly disagree

**VSS strongly supports and welcomes the proposal for victim support organisations to have access both to information surrounding release from custody and further information. We would want to see a formal information sharing agreement put in place, emulating what is already in place for prisoners being released between prisons and local authorities. The agreement would allow third sector organisations to provide tailored support to victims at the point of need, when a perpetrator is released from prison.**

**There have been instances where victims, witnesses and their families do not hear vital information regarding their cases because the criminal justice system has either failed to inform them or have informed them too late. As one service user, Terry, explains: *"The time waiting to hear outcomes is unbearable, causing great angst to the victim and their family and other witnesses. Meanwhile the accused***

*could have been released with the victim oblivious to this. The accused's family on the other hand knows the outcome of court decisions long before the victim—this is so wrong. As methods of communication should have improved over the years, there must be a quicker way of communicating court decisions to victims, specifically bail and release outcomes.”*

There are constantly stories from victims about them running into their perpetrator on the streets without any knowledge that they were released. Freida, whose brother was murdered in 2008, spoke about running into her brother's murderer, who had been temporarily released to attend a funeral, without having any warning: *“We didn't have a single call. We live in a small community where everyone knows each other; this man was released without any security measures in place, no police around him. To see him was traumatising.”*

When asked whether they felt victim support organisations should be at the receiving end of information, service users replied:

*“It should be a legal requirement for VSS, and any other independent service, to be updated and informed of all trials, bail conditions, etc so it can then be passed onto the victim and family with some empathy and compassion rather than the victim being felt to be a nuisance. They need to know what's going on and if they are safe.”*  
*“Absolutely, it is imperative for safety planning, particularly in cases of gender-based violence. Without knowledge of a threat, you are left powerless to ensure you and your family's safety.”*

*“I would absolutely advocate that victim support agencies are given direct information when a perpetrator is released, and general information on the case. It takes me forever to even find out about the results of a Preliminary Hearing.”*

*“VSS formed a vital part in communication in the case providing me with more informed information than Justice Services and also provided me with the information before Procurator Fiscal's office. Criminal Justice provided me with a Safety Worker who unfortunately in my case did not always provide me with accurate information, was often not available for updates (due to demands on the service) and unfortunately for me compared my case to others and made me feel less of a victim.”*

Additionally, VSS finds that many service users bring information to us even in cases where they have been properly informed of outcomes, because the legal jargon and lingo can be confusing and distressing, leading to a lack of understanding. Jack, a stalking victim, spoke to this: *“My support worker is instantly the one I contact when I find out anything. She is the only reason I can make sense of any of it—I have words written on a letter but other than the bare minimum, I don't know what it means and what the next steps are. I'd wholeheartedly support victim organisations being given any and all information on cases to properly inform the victim.”*

VSS also strongly supports the updating of the Victim Notification Scheme which we believe to be outdated and not fit-for-purpose for a modern-day justice system. It is important that a new system is also trauma-informed and based on being sensitive and attuned to the experiences that people have gone through.

### **Question 23**

Which of the following best reflects your view on public service's engagement with pre-release planning for prisoners?

- Existing duties on public services to give all people access to essential services are sufficient to meet prison leavers' needs

- Existing duties are not sufficient; public services should have a specific duty to engage with pre-release planning

Please give reasons for your answer.

**See below**

### **Question 24**

If public services had an additional duty to engage in pre-release planning for prisoners, which services should that duty cover? Please list each service and what each should be required to do.

**For a community safety perspective, there needs to be better communication about victim/public safety when perpetrators are released from custody. There have been many stories of perpetrators being released and moving into accommodation right across from the victim, or even cases where they just go back to the victim's home. This poses a risk to the victim and is preventable. There needs to be immediate reform in the rules and regulations surrounding where a perpetrator is/ is not allowed to live when released from custody.**

***"Awaiting information on the case was excruciating. After two days he was released to the home address where I was staying. This was rectified but the total distress and fear this caused me was horrendous."***

### **Question 31**

To what extent do you agree or disagree with the introduction of an executive power of release, for use in exceptional circumstances?

Strongly agree

**Somewhat agree**

Somewhat disagree

Strongly disagree

Please give reasons for your answer.

**Releasing prisons en masse can be alarming and triggering for victims and the wider public. Executive power of release should consider victim safety even in whatever is deemed to be an exceptional circumstance. There needs to be a plan in place for if there is ever a need to release prisoners (for example, the COVID incident detailed in the consultation) in an emergency situation so they are kept safe but still away from the community and the victims, such as temporary transfer to another prison.**

### **Question 32**

If an executive power of prisoner release was introduced for use in exceptional circumstances, what circumstances do you consider that would cover?

Please provide details.

**Only in exceptional emergency circumstances and where stringent risk assessments are in place.**

See our response above.



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## CONSULTATION ON BAIL AND RELEASE FROM CUSTODY ARRANGEMENTS

### RESPONDENT INFORMATION FORM

**Please Note** this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:  
<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual  
 Organisation

Full name or organisation's name

Victim Support Scotland
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07551 371444
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The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

**Information for organisations:**

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

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

- Yes
- No