

Consultation Report

Changes to the Parole Board (Scotland) Rules 2001

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Introduction

The procedure under which the Parole Board for Scotland (“the Board”) considers cases is determined by the Parole Board (Scotland) Rules 2001, as amended (“the 2001 Rules”). The 2001 Rules are now some 20 years old and have undergone multiple amendments in that time which has led to them being more complex and inaccessible. The Scottish Government is committed to modernising and simplifying the 2001 Rules to ensure that they are fit for purpose by updating the language and terminology used and introducing some new or different requirements to the Board’s procedures.

Consultation

A public consultation ran between 20 July and 12 October 2022 and focussed on the following topics:

- to make it clear that the Board can appoint a ‘special advocate’ to scrutinise the non-disclosure of damaging information in parole proceedings;
- adding failure to disclose a victim’s body as a matter the Board may consider in relevant cases;
- removing people registered with part 1 of the Victim Notification Scheme from the provisions which allow victims to observe parole hearings or receive decision summaries.
- introducing a new requirement for prisoners subject to an Order for Lifelong Restriction, that an up-to-date Risk Management Plan or a Risk Assessment Report must be available in dossiers sent to the Board;
- a new procedure to allow the Board to reconsider its decisions in certain cases where there has been an administrative or procedural error;
- a new procedure allowing the Board to appoint a representative for people who lack capacity to appoint one or to agree to one being appointed for them; and
- a new step to check the prisoner’s state of preparation for the hearing.

This report provides a summary and analysis of the consultation with the views of respondents and the intentions of the Scottish Government outlined after each section.

Methodology

Responses to the consultation were submitted using the Scottish Government consultation platform Citizen Space or by email.

Not all respondents addressed all questions; some commented only on those questions or sections of relevance to their individual interests. The report indicates the number of respondents who commented to each question.

All comments made by respondents were analysed. The range of issues mentioned in responses, including reasons for opinions, specific examples or explanations, alternative suggestions or other comments were noted. Grouping these issues together into similar themes allowed us to identify whether any particular theme emerged over others.

While the consultation gave all who wished to comment an opportunity to do so, given the self-selecting nature of this type of exercise, any figures quoted here cannot be extrapolated to a wider population out with the respondent sample. For example, where a single respondent is mentioned this does not necessarily equate to it being an organisation. In addition, some respondents selected 'Agree' or 'Disagree' and did not expand with comments whilst others selected 'No Answer' but provided comments and some were Neutral.

A small number of verbatim comments, from those who gave permission for their responses to be made public, have been used in the report to illustrate themes or to provide additional detail.

Overview of the Responses

There were 29 responses to the consultation, 21 of which were from organisations and 8 from individuals. Of the 29 responses, 18 wished their response published anonymously, 9 wished their response published with their name and 2 did not wish their response published. Please note that some respondents decided not to answer the options available, in such circumstances all comments provided were included in the consultation analysis.

Where permission was received, responses were published online on the Citizen Space website at: [Published responses for Consultation on changes to the Parole Board \(Scotland\) Rules 2001 - Scottish Government - Citizen Space](#)

A list of all those organisations that submitted a response to the consultation and agreed to have their name published is included in the **Annex**.

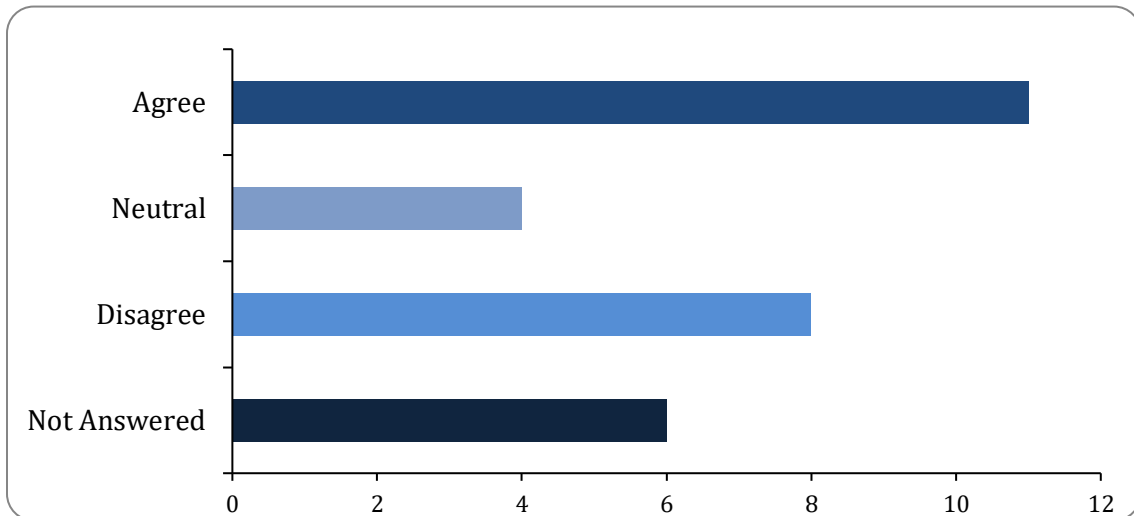
Specific points raised in the consultation

Question 1: Non-disclosure of Information (damaging information)

Non-disclosure or damaging information is provided in confidence to the Board who must take a decision on whether this information should be provided to the person concerned or their legal representative. The damaging information may be significant in assessing risk and applying the tests for release.

It was proposed in the consultation that a new provision is included in the Rules to make it clear that the Board can appoint a 'special advocate' to scrutinise damaging information, if it has concluded that the damaging information was significant and that fairness requires that it be tested by a special advocate. This is something the Board can already do but it was not clear in the 2001 Rules.

Responses to Question 1 : Do you agree or disagree that provision should be made for the appointment of a special advocate to represent the prisoner's interests in the consideration of the damaging information being withheld?



Option	Total	Percent
Agree	11	37.93%
Neutral	4	13.79%
Disagree	8	27.59%
Not Answered	6	20.69%

Specific comments to this question included:

“Yes. The Board has had a procedure in place for such circumstances and would welcome this being explicitly stated in the Rules.”

“Care should be taken to ensure the safety and privacy of the survivor at all times. With regard to the use of special advocates in these circumstances, we would submit that having a special advocate challenge these types of ‘damaging information’ is wholly inappropriate.”

Most respondents to this question thought that the provision should be made to appoint a special advocate in cases where the damaging information is significant and that fairness requires that it be tested.

There were some who thought that introducing a special advocate would have an adverse effect on prisoner’s rights and raised some concerns about the primary role a special advocate would have within tribunals.

One respondent thought that from a human right perspective, a special advocate should be appointed to represent the interests of the prisoner, while balancing this with community safety aspects, and also felt it was in line with the “Vision for Justice Scotland Principles”.

Question 1 - Next Steps

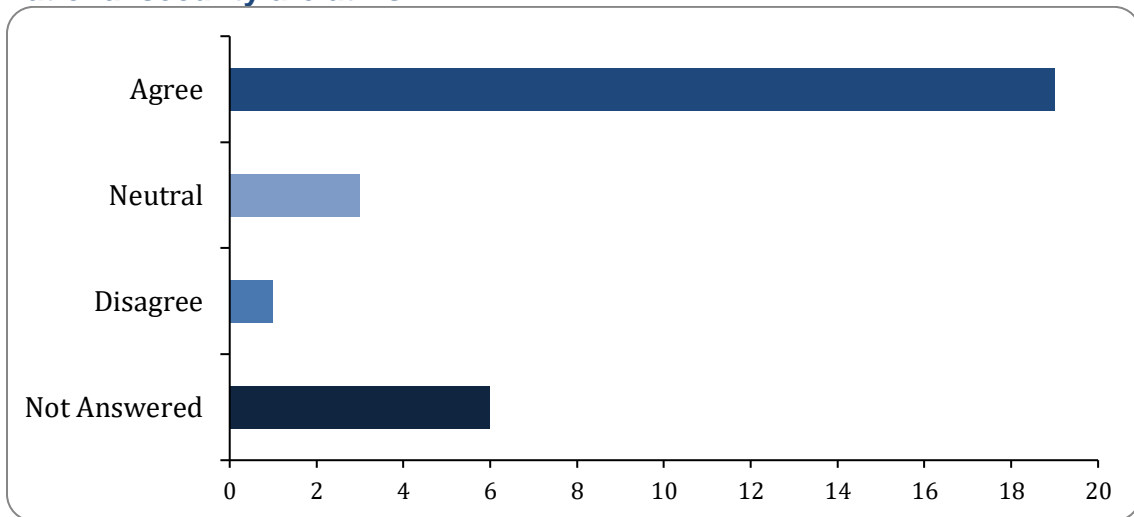
We will introduce a new provision into the Rules, that expressly provides that the Board can appoint a “Special Advocate” to scrutinise the non-disclosure of damaging information in parole proceedings.

This provision ensures fairness where damaging information is being withheld from the person to whom the case relates.

Question 2: Additional Reason for Withholding Damaging Information

The consultation also proposed adding to the list of reasons for withholding damaging information, that the information should not be disclosed to the individual, where it is in the interests of national security.

Responses to Question 2: Do you agree or disagree with the additional reason for information to be withheld from the prisoner if the interests of national security are at risk?



Option	Total	Percent
Agree	19	65.52%
Neutral	3	10.34%
Disagree	1	3.45%
Not Answered	6	20.69%

Specific comments to this question included:

“Full agreement that information is withheld from the prisoner if there are concerns that the interest of national security are at risk.”

“I think that the present overriding principles for non-disclosure are adequate.”

Most respondents agreed that additional information should be withheld from the prisoner if it is in the interests of national security.

One respondent felt there was limited information provided within this proposal to make an informed decision. Stating that additional information and guidance may need to be provided to fully endorse the proposal and questioning what constitutes a threat to security of the country.

