Passage of the

Prisoners (Control of Release) (Scotland) Bill 2014

SPPB 217
Passage of the
Prisoners (Control of Release) (Scotland) Bill 2014

SP Bill 54 (Session 4), subsequently 2015 asp 8

SPPB 217
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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. An exception is the groupings of amendments for Stage 2 and Stage 3 (a list of amendments in debating order was included in the original documents to assist members during actual proceedings but is omitted here as the text of amendments is already contained in the relevant marshalled list).

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:
Introduction, followed by publication of the Bill and its accompanying documents;
Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
Stage 2: the Bill returns to a committee for detailed consideration of amendments;
Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available for sale from Stationery Office bookshops or free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

The Annexes to the Justice Committee’s Stage 1 Report were originally published on the web only. This material is all included in this volume. The submissions and correspondence in Annexe D are organised in this volume in a slightly different way than in the report as original published. This is intended to reflect the fact that some submissions were made in response to correspondence from the Scottish Government during Stage 1 on proposed changes to the Bill.

The Finance Committee received five submissions in response to its call for views in relation to the Financial Memorandum on the Bill. None of the responses raised substantive issues. The Finance Committee, therefore, decided not to give any further consideration to the Memorandum or to produce a report, and simply forwarded the submissions to the Justice Committee.
At Stage 1, the Delegated Powers and Law Reform Committee agreed its report without debate. The report is included in Annexe A to the Justice Committee’s Stage 1 Report, but no extracts from the minutes or the Official Report of the relevant meetings of the Delegated Powers and Law Reform Committee are, therefore, included in this volume.

In advance of formal consideration of amendments at Stage 2, the Justice Committee took additional evidence at its meetings on 26 and 27 May 2015. To inform these evidence sessions, the Committee sought written comments on amendments lodged by the Scottish Government from previous witnesses on the Bill at Stage 1. Papers for those meetings, and relevant extracts from the minutes and the Official Report, are included in this volume.

Similarly, at its meeting on 26 May 2015, the Delegated Powers and Law Reform Committee considered correspondence from the Scottish Government on proposed amendments. Papers for that meeting, and the relevant extract from the minutes and the Official Report, are also included in this volume.

The Delegated Powers and Law Reform Committee also considered the delegated powers in the Bill after Stage 2, and agreed its report without debate. No extracts from the minutes or the Official Report of the relevant meeting of the Committee are, therefore, included in this volume.

No amendments were agreed to at Stage 3. There is, therefore, no ‘As Passed’ version of the Bill. The Bill was passed in its ‘As amended at Stage 2’ form.
Prisoners (Control of Release) (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to end the right of certain long-term prisoners to automatic early release from prison at the two-thirds point of their sentences and to allow prisoners serving all but very short sentences to be released from prison on a particular day suitable for their re-integration into the community.

### Amendment of relevant Act

1 **Restriction on automatic early release**

   (1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 is amended as follows.

   (2) In section 1, after subsection (3) there is inserted—

   "(3ZA) Subsection (2) above does not apply to a long-term prisoner—

   (a) if the prisoner’s sentence is for a term of 10 years or more, or

   (b) if—

   (i) the prisoner’s sentence is for a term of less than 10 years, and

   (ii) the term is, or no less than 4 years of it are, attributable to at least one conviction by virtue of which the prisoner is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003.”.

2 **Release timed to benefit re-integration**

   (1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 is amended as follows.

   (2) After section 26B there is inserted—

   "Timing of release

   26C Release timed to benefit re-integration

   (1) Where a prisoner is to be released by the Scottish Ministers, they may release the prisoner on a day that is earlier than the day on which the prisoner would otherwise fall to be released (but this is subject to subsections (2) and (3))."
(2) The release of a prisoner may be brought forward under subsection (1) only if, in the Scottish Ministers’ opinion, it would be better for the prisoner’s re-integration into the community for the prisoner to be released on the earlier day than on the day on which the prisoner would otherwise fall to be released.

(3) The release of a prisoner may not be brought forward under subsection (1) by more than 2 days.

(4) In a case in which section 27(7) applies, a reference in this section to the day on which a prisoner would fall to be released is to the day on which the prisoner would fall to be released by virtue of that section.

(5) This section does not apply in relation to a prisoner who is serving a sentence of imprisonment for a term of less than 15 days.”.

Commencement and short title

3 Commencement

(1) This section and section 4 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under subsection (2) may include transitional, transitory or saving provision.

4 Short title

The short title of this Act is the Prisoners (Control of Release) (Scotland) Act 2015.
Prisoners (Control of Release) (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to end the right of certain long-term prisoners to automatic early release from prison at the two-thirds point of their sentences and to allow prisoners serving all but very short sentences to be released from prison on a particular day suitable for their re-integration into the community.

Introduced by: Kenny MacAskill
On: 14 August 2014
Bill type: Government Bill
PRISONERS (CONTROL OF RELEASE) (SCOTLAND) BILL

EXPLANATORY NOTES
(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS
As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Prisoners (Control of Release) (Scotland) Bill introduced in the Scottish Parliament on 14 August 2014:

- Explanatory Notes;
- a Financial Memorandum;
- the Scottish Government Statement on legislative competence; and
- the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 54–PM.
EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL – AN OVERVIEW

3. The Prisoners (Control of Release) (Scotland) Bill (“the Bill”) will reform the system of prisoner release in two areas. It will end the automatic early release for certain categories of prisoner and it will introduce new limited flexibility for the Scottish Ministers to bring forward a prisoner’s release date by up to two days for the purpose of effective reintegration of a prisoner into the community.

COMMENTARY ON SECTIONS

Section 1 – Restriction on automatic early release

4. Section 27(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) provides that a long-term prisoner is someone who is serving a sentence of four years or more.

5. Section 27(5) of the 1993 Act provides for the ‘single-terming’ of more than one sentence. This can happen where a person has been sentenced to more than one sentence either at the same time or at a different time where the person receiving the second or subsequent sentence has not been released from the first sentence. For example, a person receiving a three-year sentence for an offence and a two-year sentence for a separate offence at the same time where the court orders that the two-year sentence should run consecutive to the three-year sentence will have received what becomes a single-termed sentence of five years. A person receiving a single-termed sentence of four years or more will be classed as a long-term prisoner under the 1993 Act even though each individual sentence may be less than four years.

6. Section 1(2) of the 1993 Act provides for the release arrangements for long-term prisoners. A long-term prisoner is, by virtue of section 1(2), to be released as soon as the person has served two-thirds of their sentence. This applies if the prisoner has not by that point been released through other release arrangements of the 1993 Act e.g. discretionary early release through the operation of the Parole Board. This system is known as automatic early release.

7. Section 1(2) of the Bill inserts new section 1(3ZA) into the 1993 Act. New section 1(3ZA) modifies the operation of existing section 1(2) of the 1993 Act so that automatic early release at the two-thirds point of sentence for certain categories of prisoner does not take place.
8. New section 1(3ZA)(a) disapplies section 1(2) so that automatic early release at the two-thirds point of sentence does not take place for long-term prisoners serving a sentence of 10 years or more.

9. For example, new section 1(3ZA)(a) will mean that a person convicted of one offence and receiving a sentence of 11 years for serious assault will not receive automatic early release.

10. The effect of new section 1(3ZA)(a) includes where a person is serving a sentence of 10 years or more when such a sentence has resulted from two or more convictions with a process of single-terming of the sentence having taken place under section 27(5) of the Act.

11. For example, a person is convicted of two separate offences where a process of single-terming under section 27(5) leads to a sentence of 10 years. This could be where, say, a person receives an eight-year sentence for serious assault and a two-year sentence for breach of the peace and the court orders that the second sentence should run consecutive to the first sentence. The operation of section 27(5) will mean that the person receives a single-termed sentence of 10 years and new section 1(3ZA)(a) will mean the person does not receive automatic early release.

12. New section 1(3ZA)(b) disapplies section 1(2) so that automatic early release at the two-thirds point of sentence does not take place for certain other long-term prisoners.

13. New section 1(3ZA)(b)(i) provides that where a person is a long-term prisoner who is serving a sentence of less than 10 years, automatic early release does not take place where the requirements of new section 1(3ZA)(b)(ii) are met.

14. New section 1(3ZA)(b)(ii) operates in two ways depending on whether a person’s sentence is the result of the process of single-terming or not, but both ways relate to the same underlying principle. That principle is that at least four years of a person’s sentence must relate to a conviction or convictions for a sexual offence that would trigger notification requirements of Part 2 of the Sexual Offences Act 2003 (“the 2003 Act”). In other words, the principle requires that the person would be a classed as a long-term prisoner for the sentence received in relation to a sexual offence or sexual offences when the elements of the sentence given for any other non-sexual convictions are disregarded.

15. Where only one conviction has given rise to the sentence (i.e. there has been no process of single-terming under section 27(5)), automatic early release is ended when the term of imprisonment is attributable to a conviction which triggers notification requirements of the 2003 Act.

16. For example, new section 1(3ZA)(b) will mean that a person convicted of sexual assault and receiving a five-year sentence would not receive automatic early release as the person is a long-term prisoner and the conviction gave rise to notification under the 2003 Act.

17. Where more than one conviction has given rise to the sentence (i.e. there has been a process of single-terming under section 27(5)), automatic early release is ended when at least
four years of the overall sentence is attributable to either a conviction or convictions which trigger notification requirements of the 2003 Act.

18. For example, a person is convicted of two separate offences where a process of single-terming under section 27(5) leads to a sentence of five years applying. This could be where, say, a person receives a three-year sentence for sexual assault and a two-year sentence for a separate sexual assault and the court orders that the second sentence should run consecutive to the first sentence. The operation of section 27(5) will mean that the person receives a single-termed sentence of five years and new section 1(3ZA)(b) will mean the person does not receive automatic early release as at least four years of the sentence (i.e. sufficient to make them a long-term prisoner) is attributable to a conviction or convictions which give rise to notification under the 2003 Act.

19. Another example would be where a person is convicted of two separate offences where a process of single-terming under section 27(5) leads to a sentence of five years applying. This could be where, say, a person receives a three-year sentence for sexual assault and a two-year sentence for breach of the peace and the court orders that the second sentence should run consecutive to the first sentence. The operation of section 27(5) will mean that the person receives a single-termed sentence of five years, but the operation of new section 1(3ZA)(b) will mean that existing section 1(2) continues to apply for the specific circumstances of this sentence and the person will receive automatic early release at the two-thirds point of their sentence as the length of the sentence relating to a conviction for a sexual offence (i.e. three years for sexual assault) is not sufficient in order for the provisions in this Bill to apply.

Section 2 – Release timed to benefit re-integration

20. Section 2(2) inserts new section 26C into the 1993 Act. New section 26C provides limited discretion to the Scottish Ministers to adjust a prisoner’s release date from imprisonment.

21. New section 26C(1) provides that where a prisoner is to be released by the Scottish Ministers, such as under section 1(1) or section 1(2) of the 1993 Act, the Scottish Ministers may release the prisoner on a day that is earlier than the day the prisoner would otherwise be released.

22. New section 26C(2) provides that the release of a prisoner can only be brought forward if the Scottish Ministers consider that it would be better for the prisoner’s reintegration into the community for the prisoner to be released on the earlier day than the day the prisoner would have been released. The Bill does not define what is meant by reintegration into the community, but examples could include the prisoner obtaining access to drug or alcohol treatment services or the prisoner obtaining access to the provision of housing services.

23. It will be an operational matter for the Scottish Prison Service, on behalf of the Scottish Ministers, to consider the use of this discretion to bring forward a release date for individual prisoners.

24. New section 26C(3) provides that the date of release of the prisoner under new section 26C(1) can be brought forward by up to two days. There is no equivalent discretion to delay release by up to two days. For example, if a prisoner was due to be released under section 1(1)
of the 1993 Act on a Thursday, new section 26C(1) would permit release up to two days before i.e. release on the Tuesday or Wednesday, but it would not permit release any later than the scheduled date of release of Thursday.

25. Existing section 27(7) of the 1993 Act provides that where a prisoner’s release under the 1993 Act or the Criminal Procedure (Scotland) Act 1995 Act is scheduled to fall on a Saturday, Sunday or a public holiday, the prisoner shall be released on the last working day preceding the weekend or public holiday. For example, if a prisoner was due to be released under section 1(2) of the 1993 Act on a Saturday, section 27(7) of the 1993 Act provides that the release of the prisoner shall take place on the Friday.

26. New section 26C(4) provides that references in new section 26C referring to a day when a prisoner would be released should be read as the day they fall to be released by virtue of section 27(7) of the 1993 Act. For example, new section 26C would operate so that a prisoner initially due for release on Saturday, who would become due for release on the Friday as a result of existing section 27(7) of the 1993 Act, will be able to be released up to two days before the Friday i.e. release on the Wednesday or Thursday.

27. New section 26C(5) provides that discretion to adjust a prisoner’s release date does not apply where the prisoner is serving a sentence of imprisonment of less than 15 days. This would also not apply to any young offender serving a period of detention of less than 15 days. Due to the operation of section 5(1) of the 1993 Act, the discretion will also not be available to adjust release dates for those receiving a period in custody of less than 15 days for non-payment of a fine or for contempt of court. Similarly, the discretion will not be available to adjust the release date for any young offender receiving a period of less than 15 days detention in a young offender’s institution for non-payment of a fine or for contempt of court.

Section 3 – Commencement

28. Section 3(1) of the Bill provides that the provisions in this section and section 4 of the Bill will come into force on the day after Royal Assent. Section 3(2) provides for the rest of the Bill to come into force by appointed-day order. Section 3(3) provides that a commencement order may include transitional, transitory or saving provision. Section 8 of the Interpretation and Legislative Reform (Scotland) Act 2010 allows for different days to be appointed for different purposes.

Section 4 – Short title

29. Section 4 of the Bill gives the short title of the Bill.
FINANCIAL MEMORANDUM

INTRODUCTION

1. The Prisoners (Control of Release) (Scotland) Bill (“the Bill”) will reform the system of prisoner release in two areas. It will end the automatic early release for certain categories of prisoner and it will introduce new limited flexibility for the Scottish Ministers to adjust a prisoner’s release date by up to two days where it is considered better for the prisoner’s reintegration into the community for the prisoner to be released on an earlier day.

2. The Bill will end the automatic early release of prisoners who receive terms of imprisonment of four years or more for sexual offences and will end the automatic early release of prisoners who receive terms of imprisonment of 10 years or more for all other offences. Currently, such prisoners can be considered for parole at the halfway point of their sentence and, if still in custody at the two-thirds point of sentence, prisoners have to be released automatically at that point. The effect of the Bill’s provisions will be that these prisoners will continue, as at present, to be able to receive early release from the halfway point of the sentence through consideration by the Parole Board, but the receipt of automatic early release at the two-thirds point of sentence will no longer take place and instead a continuing role for the Parole Board to consider discretionary early release will replace it from the two-thirds point of sentence until the end of sentence.

3. The Bill also provides the Scottish Ministers with the discretion to release a prisoner on a day which will better meet a prisoner’s reintegration needs with a view to assisting the prisoner’s rehabilitation. Currently, when a prisoner falls to be released on a Saturday, Sunday or public holiday, a prisoner is to be released on the last preceding day which is not a Saturday, Sunday or public holiday. The effect of the Bill’s provisions will retain the current obligation to not release on weekends or public holidays and provide the Scottish Ministers with additional flexibility to bring forward the release of a prisoner by no more than two working days (i.e. not a Saturday, Sunday or public holiday) where there is evidence that this will support the successful reintegration back into the community of an individual prisoner leaving the prison system. This discretion will be limited to prisoners sentenced to 15 days or more in custody. Scottish Prison Service (“SPS”) will, on behalf of the Scottish Ministers, consider use of this discretion for each individual prisoner.

ENDING AUTOMATIC EARLY RELEASE FOR CERTAIN CATEGORIES OF PRISONER

Costs on the Scottish Administration

The Scottish Prison Service

4. In order to estimate the financial impact the policy will have on the SPS, assumptions are required to be made relating to calculating how much longer prisoners will spend in custody as, although the prisoners affected by the policy will no longer receive automatic early release, such prisoners can still be considered for discretionary early release by the Parole Board. While it is likely that some prisoners in the two categories affected by the reforms will now spend all or almost all of their sentences in custody due to the risks they pose to public safety, some prisoners will, though no longer receiving automatic early release, likely still be authorised for release
through discretionary early release by the Parole Board. The estimates provided should be considered within this context and within the assumptions detailed below.

5. It is estimated that, once the Bill’s provisions are in force, the eventual long-term impact will be to increase the average daily prison population by about 140.

6. The modelling used in arriving at an estimate of an increase in the average daily prison population of 140 assumes that sex offenders affected by the ending of automatic early release will generally likely serve almost all of their sentence in custody following the reforms being implemented. The Scottish Government considers that this is a reasonable assumption to make as it is based on considering the data for discretionary release at the halfway point of sentence for sex offenders receiving sentences of four years or more which shows that 92% of sex offenders do not receive discretionary early release and 8% do receive discretionary early release.

7. The modelling also assumes that the other offenders affected by the ending of automatic early release will generally serve an increased proportion of their sentences in custody following the reforms being implemented, but some will still receive discretionary early release during their sentence. The Scottish Government considers that this is a reasonable assumption to make as it is based on considering the data for discretionary release at the halfway point of sentence for non-sexual offenders receiving sentences of 10 years or more which shows that 56% of these offenders do not receive discretionary early release at the halfway point of sentence and 44% do receive discretionary early release.

8. In order to test the potential impact of varying these assumptions, the Scottish Government considered two other scenarios. Firstly, an assumption could be made that non-sexual offenders receiving 10 years or more would serve their full sentence in custody following the reforms. This would mean the estimated impact on the average daily prison population would rise to around 150. Alternatively, if an assumption was made that a proportion of sex offenders receiving four years or more will be released after the halfway point but before the expiry of their sentence, this would mean the estimated impact on the average daily prison population would fall to around 100. These could be considered as possible high/low scenarios, though as explained above the Scottish Government considers that the central estimate of 140 is more plausible and the costings given in this Financial Memorandum relate to this estimate.

9. The impact on the prison population will build up over time as more prisoners receive sentences falling into the two categories, with no impact in years one, two and three of implementation before numbers begin to rise before an eventual steady state of an increase of 140 in the average daily prison population is reached by year 13 after implementation.

10. The Bill’s provisions will not affect prisoners falling into the two categories who are already in custody when the provisions come into force. Therefore, the first impact of the policy on prisoner numbers will fall on a sex offender who receives a sentence of 48 months and who is still in custody at the 32 months point of sentence (i.e. the two-thirds point of sentence where they previously would have received automatic early release). If it is assumed for the purposes of this Financial Memorandum that the provisions are in force in April 2016 and such an offender happens to be sentenced in April 2016, the first prisoner directly affected by the reforms would be in about December 2018.
11. The table below gives a breakdown of the estimated impact on prison numbers over time.

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</tr>
<tr>
<td>2030/31 and beyond</td>
<td>80</td>
<td>20</td>
<td>40</td>
<td>140</td>
</tr>
</tbody>
</table>

*Figures have been rounded to the nearest 10.

Currently about 8% of sex offenders serving sentences of 4 years or more receive discretionary early release at the halfway point of sentence. For the purposes of these estimates, it is assumed that the remainder will now serve their sentence in custody subject to an average 6 months re-integration period on licence for non-extended sentences prior to the end of sentence. Currently about 44% of non-sex offenders receiving sentences of 10 years or more receive discretionary early release at the halfway point of sentence. For the purposes of these estimates, it is assumed that one-third of the remainder will now receive discretionary early release at the ¾ point of sentence and two-thirds of the remainder will be released at the end of their sentence.

Due to difficulties in quantifying this from the available data, the estimated figures do not take into account the impact of recalls to custody as a result of breach of licence conditions. The effect of levels of recall would be likely to reduce the overall increase in prison numbers shown in the estimates as some prisoners who are currently released at the two-thirds point are assumed to spend longer in custody following the reforms, even though some will under the current arrangements breach their licence conditions upon release at the two-thirds point and spend longer in custody in any event.

Due to difficulties in quantifying this from the available data, the estimated figures may not take into account all prisoners who receive two or more sentences which are to run consecutively and which become ‘single-termed’ under section 27(5) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 where the single termed sentence is 10 years or more.
These documents relate to the Prisoners (Control of Release) (Scotland) Bill (SP Bill 54) as introduced in the Scottish Parliament on 14 August 2014

12. In arriving at the estimates given above, the historical trends for the number of sentences given for different offences have been used in order to assess the flow of prisoners entering custody who will be affected by the reforms. This information is contained in the following two tables.

<table>
<thead>
<tr>
<th>Crime type</th>
<th>2005-06</th>
<th>2006-07</th>
<th>2007-08</th>
<th>2008-09</th>
<th>2009-10</th>
<th>2010-11</th>
<th>Average per year</th>
<th>% of total crimes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rape and attempted rape</td>
<td>6</td>
<td>9</td>
<td>11</td>
<td>7</td>
<td>7</td>
<td>5</td>
<td>2</td>
<td>6.7</td>
</tr>
<tr>
<td>Sexual assault</td>
<td>1</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>4</td>
<td>1</td>
<td>1.4</td>
</tr>
<tr>
<td>Other indecency</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>4</td>
<td>2</td>
<td>4</td>
<td>1</td>
<td>2.0</td>
</tr>
<tr>
<td>Homicide</td>
<td>5</td>
<td>4</td>
<td>19</td>
<td>9</td>
<td>8</td>
<td>12</td>
<td>8</td>
<td>9.2</td>
</tr>
<tr>
<td>Serious assault and attempted murder</td>
<td>13</td>
<td>15</td>
<td>14</td>
<td>10</td>
<td>15</td>
<td>15</td>
<td>14</td>
<td>13.7</td>
</tr>
<tr>
<td>Robbery</td>
<td>2</td>
<td>9</td>
<td>4</td>
<td>3</td>
<td>0</td>
<td>3</td>
<td>1</td>
<td>3.1</td>
</tr>
<tr>
<td>Other violence</td>
<td>3</td>
<td>1</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1.0</td>
</tr>
<tr>
<td>Fraud</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.1</td>
</tr>
<tr>
<td>Other dishonesty</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.1</td>
</tr>
<tr>
<td>Vandalism etc.</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0.3</td>
</tr>
<tr>
<td>Handling an offensive weapon</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.1</td>
</tr>
<tr>
<td>Drugs</td>
<td>2</td>
<td>7</td>
<td>0</td>
<td>3</td>
<td>6</td>
<td>5</td>
<td>3</td>
<td>3.7</td>
</tr>
<tr>
<td>Other crime</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.6</td>
</tr>
<tr>
<td>Common assault</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0.4</td>
</tr>
<tr>
<td>Other offences</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>0.4</td>
</tr>
<tr>
<td>Unlawful use of vehicle</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.1</td>
</tr>
</tbody>
</table>

1 Justice Analytical Services research
These documents relate to the Prisoners (Control of Release) (Scotland) Bill (SP Bill 54) as introduced in the Scottish Parliament on 14 August 2014.

### NUMBER OF SENTENCES PER YEAR BETWEEN FOUR YEARS AND 10 YEARS FOR SEXUAL OFFENCES

<table>
<thead>
<tr>
<th>Crime type</th>
<th>2005-06</th>
<th>2006-07</th>
<th>2007-08</th>
<th>2008-09</th>
<th>2009-10</th>
<th>2010-11</th>
<th>2011-12</th>
<th>Average per year</th>
<th>% of total sexual crimes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rape and attempted rape</td>
<td>34</td>
<td>34</td>
<td>28</td>
<td>29</td>
<td>37</td>
<td>22</td>
<td>35</td>
<td>31.3</td>
<td>46%</td>
</tr>
<tr>
<td>Sexual assault</td>
<td>16</td>
<td>22</td>
<td>20</td>
<td>28</td>
<td>32</td>
<td>25</td>
<td>21</td>
<td>23.4</td>
<td>35%</td>
</tr>
<tr>
<td>Other indecency</td>
<td>14</td>
<td>13</td>
<td>4</td>
<td>17</td>
<td>20</td>
<td>7</td>
<td>14</td>
<td>12.7</td>
<td>19%</td>
</tr>
</tbody>
</table>

### TABLE A – COST IMPACT ON PRISON PLACES OF ENDING AUTOMATIC EARLY RELEASE FOR SEX OFFENDERS RECEIVING SENTENCES OF FOUR YEARS OR MORE AND OTHER OFFENDERS RECEIVING SENTENCES OF 10 YEARS OR MORE

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Increase in prison places</td>
<td>0</td>
<td>20</td>
<td>30</td>
<td>50</td>
<td>140</td>
</tr>
<tr>
<td>Additional recurring costs</td>
<td>0</td>
<td>£0.9m</td>
<td>£1.3m</td>
<td>£2.1m</td>
<td>£6.0m</td>
</tr>
</tbody>
</table>

13. The SPS annual report 2012/13 indicates that the average annual cost of a prison place is £42,619. Table A below provides an estimate for the costs on prisoner places over time.

14. The SPS has indicated that there can be limited flexibility to respond to changes in legislation within the use of the prison estate. However, the flexibilities available to the SPS have limits and each change in legislation must always be considered within the constraints existing at the time legislative change takes effect. The impact on prisoner numbers of ending automatic early release for certain categories of prisoner will build up over time, with the initial impact relatively limited in the early years, and the SPS will require the Scottish Government to ensure that the overall pressures on the prison estate arising from these reforms, and other legislative reforms, are met through future justice spending review settlements.

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2 Justice Analytical Services research
3 See page 63 of [http://www.sps.gov.uk/Publications/Publication-4809.aspx](http://www.sps.gov.uk/Publications/Publication-4809.aspx) [Link no longer available]
15. There will be other costs associated with the policy falling on the SPS. It will be required to update its IT systems to reflect that the release dates for prisoners falling into the two categories will no longer mean automatic early release takes place at the two-thirds point of sentence. It is estimated that one-off costs of £50,000 would arise in updating SPS IT systems in the period ahead of commencement of the reforms (i.e. if commencement took place in April 2016, these costs would fall in 2015/16).

16. There will also be a need for SPS staff to receive guidance and training for the changes to the system of automatic early release. This training and guidance will allow SPS staff to understand the effect of the changes and respond to any queries that may arise from prisoners and their families. Staff costs relating to training and guidance would cover staff at band B (£10.00 per hour), band C (£12.90 per hour), band D (£16.88) and band E (£20.09 per hour) and would fall in the year ahead of commencement of the reforms (i.e. 2015/16 based on an April 2016 commencement). The total one-off costs would amount to £67,000 in 2015/16. Future training for new staff would be adjusted to include coverage of these reforms and no new costs would arise after 2015/16.

17. The SPS will need to respond to a likely increased demand for prisoner programmes. This would be in relation to prisoners who may change their behaviour as a result of no longer receiving automatic early release at the two-thirds point of sentence and, therefore, decide to engage with prisoner programmes in order to improve their prospects of discretionary early release when currently such prisoners may not engage with such programmes. The increased demand would also be in relation to some prisoners being in custody for longer and, therefore, requiring access to the programmes for longer.

18. The current annual expenditure by the SPS on prisoner programmes for sex offenders serving sentences of four years or more is £392,000. The current level of engagement in these programmes by sex offenders serving sentences of four years or more is 50%. The Scottish Government has estimated for the purposes of this Financial Memorandum that the future levels of engagement will increase to 67% once the reforms are in force.

19. Assuming implementation in April 2016, there would be no additional costs in either 2016/17 or 2017/18 before costs increase by £33,000 in 2018/19, £67,000 in 2019/20 and £100,000 in 2020/21. By 2021/22, the increased costs will reach a steady state of £133,000 which will be the annual long-term recurring costs incurred for the provision of sex offender programmes.

20. The SPS also provides prisoner programmes for non-sex offender prisoners and this includes prisoners serving sentences of 10 years or more. The SPS has advised that it does not anticipate having to provide additional programmes for prisoners serving sentences of 10 years or more following the reforms, with a small estimated increase in uptake of programmes from such prisoners likely to be met from the capacity within the provision of existing programmes.

21. As overall prison numbers increase over time, there will be additional costs associated with the provision of prison-based social work services. These costs will fall into areas such as providing risk assessment reports, Parole Board hearing reports, attendance at integrated case
management case conferences and risk management meetings and engaging on a direct one-to-one basis with prisoners.

22. It is estimated that there is an annual cost of approximately £85,000 to provide prison-based social work services for each 40 prisoners requiring such services. This takes into account both staff costs and the wider costs associated with the provision of social work services. On this basis, there will be no new prison-based social work costs until 2021/22, when additional costs of £85,000 are expected to arise. In 2023/24, the additional costs are expected to be £170,000 before a long-term recurring cost of £255,000 is expected to be reached in 2025/26 and each year beyond.

TABLE B - COST IMPACT ON SPS OF ENDING AUTOMATIC EARLY RELEASE FOR SEX OFFENDERS RECEIVING SENTENCES OF 4 YEARS OR MORE AND OTHER OFFENDERS RECEIVING SENTENCES OF 10 YEARS OR MORE

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Changes to IT system</td>
<td>£50,000</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Staff guidance and training</td>
<td>£67,000</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Additional prison-based social work costs</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>£85,000</td>
<td>£255,000</td>
<td></td>
</tr>
<tr>
<td>Increased demand for prisoner programmes</td>
<td>Nil</td>
<td>Nil</td>
<td>£33,000</td>
<td>£67,000</td>
<td>£100,000</td>
<td>£133,000</td>
<td>£133,000</td>
<td></td>
</tr>
<tr>
<td>Non-recurring costs</td>
<td>£117,000</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td></td>
</tr>
<tr>
<td>Recurring costs</td>
<td>Nil</td>
<td>Nil</td>
<td>£33,000</td>
<td>£67,000</td>
<td>£100,000</td>
<td>£218,000</td>
<td>£388,000</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>£117,000</td>
<td>Nil</td>
<td>£33,000</td>
<td>£67,000</td>
<td>£100,000</td>
<td>£218,000</td>
<td>£388,000</td>
<td></td>
</tr>
</tbody>
</table>

23. The current system of automatic early release has been in place since the mid-1990s. The Scottish Government considers that any proposal for fundamental changes to the operation of the system of early release for all prisoners, appropriately and effectively focused on individual prisoners and the risks they pose, must take account not only of issues of public safety, but also prisoner numbers, access to services and capacity of and investment in the prison estate.
These documents relate to the Prisoners (Control of Release) (Scotland) Bill (SP Bill 54) as introduced in the Scottish Parliament on 14 August 2014

24. The report of the independent McLeish Prisons Commission\(^4\) in 2008 recommended that steps to end the current system of early release could only be taken once prison numbers are established at a longer-term, lower-trend level so that capacity within the prison estate is available to deal with the short to medium term impact of making changes to the system of early release.

25. Between 2007/08 and 2013/14, Scottish Government investment in the prison estate has been as below:

<table>
<thead>
<tr>
<th>Year</th>
<th>Infrastructure expenditure £m</th>
<th>Other expenditure £m</th>
<th>Total £m</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007/08</td>
<td>50.504</td>
<td>3.059</td>
<td>53.563</td>
</tr>
<tr>
<td>2008/09</td>
<td>96.961</td>
<td>3.270</td>
<td>100.231</td>
</tr>
<tr>
<td>2009/10</td>
<td>84.724</td>
<td>3.178</td>
<td>87.902</td>
</tr>
<tr>
<td>2010/11</td>
<td>135.845</td>
<td>3.454</td>
<td>139.299</td>
</tr>
<tr>
<td>2011/12</td>
<td>62.566</td>
<td>15.482</td>
<td>78.048</td>
</tr>
<tr>
<td>2012/13</td>
<td>69.015</td>
<td>3.308</td>
<td>72.323</td>
</tr>
<tr>
<td>2013/14</td>
<td>28.838</td>
<td>4.837</td>
<td>33.675</td>
</tr>
<tr>
<td><strong>Total - 2007/08 to 2013/14</strong></td>
<td><strong>528.453</strong></td>
<td><strong>36.588</strong></td>
<td><strong>565.041</strong></td>
</tr>
</tbody>
</table>

26. This total infrastructure investment of £528m over the period 2007/08 to 2013/14 represents an increase of £198m (60%) over the corresponding period 2000/01 to 2006/07 (when total infrastructure investment was £330m).

27. This investment in infrastructure between 2007/08 and 2013/14 has allowed for the full redevelopment of five existing prisons (HMPs Edinburgh, Glenochil, Perth and Shotts and HMP and YOI Polmont) and the building of two new prisons (HMP Low Moss and most recently HMP and YOI Grampian, which replaces HMPs Aberdeen and Peterhead). The redevelopment of the existing estate as well as the opening of private prison HMP Addiewell (December 2008), HMP Low Moss (March 2012) and HMP and YOI Grampian (March 2014) have made available up to 1,900 new fit-for-purpose prison places within Scotland.

28. Alongside this investment in the prison estate, action has been taken to help meet the recommendations made by the McLeish Commission through the Reducing Reoffending Programme. This action included the introduction of Community Payback Orders and the presumption against sentences of three months or less.

29. Effective community-based sentences are available for offenders, with nearly 16,000 Community Payback Orders issued in 2012-13, of which 80% included a requirement for unpaid

\(^4\) http://www.scotland.gov.uk/About/Review/spe
work or other activity. This amounts to over 1.5 million hours in total being imposed on offenders.

30. The evidence shows that short prison sentences do not work to rehabilitate offenders or reduce the risk of reoffending. Over half of those released from a prison sentence of six months or less are reconvicted within a year. The Scottish Government’s presumption against short sentences of three months or less ensures that the courts consider whether an effective community-based sentence is preferable to a short custodial sentence in any given case.

31. Reconviction rates in Scotland have decreased over the past decade. The average number of reconvictions per offender has fallen by 17% between 2002-03 and 2011-12, from 0.64 to 0.53. During the same period, the reconviction rate has fallen from 32.9% to 29.2%.

32. Through the Reducing Reoffending Programme, the Scottish Government is investing in reducing reoffending rates further. This includes the operation of the Reducing Reoffending Change Fund which is working to support ex-offenders after release so as to provide practical mentoring services to help them get their lives back on track and not to offend in future. Over the period 2013-15, £7.7m has been allocated to fund the delivery of a national offender mentoring service for young prolific male offenders and a national offender mentoring service for women offenders, and to fund the delivery of four regional or specialised projects utilising mentoring techniques to assist rehabilitation and desistance. In June 2014, the Scottish Government announced plans to extend the funding for these projects for up to another two years (2015-17) with the total amount of funding given through the Reducing Reoffending Change Fund being £18m over the period 2012-17.

33. The overall prison population level is kept under close review. Progress is being made on stabilising prisoner numbers with a fall of 2% from 8,014 (in 2012-13) to 7,851 (in 2013-14) in the average daily prison population.

34. Given the criterion set by the McLeish Commission has not yet been met and wider justice system constraints that exist, the Scottish Government has focused these reforms to end automatic early release on those prisoners who currently receive automatic early release who are likely to pose the most significant risks to public safety.

35. The Scottish Government remains committed to ending automatic early release once the conditions set by the McLeish Commission are met, with these reforms considered as an important step towards that goal.

The Parole Board for Scotland

36. There will be a limited additional burden on the Parole Board. This will relate to the need to schedule additional casework meetings for prisoners who previously would have been released automatically at the two-thirds point of sentence. As discussed previously, while some

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5 http://www.scotland.gov.uk/Publications/2014/05/4795/downloads
6 http://www.scotland.gov.uk/Publications/2014/06/1650
7 http://www.scotland.gov.uk/Publications/2014/06/1650
prisoners will remain in prison for the whole of their sentence following the reforms, other prisoners no longer receiving automatic early release will likely still receive discretionary early release by the Parole Board and this is factored into the estimates of additional consideration of cases by the Parole Board. These figures also assume that a small proportion of cases will require an oral hearing of evidence to allow the prisoner the opportunity to state their case where the prisoner challenges questions of fact.

37. The following table provides details of the expected impact on the Parole Board’s caseload.

<table>
<thead>
<tr>
<th>Year</th>
<th>Sex offenders sentenced to 4 years or more</th>
<th>Non-sex offenders sentenced to 10 years or more</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016/17</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2017/18</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2018/19</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2019/20</td>
<td>10</td>
<td>0</td>
<td>10</td>
</tr>
<tr>
<td>2020/21</td>
<td>30</td>
<td>0</td>
<td>30</td>
</tr>
<tr>
<td>2021/22</td>
<td>50</td>
<td>0</td>
<td>50</td>
</tr>
<tr>
<td>2022/23</td>
<td>70</td>
<td>0</td>
<td>70</td>
</tr>
<tr>
<td>2023/24</td>
<td>90</td>
<td>10</td>
<td>100</td>
</tr>
<tr>
<td>2024/25</td>
<td>110</td>
<td>20</td>
<td>130</td>
</tr>
<tr>
<td>2025/26</td>
<td>120</td>
<td>30</td>
<td>150</td>
</tr>
<tr>
<td>2026/27</td>
<td>140</td>
<td>40</td>
<td>180</td>
</tr>
<tr>
<td>2027/28</td>
<td>140</td>
<td>50</td>
<td>190</td>
</tr>
<tr>
<td>2028/29</td>
<td>150</td>
<td>60</td>
<td>210</td>
</tr>
<tr>
<td>2029/30</td>
<td>160</td>
<td>70</td>
<td>230</td>
</tr>
<tr>
<td>2030/31 and beyond</td>
<td>160</td>
<td>70</td>
<td>230</td>
</tr>
</tbody>
</table>

*Currently about 8% of sex offenders serving sentences of four years or more receive discretionary early release at the halfway point of sentence. Currently about 44% of non-sex offenders receiving sentences of 10 years or more receive discretionary early release at the halfway point of sentence.
These documents relate to the Prisoners (Control of Release) (Scotland) Bill (SP Bill 54) as introduced in the Scottish Parliament on 14 August 2014

38. The costs for the Parole Board are comparatively minimal with the expectation that, in the main, some additional casework meetings will be necessary plus a small number of oral hearings. The table below outlines the estimated cost impact.

| TABLE C - IMPACT ON PAROLE BOARD CASELOAD OF ENDING AUTOMATIC EARLY RELEASE FOR SEX OFFENDERS RECEIVING SENTENCES OF 4 YEARS OR MORE AND OTHER OFFENDERS RECEIVING SENTENCES OF 10 YEARS OR MORE |
|----------------------------------|------------|------------|------------|------------|
|                                  | Year       | 2016/17,   | 2017/18    | 2018/19    |
|                                  |            | 2019/20    | 2020/21    | 2030/31    |
| Increase in Parole Board Casework| 0          | 10         | 30         | 230        |
| Increase in Parole Board Casework Meetings | 0          | 1          | 2          | 12         |
| Additional recurring costs       | 0          | £1,000     | £4,000     | £30,000    |

Costs on local authorities

39. The estimated impact of the reforms will be that some prisoners will spend longer in custody. The period of time such prisoners will spend on licence in the community is likely, on average, to be reduced and it is not anticipated, therefore, that there will be any new costs falling on local authority criminal justice social work departments.

Costs on other bodies, individuals and businesses

40. There will be no new costs falling on other bodies, individuals and businesses.

Summary

41. Using the costings given in tables A, B and C, table D below provides a summary of the overall estimated cost of ending the automatic early release for certain categories of prisoners.

42. The figures in table D are based on the Scottish Government’s estimate as to the potential impact being an increase of 140 in the average daily prison population. If the impact in terms of additional prison places is toward the upper scenario (150 prison places) or the lower scenario (100 prison places) as discussed in paragraphs 5 to 8 of this Financial Memorandum, the overall estimated costs would accordingly be either approximately 7% higher or approximately 30% lower than indicated in table D.
TABLE D – ESTIMATED COST OF ENDING AUTOMATIC EARLY RELEASE FOR CERTAIN CATEGORIES OF PRISONER

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-recurring costs</td>
<td>£117,000 B</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Recurring costs</td>
<td>Nil</td>
<td>Nil</td>
<td>£33,000 B</td>
<td>£900,000 A</td>
<td>£1,300,000 A</td>
<td>£6,000,000 A</td>
<td>£133,000 B</td>
</tr>
<tr>
<td>Total</td>
<td>£117,000</td>
<td>Nil</td>
<td>£33,000</td>
<td>£968,000</td>
<td>£1,404,000</td>
<td>£6,418,000</td>
<td></td>
</tr>
</tbody>
</table>

*Letter following figures refers to the table within this Financial Memorandum where information has been taken.

RELEASE TIMED TO BENEFIT RE-INTEGRATION

Costs on the Scottish Administration

43. The current level of reoffending has significant implications for Scottish society. The total economic and social cost of reoffending in Scotland is estimated at £3 billion a year and, on average, each prisoner released from a short sentence goes on to commit offences costing society over £390,000 over a 10-year period\(^9\). The Scottish Government considers that achieving a reduction in reoffending requires the successful reintegration of offenders into Scotland’s communities and a cross-sectoral approach with close links between the criminal justice system and wider public sector services.

44. In 2011-12, there were approximately 10,500 liberations of convicted prisoners, of which a large proportion (about 4,000 or 40%\(^10\)) were released either on a Friday or the Thursday preceding a long public holiday weekend. It is difficult to assess how often the additional discretion would be used by the SPS as it will be driven by need on a case-by-case basis. However, giving the SPS discretion to be able to avoid having to release an offender with reintegration needs on a given release date, such as a Friday when services may be unavailable, is likely to bring long term efficiency savings.

45. The Bill’s provisions in relation to additional flexible release will allow the SPS to release a prisoner up to two working days in advance of their release date where this will better meet their reintegration needs, e.g. a prisoner is due for release from a national establishment and is required to travel a long distance back to their community to secure settled accommodation in advance of a weekend. This discretion will provide for the better linking of prisoners in custody with the services they need to stabilise their lives outside of prison. The opportunity to have

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\(^10\) Scottish Government Justice Analytical Services analysis
targeted release with some additional flexibility to release a prisoner based on awareness of prisoners’ circumstances pre-custody is likely to reduce the need for crisis-driven service delivery, which can often involve out of hours support services, and generally this new flexibility should positively impact on reoffending rates. The financial and societal benefit of this approach is consistent with the Scottish Government’s preventative spend agenda.

46. The SPS operationally will have the discretion to decide whether to release a prisoner up to two days earlier than their planned release date and the SPS has advised that the reforms will have minimal resource implications for it. This is because arrangements for the offender’s release already require to be made by the SPS and existing procedures will be utilised to link to the SPS’s multi-agency Integrated Case Management process to determine if use of the discretionary power is required for an individual prisoner on a case-by-case basis.

47. The costs and efficiencies associated with minimising the need for prisoners to have to access emergency support upon release are difficult to quantify. However, wider research suggests that improved levels of access to stable accommodation and other vital support services can make a difference of over 20% in terms of reduction in reconviction\footnote{See page 94 of \url{http://www.nobars.org.au/downloads/Reducing-Reoffending-Report.pdf}}. The Scottish Government considers that enhancing the SPS’s flexibility to support prisoners to resettle in communities is likely to bring long-term efficiency savings as services are able to be provided on a more proactive basis rather than reactive basis.

48. More generally, the Bill’s provisions in relation to flexible release complement wider developments in relation to reducing reoffending, such as the SPS’s Throughcare Support Officers working in HMP Greenock\footnote{\url{http://www.sps.gov.uk/MediaCentre/HMP_Greenock_Throughcare_Service.aspx}} who assist offenders upon release by facilitating access to community-based services, and the provision of mentoring services through the Reducing Reoffending Change Fund.

**Costs on local authorities**

49. There will be no new costs falling on local authorities and there may be some savings over time as there is less reactive expenditure, such as out of hours support services, needed to address the reintegration needs of prisoners leaving custody. It is not possible to quantify the extent of any savings given the uncertainty over how frequently the discretion will be used to adjust prisoner release dates.

**Costs on other bodies, individuals and businesses**

50. There will be no new costs falling on other bodies, individuals and businesses.
These documents relate to the Prisoners (Control of Release) (Scotland) Bill (SP Bill 54) as introduced in the Scottish Parliament on 14 August 2014

SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

On 14 August 2014, the Cabinet Secretary for Justice (Kenny MacAskill MSP) made the following statement:

“In my view, the provisions of the Prisoners (Control of Release) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 13 August 2014, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Prisoners (Control of Release) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
PRISONERS (CONTROL OF RELEASE) (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Prisoners (Control of Release) (Scotland) Bill introduced in the Scottish Parliament on 14 August 2014. It has been prepared by the Scottish Government to satisfy Rule 9.3.3 of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 54–EN.

POLICY OBJECTIVES OF THE BILL

2. The provisions in the Bill will help reduce reoffending and improve public safety through making changes in two areas of the system of prisoner release.

3. The Bill ends the system of automatic early release for certain prisoners in the interests of protecting public safety. The Bill also provides the Scottish Ministers with limited new flexibility to adjust exact release dates for individual prisoners where there exists a need to ensure immediate access for a prisoner to support services upon release from custody, with the aim of facilitating reintegration into the community and reducing the risk of reoffending.

4. The Bill will help contribute to the Scottish Government’s national outcome of helping people live their lives safe from crime, disorder and danger by ending automatic early release for the offenders who are likely to pose the biggest risks to public safety and who currently receive automatic early release. This is because such prisoners will, under the reforms in the Bill, only be considered for early release on the basis of an assessment of the risks they pose to public safety. Where a prisoner is assessed by the independent Parole Board as posing an unacceptable risk to public safety throughout their sentence, the prisoner will serve their entire sentence in custody with the effect that the public is protected.

5. The limited new discretion being given in the Bill to the Scottish Ministers to bring forward a release date by up to two days for individual prisoners to benefit reintegration will also contribute to this national outcome. By allowing a prisoner’s specific release date to be brought forward, it will ensure access to support services that assist prisoners who have left custody to reintegrate into their communities. This approach will help reduce reoffending and keep our communities safer.
6. In line with the Scottish Government’s Justice Strategy\(^1\), the Bill will help ensure people experience low levels of crime as well as experience low levels of fear, alarm and distress. The Bill will also help people to have high levels of confidence in justice institutions and processes.

**Ending automatic early release for certain categories of prisoner**

**Background**

7. For almost as long as Scotland’s system of criminal justice has existed, a system of early release has operated. The basis for this approach of allowing prisoners to be able to leave custody and serve part of their sentence in the community is recognition that a system of early release can be appropriate if it is focused on helping motivate individual prisoners to become rehabilitated and encouraging effective reintegration of prisoners into communities so as to reduce risks to public safety.

8. In recent times however, the system of early release in Scotland has lost focus on the individual prisoner. The current system of automatic early release, introduced in 1995 by the then UK Government, allows no discretion to consider whether an individual prisoner would pose an unacceptable risk to public safety through reoffending if released.

9. The current system operates so that once a prisoner reaches:
   - the half-way point of a sentence of less than four years (short-term prisoners); or
   - the two-thirds point of a sentence of four years or more (long-term prisoners),

   the prisoner must, by law, be released from prison\(^2\).

10. This system is commonly known as the system of automatic early release. Anyone who receives a life sentence, such as for murder, does not receive automatic early release as any release from custody from a life sentence only takes place following a decision by the Parole Board\(^3\) and this Bill does not affect the system of enforcement of life sentences.

11. In any system of early release, there is a risk of prisoners going on to commit further offences and concerns are often expressed whenever such individual circumstances arise, in particular where the further crimes are serious. However, these concerns are often significantly heightened when a prisoner who commits a further offence has benefitted from being released automatically from prison early.

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\(^1\) [http://www.scotland.gov.uk/Topics/Justice/justicestrategy](http://www.scotland.gov.uk/Topics/Justice/justicestrategy)

\(^2\) Where a prisoner receives two (or more) sentences where the court orders that at least one of the sentences is to run consecutive to another of the sentences, the law operates so that it is the combined length (known as ‘single termed’) period of imprisonment that determines whether a prisoner is a short-term or long-term prisoner. For example, a person receiving a three-year sentence for an offence and a two-year sentence for a different offence where the court determines that the two-year sentence should run consecutive to the three-year sentence. This will become a single-termed sentence of five years and the person will be a long-term prisoner. References to sentences of particular lengths within this Policy Memorandum should generally be read as including single-termed periods of imprisonment unless otherwise specified.

\(^3\) All life sentence prisoners must first serve the ‘punishment part’ of their sentence as laid down by the High Court before they can be considered for parole.
12. When a long-term prisoner receives automatic early release, they will receive non-parole licence conditions set by the Parole Board\textsuperscript{4}. Conditions will include requiring a prisoner to report promptly to a supervising officer, to co-operate with a supervising officer and to tell a supervising officer if they change addresses and get, change or lose a job.

13. Non-parole licence conditions will also specify that committing a further criminal offence will be a breach of licence conditions and a prisoner may be recalled to resume serving their sentence in custody. In addition, the court can impose a custodial sentence for the new offence as well as an additional punishment on the prisoner for having committed the new offence while on licence from an existing sentence.

14. Separate to the general system of licence conditions, special provision exists for the management and monitoring of sex offenders, given the particular impact that reoffending by sex offenders can have. All sex offenders receiving sentences of six months or over receive licence conditions and such offenders are also subject to the sex offender notification requirements of Part 2 of the Sexual Offences Act 2003\textsuperscript{5} and assessed for management under the system of multi-agency public protection arrangements (commonly known as MAPPA\textsuperscript{6}).

15. MAPPA are a statutory set of arrangements operated by Police Scotland, local authorities and the Scottish Prison Service, acting as the responsible authorities. The purpose of MAPPA is public protection and managing the risk of serious harm. MAPPA is not a statutory body in itself, but is a mechanism through which the responsible authorities discharge their statutory responsibilities and protect the public in a co-ordinated manner.

16. Each relevant sex offender is risk assessed and each case will be reviewed through the MAPPA. Following the risk assessment, a risk management plan will be put in place to ensure the correct and necessary level of management follows for each offender.

17. Although all long-term prisoners and sex offenders receiving sentences of six months or more are the subject of licence conditions after receiving automatic early release and, in addition, sex offenders are subject to notification requirements and assessed through MAPPA, these regimes relate to management of these offenders when they are in the community. Public policy concerns in this area focus on the position of serious offenders who are able to benefit from automatic early release in the first place without any consideration being able to be given to the risks to public safety they pose\textsuperscript{7,8}.

18. The overall impact of the reforms in this Bill would be that a prisoner would be kept in prison for the entire sentence if the Parole Board considered that they posed an unacceptable risk to public safety throughout the period of their sentence when they are able to be considered for parole.

\textsuperscript{4} http://www.scottishparoleboard.gov.uk/faq.asp?q=1#1
\textsuperscript{5} http://www.legislation.gov.uk/ukpga/2003/42/contents
\textsuperscript{6} http://www.scotland.gov.uk/Topics/Justice/policies/reducing-reoffending/sex-offender-management/protection
\textsuperscript{7} http://www.dailyrecord.co.uk/news/scottish-news/da-vinci-rapist-robert-greens-1115102
\textsuperscript{8} http://www.dailyrecord.co.uk/news/scottish-news/familys-fury-as-child-sex-monster-1082171
Effect of the Bill’s provisions

19. The provisions in the Bill will end automatic early release of two categories of prisoner. The two categories are:
   - Offenders receiving sentences of four years or more for a sexual offence; and
   - Offenders receiving sentences of 10 years or more for any type of offence.

20. The current law, which means prisoners reach the two-thirds point of sentence and are released with no consideration given to the risks they pose, will be replaced with the independent Parole Board being empowered to consider early release decisions based on an assessment of the risks to public safety an individual prisoner poses.

21. The Scottish Government considers that this is the best way to protect the public from those who pose unacceptable risks to public safety. Discretionary early release for individual prisoners can still take place to help such prisoners be reintegrated into the community, but only where an acceptable level of risk exists with any given individual prisoner.

22. Following the reforms being implemented, the two categories of prisoner affected by the reforms will continue to be considered for discretionary early release from the halfway point of their sentence through consideration by the Parole Board. However, these prisoners will no longer be eligible for automatic early release if they are still in custody at the two-thirds point of sentence. Instead, the Parole Board will be empowered to continue to consider the risks an individual prisoner poses from the two-thirds point of sentence onwards when deciding whether discretionary early release is appropriate.

23. The overall effect of the Bill is that offenders receiving sentences where at least four years of the sentence is attributable to a sexual offence, and offenders receiving sentences of 10 years or more for any type of offence, will only receive early release at any point in their sentence if the Parole Board is satisfied that an individual prisoner poses an acceptable risk to public safety. The Parole Board will regularly consider the case of individual prisoners between the halfway point of sentence and the end of sentence and, if the Parole Board comes to the view that an individual prisoner poses an unacceptable risk to public safety each time they are considered for parole, this will mean the prisoner will serve their entire sentence in custody.

24. For example, prisoner A receives a sentence for sexual assault of six years.

25. Under the existing system, prisoner A can be considered for parole at the halfway point of sentence (three years). If prisoner A is in custody at the two-thirds point of sentence (i.e. the Parole Board has decided that prisoner A poses an unacceptable risk to public safety when considered for parole three years into their sentence), prisoner A will receive automatic early release at the two-thirds point of sentence (four years).

26. Under the reforms in this Bill, prisoner A will continue to be considered for parole after three years. However, if prisoner A is in custody at the four-year point of their sentence, they will no longer receive automatic early release and will instead continue to be able to be considered for parole for the rest of their sentence. If the Parole Board considers that prisoner A
poses an unacceptable risk to public safety each time they are considered for parole throughout their sentence, prisoner A will remain in custody for their entire six-year sentence.

27. Another example would be prisoner B who receives a 12-year sentence for a serious assault.

28. Under the existing system, prisoner B can be considered for parole at the halfway point of sentence (six years). If prisoner B is in custody at the two-thirds point of sentence (i.e. the Parole Board has decided that prisoner B poses an unacceptable risk to public safety when considered for parole six years into their sentence), prisoner B will receive automatic early release at the two-thirds point of sentence (eight years).

29. Under the reforms in this Bill, prisoner B will continue to be considered for parole after six years. However, if prisoner B is in custody at the eight-year point of their sentence, they will no longer receive automatic early release and will instead continue to be able to be considered for parole for the rest of their sentence. If the Parole Board considers that prisoner B poses an unacceptable risk to public safety throughout their sentence, prisoner B will remain in custody for their entire 12-year sentence.

30. A further example would be for prisoner C who is convicted of two separate offences and the court imposes a sentence of three years for sexual assault and two years for a separate sexual assault. The court orders that the second sentence is to run consecutive to the first sentence and therefore the overall single-termed sentence is five years.

31. Under the existing system, prisoner C can be considered for parole at the halfway point of sentence (two years six months). If prisoner C is in custody at the two-thirds point of sentence (i.e. the Parole Board has decided that prisoner C poses an unacceptable risk to public safety when considered for parole two years six months into their sentence), prisoner B will receive automatic early release at the two-thirds point of sentence (three years four months).

32. Under the reforms in this Bill, prisoner C will continue to be considered for parole after two years six months. However, if prisoner C is in custody at the three years four months point of their sentence, they will no longer receive automatic early release and will instead continue to be able to be considered for parole for the rest of their sentence. If the Parole Board considers that prisoner C poses an unacceptable risk to public safety throughout their sentence, prisoner C will remain in custody for their entire five-year sentence.

33. A final example would be for prisoner D who is convicted of two separate offences and the court imposes a sentence of three years for sexual assault and two years for a separate breach of the peace. The court orders that the second sentence is to run consecutive to the first sentence and therefore the overall single-termed sentence is five years.

34. Under the existing system, prisoner C can be considered for parole at the halfway point of sentence (two years six months). If prisoner C is in custody at the two-thirds point of sentence (i.e. the Parole Board has decided that prisoner C poses an unacceptable risk to public safety
when considered for parole at two years six months into their sentence), prisoner B will receive automatic early release at the two-thirds point of sentence (three years four months).

35. Under the reforms in this Bill, prisoner C will continue to be considered for parole after two years six months. As a result of the term attributable to the sexual offence conviction being less than four years (i.e. three years for sexual assault), the prisoner will continue to receive automatic early release and the Bill’s reforms will not impact on them.

36. The effect of these reforms is that the risk to public safety of an individual prisoner will be the determining factor in decisions made about whether to release the most serious offenders early from prison. It should be noted that the Bill will not in any way affect the discretion of the independent judiciary to decide appropriate sentences in individual cases, with this reform being about how sentences are enforced rather than how sentences are determined.

37. The reforms will not affect prisoners serving sentences at the time the relevant provisions are brought into force. This will mean that any prisoner who has already been sentenced prior to the relevant provisions coming into force will have their sentence administered in line with the current legislative framework with automatic early release taking place at the two-thirds point of sentence.

38. If the reforms in the Bill had been in place since the current automatic early release regime was implemented in 1995, it is estimated that nearly 2,200 serious offenders would have entered prison knowing they would not be receiving automatic early release at any point in their sentence. Between 1995 and 2013, this consists of approximately 1,510 sex offenders and approximately 640 other serious offenders. This equates to one fifth (22%) of the approximate 9,800 offenders given sentences of four years or more between 1995 and 2013.

Offenders – sentences of four years or more attributable to sexual offences

39. The Scottish Parliament has previously made special provision for sex offenders in relation to early release arrangements. All sex offenders receiving sentences of six months or more receive licence conditions upon early release and this compares with other offenders where it is only sentences of four years or more which automatically lead to licence conditions being imposed. This change was made in the Management of Offenders (Scotland) Act 20059. There have also been a number of other legislative provisions aimed specifically at managing this category of offender through, for example, the systems of sex offender notification and MAPPA described above.

40. The arrangements in place for sex offenders relate to the long-term and significant impact sex offending has on its victims and communities in general. While data about reoffending rates does not generally show a higher risk of reoffending by sex offenders, it is the very specific devastating impact that sex offending and reoffending behaviour has on victims, their families and wider communities which led to the development of these special arrangements in order to help protect the public and reduce levels of fear and alarm.

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41. When assessing how to develop policy to end automatic early release for certain categories of prisoner, the Scottish Government wanted to build on the existing special arrangements for sex offenders. The Scottish Government considers that it is appropriate for the reforms to apply to all sentences where at least four years of the sentence is attributable to sexual offences (i.e. all long-term sentences given for sex offences) so that automatic early release is ended for such offenders.

42. The table below provides details of the main types of sexual offence which offenders commit where sentences of four years or more are received.

<table>
<thead>
<tr>
<th>Crime type</th>
<th>2005-06</th>
<th>2006-07</th>
<th>2007-08</th>
<th>2008-09</th>
<th>2009-10</th>
<th>2010-11</th>
<th>2011-12</th>
<th>Average per year</th>
<th>% of total sexual crimes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rape and attempted rape</td>
<td>34</td>
<td>34</td>
<td>28</td>
<td>29</td>
<td>37</td>
<td>22</td>
<td>35</td>
<td>31.3</td>
<td>46%</td>
</tr>
<tr>
<td>Sexual assault</td>
<td>16</td>
<td>22</td>
<td>20</td>
<td>28</td>
<td>32</td>
<td>25</td>
<td>21</td>
<td>23.4</td>
<td>35%</td>
</tr>
<tr>
<td>Other indecency</td>
<td>14</td>
<td>13</td>
<td>4</td>
<td>17</td>
<td>20</td>
<td>7</td>
<td>14</td>
<td>12.7</td>
<td>19%</td>
</tr>
</tbody>
</table>

Offenders – sentences of 10 years or more attributable to any type of offences

43. Alongside the Scottish Government’s intent to focus the policy to address the impact of sex offending on victims, families and communities, the Scottish Government considers it appropriate to focus the policy more generally on those offenders who are likely to pose the highest risks to public safety.

44. While sentence length is not necessarily the only way of assessing risk, the Scottish Government considers that it is appropriate to focus the policy on those offenders who have received the longest fixed sentences. Data in the table below shows that those receiving sentences of 10 years or more are largely convicted of serious crimes of violence (64%) and, to a lesser extent, sexual (23%) and drugs-related (9%) offences.

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10 Justice Analytical Services research
This document relates to the Prisoners (Control of Release) (Scotland) Bill (SP Bill 54) as introduced in the Scottish Parliament on 14 August 2014.

<table>
<thead>
<tr>
<th>Crime type</th>
<th>2005-06</th>
<th>2006-07</th>
<th>2007-08</th>
<th>2008-09</th>
<th>2009-10</th>
<th>2010-11</th>
<th>2011-12</th>
<th>Average per year</th>
<th>% of total crimes</th>
</tr>
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<td>Homicide</td>
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<td>4</td>
<td>19</td>
<td>9</td>
<td>8</td>
<td>12</td>
<td>8</td>
<td>9.2</td>
<td>21%</td>
</tr>
<tr>
<td>Serious assault and attempted murder</td>
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<td>15</td>
<td>14</td>
<td>10</td>
<td>15</td>
<td>15</td>
<td>14</td>
<td>13.7</td>
<td>32%</td>
</tr>
<tr>
<td>Robbery</td>
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<td>9</td>
<td>4</td>
<td>3</td>
<td>0</td>
<td>3</td>
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<tr>
<td>Other violence</td>
<td>3</td>
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</tr>
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<td>Rape and attempted rape</td>
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<td>9</td>
<td>11</td>
<td>7</td>
<td>7</td>
<td>5</td>
<td>2</td>
<td>6.7</td>
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<tr>
<td>Sexual assault</td>
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<td>0</td>
<td>1</td>
<td>1</td>
<td>4</td>
<td>1</td>
<td>1.4</td>
<td>3%</td>
</tr>
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<td>Fraud</td>
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<td>0</td>
<td>0.1</td>
<td>0%</td>
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<td>0</td>
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<td>0%</td>
</tr>
<tr>
<td>Drugs</td>
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<td>7</td>
<td>0</td>
<td>3</td>
<td>6</td>
<td>5</td>
<td>3</td>
<td>3.7</td>
<td>9%</td>
</tr>
<tr>
<td>Other crime</td>
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<td>0</td>
<td>4</td>
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<td>0</td>
<td>0.6</td>
<td>1%</td>
</tr>
<tr>
<td>Common assault</td>
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<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0.4</td>
<td>1%</td>
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<tr>
<td>Other offences</td>
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<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
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<td>1</td>
<td>0.4</td>
<td>1%</td>
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<td>0.1</td>
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</tbody>
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11 Justice Analytical Services research
45. The reforms to end automatic early release for certain categories of prisoner will not affect all prisoners within these categories. Any prisoner within these categories will still be able to be considered for parole from the halfway point of sentence and individual prisoners will be unaffected by the ending of automatic early release if they have already been released on parole before the two-thirds point of sentence.

46. In addition, the reforms will not mean that all prisoners affected by the ending of automatic early release (i.e. those in prison at the two-thirds point of sentence) will necessarily serve their entire sentence in custody. Prisoners will be able to be considered on a regular basis for parole and if the Parole Board is satisfied that a prisoner poses an acceptable risk to public safety at a given point in the sentence, discretionary early release on parole licence will take place.

47. It is likely, though, that some prisoners within these categories will in the future serve either all or almost all of their sentences in custody. This will happen where an individual prisoner is assessed as posing an unacceptable risk to public safety by the Parole Board throughout the period of their sentence when they can be considered for parole (i.e. halfway point until the end of sentence). The Scottish Government considers that this is a proportionate and legitimate impact of ending automatic early release for these categories of prisoner which will help protect the public.

Use of extended sentences

48. There is existing provision in the Criminal Procedure (Scotland) Act 1995\(^{12}\) giving courts powers to impose an extended sentence on any offender who is convicted on indictment of a relevant sexual or violent offence, as defined in the legislation, in circumstances where the court is of the opinion that the period of supervision on licence, which the offender would otherwise be subject to, would not be adequate for the protection of the public from serious harm from the offender.

49. An extended sentence is defined as being the aggregate of the term of imprisonment which the court would otherwise have imposed, known as “the custodial term”, and a further period, known as the “extension period”, for which the offender is to be on licence and which is in addition to any licence period attributable to the custodial term. The maximum extension period is 10 years.

50. In 2012/13, Scottish courts imposed 165 extended sentences\(^ {13}\). The equivalent figure in 2011/12 was 206 extended sentences\(^ {14}\).

51. The scenario outlined above of some prisoners now being likely to serve all their sentences in custody may give rise to concern that a prisoner will be released at the end of their


\(^{13}\) Courts also have powers to impose supervised release orders on short-term prisoners, who otherwise would not have licence conditions in place upon early release, where the court considers licence conditions are necessary to protect the public from serious harm. The relevant legislation is section 209 of the Criminal Procedure (Scotland) Act 1995.

\(^{14}\) Scottish Government Justice Analytical Services research
sentence without the benefit of licence conditions being in place in order to monitor and supervise the prisoner as they attempt to re-integrate into the community. However, the Scottish Government considers that the absolute priority is to protect the public, which justifies ending the automatic early release of prisoners who have been assessed as posing an unacceptable risk to public safety when considered for parole from the halfway point of sentence onwards.

52. The Scottish Government considers that the existing framework of extended sentences can be utilised to allow for monitoring and supervision of prisoners upon eventual release in any relevant given case.

53. Using the example of prisoner A above, they received a sentence of six years for sexual assault. At the point of sentence, the court can impose an extended sentence on prisoner A if it reaches a view that the period of supervision on licence, which prisoner A would otherwise be subject to, would not be adequate for the protection of the public from serious harm from the offender.

54. Following the reforms, the court may consider that prisoner A is unlikely to be authorised for release on parole due to the risks to public safety and, therefore, the court may take the view that prisoner A is likely to serve their six-year sentence in custody. Under existing law, the court can consider imposing an extended sentence on prisoner A so that licence conditions are in place following the expiry of the custodial term of six years to allow for monitoring and supervision of prisoner A in the community upon release. What will have changed through the reforms is that the assessment of the court will need to take into account that prisoner A will no longer receive automatic early release after four years.

55. It may be that, for example, an extended period of licence of three years is imposed by the court. Under the existing system, this would mean that prisoner A receives an overall extended sentence of nine years, with automatic release after four years and licence conditions in place for five years (two years for the remaining custodial term and three years for the extension period). Following the reforms in this Bill and if prisoner A served all their custodial term in prison, an extended sentence of nine years would result in prisoner A spending six years in custody and licence conditions in place for three years. During the extended period of three years, prisoner A would be subject to monitoring and supervision and liable to recall to custody if they breached their licence conditions.

56. A decision as to whether to impose an extended sentence will continue to be for the court to make on a case-by-case basis. Use of extended sentences is already well established within the Scottish justice system and the Scottish Government considers that the reforms in this Bill to end automatic early release for certain categories of prisoner will potentially bring into sharper focus the merits of imposing an extended sentence in individual cases.

Incentivising prisoners to engage with prison rehabilitation programmes

57. The Scottish Government considers that the effect of ending automatic early release for certain categories of prisoner may help incentivise some prisoners who currently do not engage with efforts of rehabilitation within prison to do so in the future.
58. Under the existing system, a prisoner serving, say, a sentence of six years for a sexual offence will know that they will receive automatic early release at the four-year point of sentence. This knowledge may impact on how the prisoner approaches efforts within prison to rehabilitate. While many prisoners do engage with efforts to assess what has caused their offending behaviour while in custody, some prisoners will make a decision not to engage with the knowledge that they will be released at the two-thirds point of sentence in any event.

59. It is important to note that how a prisoner engages with the prison authorities is not the factor that determines whether a prisoner should be authorised for release on parole. Consideration of public safety is the determining factor in making such decisions. However, the Parole Board website makes clear that:

‘... bad behaviour and breaching prison rules certainly does not help an offender’s case for parole. However, the Parole Board must look at wider issues than the offender’s behaviour in custody. The Board has regard to a wide range of information when considering the case from a variety of sources. The prisoner’s criminal record, his/her family background, what counselling/courses he/she has undertaken while in custody in order to address the causes of offending, the response to such counselling and the prisoner’s plans for release are all important.’

60. A wider benefit of the reforms may be that some prisoners who currently do not engage with rehabilitation efforts will, in future, decide that it is the prisoner’s own interests to seek to engage positively with the prison authorities while in custody.

Ending automatic early release completely

61. As noted above, the current system of automatic early release has been in place since the mid-1990s. Any proposal for fundamental changes to the operation of the system of early release for all prisoners, appropriately and effectively focused on individual prisoners and the risks they pose, must take account not only of issues of public safety, but also prisoner numbers, access to services and the capacity of and investment in the prison estate.

62. The report of the independent McLeish Prisons Commission in 2008 recommended that steps to end the current system of early release could only be taken once prison numbers are established at a longer-term, lower-trend level so that capacity within the prison estate is available to deal with the short to medium term impact of making changes to the system of early release.

15 http://www.scottishparoleboard.gov.uk/faq.asp?q=6#6
16 http://www.scotland.gov.uk/About/Review/spc
63. Between 2007/08 and 2013/14, Scottish Government investment in the prison estate has been as below:

<table>
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<th>YEAR</th>
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<tr>
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<td>50.504</td>
<td>3.059</td>
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<td>2008/09</td>
<td>96.961</td>
<td>3.270</td>
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<tr>
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<td>135.845</td>
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<td>62.566</td>
<td>15.482</td>
<td>78.048</td>
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<tr>
<td>2012/13</td>
<td>69.015</td>
<td>3.308</td>
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<tr>
<td>2013/14</td>
<td>28.838</td>
<td>4.837</td>
<td>33.675</td>
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<tr>
<td>Total -2007/08 to 2013/14</td>
<td>528.453</td>
<td>36.588</td>
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64. The total infrastructure investment of £528m over the period 2007/08 to 2013/14 represents an increase of £198m (60%) over the corresponding period 2000/01 to 2006/07 (when total infrastructure investment was £330m).

65. This investment in infrastructure between 2007/08 and 2013/14 has allowed for the full redevelopment of five existing prisons (HMPs Edinburgh, Glenochil, Perth and Shotts and HMP and YOI Polmont) and the building of two new prisons (HMP Low Moss and most recently HMP and YOI Grampian, which replaces HMPs Aberdeen and Peterhead). The redevelopment of the existing estate as well as the opening of private prison HMP Addiewell (December 2008), HMP Low Moss (March 2012) and HMP and YOI Grampian (March 2014) have made available up to 1,900 new fit-for-purpose prison places.

66. Alongside this investment in the prison estate, action has been taken to help meet the recommendations made by the McLeish Commission through the Reducing Reoffending Programme, including the introduction of Community Payback Orders and the presumption against sentences of three months or less.

67. Effective community-based sentences are available for offenders, with nearly 16,000 Community Payback Orders issued in 2012-13, of which 80% included a requirement for unpaid work or other activity\(^{17}\). This amounts to over 1.5 million hours in total being imposed on offenders.

68. The evidence shows that short prison sentences do not work to rehabilitate offenders or reduce the risk of reoffending. Over half of those released from a prison sentence of six months or less are reconvicted within a year\(^{18}\). The Scottish Government’s presumption against short sentences of three months or less ensures that the courts consider whether an effective community-based sentence is preferable to a short custodial sentence in any given case.

\(^{17}\) [http://www.scotland.gov.uk/Publications/2014/05/4795/downloads](http://www.scotland.gov.uk/Publications/2014/05/4795/downloads)

\(^{18}\) [http://www.scotland.gov.uk/Publications/2014/06/1650](http://www.scotland.gov.uk/Publications/2014/06/1650)
69. Reconviction rates in Scotland have decreased over the past decade. The average number of reconvictions per offender has fallen by 17% between 2002-03 and 2011-12, from 0.64 to 0.53. During the same period, the reconviction rate has fallen from 32.9% to 29.2%.

70. In addition, the Scottish Government is investing in reducing reoffending rates further, and this includes the Reducing Reoffending Change Fund, worth up to £18 million, which is working over five years (2012-2017) to support ex-offenders after release and to provide practical mentoring services to help offenders get their lives back on track and not to offend in future.

71. The overall prison population level is kept under close review. As at 15 June 2014, the average daily prison population was 7,811. Progress is being made on stabilising the prison population, which has been falling since 2011-12, with a fall of 2% in the annual daily average between 2012-13 and 2013-14, from 8,014 to 7,851.

72. Given that the criterion set by the McLeish Commission has not yet been met and wider justice system constraints, the Scottish Government has focused the reforms to end automatic early release on those prisoners who currently receive automatic early release who are likely to pose the most significant risks to public safety.

73. The Scottish Government is committed to ending automatic early release for all prisoners once the conditions set by the McLeish Commission are met and these reforms are an important step towards that goal.

**Release timed to benefit re-integration – limited flexibility for Scottish Ministers**

*Background*

74. The current level of reoffending has significant implications for public services and the public purse. Evidence indicates that achieving a reduction in reoffending requires the successful reintegration of prisoners back into Scotland’s communities, particularly in the first few days after release from prison. This is consistent with phase two of the Scottish Government’s Reducing Reoffending Programme which is focused on making sure that people who have offended have access to services and make the most of opportunities so that they fulfil their responsibilities as citizens and move away from offending.

75. Reducing reoffending requires a cross-sectoral approach with close links between the criminal justice system and other wider public and third sector partners. A Ministerial Group for Offender Reintegration was established in October 2013 in order to address this demand for better integration between the criminal justice system and wider public services to facilitate a reduction in reoffending. Individuals rely on key public and third sector services to address a range of basic and practical requirements upon release from prison. Failure to do so in a timely and effective manner is likely to hinder a prisoner’s ability to turn their lives around and live free from crime.

[19](http://www.scotland.gov.uk/Publications/2014/06/1650)

[20](http://www.scotland.gov.uk/Topics/archive/law-order/offender-management)
This document relates to the Prisoners (Control of Release) (Scotland) Bill (SP Bill 54) as introduced in the Scottish Parliament on 14 August 2014

76. In 2011-12, there were approximately 10,500 liberations of convicted prisoners, of which a large proportion (about 4,000 or 40%\textsuperscript{21}) were released on a Friday, or the Thursday preceding a long public holiday weekend. Release on the days preceding weekends and public holidays is consistently raised as a key barrier to plugging the gap between receipt of support in custody and access to wider services in the community.

77. The ability of prisoners to be able to access key public services such as housing, welfare and addictions advice on the day they are released can be critical in helping people desist from further offending. This problem can become even more acute when release is immediately preceding weekends or public holidays.

78. Under the Bill’s reforms, prisoners will still likely, in the vast majority of cases, continue to be released on their stated release date. However, where there is compelling evidence that suitable arrangements are required to address their reintegration needs and these cannot be addressed immediately upon release, the Scottish Ministers will have the discretion to release an offender up to two days in advance of their release date. The Scottish Government considers this additional flexibility will allow the closer integration of prison and the community in order to secure vital support needed to stabilise offenders’ lives, protect Scotland’s communities and reduce reoffending.

79. This discretion will be applied in practice by the Scottish Prison Service. The use of the discretion will take into account a prisoner’s individual circumstances so that reintegration is tailored to the individual needs of prisoners. The reintegration need envisaged may include timely access to services such as drug or alcohol treatment or stable accommodation, which may be more readily available on a day which is before the prisoner’s date of release. Linking people effectively to the support they need to successfully reintegrate will reduce risk to public safety and help to reduce reoffending.

80. The Scottish Government will work in partnership with the Scottish Prison Service to produce guidance on the circumstances in which the discretion will be applied across the prison estate.

\textit{Effect of the Bill’s provisions}

81. The Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) currently provides that, when a prisoner falls to be released on a Saturday, Sunday or public holiday, they will be released on the last working day before weekends or public holidays.

82. The Bill gives the Scottish Ministers the discretion to release a prisoner on the day which will better meet the reintegration needs of a prisoner. The Bill’s provisions will not impact on the current obligation to release prisoners on the last working day before weekends or public holidays. The Bill provides the Scottish Ministers with an additional flexibility to bring forward the release date of a prisoner by no more than two days where there is compelling evidence that this will better support the successful reintegration of an individual leaving custody back into the community. The overall effect of the flexible release provisions are that prisoners can be

\textsuperscript{21} Scottish Government Justice Analytical Services analysis
released either one or two working days in advance of their release date, including where this release date may have been moved forward to avoid a weekend or public holiday release.

83. An illustrative example of how the discretion might be used would be prisoner A who is due to be released on a Friday. The Scottish Prison Service assesses the prisoner as having a range of multiple and complex needs and notes that the prisoner will have to travel a long distance to their home community upon release. Under the existing system, prisoner A would have to be released despite it being the case that they would not arrive in their home community until Friday evening with crucial services such as housing provision not able to be provided over the weekend. Under the proposals, the Scottish Prison Service will consider the case of prisoner A and would have the discretion to release the prisoner on the Wednesday or the Thursday if this was tied to a specific reintegration need such as the provision of stable accommodation or availability of addictions and substance misuse advice.

84. In cases where a prisoner’s release date falls on either a weekend or a public holiday, the Bill will not affect the operation of current law which means a prisoner’s release takes place on the previous working day e.g. if release is scheduled for Saturday, the release date is brought forward to Friday. However, the Bill’s provisions will mean that where a prisoner was due to be released on Saturday, which then was brought forward to Friday as per above, use of the discretion would be available to the Scottish Prison Service to decide whether to bring forward release to either Wednesday or Thursday.

85. The discretion will be available for all prisoners and young offenders serving sentences of 15 days or more. In situations where very short periods of imprisonment or, as in the case of young offenders, periods of detention are imposed, such as can be the case for fine default or contempt of court, the normal rules of early release operate. For example, a person receiving 12 days for fine default would be released after six days. The Scottish Government does not consider it appropriate for any further reductions to apply as this would potentially significantly further reduce the period of time in custody. While it is unlikely that the Scottish Prison Service would consider it appropriate to use the discretion in such cases given effective reintegration needs would be minimal following such a short period in custody, the Scottish Government considers it appropriate to expressly exclude the application of the discretion for sentences of less than 15 days.

ALTERNATIVE APPROACHES

Ending automatic early release for certain categories of prisoner

86. The current system of automatic early release is contained in the 1993 Act and the Scottish Government could continue to operate with this long-standing system with no changes made to end automatic early release for any category of prisoner. Despite considerable criticism over a number of years, no substantive changes to the existing system of automatic early release have been implemented since the relevant provisions in the 1993 Act came into force in 1995.

87. However, the Scottish Government considers that it is not acceptable to do nothing as this would not help improve protection of the public. Within the overall constraint of prison capacity and prison numbers, the Scottish Government has focused the reforms on those prisoners who have committed the most serious offences and who pose the most significant risks to public
safety. That is why the reforms will end automatic early release for offenders receiving sentences of four years or more for sexual offences and all other offenders receiving sentences of 10 years or more for any types of offences.

88. There is no alternative approach that would allow the ending of automatic early release for categories of prisoners as primary legislative change is required to end automatic early release.

Release timed to benefit re-integration – limited flexibility for Scottish Ministers

89. The current system of release arrangements is contained in the 1993 Act and the Scottish Government could continue with the existing arrangements. This does provide that the release of prisoners on weekends or public holidays will not take place, which is beneficial to prisoners to allow for effective access to services upon release. However, the existing regime is not as effective for a prisoner due for release on a particular working day when key reintegration needs may not be able to be met, such as access to addiction services or housing provision.

90. The Scottish Government considers that it is not acceptable to do nothing as this would not improve the prospects of prisoner reintegration into the community.

91. There is no alternative approach as primary legislation is required to make changes to the release arrangements of prisoners.

CONSULTATION

Ending automatic early release for certain categories of prisoner

92. The First Minister announced the Scottish Government’s intention to end automatic early release for certain categories of prisoner in the Programme for Government statement in September 2013. Reforms to the system of automatic early release were included in the SNP’s manifesto for the Scottish elections in 2011 and these reforms achieve the ending of automatic early release for the most serious types of offender who currently receive automatic early release. The proposals in this Bill progress a manifesto commitment and there has been no formal public consultation on the proposals with the Scottish Government clear that it wanted to take steps to end the automatic entitlement to early release for certain prisoners.

93. The Scottish Government has engaged with stakeholders such as the Scottish Prison Service, the Parole Board and victims groups as the policy has been developed to ensure that the practical effect of the policy is fully considered. This engagement included assessing how the proposals in the Bill should operate for offenders who commit a number of offences and receive more than one sentence and the provisions in the Bill reflect the consideration given to this issue by the Scottish Government and the Scottish Prison Service.

http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=8974&mode=html#iob_80979
Release timed to benefit re-integration – limited flexibility for Scottish Ministers

94. The proposed reforms in the Bill are a small but important new power for the Scottish Ministers. There has been no formal public consultation, but the Scottish Government has engaged with stakeholders such as criminal justice social work, the Scottish Prison Service and the Parole Board as the policy has been developed to ensure that the practical effect of the policy is fully considered. In particular, discussion with the Scottish Prison Service was helpful in ensuring that the full practical implications of the proposed reforms were considered in the context of the existing statutory rules surrounding prisoner release dates that fall on weekends and public holidays. Victim and witnesses organisations have also been informed of the proposal.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

95. The Scottish Government does not consider that the Bill’s provisions are discriminatory on the basis of age, gender, race, disability, marital status, religion or sexual orientation.

96. All prisoners affected by the ending of automatic early release will continue to have the opportunity to be considered for discretionary early release by the independent Parole Board from the half-way point of their sentence.

97. All prisoners affected by the flexible release arrangements will have their reintegration needs considered on a case-by-case basis by the Scottish Prison Service ensuring consistency of access to wider public services in order to reduce reoffending.

Human rights

98. The Scottish Government does not consider that the Bill’s provisions adversely impact on the human rights of prisoners. Although the provisions in respect of ending automatic early release will have the effect that those long-term prisoners convicted of non-sex offences and sentenced to less than 10 years will continue to benefit from automatic early release whilst sex offenders with a sentence of four years or more and others sentenced to 10 years or more will not so benefit, the Scottish Government considers that such differential treatment can be objectively justified. The Scottish Government considers that it is proportionate in all the circumstances and the ending of automatic early release for these categories of prisoners is in pursuance of the legitimate aim of protecting the public safety. Furthermore, the Scottish Government considers that it is important to keep in mind that those affected by the policy will not be prevented from being released early from their sentence per se, with only the automatic entitlement to early release being removed. As detailed above, the Parole Board will continue to assess such prisoners for early release once they have served one half of their sentence and this Bill will not affect this in any way.
Island and rural communities

99. The Scottish Government is satisfied that the Bill has no differential impact on island and rural communities.

Local government

100. The Scottish Government is satisfied that the Bill has no significant impact on local government. The provisions that provide new flexibility for the Scottish Ministers to adjust a prisoner’s release should assist local authority provision of support services as less reactive provision, such as out of hours support, may be needed following the provisions coming into force.

Sustainable development and environmental issues

101. The Scottish Government is satisfied that the Bill has no negative impact on sustainable development.

Business and Regulatory Impact Assessment

102. The Scottish Government is satisfied that the Bill has no significant impact on businesses and other non-public bodies.
PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Prisoners (Control of Release) (Scotland) Bill (‘the Bill’). Its purpose is to assist consideration by the Delegated Powers and Law Reform Committee, in accordance with Rule 9.6.2 of the Standing Orders, of provisions in the Bill conferring powers to make subordinate legislation. It describes the purpose of each provision and explains the reasons for seeking the proposed delegated powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

Summary of Bill provisions

2. The Bill, if passed, will change the law in two areas of the system of prisoner release. First, it will end the system of automatic early release for certain prisoners in the interests of protecting public safety. Second, the Bill will provide the Scottish Ministers with limited new flexibility to adjust exact release dates for individual prisoners where there exists a need to ensure immediate access for a prisoner to support services upon release from custody, with the aim of facilitating reintegration into the community and reducing the risk of reoffending.

Delegated powers

Section 3 – Commencement

Power conferred on: Scottish Ministers
Power exercisable by: Order made by Scottish Statutory Instrument
Parliamentary procedure: No parliamentary procedure

Provision

3. Section 3(2) provides that the Scottish Ministers may by order bring section 1 and 2 of the Bill into force on an appointed day (with section 8 of the Interpretation and Legislative Reform (Scotland) Act 2010 allowing for different days to be appointed for different purposes).
Reasons for Taking Power

4. Section 3(3) provides that a commencement order may include transitional, transitory or saving provision. It is common to allow for such provision in conjunction with a commencement order where, as in this case, rights of individuals are affected. A decision will be taken at the time when the commencement order is being developed, but an example of how the power may be used would be to disapply the application of the provisions in section 1 of the Bill to any offenders sentenced before the day of commencement.

Choice of Procedure

5. A commencement order under section 3 will not be subject to parliamentary procedure, other than a requirement to lay the order before the Parliament under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010. This is standard for commencement powers.
Justice Committee

8th Report, 2015 (Session 4)

Stage 1 Report on the Prisoners (Control of Release) (Scotland) Bill
Justice Committee
8th Report, 2015 (Session 4)

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Justice Committee

Remit and membership

Remit:

To consider and report on:

a) the administration of criminal and civil justice, community safety and other matters falling within the responsibility of the Cabinet Secretary for Justice; and

b) the functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.

Membership:

Christian Allard
Jayne Baxter (from 8 January 2015)
Roderick Campbell
John Finnie
Christine Grahame (Convener)
Alison McInnes
Margaret Mitchell
Elaine Murray (Deputy Convener)
Gil Paterson (from 28 November 2014)
John Pentland (until 8 January 2015)
Sandra White (until 28 November 2014)

Committee Clerking Team:

Tracey White
Joanne Clinton
Neil Stewart
Christine Lambourne
The Scottish Parliament
Pàrlamaid na h-Alba

Justice Committee

8th Report, 2015 (Session 4)

Stage 1 Report on Prisoners (Control of Release) (Scotland) Bill

The Committee reports to the Parliament as follows—

SUMMARY OF RECOMMENDATIONS

1. The Committee endorses the report of the Delegated Powers and Law Reform Committee.

2. The Committee notes the Cabinet Secretary for Justice’s commitment to end automatic early release for certain categories of prisoner and that these reforms, assuming their coverage is extended to all long-term prisoners, may be expected to affect around 3% of offenders receiving a determinate custodial sentence in any one year.

3. The Committee welcomes the Cabinet Secretary’s willingness to reflect on the concerns and issues raised in respect of compulsory supervision and cold release.

4. The Committee is in favour of all long-term prisoners being subject to a period of compulsory community supervision on release from custody. It calls on the Scottish Government to confirm whether its intention is that a guaranteed minimum period of compulsory supervision should, where the court has not imposed an extended sentence, take place during the period of custody imposed by the court. If this is not the intention, the Committee requires further details of how a minimum period of compulsory supervision would be guaranteed in practice. The Committee also notes the views of Professor Fergus McNeill and Dr Monica Barry that this might require the imposition of a new form of sentence.

5. In relation to the length of any minimum period of compulsory community supervision, the Committee notes that periods ranging from three months to one year have been suggested in evidence, with the Cabinet Secretary suggesting between three and six months. The Committee believes that any guaranteed minimum period should be sufficient to allow effective post-release work with an offender following continuous risk assessment and should be proportionate to the length of the sentence. The
Committee also requires the Scottish Government to provide information on what supervision and support might reasonably be achieved within the suggested periods and why these periods have been proposed.

6. The Committee calls on the Scottish Government, in drafting any amendment, to fully consult the Parole Board for Scotland and representatives of criminal justice social work services on resource implications.

7. The Committee notes that debate on whether the extension of multi-agency public protection arrangements (MAPPA) might address some concerns about cold release has been overtaken by the terms of the Cabinet Secretary's letter of 3 February. The Committee notes the consideration being given to extending MAPPA to other offences and the Cabinet Secretary's commitment to keep the Committee informed of progress.

8. The Committee considers that the Cabinet Secretary’s proposal to extend the Bill to end automatic early release for all long-term prisoners is an improvement on the Bill as introduced.

9. The Committee notes the Cabinet Secretary's comments about the resourcing of the provisions and acknowledges that the changes will have effect over a relatively long period of time. Nevertheless, the Committee calls on the Scottish Government to provide updated estimates of the cost of the new provisions and how they will be resourced.

10. The Committee notes that the Policy Memorandum envisages that the provisions of the Bill will incentivise prisoners to engage with prison rehabilitation programmes. However, the Committee has concerns that demand for certain programmes may currently outweigh supply and recommends that an independent assessment be carried out to inform the supplementary Policy Memorandum requested in paragraph 121 of this report. The Committee welcomes the commitment of the Scottish Government and Scottish Prison Service (SPS) to the development of prison rehabilitation programmes aligned to prisoner needs. The Committee calls on the Cabinet Secretary and the SPS to keep the Committee updated in relation to the development and resourcing of relevant programmes.

11. The Committee notes the concerns of Professor Cyrus Tata that the Parole Board is being “set up for failure” but also notes the reassurances provided by the Board’s Convener, who disputed this comment and said he was “pretty sure that the board can cope with that”.

12. In light of the Board’s further written submission, the Committee calls on the Scottish Government to ensure that the Parole Board is sufficiently resourced.

13. The Committee notes the concerns of witnesses about the level of clarity for victims and the community in sentencing and is of the view that such issues should be prioritised for consideration by the Scottish Sentencing Council after it is established. The Committee also notes the comments of
the Cabinet Secretary that the Bill provides victims with greater certainty in respect of the release arrangements for offenders, but also notes that Victim Support Scotland has called for greater transparency and clarity in the system.

14. The Committee accepts that implementation of relevant reforms in the Custodial Sentences and Weapons (Scotland) Act 2007 (as amended by the Criminal Justice and Licensing (Scotland) Act 2010) may be problematic at this point in time. The Committee calls on the Scottish Government to review this area, with input from relevant stakeholders, to establish what wider reforms should be taken forward.

15. The Committee notes the comments of witnesses about delaying the Bill until the Scottish Sentencing Council is established, but notes the Cabinet Secretary’s comments that current reforms should not be delayed.

16. The Committee is aware of ongoing concerns about the operation of automatic early release for short-term prisoners, but notes that the purpose of this Bill is the ending of automatic early release for long-term prisoners.

17. The Committee is concerned that Professor Alan Miller advised us that the human rights impact statement is inadequate, for example with regard to the availability of rehabilitation programmes, and calls on the Scottish Government to revisit the statement.

18. The Committee notes the clear support for the provisions of section 2 of the Bill and welcomes the flexibility that this provides for the SPS to better manage re-integration into the community.

19. The Committee welcomes the Cabinet Secretary’s decision to act on evidence received at Stage 1. The Committee also welcomes the Cabinet Secretary’s willingness to reflect on the recommendations of this report in informing the detail of his Stage 2 amendments. Nevertheless the Committee considers that the level of detail provided in the Cabinet Secretary’s letter of 3 February 2015 was insufficient to inform the views of witnesses and the Committee on its proposed changes to the Bill. Given the extent of the proposed Stage 2 amendments, the Committee requests that the Scottish Government brings forward a supplementary Policy Memorandum alongside any other supplementary accompanying documents it may lodge at that point.

20. Again, given the extent of the proposed amendments, the Committee requests that the Scottish Government bring forward a supplementary Financial Memorandum at Stage 2.

21. The Committee supports the general principles of this Bill.\(^1\)

22. The Committee notes that, as set out in the Cabinet Secretary’s letter to the Committee of 3 February, the Bill will be amended at Stage 2. Whilst the

\(^1\) Margaret Mitchell MSP dissented from this paragraph.
Committee welcomes the broad policy intention of those proposed amendments, it requires further detail on their implications, and will seek sufficient time at Stage 2 to allow it to conduct the thorough scrutiny expected by witnesses and the general public.

INTRODUCTION

Early release from custodial sentences

23. The current rules on early release from a custodial sentence are set out in the Prisoners and Criminal Proceedings (Scotland) Act 1993. They include the following:

- **short-term prisoners**\(^2\) – an offender sentenced to a period of less than four years must be released after serving one-half of the sentence. For most prisoners, this release is not subject to licence conditions and thus not subject to supervision by criminal justice social work services. However, sex offenders receiving sentences of between six months and four years are released on licence;

- **long-term prisoners**\(^3\) – an offender sentenced to a determinate period of four or more years may be released after having served at least one-half of the sentence. If not already released, a long-term prisoner must be released on licence after serving two-thirds of the sentence\(^4\). Any decision to release before the two-thirds point is taken by the Parole Board for Scotland (“the Parole Board”), following an assessment of whether the prisoner is likely to present a risk to the public if released. Long-term prisoners are, irrespective of the proportion of sentence served in custody, released on licence (under conditions set by the Parole Board) and subject to supervision by criminal justice social work services. The licence, unless previously revoked, continues until the end of the whole sentence;

- **life sentence prisoners** (including those subject to orders for lifelong restriction) – when sentencing an offender to a life sentence, the court sets a punishment part. This is the period that the court considers appropriate to satisfy the requirements of retribution and deterrence, but ignoring any period of confinement necessary for the protection of the public. The prisoner serves the whole of the punishment part in custody. Such a prisoner may be released after this point if the Parole Board considers that continued incarceration is not required for the protection of the public. The possibility of release is considered again periodically where the Parole Board does not initially order the release of the prisoner. Prisoners are released on licence, continuing until the person’s death, under the supervision of criminal justice social work services.\(^5\)

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\(^2\) a short-term prisoner is an offender sentenced to a period of less than four years.

\(^3\) a long-term prisoner is an offender serving a determinate sentence of four years or more.


\(^5\) SPICe briefing 14/60, Prisoners (Control of Release) (Scotland) Bill, pp6-7. Available at: [http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_14-60.pdf](http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_14-60.pdf)
24. Breach of licence conditions can lead to a released prisoner being recalled to custody.\(^6\)

**Scottish Government’s plans to reform automatic early release**

25. The Scottish Government’s Policy Memorandum notes that the current system of automatic early release has been in place since the mid-1990s and that any proposal for fundamental changes to the operation of the system of early release for all prisoners, must, in addition to public safety, take account of prisoner numbers, access to services and the capacity of an investment in the prison estate.\(^7\)

26. The Policy Memorandum further notes that the report of the Scottish Prisons Commission in 2008 recommended that steps taken to end the current system of automatic early release could only be taken once prisoner numbers are established at a longer-term, lower-trend level so that capacity within the prison estate is available to deal with the short to medium impact of making changes to the system of early release.\(^8\) The 2011 SNP manifesto committed to ending automatic early release once the criteria set by the Scottish Prisons Commission are met\(^9\).

27. The Scottish Government wrote to the Committee on 3 September 2013, setting out its plans to end automatic early release for certain categories of long-term prisoners and indicating that the provisions would be brought forward by way of amendment to the Criminal Justice (Scotland) Bill\(^10\). The Committee agreed to seek views on the proposals before considering the relevant amendments. To that end, the Committee issued a call for evidence seeking views on the proposals and 11 submissions were received in response.\(^11\)

28. The then Cabinet Secretary for Justice subsequently announced to the Parliament on 23 April 2014 that Stage 2 of the Criminal Justice (Scotland) Bill would not commence until after the Post-corroboration Safeguards Review, chaired by Lord Bonomy, had reported. The Review is expected to report in April 2015.

29. On 27 May the then Cabinet Secretary wrote to the Committee advising that the provisions relating to automatic early release would be brought forward as a separate piece of legislation.\(^12\)

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\(^6\) SPICe briefing 14/60, Prisoners (Control of Release) (Scotland) Bill, pp6-7.

\(^7\) Policy Memorandum, p11. Available at: [http://www.scottish.parliament.uk/S4_Bills/Prisoners%20(Scotland)%20Bill/b54s4-introd-pm.pdf](http://www.scottish.parliament.uk/S4_Bills/Prisoners%20(Scotland)%20Bill/b54s4-introd-pm.pdf).

\(^8\) Policy Memorandum, p11.


\(^12\) Proposals to end the automatic early release of certain categories of prisoner,
Introduction of the Bill

30. The Prisoners (Control of Release) (Scotland) Bill was introduced in the Scottish Parliament on 14 August 2014. The Parliamentary Bureau designated the Justice Committee as lead committee in consideration of the Bill at Stage 1 on 19 August.

31. As well as seeking to reform automatic early release, the Bill includes measures aimed at supporting the process of reintegrating prisoners back into the community.

THE BILL’S PROVISIONS

32. The Bill, as introduced, contains the following provisions relating to the release of offenders serving custodial sentences—

- **restriction of automatic early release** – seeking to end automatic early release for sex offenders receiving determinate custodial sentences of four years or more and other offenders receiving determinate custodial sentences of ten years or more; and

- **early release for community reintegration** – allowing the Scottish Prison Service (SPS) to release sentenced prisoners up to two days early where this would help facilitate community reintegration (e.g., by allowing for early access to key public services).

33. Further information on the Bill’s provisions is available in SPICe briefing 14/60, *Prisoners (Control of Release) (Scotland) Bill*, published on 24 September 2014.15

PARLIAMENTARY SCRUTINY

Call for views

34. On 21 November 2014 the Justice Committee issued a call for written evidence on the Bill’s proposals. 13 written submissions and one supplementary submission were received.

Evidence taking

35. The Committee initially took evidence on the Bill over three meetings between 13 and 27 January 2015, hearing from academics, representatives of victims and prisoners, campaigners for prison reform, the Risk Management Authority, the

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Letter from the Cabinet Secretary for Justice to the Convener, 27 May 2014. Available at: [http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/20140527_CSfJ_to_CG_AER_Bill.pdf](http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/20140527_CSfJ_to_CG_AER_Bill.pdf).

13 Paragraph 37 of the Policy Memorandum makes clear that the Bill’s provisions would only apply to offenders sentenced after the reforms come into force.


Justice Committee, 8th Report, 2015 (Session 4)

Parole Board for Scotland, the Scottish Prison Service (SPS) and the Cabinet Secretary for Justice.

36. Following those evidence sessions, the Cabinet Secretary wrote\(^{16}\) to the Committee on 3 February to advise that, in light of concerns raised in evidence, the Scottish Government would bring forward proposals at Stage 2 to—

- guarantee that all long-term prisoners are, on release from prison, subject to a minimum period of compulsory supervision in the community;
- extend, to all long-term prisoners, the provisions of the Bill seeking to end automatic early release.

37. Given the significance of the proposed changes, the Committee agreed to take further evidence in round-table format from witnesses who had previously raised issues about the Bill. This further session took place on 24 February\(^{17}\). Following that session, the Committee recalled the Cabinet Secretary to give oral evidence on 3 March, to respond to issues raised during the round table session.

**Other committees**

38. The Finance Committee received five responses to its call for views in relation to the Financial Memorandum on the Bill. These responses did not raise any substantive issues in relation to the Financial Memorandum and the Finance Committee therefore decided not to give any further consideration to that Memorandum.

39. The Delegated Powers and Law Reform (DPLR) Committee published its report on the Delegated Powers Memorandum on the Bill on 2 December 2014. \(^{18}\) That committee called on the Scottish Government to amend the Bill at Stage 2 to make the commencement power under section 3(2) of the Bill subject to negative procedure.

40. **The Committee endorses the report of the DPLR Committee.**

**ISSUES**

41. This report seeks to highlight key issues which have arisen during the Committee’s Stage 1 scrutiny of the Bill, including evidence received in relation to the Cabinet Secretary’s letter of 3 February 2015.

42. The report comments on the following issues, which arose in evidence—

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\(^{16}\) Cabinet Secretary for Justice, letter to the Justice Committee, 3 February 2015. Available at: [http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/20150203_CSfJ_to_CG_AER_announcement.pdf](http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/20150203_CSfJ_to_CG_AER_announcement.pdf).


Section 1 (Restriction of automatic early release)

- public protection;
- categories of prisoner covered by reforms;
- prison rehabilitation programmes;
- impact on the Parole Board;
- clarity in sentencing;
- alternative approaches; and
- the Bill’s human rights statement.

Section 2 (Early release for community reintegration)

- timing of release.

SECTION 1 (RESTRICTION OF AUTOMATIC EARLY RELEASE)

Public Protection

43. The Scottish Government indicated in the Policy Memorandum that its proposed reforms to end automatic early release are intended to enhance public protection by allowing some prisoners who are assessed by the Parole Board as presenting an unacceptable risk to be kept in custody for longer. The Policy Memorandum states—

“The overall impact of the reforms in this Bill would be that a prisoner would be kept in prison for the entire sentence if the Parole Board considered that they posed an unacceptable risk to public safety throughout the period of their sentence when they are able to be considered for parole”. 19

Initial evidence

44. The main arguments advanced in favour of the proposals enhancing public protection included—

- that the release of a potentially dangerous offender may be delayed; and
- that relevant offenders may be incentivised to engage with rehabilitation programmes whilst in custody so as to increase their chance of being released early on parole.

45. Witnesses questioning whether the Bill would in fact enhance public protection focused on the importance of post-release supervision in safely reintegrating long-term prisoners back into society. Concerns were expressed that the provisions of the Bill may simply involve “storing the risky” 20 for longer whilst undermining

19 Policy Memorandum, p3.
20 Professor Fergus McNeill, written submission, p3.
effective reintegration by allowing some long-term prisoners to be released without mandatory supervision in the community – sometimes referred to as “cold release”.

46. Professor Cyrus Tata from the University of Strathclyde described the issue in the following terms—

“We need to explain to members of the public that eventually prisoners have to come out and that if someone is released cold they are more likely to reoffend.”\(^{21}\)

47. Peter Johnston from the Risk Management Authority (RMA) described anything that produces cold release as a “matter for concern” for the RMA, adding that —

“it goes against what we believe Government has done well in tackling a difficult challenge, and we are concerned that cold release, which is perhaps an unintended consequence of the bill, could constitute a retrograde step”.\(^{22}\)

48. He also made clear that effective supervision was “vital”.\(^{23}\)

49. In written evidence, SACRO argued that consideration should be given to mechanisms to provide support to the offender and enhance protection for the public, such as providing a form of automatic early release for the last three months of the sentence to ensure that there is some brief period of compulsory supervision to oversee reintegration to the community.\(^{24}\)

50. The Cabinet Secretary responded to concerns about cold release by reminding the Committee that the Bill “deals with a select group of prisoners”. He advised that some long-term prisoners are already released on parole prior to the end of their sentence and thus not subject to cold release, whilst others are serving extended sentences imposed at the time of their original sentence. Questions around cold release only apply to a third category of prisoners, namely those who have not qualified for parole but who are coming to the end of their sentence (and who are not serving extended sentences).\(^{25}\)

51. Extended sentences are provided for in the Criminal Procedure (Scotland) Act 1995, which gives courts powers to impose an extended sentence on any offender who is convicted on indictment of a relevant sexual or violent offence, in circumstances where the court is of the opinion that the period of supervision on licence would not be adequate for the protection of the public from serious harm from the offender.

52. On introduction of the Bill the Scottish Government drew attention to the use of multi-agency public protection arrangements (MAPPA) to ensure public protection in this context.\(^{26}\) These are a statutory set of arrangements, provided for by the

\(^{24}\) SACRO written submission, page 2.
\(^{26}\) Policy Memorandum, paragraphs 14-17.
Sexual Offences Act 2003, to ensure public protection and manage the risk of serious harm.

53. The Cabinet Secretary indicated that the Scottish Government is currently carrying out work on MAPPA to assess whether it could be extended to cover violent offenders. He indicated that this work is scheduled to be completed by the end of the year. He agreed to keep the Committee informed of progress. 27

54. The RMA indicated that it would support the extension of MAPPA to other offences. 28

55. However, some witnesses asserted that MAPPA would not directly address issues that would arise around cold release if the Bill as introduced were to have been passed. For example, Dr Monica Barry of the University of Strathclyde advised that it would not make up for the lack of supervision and support that can be given through criminal justice social work services. 29

Cabinet Secretary’s letter
56. In his letter to the Committee of 3 February 2015, the Cabinet Secretary again highlighted the “existing arrangements under which a court can impose supervision conditions on offenders which extend beyond the terms of their custodial sentence”. 30

57. However, in light of concerns expressed about cold release, he also stated that the Scottish Government would bring forward proposals at Stage 2 to ensure that—

“anyone serving a sentence of 4 years or more for any crime, being released from prison will be subject to a minimum period of compulsory supervision in the community. The focus of such supervision will be on ensuring both the immediate and longer-term protection of public safety”. 31

58. Whilst welcoming some of the principles underpinning the letter, witnesses expressed concern at a lack of clarity in respect of compulsory supervision. For example, witnesses were not clear whether the Scottish Government’s intention was: (a) to add on compulsory supervision to sentences already completed in custody (described in evidence as “Option A”); or (b) to provide for compulsory supervision in the community for a fixed period within the existing custodial sentence (described as “Option B”). 32

59. Dr Barry and Professor Fergus McNeill of the University of Glasgow indicated that, if Option A was intended, it would amount to a “de facto increase in the punishments imposed by the courts”. 33 Concerns were expressed that any attempt

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31 Cabinet Secretary for Justice, letter to the Justice Committee, 3 February 2015.
32 Dr Monica Barry and Professor Fergus McNeill, written submission, p1.
33 Dr Monica Barry and Professor Fergus McNeill, written submission, p1.
to impose a period of compulsory supervision over and above the parameters of a sentence imposed by a court may lack legitimacy and be open to challenge on human rights grounds. Thus, Option A might require the imposition of a new form of sentence.\textsuperscript{34}

60. If Option B was intended, Dr Barry and Professor McNeill argued that there should be a fixed minimum period of supervision of one year within the existing sentence, and that, any supervision period should be proportionate to the length of the original sentence\textsuperscript{35}.

61. Professor McNeill expressed concerns that, although workable, Option B might not address the concerns of some witnesses, because—

“In effect it creates a new system of automatic early release but calls it something else and changes the dates. That is the net effect of option B. Unless the bill can be amended or some other legislative device can be found so that something is done about clarity in sentencing in the first instance, we cannot address Victim Support Scotland’s concerns appropriately or deliver what it is requesting”\textsuperscript{36}

62. The issue of clarity in sentencing is considered further later in this report.

63. In relation to the mechanics of guaranteeing a period of compulsory supervision, and also the length of the minimum period, the Cabinet Secretary stated in oral evidence that “a period of six or three months at the end of a sentence could be created within the sentence period”\textsuperscript{37}.

The Cabinet Secretary also indicated that the final detail of the proposal will “reflect the concerns and issues that the committee raises in its stage 1 report”\textsuperscript{38}. Pressed on these matters and on whether problems might arise if the period of supervision provided for by the amendment were to be “guaranteed” but not necessarily “compulsory”, the Cabinet Secretary confirmed that the proposal would involve a period of compulsory supervision during which there would be a power of recall.\textsuperscript{39} He also advised that, in 2012-13 476 prisoners were subject to supervision in the community after parole release and 403 were subject to supervision in the community after non-parole release. He added that the rate at which non parole-released prisoners breached their licence conditions was 37%, compared with 5.5% for parole-released prisoners.\textsuperscript{40}

Recommendations

64. The Committee notes the Cabinet Secretary’s commitment to end automatic early release for certain categories of prisoner and that these reforms, assuming their coverage is extended to all long-term prisoners,
may be expected to affect around 3% of offenders receiving a determinate custodial sentence in any one year\textsuperscript{41}.

65. The Committee welcomes the Cabinet Secretary’s willingness to reflect on the concerns and issues raised in respect of compulsory supervision and cold release.

66. The Committee is in favour of all long-term prisoners being subject to a period of compulsory community supervision on release from custody. It calls on the Scottish Government to confirm whether its intention is that a guaranteed minimum period of compulsory supervision should, where the court has not imposed an extended sentence, take place during the period of custody imposed by the court. If this is not the intention, the Committee requires further details of how a minimum period of compulsory supervision would be guaranteed in practice. The Committee also notes the views of Professor McNeill and Dr Barry that this might require the imposition of a new form of sentence.

67. In relation to the length of any minimum period of compulsory community supervision, the Committee notes that periods ranging from three months to one year have been suggested in evidence, with the Cabinet Secretary suggesting between three and six months. The Committee believes that any guaranteed minimum period should be sufficient to allow effective post-release work with an offender following continuous risk assessment and should be proportionate to the length of the sentence. The Committee also requires the Scottish Government to provide information on what supervision and support might reasonably be achieved within the suggested periods and why these periods have been proposed.

68. The Committee calls on the Scottish Government, in drafting any amendment, to fully consult the Parole Board and representatives of criminal justice social work services on resource implications.

69. The Committee notes that debate on whether the extension of MAPPA might address some concerns about cold release has been overtaken by the terms of the Cabinet Secretary’s letter of 3 February. The Committee notes the consideration being given to extending MAPPA to other offences and the Cabinet Secretary’s commitment to keep the Committee informed of progress.

Categories of prisoner covered by reforms

	extit{Bill as introduced}

70. As noted above, the Bill as introduced seeks to end automatic early release for sex offenders receiving determinate custodial sentences of four years or more and other offenders receiving determinate custodial sentences of ten years or more.

\textsuperscript{41} If the reforms had applied to offenders sentenced in 2013-14, they would have affected 450 out of 14,026 offenders receiving a determinate custodial sentence (see table 10(a) of the Scottish Government’s statistical bulletin: Criminal Proceedings in Scotland, 2013-14 (2014). Available at: \url{http://www.gov.scot/Publications/2014/12/1343}.}
71. The particular focus on sex offenders, and whether offenders posing a greater risk of serious reoffending were being omitted from the proposed reforms, was commented on by a number of witnesses.

72. For example, the Risk Management Authority highlighted that, based on Parole Board statistics, sex offenders are less likely to reoffend than other offenders, and that the Bill would benefit from re-focussing on risk of serious harm rather than on offence type.\(^{42}\) This was also a concern of Dr Barry\(^ {43}\) and Howard League Scotland\(^ {44}\). Scottish Women’s Aid noted that the proposals excluded the vast majority of perpetrators of domestic abuse, who can be considered to pose a high risk of reoffending\(^ {45}\).

73. Howard League Scotland stated that it was “not entirely clear” why the Bill homed in on two particular categories of offenders when people who commit low-tariff offences are more likely to re-offend\(^ {46}\).

74. On 27 January 2014 the Cabinet Secretary stated that the approach of successive governments has been to deal with sex offenders in a different way, largely because of the impact that sexual offences have on victims, their families and the wider community. The Cabinet Secretary stated that he, and the Chief Executive of the SPS, expected engagement in rehabilitation programmes among sex offenders to increase from 50% to 67% once the provisions of the Bill as introduced were enacted\(^ {47}\).

75. The SPICe briefing on the Bill provides more detail on the numbers of prisoners who might be affected by the provisions of the Bill as introduced\(^ {48}\).

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**Letter from the Cabinet Secretary**

76. As referred to earlier in this report, the Cabinet Secretary wrote to the Committee on 3 February indicating that—

> “Having considered this issue, I can confirm that we will also bring forward amendments at Stage 2 of the Bill to extend the provisions to end the existing system of automatic early release for all long-term prisoners”.\(^ {49}\)

77. Thus the letter proposes that all offenders receiving a determinate custodial sentence of four years or more should be covered by the reforms (with the particular focus on sex offenders being removed).

78. Whilst welcoming the ending of automatic early release for all long-term prisoners, witnesses responding to the letter expressed concerns that a major change of this nature was being carried out by means of a Stage 2 amendment,

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\(^ {45}\) Scottish Women’s Aid, written submission, pp 2-3.


\(^ {48}\) SPICe briefing 14/60, Prisoners (Control of Release) (Scotland) Bill, p6.

\(^ {49}\) Cabinet Secretary for Justice, letter to the Justice Committee, 3 February 2015. Available at: [http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/20150203_CSfJ_to_CG_AER_announcement.pdf](http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/20150203_CSfJ_to_CG_AER_announcement.pdf).
and had not been subject to formal consultation. Howard League Scotland argued that the letter left many unanswered questions—

“Has the judiciary been consulted, given that it is a key stakeholder? We do not know. What impact will there be on the prison population? The SPS says that it will need more resources. How much money has been set aside for that? Prison is expensive, so what is the likely total cost to the public purse? We do not know.”

79. Professor McNeill expressed his concerns in the following terms—

“If we take a rough estimate of 400 additional prison places to accommodate the numbers in this instance—we think that it is a conservative estimate—that £40,000 per place per annum will cost £16 million. We have to be pretty sure that that investment is buying us improvements in public safety. I do not think that storing risk for longer buys us improvements in public safety. That is my caution”.

80. When asked about the financial implications of the proposed to come forward by amendment, the Cabinet Secretary advised—

“It is worth keeping in mind that we are talking about a very small number of prisoners and that it will be several years into the future before any of this will start to have an impact. There would be a danger in starting to put some limits on it now, thinking about what we may require in five or six years’ time. If there is a need for some additional resource going forward, we will be alive to that and will seek to address that. However, we must get the balance right. If there is a need for additional resource—as I say, that will be a number of years ahead—we will look at that, but, as I have mentioned, it is also about the balance in the system. Some of the resource that we have got tied up in dealing with the churn of short-term offenders may be better directed to dealing with issues around the end of a sentence. It may be a matter of reallocating existing resource in order to make the balance more effective”.

Recommendations
81. The Committee considers that the Cabinet Secretary’s proposal to extend the Bill to end automatic early release for all long-term prisoners is an improvement on the Bill as introduced.

82. The Committee notes the Cabinet Secretary’s comments about the resourcing of the provisions and acknowledges that the changes will have effect over a relatively long period of time. Nevertheless, the Committee calls on the Scottish Government to provide updated estimates of the cost of the new provisions and how they will be resourced.

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Prison rehabilitation programmes

83. The Bill’s policy memorandum envisages that the removal of automatic early release would incentivise prisoners to engage with prison rehabilitation programmes as a way of increasing their chances of obtaining early release on parole. A number of witnesses agreed that this could be the case, with a representative of the Parole Board stating that—

“The changes will incentivise some prisoners who at the moment are happy to wait until they get two thirds of the way into their sentence in the knowledge that they will get out. Knowing that they had a significant period to go after that would have to incentivise some, but how many? Who knows?”

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84. On the same point, the Chief Executive of the SPS stated that—

“Some will be motivated to engage in order to get released early, while others will not. I am more interested in engagement for the purpose of not coming back to prison and in how we as a system and society gear up to help people make that transition.”

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85. Witnesses also commented on the adequacy and availability of relevant rehabilitation programmes within prisons. Professor Alan Miller from the Scottish Human Rights Commission (SHRC) noted that—

“If more people are demanding them—rightly, because society has said that that is the deal—and if the Parole Board has to make more decisions than in the past on the adequacy of the programmes, the spotlight will be on those arrangements. The committee has heard evidence from a number of witnesses that the spotlight might not be very favourable, because the programmes will be seen to be inadequate.”

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86. Dr Barry and Professor Tata argued that there is an issue with the supply of, rather than the demand for, prison programmes. Dr Barry argued that, if prisoners cannot get on the waiting list for a programme, they are unlikely to get parole. Professor Tata highlighted the possibility of human rights challenges by prisoners claiming they could not access programmes due to lack of availability.

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87. The Chief Executive of the SPS acknowledged that there was a waiting list for programmes, but argued that, within the context of the resources and highly specialised skills necessary and held by the SPS, “we try to prioritise those programmes and opportunities as best we judge fits people’s needs—but perhaps not their wants”.

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53 Policy Memorandum, paragraphs 57-60.
88. Giving evidence on 24 February, the SPS’s Director of Operations explained that there were complex reasons for the waiting lists—

“Some prisoners will deny that they have a problem until very close to their critical date and then they will try to move up the list. Some people are recalled into custody. We currently have about 675 recalls in the system who we have to mobilise quickly, which means that it is not reasonable to expect that we can always catch everybody who scores with a lower need”.

89. Giving evidence on 27 January the Cabinet Secretary committed to discussing the issue of resourcing of programmes. He also stated that an increase in demand would build up over a 10 to 11 year timeframe, thus allowing time to plan for the likely increase.

90. In evidence on 3 March the Cabinet Secretary added—

“I know that the Prison Service is keen to look at developing programmes that are much more aligned to the assessment of the prisoner’s needs to make sure that programmes are more tailored and reflect more what prisoners require. That is a significant undertaking for the Prison Service, but it wants to move in that direction, which it feels would be a more appropriate way to deliver rehabilitation programmes. We are keen to support the SPS to move in that direction. I have no doubt that the SPS will start to take a much more bespoke approach to how rehabilitation programmes are developed for prisoners in order to improve the delivery of those programmes and the outcomes that can be gained from them”.

Recommendation

91. The Committee notes that the Policy Memorandum envisages that the provisions of the Bill will incentivise prisoners to engage with prison rehabilitation programmes. However, the Committee has concerns that demand for certain programmes may currently outweigh supply and recommends that an independent assessment be carried out to inform the supplementary Policy Memorandum requested in paragraph 121 of this report. The Committee welcomes the commitment of the Scottish Government and SPS to the development of prison rehabilitation programmes aligned to prisoner needs. The Committee calls on the Cabinet Secretary and the SPS to keep the Committee updated in relation to the development and resourcing of relevant programmes.

Impact on the Parole Board

92. The impact of the provisions on the work of the Parole Board was also discussed. Expressing his concerns over cold release, Professor Tata feared that the Parole Board would end up taking the blame for possible unintended consequences of the Bill. It was, he said, being “set up for failure”. However, the Convener of the Board disputed that comment, asserting that the Board was...
“happy to account for its decisions” and he was “pretty sure that the board can cope with that”. He acknowledged that the Board would be “more in the public eye” but said that this was not something that caused him concern.

93. Following the Cabinet Secretary’s letter of 3 February, the Parole Board provided further written evidence in which it stated—

“The proposed changes to the Bill will necessarily increase the work to be undertaken by the Board to a greater extent than first envisaged and while the Board will endeavour to do so within existing budgets, it may need some support from Scottish Government to manage the impact.”

Recommendations

94. The Committee notes the concerns of Professor Tata that the Parole Board is being “set up for failure” but also notes the reassurances provided by the Board’s Convener, who disputed this comment and said he was “pretty sure that the board can cope with that”.

95. In light of the Board’s further written submission, the Committee calls on the Scottish Government to ensure that the Parole Board is sufficiently resourced.

Clarity in sentencing

96. Victim Support Scotland indicated support for the ending of automatic early release, and for the provision of a period of post-release supervision for prisoners, but added—

“We want greater clarity and transparency in the system, so that victims and the community are better able to understand sentencing. In our experience, a lot of victims do not currently understand the system; they do not understand what part of the sentence is custodial and what part is served in the community. We want to work towards something that provides more clarity to them.”

97. Howard League Scotland was concerned that the Bill pre-empted the work of the Scottish Sentencing Council whilst Dr Barry argued that the Bill “muddies the waters” in respect of clarity of sentencing. Professor Tata shared this view and went further, arguing that the Bill is a “way of trying to change sentencing by suggesting extended sentences and trying to increase the length of time that people serve”.

68 The Scottish Sentencing Council was created by the Criminal Justice and Licensing (Scotland) Act 2010 with the objectives of promoting consistency in sentencing practice, assisting the development of policy in relation to sentencing and promoting greater awareness and understanding of sentencing policy and practice. It will be operational in autumn 2015.
98. The Cabinet Secretary made clear that he did not agree with the view that the Bill “muddies the water” in respect of sentencing, arguing that it gives victims the certainty that the offender will not be released automatically two-thirds into their sentence, irrespective of circumstances.72

99. The Committee notes the concerns of witnesses about the level of clarity for victims and the community in sentencing and is of the view that such issues should be prioritised for consideration by the Scottish Sentencing Council after it is established. The Committee also notes the comments of the Cabinet Secretary that the Bill provides victims with greater certainty in respect of the release arrangements for offenders, but also notes that Victim Support Scotland has called for greater transparency and clarity in the system.

Alternative approaches

100. During evidence, alternative approaches, such as the commencement of relevant provisions of the Custodial Sentences and Weapons (Scotland) Act 2007 (as amended by the Criminal Justice and Licensing (Scotland) Act 2010), or waiting for the Scottish Sentencing Council to be established to consider the wider issues around sentencing before ending automatic early release were discussed. The Committee also heard evidence relating to the operation of automatic early release for short-term prisoners.

2007 and 2010 Acts

101. Provisions in the Custodial Sentences and Weapons (Scotland) Act 2007, as amended by the Criminal Justice and Licensing (Scotland) Act 2010, set out significant reforms to the current rules on early release. They provide for the replacement of the current categories of short- and long-term prisoners with “short-term custody and community prisoners” and “custody and community prisoners”. Those reforms would not end automatic early release but would ensure that all released prisoners are subject to licence conditions for the remainder of their total sentence. The relevant provisions have, as yet, not been brought into force.73

102. The views of witnesses on the un-commenced provisions were mixed. Dr Barry said that “I do not know why the 2007 act reforms have not been enacted” and that “it is vital that any custodial sentence has a community part, because that enables people to be tested in the community”74. She added that it “needs to be brought into force”.75

103. Victim Support Scotland said that it “quite likes” the 2007 Act, as it would give the victim clearer knowledge of the amount of time being spent in custody and in the community by the offender76.

104. However, Howard League Scotland indicated its opposition, stating that the McLeish Commission77 highlighted concerns.78 Professor Tata described the

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73 SPICe briefing 14/60, Prisoners (Control of Release) (Scotland) Bill, p14.
provisions as having “fundamental problems and contradictions” in their detail\textsuperscript{79}. He added that a senior civil servant had described them as “unworkable”\textsuperscript{80}.

105. The development of relevant provisions in the 2010 Act was informed by the recommendations of Scottish Prisons Commission. The Commission recommended that “any implementation of the early release provisions of the 2007 Act must follow the implementation of the Commission’s other recommendations and the achievement of a reduction in the short sentence prison population.”\textsuperscript{81} The Commission also recommended that the Government should pursue a target of reducing the prison population to an average daily population of 5,000\textsuperscript{82}. As noted in the SPICe briefing on this Bill, the average daily prison population in 2013-14 was 7,851\textsuperscript{83}.

106. When asked why the Scottish Government was not adopting the alternative approach of implementing the 2007 Act as amended by the 2010 Act, the Cabinet Secretary reminded the Committee of the wider context of these reforms whilst reiterating the Government’s commitment to ending automatic early release—

“The other thing that is worth keeping in mind around the other approach to changing sentencing arrangements is that, as Henry McLeish pointed out, a number of other issues would have to be addressed before such an approach could be introduced. A large part of that would be about addressing short-term sentences in order to create capacity in the prison estate to keep prisoners in prison for longer periods of time. A number of things would need to be done before that would be possible, some of which we are already doing, but it is also important that we send out a clear signal about ending automatic early release.”\textsuperscript{84}

Scottish Sentencing Council

107. As referred to earlier in this report, the Committee received evidence, for example from Professor McNeill\textsuperscript{85}, that the Bill should be delayed until the Scottish Sentencing Council (SSC) is established and had the opportunity to be consulted and consider the proposals in the wider context of “front-door sentencing” (sending people to prison) and “backdoor sentencing” (release arrangements)\textsuperscript{86}.

108. The Cabinet Secretary indicated that he was “not entirely persuaded” of the benefits of delaying the Bill to allow the SSC to consider the impact of the reforms on sentencing policy, adding that “many victims would find it difficult to understand why, when there is a bill before Parliament that could end automatic early release,


\textsuperscript{80} Scottish Parliament Justice Committee. Official Report, 20 January 2015, Col 10


\textsuperscript{83} SPICe briefing 14/60, Prisoners (Control of Release) (Scotland) Bill, p15.


\textsuperscript{86} The Scottish Sentencing Council is due to be established in autumn 2015.
we would decide to delay it for an indeterminate period of time”. Nevertheless, he indicated that the SSC can play an important part in sentencing policy in the years to come and “will provide an invaluable insight”, and that the Scottish Government will engage with it on an ongoing basis.

**Short-term prisoners**

109. Concerns were expressed in evidence that there are no current plans to end automatic early release for short-term prisoners (those serving sentences of less than four years). For example, Howard League Scotland argued that, statistically, short-term prisoners are more likely to offend, a point echoed by Professor Miller from SHRC. Professor Tata described release for short-term prisoners as “less justifiable”.

110. Commenting on the issue of short-term prisoners, the Cabinet Secretary stated that the Scottish Government had already moved for a presumption against sentences of less than three months but that he was happy to explore ways of tackling the effectiveness of short-term sentences. He added that “it has been demonstrated that short-term sentences are very ineffective in dealing with offending behaviour” and that they take up a tremendous amount of SPS resources. He made clear the Scottish Government’s view that this money would be better spent on rehabilitation of more serious offenders.

**Recommendations**

111. The Committee accepts that implementation of relevant reforms in the Custodial Sentences and Weapons (Scotland) Act 2007 (as amended by the Criminal Justice and Licensing (Scotland) Act 2010) may be problematic at this point in time. The Committee calls on the Scottish Government to review this area, with input from relevant stakeholders, to establish what wider reforms should be taken forward.

112. The Committee notes the comments of witnesses about delaying the Bill until the Scottish Sentencing Council is established, but notes the Cabinet Secretary’s comments that current reforms should not be delayed.

113. The Committee is aware of ongoing concerns about the operation of automatic early release for short-term prisoners, but notes that the purpose of this Bill is the ending of automatic early release for long-term prisoners.

**The Bill’s Human Rights Statement**

114. Professor Miller described the Bill’s human rights impact statement as “simply not adequate”. He said he did not believe that the statement considered...
the foreseeable consequences of ending automatic early release, specifically “the jeopardy that the public might be put in and the consequences for prisoners’ rights if they are not given the rehabilitation programmes that they will be looking for more than in the past”\textsuperscript{97}.

**Recommendation**

115. The Committee is concerned that Professor Miller advised us that the human rights impact statement is inadequate, for example with regard to the availability of rehabilitation programmes, and calls on the Scottish Government to revisit the statement.

**SECTION 2 (EARLY RELEASE FOR COMMUNITY REINTEGRATION)**

**Timing of release**

116. The Committee received evidence on the proposals in section 2 of the Bill which would provide some flexibility in the timing of prisoner release to benefit re-integration. The Bill provides the Scottish Ministers (in practice the SPS) the discretion to release an offender up to two days in advance of their release date.

117. Evidence received was supportive of this provision. The Risk Management Authority considered that it is “good common sense” as a practical solution to the issue of someone being unfortunate to be released on the wrong day\textsuperscript{98}. Positive Prison? Positive Futures\textsuperscript{99} and the Cabinet Secretary\textsuperscript{100} highlighted issues faced by prisoners released from prison in one part of the country and having to travel some distance to get home. According to Positive Prison? Positive Futures, individuals released on a Friday who do not make it back home, for example, for housing appointments, tend to reoffend, commit self-harm, overdose or commit suicide; or who reoffend in order to get back to prison because they have nowhere else to go\textsuperscript{101}. The Cabinet Secretary made clear that introducing flexibility in this area allows the SPS and other agencies to improve throughcare and better manage re-integration into the community\textsuperscript{102}.

118. In the round table evidence session on 24 February, Positive Prison? Positive Futures stressed the importance of keeping the provisions of section 2 of the Bill, regardless of the Parliament’s decision on section 1.\textsuperscript{103}

**Recommendation**

119. The Committee notes the clear support for the provisions of section 2 of the Bill and welcomes the flexibility that this provides for the SPS to better manage re-integration into the community.

\textsuperscript{97} Scottish Parliament Justice Committee. Official Report, 13 January 2015, Col 16.
POLICY MEMORANDUM

120. The lead committee is required under Rule 9.6.3 of Standing Orders to report on the Policy Memorandum which accompanies the Bill. The level of detail provided in the Policy Memorandum on the policy intention behind the provisions in the Bill and why alternative approaches were not favoured was satisfactory in assisting the Committee in its scrutiny of the Bill.

121. As mentioned earlier in this report, the Committee welcomes the Cabinet Secretary’s decision to act on evidence received at Stage 1. The Committee also welcomes the Cabinet Secretary’s willingness to reflect on the recommendations of this report in informing the detail of his Stage 2 amendments. Nevertheless the Committee considers that the level of detail provided in the Cabinet Secretary’s letter of 3 February 2015 was insufficient to inform the views of witnesses and the Committee on its proposed changes to the Bill. Given the extent of the proposed Stage 2 amendments, the Committee requests that the Scottish Government brings forward a supplementary Policy Memorandum alongside any other supplementary accompanying documents it may lodge at that point.

FINANCIAL MEMORANDUM

122. The same rule requires the lead committee to report on the Financial Memorandum. The Committee notes that no substantive issues were raised by the Finance Committee on the Bill as introduced.

123. Throughout this report, the Committee has sought to consider the resource implications, in particular for the SPS, the Parole Board and criminal justice social work services, of the Bill’s provisions and of the Scottish Government’s proposed Stage 2 amendments. Again, given the extent of the proposed amendments, the Committee requests that the Scottish Government bring forward a supplementary Financial Memorandum at Stage 2.

GENERAL PRINCIPLES

124. Under Rule 9.6.1 of Standing Orders, the lead committee is required to report to the Parliament on the general principles of the Bill.

125. The Committee supports the general principles of this Bill104.

126. The Committee notes that, as set out in the Cabinet Secretary’s letter to the Committee of 3 February, the Bill will be amended at Stage 2. Whilst the Committee welcomes the broad policy intention of those proposed amendments, it requires further detail on their implications, and will seek sufficient time at Stage 2 to allow it to conduct the thorough scrutiny expected by witnesses and the general public.

104 Margaret Mitchell MSP dissented from this paragraph.
Consultation
Did you take part in any consultation exercise preceding the Bill, and if so, did you comment on the financial assumptions made?
1. No

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. n/a

Did you have sufficient time to contribute to the consultation exercise?
3. n/a

Costs
If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details?
4. There are no financial implications for Angus Council

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
5. The basis for calculating the costs appears valid and the costing is explained clearly; consequently the estimated costs and savings are reasonable and accurate. As ever it is important to note that they are estimates.

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?
6. It is very unlikely that there will be any additional cost for Angus Council and it may be that some very small savings occur due to a delay in the need to provide community supervision/housing etc. This is likely to be negated if sentencers utilise extended sentences to ensure that offenders remain supervised in the community for a reasonable period following release. It is likely that Criminal Justice Social Work Report writers will recommend extended sentences so that offenders who serve a full term will still be subject to conditions on release. The risk of the bill is that offenders who serve a full term will be released without any obligation to co-operate with Criminal Justice Services.

Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?
7. The timescales are represented fairly however and the consideration of likely lower and upper limits of expenditure should be useful in allowing for concerned agencies to consider contingencies.

**Wider issues**

*Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?*

8. As noted above if there was to be an increased use of extended sentence this may have an impact on community supervision however this is likely to be mitigated by the relatively low numbers in each local authority and the delay in release.

*Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?*

9. While it’s not possible to rule out future costs via unintended consequences; the relatively low numbers involved and the limited scope of the legislation suggest future costs beyond those already identified are unlikely and there is no obvious need for subordinate legislation.
FINANCE COMMITTEE CALL FOR EVIDENCE

PRISONERS (CONTROL OF RELEASE) (SCOTLAND) BILL:

FINANCIAL MEMORANDUM FROM NORTH AYRSHIRE COUNCIL

Consultation
Did you take part in any consultation exercise preceding the Bill, and if so, did you comment on the financial assumptions made?
1. No

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. Not applicable costs are in relation to the Scottish Prison Service

Did you have sufficient time to contribute to the consultation exercise?
3. Not applicable

Costs
If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details?
4. Not applicable

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
5. Not applicable for the Local Authority

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? Yes
If not, how do you think these costs should be met?
6. Not applicable

Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?
7. Not applicable for the Local Authority, the automatic early release will have implications for the Scottish Prison Service.

Wider issues
Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?
8. Not applicable to the Local Authority.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?
9. At this juncture we are not in a position to comment.
FINANCE COMMITTEE CALL FOR EVIDENCE

PRISONERS (CONTROL OF RELEASE) (SCOTLAND) BILL:

FINANCIAL MEMORANDUM POLICE SCOTLAND

Consultation
Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
1. No

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. N/a

Did you have sufficient time to contribute to the consultation exercise?
3. N/a

Costs
If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.
4. N/a

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
5. As far as we are aware, yes.

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?
6. N/a

Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?
7. N/a

Wider Issues
Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?
8. See below

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?
9. There is no anticipated financial or detrimental impact upon the police service as a result of this proposal, in fact quite the contrary.

In effect, some serious offenders will be kept incarcerated for longer, in keeping with their original sentence, and this can only be welcomed by the police service as there will be (albeit limited) reduced opportunity for reoffending. Equally, it is not anticipated that there will be associated savings for the police as the numbers involved are expected to be relatively minimal and there is more than enough 'opportunity cost' enquiries / work / investigations that will be conducted should there be any more available time.
FINANCE COMMITTEE CALL FOR EVIDENCE

PRISONERS (CONTROL OF RELEASE) (SCOTLAND) BILL:

FINANCIAL MEMORANDUM FROM THE SCOTTISH PRISON SERVICE

Consultation
Did you take part in any consultation exercise preceding the Bill, and if so, did you comment on the financial assumptions made?
1. Although there was no formal consultation on the proposals contained within the Bill, discussions did take between representatives from the Scottish Government and SPS regarding the practical implications of the proposals. These discussions included the estimated increase in the numbers of persons in SPS custody as a result of the implementation of these proposals and the financial implications for SPS.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. Yes.

Did you have sufficient time to contribute to the consultation exercise?
3. Not applicable, as there has been no formal consultation; however as described in answer to question 1 there were discussions between the Scottish Government and the SPS.

Costs
If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.
4. Based on the information provided by Scottish Government colleagues regarding the likely impact the proposals will have on the numbers of persons in SPS custody we consider that the financial implications for SPS have been accurately reflected in the FM.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
5. The estimated costs are reasonable and accurate based on the assumptions made by the Scottish Government.

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?
6. As described in the FM the impact on prisoner numbers of ending automatic early release for certain categories of prisoner will build up over time, with the initial impact relatively limited in the early years. SPS will require the Scottish Government to ensure that the overall pressures on the prison estate arising from these reforms, and other legislative reforms, are met through future justice spending review settlements.

SPS anticipate that the costs associated with the provisions relating to ‘release timed to benefit re-integration’ will be minimal and that SPS will be able to absorb them.
Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?

7. Yes, based on the assumptions and estimates provided by the Scottish Government regarding the impact on the numbers of persons to be detained in SPS custody.

Wider Issues

Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

8. Yes.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

FINANCE COMMITTEE CALL FOR EVIDENCE

PRISONERS (CONTROL OF RELEASE) (SCOTLAND) BILL:

FINANCIAL MEMORANDUM FROM SOUTH LANARKSHIRE COUNCIL

Further to your e-mail of 21 August 2014, I am responding to the request for evidence in relation to the above. Prisoners (Control of Release) (Scotland) Bill propose that prisoners sentence to four years or more for sex offences 10 years or more for other crime will no longer be entitled to automatic early release from prison at any point in their sentence.

This Bill also includes a proposal to reduce reoffending by improving prisoner release arrangements. It allows a release date to be brought forward by one or two days to ensure immediate access to support services in communities to help break the cycle of offending behaviour. The one or two day early release also allows prisons to avoid releasing prisoners on a Friday, which allows anyone needing a care package or support to have this in place and allow staff a couple of days to monitor stability before entering the weekend period. Similarly, the new Bill stipulates that prisoners should not be released on a weekend or public holiday and that their release date should be moved to a date prior to the weekend or public holiday date.

We would welcome this proposal as this enhances prisoner release arrangements and promotes supported integration into the community through allowing time to establish required links within the community before their actual release date. We are aware that the hours following prison release can be critical in determining whether a person desists from offending or re-enters into criminal activities. Immediate access to relevant and responsive support services following release can greatly improve the chances of an individual’s reintegration into the community and their self-assurance to take charge of their lives. Through introducing a defined flexibility to prison release arrangements, we believe that valuable links to the services in the community could be improved.

Previously prisoners could be released after servicing two-thirds of their sentence. The Bill will end automatic release for certain categories of prisoners. This will mainly apply to prisoners who receive a prison term for four years or more for a sexual offence (or for that period for consecutive sentences, where part of the offences are for sexual offence) and for prisoners who receive imprisonment for ten years or more. These individuals will be released via the Parole Board. It is expected that a number of these individuals will serve more than two-thirds of their sentence.

We do not consider that there are direct financial implications arising from the Prisoners (Control of Release) (Scotland) Bill for the local authorities.

There may be indirect implications arising from this Bill in the future as a result of some prisoners being retained in prison for longer periods.

Research evidence suggests that programmed work is more effective in the
community and delaying the opportunity to work with offenders could translate into risks being delayed rather than being addressed. Initially this could create a sense of reduced reoffending but has the potential to give rise to greater risks at later date.

Yours sincerely

Harry Stevenson
Executive Director
Delegated Powers and Law Reform Committee

71st Report, 2014 (Session 4)

Prisoners (Control of Release) (Scotland) Bill at stage 1
Delegated Powers and Law Reform Committee

Remit and membership

Remit:

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
   (a) any—
   (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   (ii) [deleted]
   (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
   (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
   (c) general questions relating to powers to make subordinate legislation;
   (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
   (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and
   (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.
   (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
   (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

Membership:

Richard Baker
Nigel Don (Convener)
John Mason
Margaret McCulloch
Stuart McMillan (Deputy Convener)
John Scott
Stewart Stevenson
Committee Clerking Team:

Clerk to the Committee
Euan Donald

Assistant Clerk
Elizabeth Anderson

Support Manager
Daren Pratt
The Committee reports to the Parliament as follows—

1. At its meetings on 4 November and 2 December 2014 the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Prisoners (Control of Release) (Scotland) Bill at stage 1 (“the Bill”)¹. The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

2. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM”)²

OVERVIEW OF BILL

3. This Government Bill was introduced on 14 August 2014, by Kenny MacAskill MSP. The lead Committee is the Justice Committee.

4. Broadly, the Bill will change the law in two areas of prisoner early release. First, section 1 would end the system of automatic early release on licence for certain prisoners at the 2/3rds point of their sentence in the interests of protecting public safety.

5. Second, section 2 would provide the Scottish Ministers with limited flexibility to adjust exact release dates for individual prisoners by up to 2 days, where there exists a need to ensure immediate access for a prisoner to support services on release from custody. This applies to all prisoners, not only “long-term prisoners” serving a sentence of 4 years or more. This is with the aim of facilitating reintegration into the community, and reducing the risk of reoffending.

6. The report of the independent McLeish Prisons Commission in 2008 recommended that steps to end the current system of early release could only be

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¹ Prisoners (Control of Release) (Scotland) Bill [as introduced] available here: http://www.scottish.parliament.uk/S4_Bills/Prisoners%20(Scotland)%20Bill/b54s4-introd.pdf
² Prisoners (Control of Release) (Scotland) Bill Delegated Powers Memorandum available here: http://www.scottish.parliament.uk/S4_Bills/Prisoners_-_control_of_release_-_DPM.pdf
taken once prison numbers are established at a “longer term, lower trend” level, so that capacity in the prison estate is available to deal with the short to medium term impact of making changes to the system of early release. The Policy Memorandum states that, given that the criteria set by the McLeish Commission have not been met and also given wider justice system constraints, the Scottish Government has focussed the reforms to end automatic early release on those who currently receive automatic early release on those who are likely to pose the most significant risks to public safety (paragraphs 71/72 of the Policy Memorandum).

DELEGATED POWERS PROVISIONS

7. At its meeting of 4 November, the Committee agreed to write to the Scottish Government to raise questions on the delegated powers provisions in the Bill. This correspondence is reproduced at the Annex.

8. The Committee’s comments, and where appropriate, recommendations on the delegated powers are detailed below.

Section 3 – Commencement
Power conferred on: Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Laid, no further procedure

Provisions

9. Section 3(2) provides that the Scottish Ministers may by order bring section 1 and 2 of the Bill into force on an appointed day. (Section 8 of the Interpretation and Legislative Reform (Scotland) Act 2010 allows different days to be appointed for different purposes).

10. Section 3(3) provides that a commencement order may include transitional, transitory or saving provision. The DPM explains that “a decision will be taken at the time when the commencement order is being developed, but an example of how the power may be used would be to disapply the application of the provisions in section 1 of the Bill to any offenders sentenced before the day of commencement.”

Comments

11. The Committee accepts (in principle) that transitional, transitory or saving provisions may be needed within a commencement order, in respect of the commencement of sections 1 and 2. The Scottish Government has indicated in the annexed correspondence that a commencement order, in respect of section 1, will also preserve the existing early release provisions in respect of certain offenders, according to the date of their sentence, conviction or commission of the applicable offence (as may be determined). With regards to section 2 it may contain transitional provision concerning offenders who are due to be released on the commencement date or the following day.

12. The Committee considers however that such transitional, transitory or saving provisions will have significant effects on certain persons. In particular in regard to section 1, they will further determine (according to date of sentence,
conviction or commission of offence) which prisoners will have the existing entitlement to the early release provision, and which other prisoners will not have that entitlement. It is possible that the provisions in the order may need consideration in relation to certain rights which are protected by the European Convention of Human Rights, as they will relate to release from detention and sentence, and will effect a difference in treatment between certain offenders.

13. The Committee considers therefore that where a commencement order includes transitional, transitory or saving provision in terms of section 3(3), it should be subject to Parliamentary scrutiny by the negative procedure.

14. Accordingly, the Committee calls on the Scottish Government to amend the Bill at Stage 2 so as to make the power under section 3(2) subject to the negative procedure.
Correspondence with the Scottish Government—

On 4 November 2014, the Delegated Powers and Law Reform Committee wrote to the Scottish Government as follows:

Section 3 – Commencement
Power conferred on: Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Laid, no further procedure

1. Section 3(2) provides that the Scottish Ministers may by order bring section 1 and 2 of the Bill into force on an appointed day. Section 3(3) provides that a commencement order may include transitional, transitory or saving provision.

2. The Delegated Powers Memorandum states that an example of how this power may be used would be to disapply the application of the provisions in section 1 of the Bill to any offenders sentenced before the day of commencement. Paragraph 37 of the Policy Memorandum states that “the reforms will not affect prisoners serving sentences at the time the relevant provisions are brought into force”.

3. The Committee therefore asks the Scottish Government:
   - Why it is appropriate that provision to that effect is not made on the face of the Bill, but is better left to provision by order under section 3(3)?
   - How alternatively might this power be exercised?

4. The exercise of the power in section 3(3) may have substantive effects on certain individuals (because it could further define which prisoners will be affected by section 1 in particular, but also section 2).

5. The Committee therefore asks the Scottish Government:
   - To explain why either the negative or affirmative procedures would not be appropriate for the Parliamentary scrutiny of this power, or whether the Scottish Government could agree to lodge an amendment at Stage 2 of the Bill to adjust the procedure?
   - If accordingly a higher level of scrutiny ought to apply (negative or affirmative), how would the Scottish Government assess which higher level would be appropriate?
On 11 November 2014, the Scottish Government responded to the Committee as follows:

We have now had an opportunity to consider the points raised in the letter and would respond as follows:-

At paragraph 4 it is asked –

The Committee therefore asks the Scottish Government:

- Why it is appropriate that provision to that effect is not made on the face of the Bill, but is better left to provision by order under section 3(3)?

- How alternatively might this power be exercised?

In response to the first point, it is common for transitional, transitory and saving provisions to be set out in a commencement order, rather than being placed on the face of the Bill. We consider it is more appropriate to do so as it allows the Scottish Government the ability to retain flexibility around the commencement date and the prisoners that the provisions should apply to. It will ensure that any administrative changes necessary are in place prior to the provisions coming into effect.

With regards to the second point of paragraph 4 the Delegated Powers Memorandum has already provided an example of how the power may apply; i.e. dis-applying the application of the section 1 provisions to those sentenced before the commencement date. Alternatively the power could be exercised in respect of section 1 to save the existing early release provision for all offenders convicted before the commencement date or who committed their offence before the commencement date, thereby ensuring that all offenders will know at the point of their sentencing what early release provisions apply to them and therefore when they may anticipate being released from prison.

In respect of the exercise of the discretionary power to release early in section 2, the power may be applied such that transitional and/or saving provision may be required to ensure that the provisions do not apply to those offenders set for release on the commencement date or the day thereafter, as the provisions for an early release of 2 days prior could not be possible to achieve. However it must be stressed that no firm view has yet been reached as to the commencement provisions and their precise workings for either section 1 or 2. This will be further developed as the Bill progresses through the parliamentary process.

At paragraph 6 it was asked –

The Committee therefore asks the Scottish Government:

- To explain why either the negative or affirmative procedures would not be appropriate for the Parliamentary scrutiny of this power, or
whether the Scottish Government could agree to lodge an amendment at Stage 2 of the Bill to adjust the procedure?

- If accordingly a higher level of scrutiny ought to apply (negative or affirmative), how would the Scottish Government assess which higher level would be appropriate?

In response to point 1 Scottish Government do not consider that either negative nor affirmative procedure are appropriate for Parliamentary scrutiny of this order. It is unusual for a commencement order to take any procedure (other than laying) and the inclusion of a power to make transitional, transitory and saving provision does not normally cause it to take procedure. It is anticipated that this order will be a straightforward commencement order. It will contain saving and potentially, transitional provision, pertaining to commencement of the Bill only. It will state a date or dates for commencement of the provisions and, in respect of section 1, preserve the existing early release provisions in respect of certain offenders, according to the date of their sentence, conviction or commission of the applicable offence. With regards to section 2 it may contain transitional provision concerning offenders who are due to be released on the commencement date or the following day.

With regard to the second point of paragraph 6 Scottish Government do not consider that negative nor affirmative procedure, are necessary for this commencement order. As I have set out above, it will be a straightforward commencement order, containing simple saving and/or transitional provision and therefore it is proposed that the requirements at section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 will be followed.
Prisoners (Control of Release) (Scotland) Bill (in private): The Committee considered its approach to the scrutiny of the Bill at Stage 1 and agreed: (a) proposed witnesses; and (b) to issue a call for written evidence.

Prisoners (Control of Release) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Dr Monica Barry, Principal Research Fellow, University of Strathclyde;
Lisa Mackenzie, Policy and Public Affairs Manager, Howard League Scotland;
Pete White, National Co-ordinator, Positive Prison? Positive Futures;
Professor Alan Miller, Chair, Scottish Human Rights Commission;
Sarah Crombie, Acting Director of Corporate Services, Victim Support Scotland.

Prisoners (Control of Release) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Professor Cyrus Tata, Professor of Law and Criminal Justice, University of Strathclyde;
Peter Johnston, Convener, Risk Management Authority;
Colin McConnell, Chief Executive, Scottish Prison Service;
John Watt, Chair, Parole Board for Scotland;
Phil Thomas, Scottish National Committee, Prison Officers Association (Scotland).

Prisoners (Control of Release) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Michael Matheson, Cabinet Secretary for Justice, and Philip Lamont, Head of Criminal Justice and Sentencing Unit, Scottish Government.
5th Meeting, 2015 (Session 4) Tuesday 3 February 2015

Prisoners (Control of Release) (Scotland) Bill (in private): The Committee considered correspondence from the Cabinet Secretary for Justice in relation to the evidence received on the Bill. In light of this correspondence, the Committee agreed to hold a further evidence session, in round-table format, at a future meeting.

6th Meeting, 2015 (Session 4) Tuesday 24 February 2015

Prisoners (Control of Release) (Scotland) Bill: The Committee took evidence, in round-table format, on the Bill at Stage 1 from—

Lisa Mackenzie, Policy and Public Affairs Manager, Howard League Scotland;
Pete White, National Co-ordinator, Positive Prison? Positive Futures;
Yvonne Gailey, Chief Executive, Risk Management Authority;
Eric Murch, Director of Operations, Scottish Prison Service;
Sean McKendrick, Social Work Scotland;
Professor Fergus McNeill, Professor of Criminology and Social Work, University of Glasgow;
Professor Cyrus Tata, Professor of Law and Criminal Justice, University of Strathclyde;
Sarah Crombie, Acting Director of Corporate Services, Victim Support Scotland.

7th Meeting, 2015 (Session 4) Tuesday 3 March 2015

Prisoners (Control of Release) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Michael Matheson, Cabinet Secretary for Justice, Scottish Government.

9th Meeting, 2015 (Session 4) Tuesday 17 March 2015

Prisoners (Control of Release) (Scotland) Bill (in private): The Committee considered a draft Stage 1 report. Various changes were agreed to.

It was proposed that the wording of footnote 104, recording Margaret Mitchell’s dissent, be agreed to. The proposal was agreed to by division: (For 8 (Christian Allard, Jayne Baxter, Roderick Campbell, John Finnie, Christine Grahame, Alison McInnes, Elaine Murray, Gil Paterson), Against 0, Abstentions 1 (Margaret Mitchell)).

The report, as amended, was agreed to.
ANNEXE C: ORAL EVIDENCE TO THE JUSTICE COMMITTEE

2nd Meeting, 2015 (Session 4) Tuesday 13 January 2015

Dr Monica Barry, Principal Research Fellow, University of Strathclyde
Lisa Mackenzie, Policy and Public Affairs Manager, Howard League Scotland
Pete White, National Co-ordinator, Positive Prison? Positive Futures
Professor Alan Miller, Chair, Scottish Human Rights Commission
Sarah Crombie, Acting Director of Corporate Services, Victim Support Scotland

3rd Meeting, 2015 (Session 4) Tuesday 20 January 2015

Professor Cyrus Tata, Professor of Law and Criminal Justice, University of Strathclyde
Peter Johnston, Convener, Risk Management Authority
Colin McConnell, Chief Executive, Scottish Prison Service
John Watt, Chair, Parole Board for Scotland
Phil Thomas, Scottish National Committee, Prison Officers Association (Scotland)

4th Meeting, 2015 (Session 4) Tuesday 27 January 2015

Michael Matheson, Cabinet Secretary for Justice, and Philip Lamont, Head of Criminal Justice and Sentencing Unit, Scottish Government.

6th Meeting, 2015 (Session 4) Tuesday 24 February 2015

Lisa Mackenzie, Policy and Public Affairs Manager, Howard League Scotland
Pete White, National Co-ordinator, Positive Prison? Positive Futures
Yvonne Gailey, Chief Executive, Risk Management Authority
Eric Murch, Director of Operations, Scottish Prison Service
Sean McKendrick, Social Work Scotland
Professor Fergus McNeill, Professor of Criminology and Social Work, University of Glasgow
Professor Cyrus Tata, Professor of Law and Criminal Justice, University of Strathclyde
Sarah Crombie, Acting Director of Corporate Services, Victim Support Scotland

7th Meeting, 2015 (Session 4) Tuesday 3 March 2015

Michael Matheson, Cabinet Secretary for Justice, Scottish Government.
Scottish Parliament  
Justice Committee  
Tuesday 13 January 2015  

[The Convener opened the meeting at 10:15]  

Prisoners (Control of Release) (Scotland) Bill: Stage 1  

10:16  
The Convener: Item 3 is our first day of evidence taking at stage 1 of the Prisoners (Control of Release) (Scotland) Bill. I welcome to our meeting Dr Monica Barry, who is a principal research fellow at the University of Strathclyde and is alone and palely loitering. Unfortunately, due to a family illness, Professor Cyrus Tata, who is a professor of law and criminal justice at the same university, has had to withdraw at short notice. We hope that he will be able to give evidence at a future meeting. If he was able to come next week, would members be content with that?  

Members indicated agreement.  

The Convener: We have a written submission, so we will go straight to questions.  

Gil Paterson (Clydebank and Milngavie) (SNP): I am particularly interested in addressing the behaviour of sex offenders, in which I have a personal interest. I wonder about early release and people addressing their offending. For instance, I know that there was a particularly good scheme in Peterhead, but it relied on people volunteering, of course. I suspect that some of those people volunteered to play up to the Parole Board for Scotland, although the indicators suggested that the scheme was very successful.  

If early release stopped, what impact would that have? Would it be a good thing, in that there would perhaps be more time for people to reflect and understand that they would be in prison for longer if they did not participate and get working on things? Would it be a good thing for the two reasons that I have mentioned—the good reason and just to get out of the place—or is there a downside? I know that there may be some downsides. What are your feelings about that?  

Dr Monica Barry (University of Strathclyde): First, I think that sex offenders are the most compliant of ex-prisoners you will find. They are absolutely paranoid about being returned to prison following a recall and they tend to keep to their licence conditions.  

On sex offender programmes, I have done research with high-risk sexual and violent offenders in London who are on levels 2 and 3 of the multi-agency public protection arrangements and with around 70 people on licence in Scotland. All the sex offenders say that the programmes help, but they do not have the time for them.
There is an assumption in the bill that, if automatic early release is abolished, prisoners will more readily take up those group work programmes, but there are waiting lists for them in Peterhead and elsewhere, so not everyone can access them when they are in prison.

I have been told by prisoners and sheriffs that extended sentences are often used as a way to ensure that people get programmes in the community. I think that that is the wrong use of extended sentences.

There is not a demand problem with programmes; there is a supply problem. There are not enough programmes in prison, so people are being put out into the community and asked to do the programmes there.

While I am on that subject, I have a point to make about the open estate. To get parole, people must have time in the open estate and there are waiting lists for that as well, for some reason. Sometimes there is no possibility of people getting parole and therefore they are dependent on automatic early release at the two-thirds stage.

**Gil Paterson:** So perhaps there is a resource question in that.

**Dr Barry:** There is definitely a resource question now, which will be exacerbated if the reforms go through.

**Gil Paterson:** In your submission, you talk about programmes after release, for which people have to volunteer—they cannot be coerced into them. I find it difficult to believe that folk would volunteer in great numbers after being released. Are programmes in prison more reliable? I take on board your comment that there is a resource element. If that was not a barrier and resources were there, would we enjoy a higher number of people presenting voluntarily in prison?

**Dr Barry:** I am not sure, but I think that prisoners who are released on non-parole licence have to undertake the programme in the community if they have not done it in prison. I apologise if I am wrong on that, but I am pretty sure that that is part of the non-parole licence conditions. If they have not done in prison a course that needs to be done, they have to do it in the community. Sheriffs are putting extended sentences in place to ensure that there is time for them to do that.

Some sex offenders would do programmes voluntarily, but I doubt that many violent offenders would. There is probably quite a sizable minority of sex offenders who would not do programmes voluntarily.

**The Convener:** It may be different now, but a long time ago I visited Peterhead, where many sex offenders were in denial: they did not think that they had committed an offence, particularly if children were involved. Is it a huge difficulty to get them to see that they are guilty of an offence in the first place?

**Dr Barry:** Yes, but that is a minority. They tend to do the programmes, not least because if they do not they do not get out.

**The Convener:** I understand the compliance element, but whether the fact that they have done the programme means anything is another thing.

**Dr Barry:** Some people whom I have talked to said that they went into the programme thinking that they would just do it for tokenistic purposes, but they came out thinking that it really helped them and made them change their mindset.

**Elaine Murray (Dumfriesshire) (Lab):** In your submission, you are pretty critical of the bill, which you describe as a “flawed change in legislation” that is "undermining rather than strengthening the role of both deterrence and reintegration".

Are the alternative proposals in the Custodial Sentences and Weapons (Scotland) Act 2007, which have not been enacted and in which sentences have a custody element and a community element, preferable to the approach that is being taken in the bill?

**Dr Barry:** They are much preferable. I do not know why the 2007 act reforms have not been enacted. It is vital that any custodial sentence has a community part, because that enables people to be tested in the community.

People will not reoffend in prison in a way that will harm the public, obviously. It is only when they are released that there is the potential for risk, so monitoring and supervision have to be in place when they get out of prison. The longer somebody is in prison, the more difficult it is for them to adapt to life on the outside and the more support they need. Many of those people, especially sex offenders, do not have social networks in the community that they can call on, so they are dependent on social workers and the police. Many people have told me that they look forward to having a police visit once a week—if they are on a sex offender notification requirement, for example—because it is company and somebody to talk to, and they really are desperate for that kind of social support.

**Elaine Murray:** Is your principal concern that the bill as drafted would lessen the support available compared with what currently happens?

**Dr Barry:** There will be no support for the people who potentially pose the highest risk if the reforms go through, because once they are out
after a full term of imprisonment, there is no statutory requirement to look after them.

**Elaine Murray:** So you would not agree that the proposed reforms would help to protect the public.

**Dr Barry:** Not at all, no.

**Roderick Campbell (North East Fife) (SNP):** I have a couple of disparate questions. First, the Government’s policy memorandum makes it clear that

"the reforms will not mean that all prisoners affected by the ending of automatic early release ... will necessarily serve their entire sentence in custody. Prisoners will be able to be considered on a regular basis for parole and if the Parole Board is satisfied that a prisoner poses an acceptable risk to public safety at a given point in the sentence, discretionary early release on parole licence will take place."

Therefore, there will still be an incentive for a prisoner. Would you agree with that?

**Dr Barry:** Yes, but given that only around 25 or 30 per cent of people who go forward for parole actually get it, there is not much incentive there, and prisoners know that it is unlikely, depending on their offence, that they will get parole. If they have not done the programmes because there is a waiting list and they have not been in the open estate because there is a waiting list, they are unlikely to get parole, although they can continue to seek it every year or two.

If somebody is deemed eligible for parole and gets out, that is no guarantee that they are not going to reoffend. You can never guarantee that somebody is not going to reoffend. If they do not get out because they are deemed a risk to the public in January 2015, but they get out in January 2016 having served the full term of their imprisonment, that risk is not going to change, and if they are without support in January 2016, the risk of them reoffending will be exacerbated.

**Roderick Campbell:** The policy memorandum makes it clear that there are alternatives—such as extended sentences and the use of MAPPA—that could come into play if the proposals become legislation. Can you comment on that?

**Dr Barry:** Extended sentences and sexual offences prevention orders—known as SOPOs—as well as MAPPA will not make up for the lack of supervision and support that can be given through criminal justice social work. The additional sentences—they are additional sentences, in the eyes of prisoners; they are a double punishment—are purely for monitoring behaviour and managing risk. Prisoners think that they are a kind of catch-all to trip them up and get them recalled to prison as soon as possible; that is what they think they are for and they do not see them as a help at all.

**Roderick Campbell:** Can you help us with the figures on a different matter? At present, prisoners who are released at the two-thirds point are subject to supervision. What is the reoffending rate during the period in which they are subject to supervision, as opposed to the rate after supervision has ended? Is there a distinction between the reoffending rates?

**Dr Barry:** We have just completed the fieldwork for a study that looks at 10,000 people on community-based supervision—either community payback orders or post-release licence conditions. Unfortunately, we have not analysed that yet, but I can certainly get it to you when we do.

From previous research, I suspect that people on non-parole licence are more likely to reoffend than people on parole licence, and people on no licence conditions whatsoever are more likely to offend than people on licence.

**Roderick Campbell:** It would be useful to look at the same individuals and compare the subject-to-supervision reoffending rate and the not-subject-to-supervision reoffending rate. However, any information would be helpful. I think that the convener would agree with that.

**The Convener:** I always agree with you, Roderick.

10:30

**Dr Barry:** That would take time, because the people who are not subject to supervision now are a different type of person with a different type of offence and they have been in prison for a much shorter time. To really look at that, we would need four or five years so that we could, first, get them when the new legislation is enacted—if it is enacted—and, secondly, spend more than two years looking at their reconviction rates once they are in the community again. It would take time.

**The Convener:** I have just been discussing timing with the clerks. We have until the end of February before we have to draft a report. Would that information be available by then?

**Dr Barry:** Our information will be, yes.

**The Convener:** That is excellent.

**Christian Allard (North East Scotland) (SNP):** Good morning. I seek some clarification. You have talked about serious offenders and said that the bill covers only a limited number of offenders. Do you believe that it would have more merit if it was for all offenders?

**Dr Barry:** No, because I do not think that there is any merit in the bill in terms of reducing reoffending or encouraging reintegration. If the Government is piloting this with high-risk violent offenders and sex offenders, it is probably piloting
it with the wrong people. If it is going to abolish early release, it should be going for the lower end, such as dangerous driving, which is probably a higher risk to the public than sex offenders, or common street crimes such as shoplifting, theft or breach of the peace.

If people are in custody for less than four years, or less than two years, possibly, it is likely that they will survive better after a full term of imprisonment with no support in the community, but the longer people are in prison and the more stigma is attached to the offence—an example is sexual offending—the more support they need when they get out.

Christian Allard: I return to my colleague Roderick Campbell’s question about MAPPA. You do not see any justification for having anything after the end of the sentence.

Dr Barry: I would have to check this, but I am not sure that there is a statutory obligation for MAPPA if the person is not on licence. I may be wrong, and I am happy for someone to tell me otherwise, but if there is no statutory obligation for social work to help the person or to monitor their risk, it will be difficult to hold them to account, whereas if they are on licence, there is a statutory obligation.

Christian Allard: So you are happy for those types of services to be provided at the end of the sentence but not after it.

Dr Barry: No—they can be provided afterwards as long as support is in place. There is no point in monitoring somebody in a vacuum. They have to be given proactive support in relation to accommodation, employment, education, benefits and so on.

Margaret Mitchell (Central Scotland) (Con): Good morning, Dr Barry. The bill targets sex offenders with custodial sentences of four years or more and other offenders with custodial sentences of 10 years or more. Given your comments about recidivism and the category of offenders who are more likely to reoffend, is there a case for more wide-ranging reform of the system of early release? You have said a little bit about where you would start with that, but it would be very helpful if you could expand on those remarks.

Dr Barry: I think that in general there needs to be much more wide-ranging reform of the criminal justice system. First of all, whatever happens reform-wise, groupwork programmes in prison need to be expanded and there needs to be more access to programmes for people when they need them. Even if they are transferred to a different prison, they need to be able to continue the programme that they have started. That is certainly an issue for some prisoners. Moreover, greater use needs to be made of the open estate, if people need that before they can get parole.

The 2007 act with its half-custody, half-community approach needs to be brought into force. With regard to breaches, our study is looking at 250 offenders who have or have not breached community payback orders or post-release licence conditions. As I have said, those findings will be published later this year, but it has been said that adhering to breach conditions is overly strenuous, and I think that breach needs to be loosened for people on either parole or non-parole licences.

Community supervision needs to be much more proactive, which means giving social workers not just more resources to look after people on release but more of a remit to encourage them to get constructive activity in the community. Without such activity, they are not going to feel part of that community or reintegrate easily.

There also needs to be much greater prison-based planning for release. The suggestion in the reforms is that it might help if someone gets out on a Thursday rather than a Friday, but I have my doubts about that. Planning needs to take place in the prison for about three months prior to release, and that is not happening just now. If the person in question gets parole, they are let out the next day, and no planning can happen in that time. The whole system needs to change. For example, housing needs to be more proactive and to hold beds for people who might get out on parole or non-parole licences.

Margaret Mitchell: Given that the cost of reoffending is about £3 billion a year, it seems to me to make sense to put many more resources into the kinds of activities that you have just outlined instead of some of the approaches that we are taking.

Finally, can you comment on the issue of perception? Does the bill clarify sentencing policy? Indeed, is there a need for such clarification? Is there any confusion here?

Dr Barry: I do not think that the bill clarifies the situation; it just muddies the water even more at the expense of one of our most vulnerable groups. It plays into the hands of a baying public and media, and it seems to have more to do with electoral appeal than enhancing public protection. The 2007 act is a lot clearer: it is obvious that sentences are half prison and half community and that the community half is about rehabilitation and not purely surveillance.

Margaret Mitchell: Thank you.

The Convener: You said that 250 offenders breached community payback orders and you are looking at them just now. You said that
“breach needs to be loosened”.

Dr Barry: The breach criteria have to be loosened.

The Convener: Could you expand on that a little, please?

Dr Barry: A lot of social workers are currently going by the book and saying that, if someone does not turn up for two appointments or does not have a valid reason for not turning up, they are in breach. If someone’s grandmother dies and they cannot attend an appointment, they need to show the death certificate, for example. Things are getting quite out of hand.

Sex offenders are being alleged to have committed a further offence when they insist that they have not and they are being recalled to prison on the basis of an allegation from a member of the public. They can be there for years before being let out again, even if they are found to be not guilty of the subsequent offence.

The Convener: That seems to be quite extraordinary.

Dr Barry: It happens.

The Convener: That happens in Scotland?

Dr Barry: Yes, it happens quite a bit. It is not the fault of the Parole Board for Scotland, but it takes a long time to go through the paperwork to get somebody out of prison once they have been recalled. It can take three months.

The Convener: You just said that somebody could be in prison for years, but the Crown Office would have to bring a prosecution if there had been an allegation of another offence. Surely a person has to be prosecuted for a subsequent offence.

Dr Barry: Yes, but that can take time. It depends on why the person is recalled. If they are recalled on the basis of an allegation or because they have breached the technical conditions of their licence, they can be kept in prison for the duration of the original sentence, which can be years. I accept that if a prosecutable allegation is made, it will take less time, but people have told me that it has taken three to six months or longer to get a case taken to court and, once the person is found not guilty, it can take three months to get them out.

The Convener: Thank you for that clarification. We come to Jayne Baxter for her maiden voyage.

Jayne Baxter: You have spoken this morning about the impact of social isolation and the lack of community networks on prisoners who have been released and are living in the community. You have also spoken about the need for more proactive approaches and additional resources. If those issues are not addressed and the bill goes through, how will that impact on the current workload of criminal justice social workers who play such an important role? Is their capacity to be effective going to be squeezed even more than it is at the moment?

Dr Barry: It depends. If people are released with no statutory supervision, it will not impact on criminal justice social workers at all, but it will impact on humanity, certainly, and on the community, because people will be without accommodation, possibly without employment, without social networks, and without any statutory authority to help them to get back on their feet. Offending is likely to increase if there is no support. The research finding is that the less support people have, the more likely they are to resort to offending.

I have had prisoners tell me that, when they were released and had no support from social work, they phoned the police and said, “Can I come back inside?” That is a damning indictment.

Jayne Baxter: Thank you.

The Convener: We have no more questions so I thank you for your evidence. I will suspend for a couple of minutes to allow for a change of witnesses.

10:44

Meeting suspended.

10:46

On resuming—

The Convener: I welcome to the meeting our second panel of witnesses: Lisa Mackenzie, policy and public affairs manager, Howard League Scotland; Pete White, national co-ordinator, Positive Prison? Positive Futures; Professor Alan Miller, chair, