

Prison population and penal reform: working towards sustainability Scottish Government Consultation, August 2026

Children First is Scotland's national children's charity. We stand up for children, keep them safe and support them to recover from trauma and abuse through our national and local services.

Justice Social Work Reports

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.

There is often a belief that more reporting leads to better outcomes. However, this is not always the case, especially when reporting requirements add pressure to an already over-stretched workforce like criminal justice social work.

This section of the consultation is not very clear about the exact purpose of increased reporting, but the implication seems to be that if more justice social work reports are available to sentencers then there will be more confidence in community-based alternatives to custody because the “particular support that could help facilitate a community sentence” will be identified.

The challenge with this idea is that it still relies on that support being available in the community. A report that identifies support needs doesn't solve that problem. The Scottish Government should therefore think more fully about the response to it.

Community based alternatives need massive investment and improvements. They can provide opportunities for intensive supervision; behaviour change programmes and specialist support that address the underlying causes of harmful behaviour and reduce the risk of reoffending.

When an offence has been prosecuted, this is also an important inflection point where an attempt can be made to recognise and address the underlying causes of the behaviour, support accountability and reduce the risk of future harm.

Even without further expansion, community sentences are already tasked with responding to complex cases, with a high chance of reoffending. For example, community sentences were the most common main penalty in 2023 – 24 in cases of possession of indecent photos of children (73%), followed by offences under the Domestic Abuse (Scotland) Act 2018 (60%).

However, these programmes require resource and there needs to be clear accountability to de-escalate patterns of offending behaviour. Without significant investments in the infrastructure around community-based alternatives, including the police, social work and court response to

breaches of sentencing conditions, it's very unlikely that this reporting requirement will generate the increase in community-based alternatives that this consultation suggests.

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.

Prison is an important sentencing option. It demonstrates that certain actions are unacceptable and provides a clear consequence for serious offending. The physical restriction it can guarantee can also offer victims some respite, particularly when campaigns of continuing abuse are being perpetrated.

But it can also lead to a greater likelihood of reoffending and carries a significant cost to the public purse. The use of prison should always be something that is carefully considered, alongside alternative options. We support more effective use of community-based alternatives to prison, where that is appropriate.

In our view, the key challenge is not a lack of willingness to use community sentences. Actually, in our experience there is an openness and a willingness for community sentences to play an important part in Scotland's sentencing system, for victims, communities and sentencers alike.

The challenge we see many decision makers facing at the moment is that the infrastructure around alternatives to prison is just not good enough. Judicial and public confidence will not be strengthened by legislative changes alone. It requires sustained investment in the quality, availability and effectiveness of community-based interventions.

The core challenges we see with the current set of community-based alternatives are that:

- **Complex social issues drive offending and hinder rehabilitation.** The reasons behind offending are complex and layered. The combination of national crises around mental health support, education attainment, housing and poverty create the conditions for offending behaviour and also make it much more challenging to rehabilitate individuals after an offence has been committed.
- **Support offers are too limited.** These complex needs cannot be addressed through unpaid work and basic supervision. They require meaningful and sustained interventions around issues like substance misuse and mental health. There are not enough community-based support options.
- **Opportunities to intervene on 'lower level' offending behaviour are often missed.** When offending involves certain 'red flag' behaviours, this is an opportunity for intervention to prevent escalation and future more serious harm. This can be particularly impactful and necessary in relation to misogynistic conduct, sexual offences and domestic abuse, but there is a lack of credible interventions available.
- **Outdated monitoring systems delay responses to breaches and weaken victim safety.** Victim safety is compromised by ineffective supervision and monitoring arrangements that rely on outdated technology and slow reporting processes. As a result, breaches of conditions are not identified and acted on quickly enough. This can leave victims feeling unsafe and creates opportunities for those who continue to pose a risk to exploit delays in the system.

Community based alternatives can't be pursued on just a will and a wish. They need proper investment, to make them effective in supporting desistance and to make sure that victims are as safe as they can be from further harm.

Effective response systems for breaches for community-based measures

A better system around breaches of conditions and orders is essential to improve judicial and public confidence in community sentencing options.

At the moment, we see far too many families who are left vulnerable and feel let down because of failures to communicate or enforce the conditions upon which offenders are allowed remain in their communities.

Non-Harassment Orders (NHOs) provide a clear example. While breach of an NHO is a criminal offence, families often continue to experience behaviour that falls within a pattern of harassment or intimidation. This can, for example, be something that's difficult to articulate when reporting a breach of an order to police, and open to interpretation and therefore exploitation. We have supported families who have had offenders show up in their place of work, or at a bus stop they regularly use, which has felt like an approach but has been difficult to prove categorically. Families report uncertainty about what behaviour constitutes a breach, creating an additional barrier to reporting concerns.

Where breaches are reported, victims are often required to repeatedly recount their experiences and engage with lengthy administrative processes. For families already living with ongoing fear and uncertainty, these delays can significantly reduce confidence in the effectiveness of protective measures.

We see parallel scenarios when electronic monitoring conditions are in place. The current system relying on Radio Frequency monitoring is not fit for purpose. It relies on boxes being set up in the places offenders are required to be/not be. When these are set up in victims' homes as a protective measure this creates an obvious gap when they are out in the community, or when children are in schools. Most people have more effective location monitoring systems set up on their phones, and so it is difficult to understand why a more robust system has not already been put in place.

Prevention alongside and in anticipation of reinforced community-based measures

We are concerned that discussion of reducing Scotland's prison population is overly focussed on sentencing rather than on preventing offending in the first place.

The most effective way to reduce demand on the criminal justice system is to prevent harm from occurring. This requires long-term investment in children, families and communities, particularly those experiencing poverty and trauma.

For Children First, prevention includes strengthening family support, improving access to mental health services, tackling child poverty, supporting positive childhood development and addressing emerging harms before they become entrenched patterns of behaviour.

This is particularly important in the context of online harm. Digital environments have created new opportunities for exploitation, abuse and harmful behaviour at an unprecedented scale. Research commissioned by Ofcom has found that children frequently encounter violent and harmful content online, often from a young age and often unintentionally through social media, messaging platforms and recommendation algorithms. Exposure to such content is increasingly normalised, and harmful behaviour is enabled or encouraged online.

A credible strategy for reducing imprisonment must therefore include a strong focus on prevention, early intervention and the development of evidence-based programmes that address the root causes of offending, including those arising in online spaces.

Confidence in community sentencing will increase when communities can see that it is:

- Available consistently across Scotland.
- Properly resourced and delivered by skilled practitioners.
- Able to address the underlying causes of offending.
- Responsive to breaches and risks.
- Focused on reducing reoffending and preventing future harm.

Community sentencing should not be viewed as a cheaper alternative to custody. It should be regarded as a meaningful intervention that holds people accountable while addressing the factors that contribute to offending. Where properly funded, effectively monitored and supported by strong preventative services, community-based sentences can play a vital role in creating safer communities and reducing long-term harm.

Long-term planning on the basis that community sentences will not be suitable for all offences

There are a number of reasons behind the increase in the prison population. It's true that better use of community-based alternatives may help stem the flow of the short-term prison sentences and reduce the reoffending cycle those can lead to. It's also true that too many people are in prison on remand for extended lengths of time, and this also needs to be reduced.

But it's also important to acknowledge that some of the overcrowding is due to more convictions for serious offences, for which prison may still be the most effective and appropriate response.

A Scottish Government briefing released following a Freedom of Information request noted that *"The volume of more serious crimes coming to the attention of the justice system has increased. Over the last 5 years there have been increases in recorded violent and sexual crimes, as well as crimes against public justice (which is driven by increases in bail offences). In the last 10 years, the number of sexual crimes has increased by 45% from 10,273 in 2015-16 to 14,892 in 2024-25 and are now at the highest level since comparable records began in 1971."*¹

This trajectory is a continuing concern. Last year there was a 10% increase in sexual crimes recorded in Scotland.² More domestic abuse offences have also, rightly, been prosecuted, following the introduction of the Domestic Abuse (Scotland) Act 2018.

These recorded offences will now be going through a process of investigation and prosecution, that may ultimately lead to a conviction and consideration of a prison sentence. Prison will be an appropriate response in many of these cases.

This means two things. Firstly, further increases to the prison population may need to be planned for, with effective communication about what this will mean for victims built into sentencing processes that are happening now. Secondly, the only credible way to reduce the long-term prison population further is through a meaningful prevention plan, to reduce the

¹ [FOI+202600518776+-+Information+released+-+Briefing+materials.pdf](#)

² [Recorded Crime in Scotland, 2025-26 - gov.scot](#)

volume of sexual and violent crimes, and domestic abuse offences committed in the first place.

Presumption against short term sentences

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

The legislative presumption is not having the effect that was intended, but the reason behind this is probably not the way the legislative test is framed. The legislative test is clear, and it came with a strong policy rationale.

Instead, we think this is much more to do with the lack of good support options in the community. Without consistent, evidence informed options available in every local authority, a short sentence may appear to be the most reliable option.

It's also important to note that many short sentences are imposed after a failed community sentence. The Scottish Sentencing and Penal Policy Commission noted in their report last year that "many people currently service short prison sentences are there for breaching community orders".³

This is a symptom of that lack of support. As well as reinforcing support options to begin with, there needs to be a clearer, nationally agreed process for responding to breaches of orders. While prison may sometimes be appropriate, decisions should be based on risk assessment and victim safety planning, recognising the difference between deliberate harmful behaviour and breaches caused by a lack of support.

This will require updates to social work national standards, alongside a review of the support environment available in each local authority for both victims and offenders. Safety planning is far too sporadically available, and would benefit from nationally led investment.

Legislation is increasingly out of step with the practical realities faced by social workers, police and judicial decision makers and reinforcing the legislative test without investing in the support options that need to go alongside it would lead to even more of a divide. This could make the problem worse.

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

See response to question 3. We do not think strengthened legislation is the barrier to this policy being effective.

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.

This could be a helpful support, to build a culture of awareness and understanding of the options that are available alongside custody to help explain that to victims and communities. As well as explaining the rationale behind the chosen sentence, the way that sentences are presented should also be reframed.

³ [Justice That Works: Report of the Scottish Sentencing and Penal Policy Commission](#)

Sentences should always be explained as a breakdown of their respective parts. For example, even where custody is being used, this should be presented as a minimum time in custody, followed by a variable timeframe under some form of community supervision. This should be explained in detail, with information from the local authority who will be supporting the implementation of any community elements, to make sure it is aligned.

A report by the Scottish Sentencing Council highlighted explained this issue clearly:

“Following the sentencing hearing, victim-survivors described receiving sparse communication about the sentence and considerable difficulty in understanding the sentence imposed. Key questions they had related to the actual length of the sentence that would be served, the judge’s reasoning for the sentence, and the breakdown of the sentence in terms of how it applied to individual victims and offences.

“The opportunity to have the sentence explained was considered particularly important, especially if they were unable to attend the sentencing hearing. However, even those who attended the sentencing hearing still had unanswered questions about what the sentence actually meant, especially around how much time the perpetrator would spend in prison and the role of the Parole Board in deciding on release.”⁴

This echoes the experience services across Children First report, where there is a missed opportunity to properly explain the sentence that is being delivered in a way that could actually pre-empt work that may need to be done later when release from custody is being considered.

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?

More links should be made between the way that sentences are decided and rights-based assessments of children who will be affected.

Imprisonment of a household member is a recognised Adverse Childhood Experience, and the trauma associated with ACEs is well evidenced and recognised. This is relevant to the conversation about how short-term prison sentences are used.

In some cases, this will reinforce the appropriateness of a prison sentence where it acts as a protective measure to reinforce children’s right to safety. However, in other circumstances it may support a well-supported community sentence.

We would highlight the work of Families Outside in supporting children and families with experience of the criminal justice system, and the invaluable nature of this third sector support offer.

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

Children First recognises the Scottish Government's ambition to reduce the use of short-term imprisonment and to promote more effective responses to offending that support rehabilitation and reduce reoffending. However, the impact of extending the Presumption Against Short Sentences (PASS) from 12 to 24 months must be carefully considered in relation to victims, children and families, equality and human rights.

⁴ [20240516-victim-views-on-sentencting-rape-sexual-offences.pdf](#)

We respect the recommendation made by the Scottish Sentencing and Penal Policy Commission. However, we are not yet convinced that there has been enough investment in strong community-based alternatives to deliver this in practice.

In particular, the lack of GPS technology to support electronic monitoring requirements means that these orders remain ineffective in practice for too many, and with the level of reassurance to victims and communities that may be required if this presumption was to be effectively implemented.

Any extension to PASS should be accompanied by sustained investment in community justice services, family support and specialist services that help address the causes of offending while protecting victims and communities. Without sufficient investment, there is a risk that the intended benefits for rehabilitation, equality and human rights will not be realised.

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

While this may have a logical rationale, it's important that careful consideration is given to the potential side-effects this might have, particularly in relation to special measures available to children and vulnerable witnesses.

For example, the presumption that children should be able to pre-record their evidence set out in the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 is clear that this applies to 'certain solemn procedures'.⁵ At the time this legislation was debated, this was thought to be a fair line to draw while the system builds up its capacity to pre-record evidence, and would likely catch many of the cases where children are asked to give evidence of hurt or harm.

However, this should go further. Children First have for some time argued that children should not be asked to attend court unless this is absolutely and unavoidably necessary. This is true at any level of court. In our view, all children who have experienced hurt or harm and need to give evidence should be able to pre-record their evidence in a Bairns Hoose, while being connected to recovery support that helps them move on with their lives. This should be true regardless of the court level.

If this amendment to sentencing power is made, we would strongly advocate for the presumption that children can pre-record their evidence to be expanded to all levels of court.

This would help make sure that even when serious incidents are being considered at summary level, they would still be entitled to the same level of protection they are now.

It would also build on the years of work now in place to roll out the Scottish Child Interview Model, the Joint Investigative Interview process and the Bairns Hoose model across Scotland.

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?

As outlined in response to Question 8, we believe that the presumption that children should be able to pre-record their evidence should be extended to all levels of court so as to ensure that changes to sentencing arrangements do not affect children's Article 19 right to protection from harm and Article 39 right to recovery.

⁵ [Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Act 2019](#)

Children First believes that any consideration of extending the Presumption Against Short Sentences should take account of the wider impact of imprisonment and community justice responses on children and families. This must include a Children's Rights Impact Assessment and include the views and experiences of children who have a right to be heard.

Community Protection Orders

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.

Not enough is known about the practical impact of different elements of Community Payback Orders, on both offenders and the communities around them. The recommendation made by the Sentencing and Penal Policy Commission to review Community Payback Orders to understand the impact of different requirements would be a helpful exercise for the Scottish Government to undertake and publish.

Gaps in community-based support

What we do know is that there is not enough community-based support, in any form. While unpaid work can provide an important means of reparation, CPOs are most effective when combined with interventions that address the factors contributing to offending behaviour. Greater use of requirements linked to mental health support, substance use recovery, family support, employability and housing stability would strengthen the effectiveness and credibility of Community Payback Orders.

Too many of these supports are funded through year-to-year arrangements, which can mean that courts find it difficult to maintain current, up to date information about the options available. In turn, this means there is less confidence in the support options available even where they are in place.

There is a particular gap around interventions available that can help support desistance of sexual offending and behaviours associated with domestic abuse. There are some specialist programmes, such as the Caledonia programme, able to intervene in complex patterns of behaviour, but there are not enough to counter the wave of problematic conduct that we see in communities.

We are also increasingly concerned about the escalation of peer-on-peer harmful behaviour among children and young people. Practitioners are reporting growing levels of sexual harassment, sexualised bullying, coercive behaviour and violence occurring within peer groups. While these behaviours are driven by a range of factors, there is mounting concern that early and repeated exposure to violent and pornographic content online is contributing to the normalisation of harmful attitudes and behaviours. Children First have been clear that this is the childhood emergency of our time.

Without effective early intervention, education and specialist support, these behaviours can become embedded, increasing the risk of more serious offending and causing significant harm to other children and young people. There is a clear need for greater investment in preventative and therapeutic community-based programmes that can address harmful sexual behaviour, challenge misogynistic attitudes and support healthy, respectful relationships before patterns of harm become entrenched.

Support for victims and communities

Both support for victims to recover and support for offenders to rehabilitate need to be available simultaneously.

There is a parallel gap in support available to victims to support their own recovery. It would be easier for victims to have trust in community sentences if they were guaranteed some form of support to recover and safety plan.

Nationally, victim support is a patchwork provision mostly delivered by third sector organisations. Again, this support largely depends on inefficient year to year funding arrangements which builds in instability and undermines the value for money where time has to be spent on reporting and application processes. This can lead to a sense of imbalance in the system, when victims of harm are left to manage the fallout from an offence by themselves while offenders are set up with support offers.

Supporting victims with their long-term recovery in a more deliberate way could help to reorientate the system away from prison, as recovery support and safety planning can help build up protective factors around victims and their families and help them move on with their lives notwithstanding sentencing outcomes.

For children, we are working to develop this offer through the Bairns Hoose partnerships we are involved in. Children First Bairns Hoose rights, advocacy and recovery workers coordinate the child's journey through the Bairns Hoose, from the point of disclosure through to the end of the justice process. Children consistently describe feeling disempowered and traumatised by the lack of communication, control or agency within processes and our model is designed to address that deficit.

Outcome monitoring

Alongside a more robust support offer for both victims and offenders, Community Payback Orders would be strengthened by including some form of outcome monitoring.

This should include nationally reported data on further offending or breaches that lead to stronger sentencing options being used. This would help policy makers identify where justice social work need the most support, and any patterns in non-compliance.

This could also include an element of monitoring around the proportion of offenders who go on to secure things that are highly relevant to successful rehabilitation, like secure employment or study and housing. This could help policy makers better understand where there are particular challenges in rehabilitating offenders, increasing the likelihood of repeat offending.

There should also be close monitoring of breaches and victims' experiences of these.

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

No response (not something that aligns with Children First's experience or expertise).

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.**

Community Payback Orders (CPOs) can be an effective and credible alternative to custody where they are properly resourced, trauma-informed and focused on addressing the underlying causes of offending.

Investment in more effective electronic monitoring technology, as well as easier and more timely responses to breaches for victims, offer the best opportunity to make Community Payback Orders more effective.

Additional issues that would benefit from more deliberate incorporation into community sentences include:

Interventions targeting early sexual offending

We are deeply concerned about the impact that early exposure to violent and extreme pornography is having on the attitudes, expectations and behaviours of children growing up in Scotland today. Despite this, there is a significant gap in the availability of specialist support services for children who display harmful sexual behaviour or concerning peer-on-peer conduct.

While some of these issues may come to the attention of the children's hearings system, our services are seeing an apparent increase in peer-on-peer harmful sexual behaviour and violence. This reflects a broader challenge that extends beyond those children who are formally involved in offending or justice processes but also highlights an opportunity for more deliberate and co-ordinated interventions to stop behaviour escalating.

Without sustained investment in specialist early intervention and therapeutic support for children displaying problematic or harmful behaviours, there is a real risk that these issues will become more entrenched. Failing to act now will not only leave children without the help they need but will also contribute to greater social harms and increased demand on public services in the years ahead.

Children and criminal exploitation

We are also concerned about the growing number of children experiencing criminal exploitation. Evidence from Barnardo's and Action for Children highlights that exploited children are too often viewed through a youth justice lens and treated as offenders rather than victims of abuse.⁶

Criminal exploitation is a form of child abuse that can involve coercion, grooming, violence and control, yet children frequently face barriers to accessing the protection and specialist support they need.

Scotland requires a stronger, more consistent response that recognises these children as victims first and foremost. This should include investment in specialist early intervention, trusted relationship-based support and therapeutic recovery services, alongside improved training and guidance for professionals.

Without this, there is a risk that children who have been exploited will become further entrenched in harm, experience ongoing trauma and be drawn deeper into criminal networks rather than receiving the protection and support to which they are entitled.

⁶ [The Jay Review of Criminally Exploited Children | Action For Children](#); [Criminal exploitation of children | Barnardo's](#).

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.

No, there is not sufficient support available.

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.

In principle, this is something that could add real benefit to the options available for community-based orders in Scotland. However, further information is needed to properly assess the potential, and what this would look like in practice – who would provide the services, and how agencies would work alongside each other.

There are particular questions around how the introduction of this model would better connect offenders to more effective mental health support, when there are ongoing challenges with the severe crisis in availability of mental health support across Scotland.

We also note that these Orders reference ‘victims work’. It’s not clear exactly what this would involve, but if we assume that this means some form of restorative justice option being explored we would note the limitations of this model in practice in relation to offences, like domestic abuse, and when children are involved. Children’s best interests always need to be the paramount consideration in these situations, and great caution needs to be taken when considering restorative justice responses when the relevant offence involves coercive and controlling elements that can be manipulated by perpetrators of harm.

These interventions need to be presented alongside recovery support options for victims. Children First have been developing our recovery support model within Bairns Hoose, based on decades of developing this approach through our trauma and recovery support services. Further research on this model will soon be shared, based on a collaboration between Children First and the University of Edinburgh.

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.

See responses above, in relation to the need for further investment in community-based support and the limitations legislative reform will have on delivering real change without this investment.

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.

We would seriously caution against routinely using Community Payback Orders for more serious offending behaviour. If the Presumption Against Short-term Sentences were to be brought in for sentences under 24 months, this would already see community-based sentences being more routinely relied on in place of custody for a range of serious offences.

Looking at the latest Criminal Proceedings statistics, offences with an average sentence length under 24 months include supply of drugs and possession of indecent photos of children. More serious offences would move into the realm of violent offending, sexual offending and rape.

It is essential that we continue to be able to communicate that offences like these are unacceptable, in the strongest of terms and ensure that when serious offending takes place an appropriately strong response can be delivered.

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.

We agree that there should be opportunities to recognise and incentivise positive engagement and sustained progress on Community Payback Orders (CPOs). A strengths-based approach, which acknowledges effort, responsibility and meaningful change, can help build motivation and support long-term desistance from offending.

Any reduction in or early discharge from unpaid work or supervision requirements should be applied carefully and consistently. Decisions should be informed by evidence of sustained engagement, progress towards agreed outcomes, compliance with requirements and, where relevant, consideration of the views and safety of those affected by the offence.

It will be particularly important to make sure this is a thorough assessment in cases where domestic abuse is present. Systems of early release will always be open to manipulation by individuals who are still involved in a pattern of coercive and controlling behaviour. This needs to be considered by decision makers.

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?

We hear regular concerns about the length of time it can take for breaches to progress through the justice system. Delays in investigating incidents, gathering information and bringing cases back before the court can leave victims waiting extended periods for action to be taken and for the facts surrounding an alleged breach to be assessed. These delays can undermine confidence in community-based sentences, weaken their deterrent effect and leave victims feeling that non-compliance is not being treated seriously.

Improving breach processes should focus on ensuring that responses are both timely and proportionate. Courts and justice agencies should have access to clear information about compliance, risk and previous behaviour so that action can be taken quickly where concerns arise. A prompt response helps reinforce accountability, supports the credibility of Community Payback Orders and provides reassurance to victims and communities that conditions will be enforced.

There is also a connected issue with how breaches of Non-Harassment Orders and other protective measures are responded to. Although breaching a Non-Harassment Order is a criminal offence, the process for reporting and responding to breaches can create additional barriers for victims. In practice, reporting a breach often requires further engagement with the police and, in some cases, additional interviews either at a police station or in the victim's home.

For individuals already experiencing fear, intimidation or ongoing harassment, this can be distressing and may discourage reporting. There can also be difficulties in interpreting the

scope of an order and determining whether particular behaviours constitute a breach, creating uncertainty for both victims and enforcement agencies.

In cases involving domestic abuse, we see particular gaps in how breaches that are designed to "test" the system are addressed. This can involve an offender deliberately pushing the boundaries of an order through behaviours that may appear minor in isolation but form part of a wider pattern of intimidation, coercion or control.

Examples may include repeated unwanted contact through third parties, appearing in places known to be frequented by the victim, or engaging in online behaviours intended to cause distress. Such conduct may not always trigger an immediate enforcement response, but it can have a significant impact on victims' safety and wellbeing and can undermine confidence in the protection offered by the order.

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

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.**

Substance-related offending is often linked to complex trauma, poverty, poor mental health, adverse childhood experiences and unmet support needs. A distinct disposal recognises that addressing the underlying causes of offending requires more than punishment alone. It provides a clear framework that prioritises treatment, recovery and behaviour change while maintaining judicial oversight and accountability.

However, their effectiveness can be limited by:

- Variations in treatment availability and quality across local areas.
- Long waiting times for specialist services.
- Insufficient integration with mental health, housing and family support.
- High levels of complexity among individuals subject to orders.
- The potential for breaches and repeated returns to court where recovery is not linear.

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

If properly invested in, improvements to community-based sentences could deliver material improvements for victims and strengthen Scotland's compliance with both the UNCRC and wider human rights obligations.

However, it also needs to be acknowledged that current challenges – including the approach to responding to breaches – may well lead to rights breaches, and there is scope for this to open public agencies to challenge under the UNCRC (Incorporation) (Scotland) Act 2024.

Bail mechanisms and electronic monitoring

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.

This would be a sensible change, though careful consideration will need to be given to what issues fall into the category of ‘administrative issues’. There should be a clear distinction between matters that are purely practical or technical in nature and those that may have implications for compliance, risk management or the rights of the individual subject to the order.

Examples of administrative issues might include changes of address, temporary accommodation arrangements, technical difficulties with monitoring equipment or other circumstances that affect the operation of monitoring without involving any allegation of breach.

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.

We strongly support this proposal. This should be accompanied by a clear process and clear communication responsibilities so that victims and communities can properly understand next steps.

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.

As noted above, it is difficult to understand why a decision has not yet been taken to replace radio frequency (RF) monitoring with GPS technology. This option has been available to the Scottish Government for a considerable period and has the potential to significantly strengthen the effectiveness of electronic monitoring.

The limitations of RF technology are well understood. It can only monitor an individual's presence at, or absence from, specified locations, which restricts its usefulness in many situations. In practice, it is not always possible to identify every location where a victim, particularly a child, may be at risk, or to ensure that monitoring arrangements adequately reflect the realities of their daily lives.

We see this challenge most clearly in cases involving domestic abuse and other forms of harassment, where victims may continue to encounter those responsible for harm within their local community despite conditions being attached to orders that say this shouldn't happen. For children and young people, this can include schools, after-school activities, sports clubs, public transport or other community settings.

GPS technology could provide a much more responsive and comprehensive approach by allowing monitoring across a wider range of settings and movements. This would offer greater

protection and reassurance for victims and their families while supporting agencies to respond more effectively to potential breaches or safety concerns.

GPS monitoring is not, however, a complete solution. Its effectiveness depends on the capacity of police, social work and other relevant services to respond promptly when risks are identified. Investment in technology must therefore be accompanied by sufficient operational capacity and clear processes for responding to alerts and safeguarding concerns.

Nevertheless, moving from RF to GPS technology would represent a significant and overdue improvement to the current electronic monitoring system.

It's also worth noting further protections that still need to be brought into force following the passage of the Domestic Abuse (Protection) (Scotland) Act 2021, which should have seen the introduction of new legal powers to provide immediate protection for people experiencing domestic abuse, when abusers have been living in the same home as the victim.

However, Domestic Abuse Protection Notices (which could be issued by police), and Domestic Abuse Protection Orders (DAPOs) which could be issued by courts are still not available. Our understanding is that the delay in implementing this legislation has been due to capacity limitations with justice services, including police, courts and social work.

The failure to implement these provisions has been a real disappointment, and immediate plans to resource these kinds of protection orders should be a priority in the context of these ongoing challenges with the prison population.

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?

The Scottish Government should also consider how children's views are sought and taken into account where electronic monitoring conditions are being considered in cases that directly affect them.

Article 12 of the UNCRC requires that children are given meaningful opportunities to express their views and have those views taken seriously in decisions affecting their lives. This is particularly important where contact restrictions, exclusion zones or other monitoring arrangements are intended to protect a child victim.

Scotland's approach should be informed by international commitments to protect children from abuse and exploitation. The Council of Europe Lanzarote Convention requires states to take effective measures to prevent sexual abuse and exploitation, protect child victims and support timely intervention where risks arise.

Electronic monitoring should therefore be viewed not simply as a tool for managing offenders, but as one component of a wider child protection system that prioritises prevention, safeguards children's rights and supports recovery from harm.

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.

We do not agree with this idea. We appreciate that remand is being used too often, and that there is a need to find a way to reduce it.

While we recognise concerns about the overuse of remand and support efforts to reduce unnecessary use of custodial detention before trial, we do not believe that eligibility for remand should be determined primarily by whether an individual is likely to receive a custodial sentence of 24 months or more.

Reducing the question of whether an individual should be placed on remand to an assessment would pre-judge too much before the court process has taken place and distract from the risk assessment that should always be the priority in a remand assessment.

Decisions on remand should be based first and foremost on an assessment of risk, including the risk of further offending, failure to appear at court, interference with the administration of justice and, critically, the risk of harm to victims, witnesses and the wider public.

Restricting remand to cases where there is a reasonable prospect of a custodial sentence of 24 months or more creates an arbitrary threshold that may prevent courts from responding appropriately to serious risks. In particular, there will be cases where an accused person poses a significant and immediate risk to a victim's safety, wellbeing or recovery, but where the likely sentence falls below the proposed threshold.

This is especially relevant in cases involving domestic abuse, stalking, sexual offending, child protection concerns or patterns of coercive and controlling behaviour. The impact on victims and children can be severe, even where the offence itself may not ultimately result in a custodial sentence of 24 months or more. In these circumstances, remand may be necessary to provide protection, prevent further harm and maintain confidence in the justice system.

It would be much better to focus efforts on ways to reduce court delays, so that clarity about whether a custodial sentence will continue can be given earlier and remand periods can be reduced.

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?

Any changes to bail and remand policy should be carefully assessed against Scotland's human rights obligations, including the UN Convention on the Rights of the Child (UNCRC). While it is important to reduce the unnecessary use of remand and uphold the rights of accused persons, reforms must also protect the rights, safety and wellbeing of victims, particularly children.

Children can be affected by remand decisions in a variety of ways, including as direct victims of crime, witnesses, family members of an accused person or individuals living within households where there are concerns about abuse, coercion or violence. In line with Article 3 of the UNCRC, the best interests of the child must be a primary consideration in all decisions that affect them. Any changes to remand policy should therefore consider the potential impact on children's safety, recovery and wellbeing.

We are concerned that a threshold based primarily on the likelihood of a custodial sentence of 24 months or more may not adequately reflect the risks posed to children and families in some cases. There may be circumstances where a child remains at significant risk of harm, intimidation, coercion or ongoing trauma despite the fact that the likely sentence would fall below the proposed threshold.

The proposal should also be considered in the context of Article 19 of the UNCRC, which places obligations on public authorities to protect children from all forms of violence, abuse

and neglect. Remand decisions must continue to allow courts to respond appropriately where necessary to protect children and other vulnerable individuals from further harm.

At the same time, we recognise that the unnecessary use of remand can itself raise human rights concerns, including impacts on family life and children's relationships with parents or carers. Article 9 of the UNCRC recognises the importance of maintaining family relationships where this is in the child's best interests. Reducing avoidable remand and minimising delays in criminal proceedings could help reduce these harms. However, this should be achieved through a robust, individualised assessment of risk rather than through a fixed sentencing threshold.

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.

We understand the scale of challenge around Scotland's overcrowded prisons, so while this will create challenges for victims and their families this change could be part of a proportionate set of changes that move Scotland closer to a sustainable prison population.

Retrospective application of this change

We have, however, raised concerns before about the retrospective application of these changes. This effectively creates another form of emergency release, without the conditions, exceptions and planning arrangements.

As we said in response to the consultation in 2024, blanket changes to sentences that have already been agreed by court and communicated to victims and witnesses make a system that is already opaque even more untrustworthy.

It's also important to be clear that this will be a material change to the expected sentence for many, and the way this is communicated with victims needs to be carefully considered.

Communicating this change with victims

The reality is that efforts to communicate these changes to victims to date, largely through the Victim Notification Scheme (VNS), have not been as effective as intended. Children First have been nominated as a Victim Support Organisation to support communication with victims, but engagement with information sharing options has been low. Many victims are not registered with the scheme and, for those who are, the information provided is not always experienced as timely, accessible or helpful.

We are aware of plans to reform the VNS, including proposals for delivery through a Scottish Government team. We are hopeful they will lead to significant improvements. It will be important that any changes are closely aligned with the ongoing development of recovery and support services for children through Bairns Hoose, ensuring that communication and support are connected rather than delivered in isolation.

However, these improvements are unlikely to be implemented in the short term. For many victims who may be affected by the proposed change, the opportunity to register for the VNS may already have passed. As a result, reliance on the scheme alone is unlikely to ensure that those affected receive clear and timely information.

We therefore encourage serious consideration of additional approaches to communicating these changes directly to victims. Alternative routes should be explored to ensure that

individuals affected are informed in a way that is accessible, responsive and sensitive to their circumstances.

More broadly, while reforms to the VNS are welcome, the scheme in its current form remains a limited mechanism for ensuring that victims receive the right information at the right time. We have long been concerned about how the scheme operates for children aged 12 and over. It places an expectation on children to engage independently with a complex process at a time when they may still require significant support from trusted adults. We do not believe this approach sufficiently reflects children's rights, needs or developmental stages.

As the VNS continues to evolve, we would strongly encourage specific attention to the needs of children and young people. Children's experiences of the justice system are distinct from those of adults and communication processes should be designed accordingly, with children's rights, participation and wellbeing at their centre.

Communicating sentences more generally

There is a wider issue around how sentences are explained to victims and their families, and how they are supported to understand and prepare for what a sentence will mean in practice.

Through our involvement in Bairns Hoose partnerships across Scotland, and through decades of providing recovery and support services to children and families, we regularly see the impact of inadequate communication about the operation of sentences.

Where the different components of a sentence, including release arrangements and other mechanisms that may affect the amount of time spent in custody, are not clearly explained, victims and families can feel confused, distressed and misled. This can lead to a significant loss of trust in the justice system, even where a conviction has been secured.

It is important to recognise the barriers that will already have been overcome to reach a conviction. Establishing guilt beyond reasonable doubt is a complex and demanding process. Investigations, court proceedings and the wider justice process can take many months or years, requiring victims and their families to repeatedly engage with difficult and often traumatic experiences. Many cases do not result in a conviction.

Where a conviction has been secured, victims and families often see this as the conclusion of a long and challenging journey and as confirmation that harm has been recognised. When the sentence is not properly explained this can undermine confidence in the justice system and diminish the sense of justice that a conviction was intended to provide.

There is therefore a strong case for improving how information about sentences is communicated from the outset. Victims and families should be supported to understand not only the headline sentence, but also how it may operate in practice and what future changes may occur. This information should be provided in clear, accessible language and accompanied by appropriate emotional and practical support, including support with safety planning where relevant.

For children and young people in particular, communication must be tailored to their age, stage of development and individual circumstances. Providing accurate information in a way that children can understand is essential to upholding their rights, supporting their recovery and helping them to feel safe and informed throughout the justice process.

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.

Our understanding is that extended sentences are used for certain serious offences, when the court considers that normal supervision arrangements would not be enough to protect the public from harm.

These sentences should continue to see a higher level of monitoring, on the basis of this assessment. It would be an inappropriate burden on justice social work and on communities to include these sentences.

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”.

The effectiveness of this change would wholly depend on properly resourced police, social work and victims support organisations to support reintegration and victims safety planning.

This change would affect the opportunity victims have to make representations as part of the release process. Long term prisoner release arrangements are managed by the Parole Board and have an associated opportunity to make representations to inform that decision. Automatic release arrangements do not include that opportunity, because of the automated nature of the decision.

This makes victims safety planning challenging, especially in cases of domestic abuse and sexual offending. Seeing someone back in the community after they have been convicted for one of these offences is always a very jarring experience and can often be triggering and affect their recovery. Making it so that this experience does not happen out of the blue so that victims can prepare properly is critical to softening this blow.

It's important to recognise that in some cases, planning for release will happen very quickly after the sentence has been agreed because of the proportion of time many offenders are spending on remand. We support families who have endured a lengthy and challenging court process, only to reach a point of conviction when they are almost immediately faced with the prospect of release. Again, this makes planning for reintegration and victim safety very challenging.

If this change were to be implemented, we would advocate for:

- No retrospective application of this change.
- Planning for communication with victims to go beyond basic information sharing through the Victim Notification Scheme, involving recovery support offers that help victims plan.
- Improvements to the way this is explained to victims in court when a sentence has been applied. Much more thorough information needs to be provided to victims about the release arrangements.
- Monitoring arrangements assess not only reoffending and reintegration outcomes, but also the experiences, safety and wellbeing of victims following release.

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?

In line with the UN Convention on the Rights of the Child, children affected by offending and criminal justice processes have the right to protection, recovery, support and to have their views taken into account in decisions that affect them.

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?

Scotland's prison population challenge needs to trigger a much more root and branch overhaul of the way that Scotland approaches its justice system.

Children First recognises that Scotland's prison population is unsustainable and that action is required. We also recognise the evidence that imprisonment, particularly for shorter periods, is not always effective in reducing reoffending and can create additional harms for individuals, families and communities. However, taken as a whole, we do not believe that the proposals in this consultation are sufficient to deliver the scale of change required to create a genuinely sustainable prison population.

The consultation is framed largely around a series of adjustments to sentencing thresholds, release arrangements, remand criteria and community disposals. While some of these proposals may contribute incrementally to reducing prison numbers, they do not address the fundamental factors that drive both imprisonment and reoffending. As a result, there is a significant risk that these reforms simply redistribute pressure elsewhere in the justice system rather than delivering lasting change.

There is insufficient investment in prevention, early intervention, mental health support, substance use services, housing, family support and community justice services. There are also significant gaps in support for victims and in the infrastructure required to make community-based sentences credible, safe and effective. These issues appear repeatedly throughout the consultation but are not adequately addressed by the proposals.

If Scotland is serious about achieving a sustainable prison population, a much more ambitious programme of reform is required. This should include:

- Significant investment in prevention and early intervention and improved mental health, substance use, housing and family support services.
- Greater investment in community justice services and evidence-based alternatives to custody.
- Modernisation of electronic monitoring, including the adoption of GPS technology.
- Faster and more effective responses to breaches of court orders.
- Universal access to advocacy, recovery and safety planning support for victims, particularly children.
- Expansion of the Bairns Hoose model and extension of pre-recorded evidence arrangements to all court levels.
- Reduced court delays through prioritisation of certain cases and dedication of specific resources within COPFS and SCTS towards cases that involve vulnerable victims, including children.
- Recovery and advocacy support should be available all children who are victims or witnesses. Much more emphasis needs to be placed on victims' own recovery and sense of safety and the planning around this. The overwhelming experience for too many is that they are just left alone.

- Special measures and supports like Non-harassment Orders need to be more routinely available and enforced, to support effective safety planning when offenders who continue to pose a risk to victims are being managed in the community.
- Greater transparency around sentencing decisions and release arrangements.

Ultimately, a sustainable prison population will not be achieved through sentencing reform alone. It will require a long-term commitment to preventing harm, tackling the root causes of offending and investing in the services that support both rehabilitation and recovery.

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