Question 2 - Next Steps

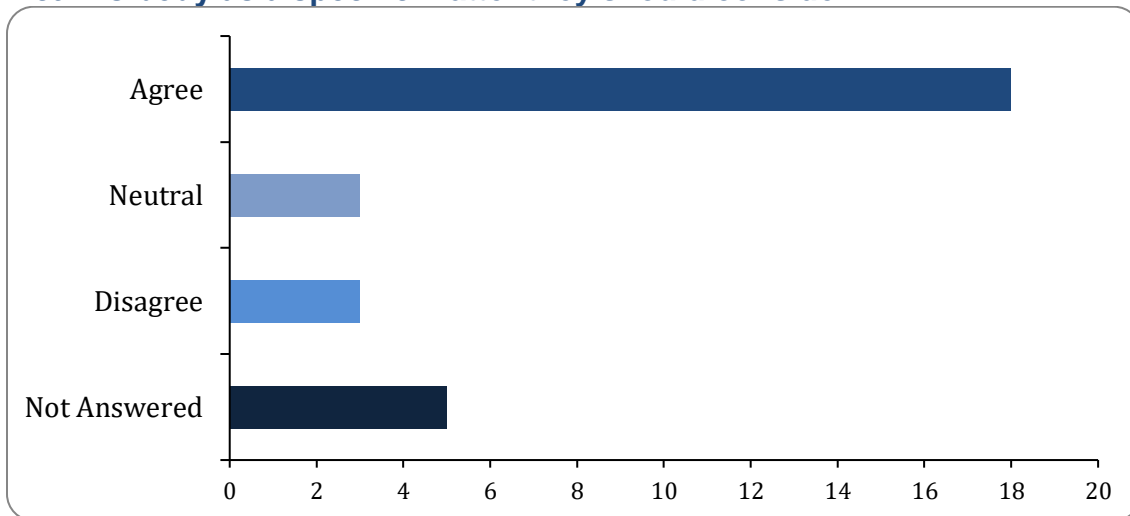
We will specify in the Rules that damaging information should not be disclosed if it is likely to have an adverse effect on national security.

Question 3: Matters the Parole Board May Consider

Rule 8 of the 2001 Rules contains provisions which lists the matters that the Board may take into account when considering a person's case. This is not a comprehensive list but it brings to the attention of the Board specific matters that it may consider.

The consultation proposed to add to the list a provision which outlines that the Board may, in applicable cases, take into account any failure to reveal the location of a victim's body. This would be relevant in cases where a person has been convicted of murder or culpable homicide and the victims remains have never been discovered or disclosed.

Responses to Question 3: Do you agree or disagree that there should be a provision which asks the Parole Board to consider the failure to reveal a victim's body as a specific matter they should consider?



Option	Total	Percent
Agree	18	62.07%
Neutral	3	10.34%
Disagree	3	10.34%
Not Answered	5	17.24%

Specific comments to this question included:

"We agree that there should be a provision which asks the Parole Board to consider as a specific matter the failure to reveal a victim's body. This is an important consideration for the victim's family members. It can also provide an important insight into a person not being able or ready to think about the impact of their behavior on others, a factor which would be considered in their assessment of risk"

“The Board already has a wide discretion to consider this matter. It is my understanding, however, that it would only consider this as a relevant issue if non-disclosure of the body tended to show the person remained a danger to society”

One respondent felt that “The Parole Board are there to determine risk and not to pass judgement on the offence or the sentence imposed by the court.”

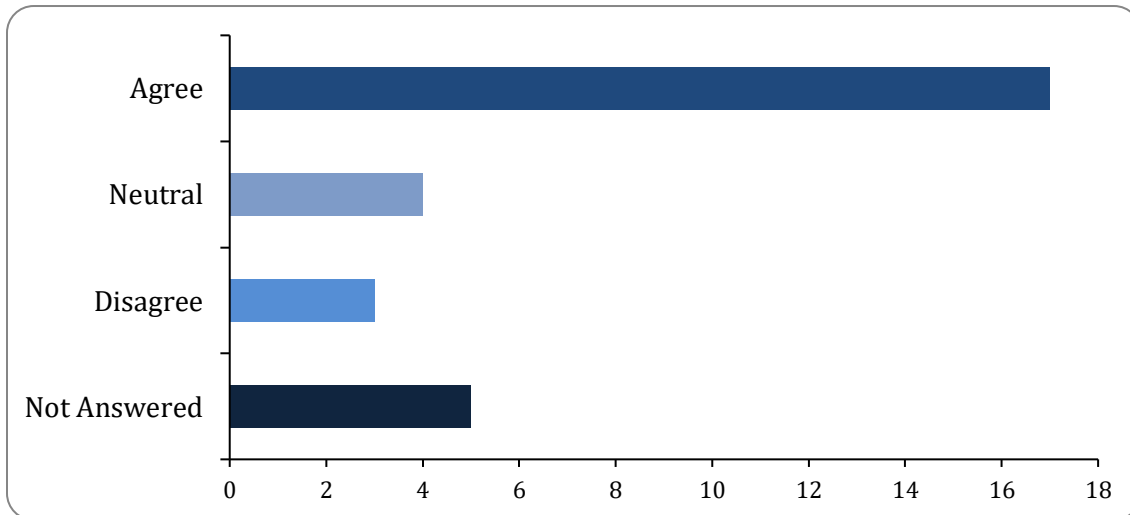
Question 3 - Next Steps

We will include in the rules a specific provision where a person has been convicted of murder or culpable homicide, which outlines that the Board may, in applicable cases, take into account amongst other matters, any failure to reveal the location of a victim’s body.

Question 4: Matters the Parole Board Consider – ‘May’ or ‘Must’ question

The consultation also proposed to strengthen the matters the Board consider and suggested changing the wording from ‘matters the Parole Board **may** consider’ to ‘matters the Parole Board **must** (where it is relevant) consider’.

Responses to Question 4: Do you agree or disagree with the change of term from ‘may consider’ to ‘must (where relevant) consider’ in this specific rule?



Option	Total	Percent
Agree	17	58.62%
Neutral	4	13.79%
Disagree	3	10.34%
Not Answered	5	17.24%

Specific comments to this question included:

“Yes, I fully agree with this, the parole board must, take into consideration the full impact of family’s and victims if the offender/s are released without giving the location of the/their victims”

“The use of must, infers that this will have a specific bearing on the final decision. The Board should retain the independence to consider the information presented to them without specific additional direction”

“The Board already has a wide power to consider such matters as it considers appropriate. By requiring the Board to consider specified matters the Board may find itself going through a checklist of issues to deal with, and thus also having to justify why it did not take specified matters into account, simply to ward off any possible grounds of review.”

Most of the respondents agreed to the change in term from “may” to “must” feeling that in fairness of justice to the victim’ families that the Board must consider this factor at parole hearings.

Others however, stated that the Board already has a wide discretion to consider this and other matters which it considers appropriate.

Question 4 - Next Steps

We considered changing ‘may consider’ to ‘must consider’ but on reflection decided that there should be an option to consider only things that are relevant to the case in question and that this must be done independently based on the risk the person posed if released. We felt the Board was best placed to know what matters they should take into account in particular cases.

Question 5 - Victims

The Parole Board (Scotland) Amendment Rules 2021 brought in new provisions, with effect from 1 March 2021, to allow a victim or family member(s) of a victim to request to observe a parole hearing relating to the person involved in their case. This provision currently applies to all victims who are registered with the Victim Notification Scheme (“the scheme”) under part’s 1 or 2, and family member(s) of such victims.

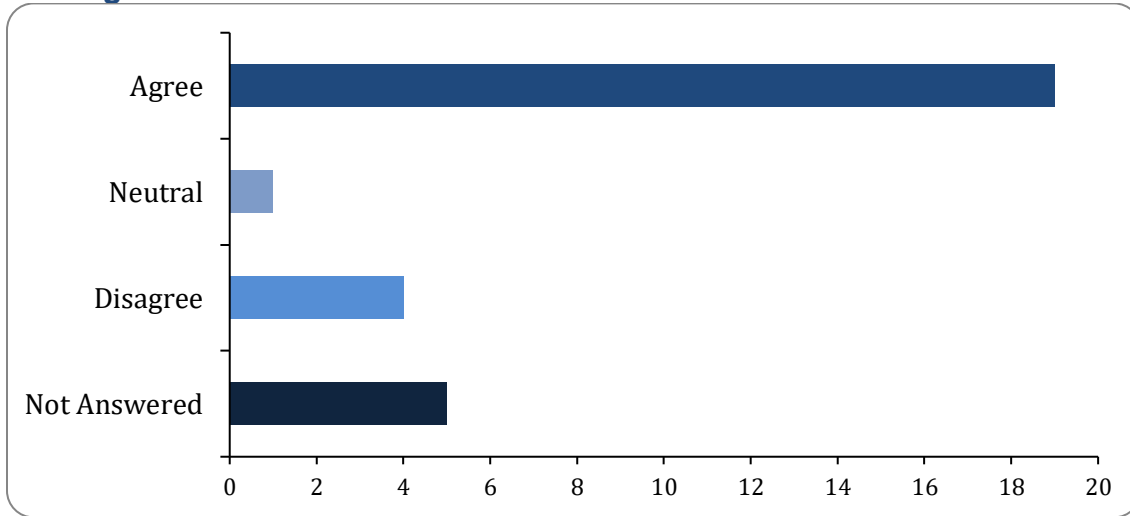
The scheme operates as follows:

Part 1 gives the registered person(s) the right to receive information about the person concerned release.

Part 2 gives the registered person(s) the right to know if the person concerned is being considered for parole or for release with an electronic tag (Home Detention Curfew).

The consultation proposed to amend the provision in the 2001 Rules to restrict the entitlement to ask to observe a hearing to those registered with part 2 of the scheme only. This avoids re-traumatising those victims who have made the choice to register only for part 1, to hear about the person’s release and have not requested to have information about parole and do not want to receive unexpected news about the person concerned with their case.

Responses to Question 5: Do you agree or disagree that only victims registered with part 2 should be contacted in regards to observing parole hearings?



Option	Total	Percent
Agree	19	65.52%
Neutral	1	3.45%
Disagree	4	13.79%
Not Answered	5	17.24%

Specific comments to this question included:

“It is important that the Victim Notification Scheme is fully understood by those who agree to participate in it so that they do not receive unexpected or unwanted information that could further traumatize them.”

“Disagree. We consider that the proposed change should only be made following the conclusion of the independent review mentioned in para 4.22 of the consultation document”

“Individuals should be offered the choice in a trauma informed way to receive the minute and/or have the implications of the options of VNS membership explained in full to allow them to understand their decision around their entitlement to these minutes. The ongoing Independent Review of the VNS will also provide learning in this area.”

Most of the respondents agreed with this change and saw it as a positive step forward in respect of not re-traumatizing victims unnecessarily. Others felt that the outcome of the independent review of the VNS should be the driver for the decision in relation to this question and that victims should be given clear options regarding what they are signing up to.

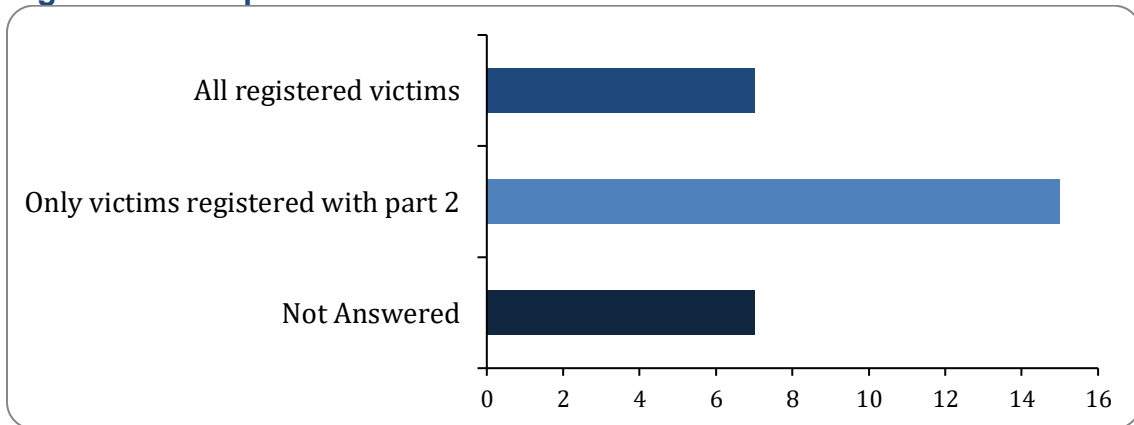
Question 5 - Next Steps

We will change the provision in the Rules relating to victims observing parole hearings, to victims who have registered with Part 2 of the scheme only.

Question 6 - Decision Summaries

Registered victims of the scheme are also entitled to receive a redacted/anonymised note of the decision minute. We considered that this information is only of interest to part 2 registered victims therefore the consultation asked for views on whether the decision minute should be sent to part 1 and part 2 registered victims or Part 2 only.

Responses to Question 6: Should the redacted/anonymised decision minute be sent to all victims registered with the scheme or only victims registered with part 2 of the scheme?



Option	Total	Percent
All registered victims	7	24.14%
Only victims registered with part 2	15	51.72%
Not Answered	7	24.14%

Specific comments to this question included:

“This would appear to sit better with the victims choice and could be clear at point of registration.”

“From discussions with people affected by crime, we have heard some individuals wish to receive the decision minute. This might be the case whether people have signed up to Part 1 or Parts 1 and 2 of the Victim Notification Scheme (VNS).”

Most of the responses tended to agree that only victims that are registered with part 2 of the scheme should be sent a redacted decision minute. There is a general theme though that any changes to the scheme should be decided after the outcome of the independent review of the VNS and that information about what a victim will receive should be clearer when they register for the scheme.

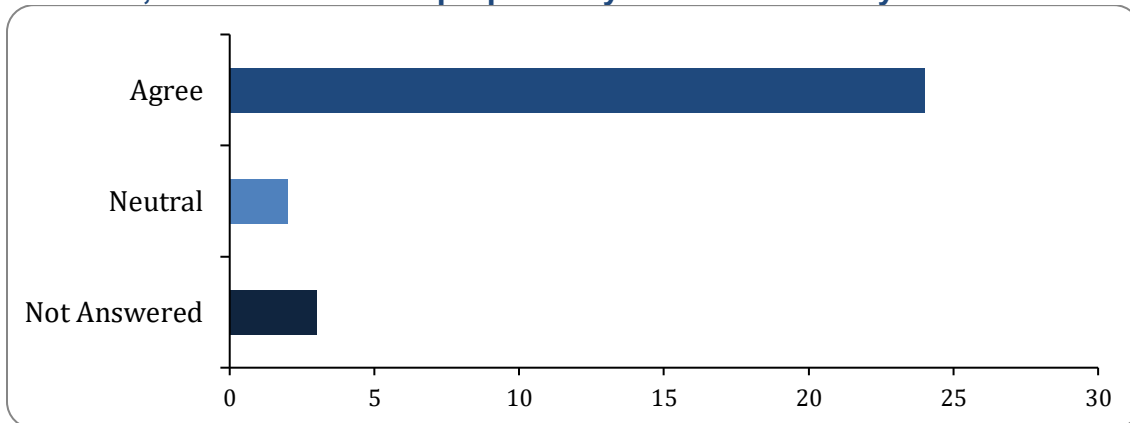
Question 6 - Next Steps

We will change the provision in the Rules so as Part 1 registered victims will only get a summary of the Board's decision minute if they say, when they are told of the person's release, that they wish to receive one. This aims to avoid re-traumatising victims who do not now wish to hear about the parole hearing.

Question 7 – Order for Lifelong Restriction (OLR)

The consultation sought views on the proposal to include in the rules a specific provision to make clear that in relation to people with an OLR that the dossier must contain the most up-to-date available Risk Management Plan (RMP) which has been approved by the Risk Management Authority (RMA). This provision is needed to ensure that the most recently approved RMP is available to the Board. The final decision whether to release a person would remain for the Parole Board having had regard to the information contained within the RMP.

Responses to Question 7: Do you agree or disagree that provision should be made in the rules making clear the Parole Board must consider the most up to date risk management plan which has been approved by the Risk Management Authority and that an up-to-date plan should always be available, where it has been prepared by the lead authority?



Option	Total	Percent
Agree	24	82.76%
Neutral	2	6.90%
Disagree	0	0.00%
Not Answered	3	10.34%

Specific comments to this question included:

“Risk Management Plans are prepared by specialist professionals to provide assessment and strategies, risk formulations and contingency plans based around the individuals risks/needs, therefore it should mandatory that decisions are based on whether the individual can be safely managed in the community”

“should be a condition that the Parole Board need to consider the most up to date Risk Management plan and it should always be available to them. This is key information regarding the safety of the decision to release a prisoner and it seems inconceivable that the Parole Board would make a decision without giving this proper consideration.”

From the responses the vast majority were in favour of the provision being implemented and agreed that it was essential that the Board should have the most up-to-date available Risk Management Plan (RMP) which had been approved by the Risk Management Authority (RMA).

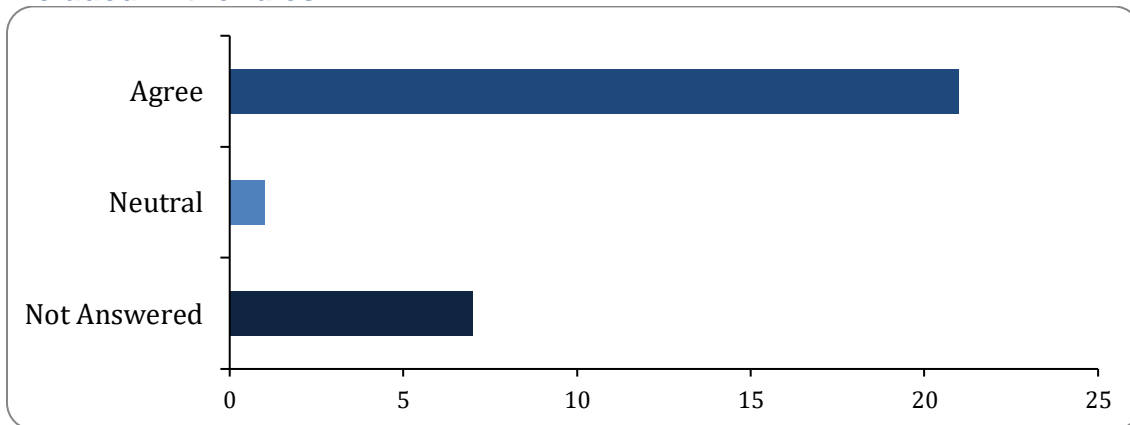
Question 7 - Next Steps

Provision will be made in the Rules so that either the most recent, Risk Management Plan (RMP) (approved by the Risk Management Authority) or the Risk Assessment Report, is available to the Board when considering the release of a person sentenced to an OLR.

Question 8 – Reasons Contrary to the RMP

The consultation also sought views on whether the Board should provide reasons when they release someone where their decision is different to that in the RMP.

Responses to Question 8: Do you agree or disagree that the decision note should provide the rationale for the reasons to release when the reasons are contrary to the risk management plan and that provision should be included in the rules?



Option	Total	Percent
Agree	21	72.41%
Neutral	1	3.45%
Disagree	0	0.00%
Not Answered	7	24.14%

Specific comments to this question included:

“It is vital that the decision making process is transparent. A rationale for all decisions made should be required, particularly where this deviates from the Risk Management Plan.”

“A clear rationale for any decision to release against the recommendation in the Risk Management Plan should be clearly recorded and made available to all parties”

The majority of respondents agreed that the decision note should provide the rationale for the reasons to release when the reasons are contrary to the RMP, with one commenting that:

“This would help to ensure accountability and rationale for the release and perhaps allow victims and the public to better understand why a prisoner has been released.”

Question 8 - Next Steps

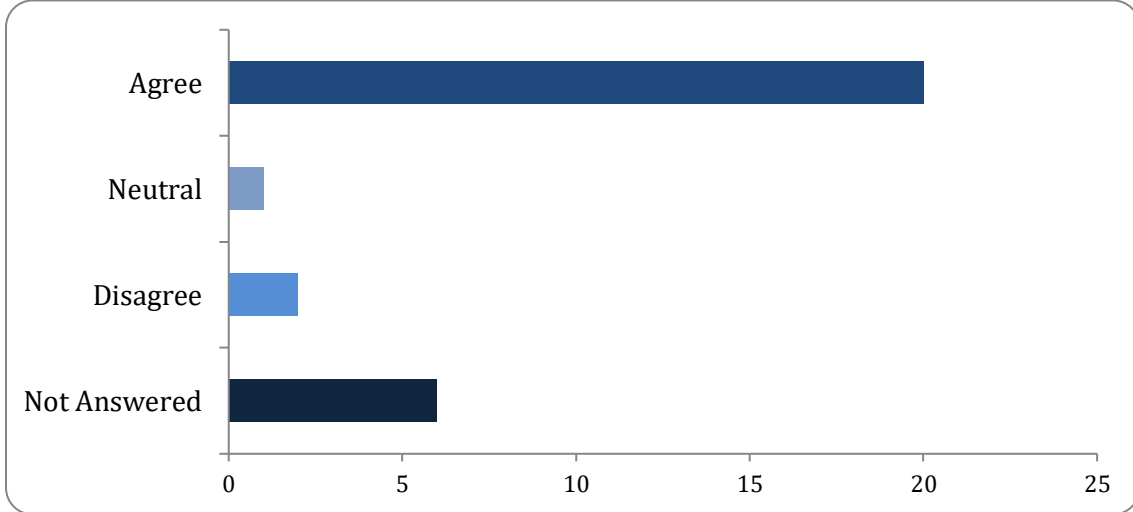
We will add a new provision to the Rule on decision summaries, stating that the Board must give reasons for their decision where it differs from the recommendations in a RMP.

Question 9 – Reconsideration of a Decision

The consultation sought views on allowing a review/reconsideration of a decision once it has become final. This is aimed at providing the Board with more flexibility to amend or re-make decisions where there have been errors, without the requirement to have them referred again by the Scottish Ministers.

Responses to Question 9: Do you agree or disagree with the proposal to allow a review of a Parole Board decision if:

- **additional information or documentation becomes available,**
- **the decision is procedurally unfair, or**
- **the decision was irrational.**



Option	Total	Percent
Agree	20	68.97%
Neutral	1	3.45%
Disagree	2	6.90%
Not Answered	6	20.69%

Specific comments to this question included:

“Review of a decision where additional information becomes available or where decisions appear to be unfair or irrational makes perfect sense and falls within the laws of natural justice and procedural fairness.”

“This would require a tight timescale attached for completion , i.e. the suggested 28 days, and should not be permitted to drift. The 3 identified review criteria appear appropriate reasons for review and should not be expanded on”

“If the Parole Board have made a decision then this should not be subject for a review within such a short time frame. The provisions to re-assess parole cases is already sufficient to allow fair consideration of the suitability of parole. The suggested provisions would allow for additional procedures and a lack of certainty for victims.”

One respondent thought it was a sensible idea to have a procedure whereby a decision could be reviewed, however felt the term “irrational” raises many questions, like how a decision could be regarded as “irrational” and how will this be defined, particularly around “evidence of risk” and who or what will decide whether a decision is “irrational.”

Question 9 - Next Steps

We will add provision to the Rules which allows a reconsideration of decisions not to release where there has been an administrative or procedural error made.

Responses to Question 10 : Are there any other circumstances which you consider a review of the decision should be available?

Sixteen respondents provided further comments to this follow up to Question 9 which mainly supported a reconsideration. Specific comments included:

“Openness and clarity should not be an issue within the system”

“Apart from the circumstances in Question 9 we don’t have any further examples”

“Agree with the circumstances in the consultation”

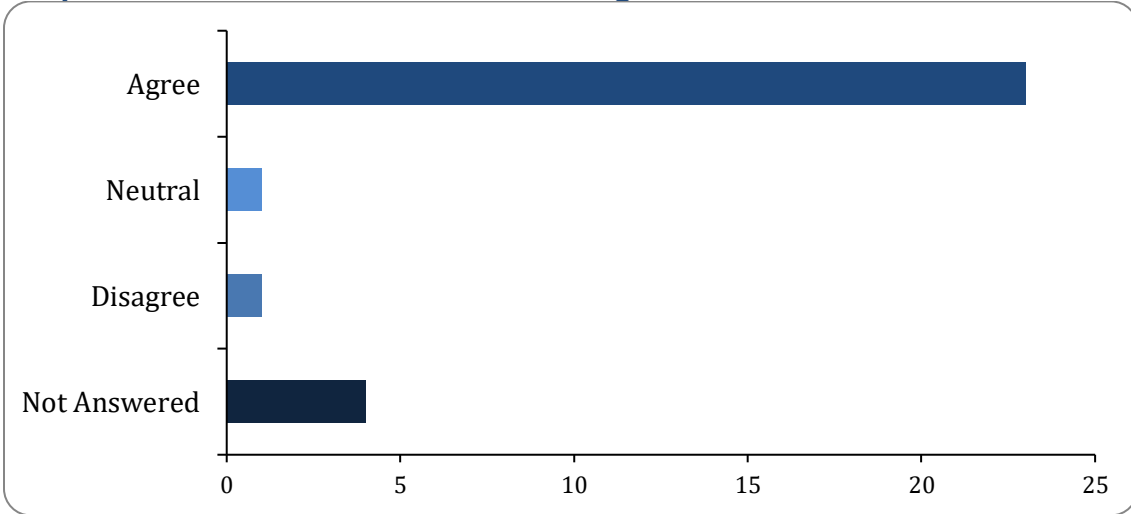
“Nothing further than if additional information or documents become available, the decision is procedurally unfair or irrational”

A few comments were unclear whether the proposal to review would replace the current system or whether this was intended to provide an additional step in the process. With others feeling that the Risk Management Authority should have the means to challenge any release which is contrary to the approved RMP. Also others were of the opinion that reviews should be considered if there were concerns regarding professional conduct at meetings which impacted negatively on witnesses.

Question 11 – Representation for People who Lack Capacity to make decisions

In cases where, through illness or disability, a person lacks capacity to appoint or agree to the appointment of a representative (such as a solicitor), the consultation sought views on whether to enable the Board to appoint someone to represent the person’s interests at an oral hearing, where that person could not make the decision themselves.

Question 11: Do you agree or disagree, that if a prisoner lacks capacity to make decisions for themselves the Parole Board should be able to appoint a representative for them without their agreement?



Option	Total	Percent
Agree	23	79.31%
Neutral	1	3.45%
Disagree	1	3.45%
Not Answered	4	13.79%

Specific comments to this question included:

“Given the importance of the Parole Board process, access to legal representation should be prioritised in the same ways as it is in sentencing decisions in court. Parole Board processes will decide on liberty or further detention – they are judicial decisions, and it is therefore imperative that people whose cases are considered by the Parole Board (particularly the decisions around release) have legal representation.”

“All have the right to appoint a person they trust to represent them. This will be very biased and needs to be a selected and known trusted party if advocate is truly an advocate. Every human deserves that”

Almost all the respondents who expanded on their answer to this question were in agreement that, if a prisoner lacks the capacity to make decision for themselves then the Board should be able to appoint representation on their behalf.

One respondent did comment that they would:

“only agree if the appointed person is a psychologist and psychiatrist team that assess capacity together and who can link in with trained professionals - such as intermediaries (or equivalent) or qualified Forensic Psychologists. A concern is that the appointed representative will be an untrained non specialist member of staff.”

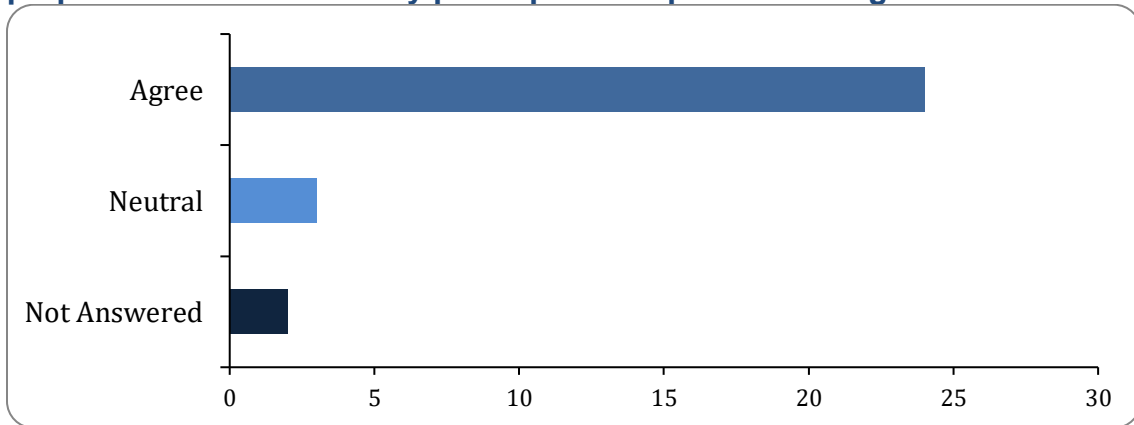
Question 11 - Next Steps

Consideration will be given to enabling the Board to appoint someone to represent a person who lacks capacity at an oral hearing where the person cannot make the decision to appoint someone themselves.

Question 12 – Prisoner Representation

The consultation proposed to introduce a checklist, to assist the individual to be better prepared for their parole hearing. The checklist would allow information to be obtained from the person concerned in advance to assess whether they are ready to proceed.

Responses to Question 12: Do you agree or disagree with the proposal to include a check list to assist the individual to be in the best state of preparation in order to fully participate in a parole hearing?



Option	Total	Percent
Agree	24	82.76%
Neutral	3	10.34%
Disagree	0	0.00%
Not Answered	2	6.90%

Specific comments to this question included:

“we agree that a person’s preparation for a parole hearing is essential, and we believe that some of the steps outlined in the checklist will already be in place. This is a significant meeting in a person’s life, and it is crucial that they have time to consider some of the key aspects that are being considered, shared their views”

“If agreed and a check list is introduced, it should be a requirement that the checklist is issued to all. Failure to do so should result in the hearing being rescheduled. There is little benefit to introducing the check list, if it’s issue has the potential to be arbitrary and there is no consequence to the process of not issued to the prisoner.”

One respondent thought that introducing this provision would be highly beneficial in reducing the amount of hearings being deferred, which in turn decreases the stress to victims/survivors.

Question 12 - Next Steps

We will introduce a specific provision in the rules to assist the person concerned to be better prepared for a parole hearing.

Organisations who Responded to the Consultation

City of Edinburgh Council Justice Services for Adults
Dumfries & Galloway Council Social Work Department
East Ayrshire HSCP Justice Services
Equality & Human Rights Commission
Families Outside
Fife Council Justice Social Work
Glasgow City HSCP Justice Services
Howard League Scotland
Law Society of Scotland
Parole Board for Scotland
Police Service for Scotland
Rape Crisis Scotland
Risk Management Authority
SBC Justice Social Work Services
Scottish Legal Aid Board
Scottish Women's Aid
South Lanarkshire Council
Victim Support Scotland
West Lothian Council

Note: Not all organisations wished their response or names to be published.



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