

Consultation Response

Sentencing and Penal
Policy Commission

Call for evidence

May 2025



Consultation Response

Sentencing and Penal Policy Commission

Call for evidence

May 2025

Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Criminal Law Committee welcomes the opportunity to consider and respond to the Sentencing and Penal Policy Commission: call for evidence.¹ The Committee has the following comments to put forward for consideration.

Question 1 What changes could be made to community sentences and other alternatives to prison to reduce crime, protect victims, and create safer communities?

We have noted a lack of trust in the community justice system. There may be a perception that community sentences do not provide public reassurance, downgrade the seriousness of the offence and are not effective in terms of rehabilitation. In addition, we are aware of lack of consistency across the country, particularly in aspects such as national directories of services and accredited programmes. This produces confusion and disincentivises its use.

We suggest the implementation of changes with the aim of addressing the problems noted above.

Firstly, appropriate resources should be provided to local authorities to assure clarity and consistency across the country.

Secondly, we suggest increasing public awareness of the benefits of community justice. We see great value in launching public campaigns that explain how the system works, and the benefits it provides for communities. Additionally, we see some value in exploring longer periods of community sentences beyond the 300 hours limit.

Thirdly, we consider that some consideration should be given to the benefits of community service in order to make it an attractive option for offenders. For example, providing certificates of completion may contribute to supporting this objective.

¹ [Sentencing and Penal Policy Commission: call for evidence - gov.scot](https://www.gov.scot/publications/sentencing-and-penal-policy-commission-call-for-evidence/pages/1-introduction.aspx)

Fourthly, it is critical that non-compliance by offenders is referred back to the court and dealt with swiftly. Anecdotal evidence suggests that the breach process is beset by delay, with reports often taking several months to come back before the sentencing judge. Such delays undermine the effectiveness of the process and are likely to damage public confidence in community sentences. Orders that have an element of ongoing supervision by the court, such as drug treatment and testing orders, tend to see better compliance and more effective rehabilitation.

Finally, we see some merit in exploring alternative remedies to traditional custody. We are aware of the implementation of intermittent confinement in other jurisdictions that allow the prisoner to remain in custody overnight, at weekends or for another time interval². Efforts should also be made to fully utilise developments in technology. Remote monitoring, for instance, should now be much more reliable and less expensive than before.

Question 2 - In your view, what are the priority issues affecting bail and remand? In Scotland, what needs to change and why?

In general terms, we note the effective operation of supervised bail. While we are aware of some inconsistencies around the country regarding the information available to the courts, the situation is improving. We also consider that the use of supervised bail allows people to engage with social workers before the case concludes; should they come to be convicted, that ought to allow for more effective sentencing.

We also note that electronic monitoring is used in many cases. While there is still a proportion of people that cannot use it, the use of battery packs and mobile technology should overcome those issues.

Question 3 - In your view, what are the priority issues affecting release from prison custody? In Scotland, what needs to change and why?

We have identified at least three main issues affecting release from prison custody.

We have noted a lack of training and education for people in custody. In addition, many people in custody are not able to find the right programme that allows them to progress towards release. Further training and clarity in the programmes available would improve this situation. We also think that using blended training models would be beneficial. For example, there can be merit in allowing prisoners to join sessions remotely.

We are aware of some issues on accessing to psychology professionals in the Scottish Prison Service. This situation negatively impacts people in custody

² [United States Courts. Intermittent Confinement \(Probation and Supervised Release Conditions\).](#)

expecting parole decisions that cannot be taken on time, as there are not enough professionals who provide the reports required.

We have also noted an issue on the accommodation of people released. With the housing crisis, many of them do not have an appropriate accommodation to go to when released from custody.

Question 4 - Are there any recommendations from the McLeish Commission or subsequent reports by other bodies that haven't been put into action yet but could still be beneficial?

Prison population

One of the recommendations from the McLeish Commission³ was: "The Scottish Government should pursue a target of reducing the prison population to an average daily population of 5,000, guiding and supporting the efforts of relevant statutory bodies in achieving it".

Despite the efforts made by the Scottish Government in reducing the prison population, the average daily in 2023-24 was 7,860. Compared with the 2022-23 figures, the prison population increased almost 6%⁴.

Last year, the Scottish Government introduced legislation that aimed to reduce the prison population, focused on short-term prisoners. The Policy Memorandum for the Prisoners (Early Release) (Scotland) Bill indicates:

"The prison population has risen by around 14% since the start of 2023, with a particularly sharp rise between March and May 2024. That rise has been driven by a complex set of factors, including: the court backlog, caused by reduced court capacity over the pandemic; an increase in the sentenced population; and the remand population remaining at a high level."⁵

The Scottish Government also conducted a consultation in July 2024 on the long-term prisoner release process⁶. However, no legislation was introduced for reducing the long-term prison population.

We are aware of the complexity of the prison population problem. We recognise the efforts made by the Scottish Government in reducing its numbers with the aim of assuring the safety and effectivity of the system.

³ [Sentencing and Penal Policy Commission: Call for Evidence – Annex A: McLeish Commission \(2008\) Scotland's Choice: The Report of the Scottish Prisons Commission – summary of recommendations](#)

⁴ [Scottish Prison Population Statistics 2023-24](#)

⁵ [Prisoners \(Early Release\) \(Scotland\) Bill Policy Memorandum](#). Para. 9

⁶ [Long-term prisoner release process: consultation](#)

However, we would reiterate the comments that we made on the Prisoners (Early Release) (Scotland) Bill⁷. Firstly, we consider that thoughtful consideration should be given to the proportion of prisoners on remand, that in October 2024, was close to one-third of the total prison population. We would welcome measures focused on this type of prisoners. Secondly, we are of the view that appropriate rehabilitation and reintegration programmes are fundamental when considering release of any type of prisoners.

⁷ [Prisoners \(Early Release\) \(Scotland\) Bill Stage 1 briefing](#)



For further information, please contact:

Liliana Torres Jimenez
Policy Team
Law Society of Scotland
LilianaTorresJimenez@lawscot.org.uk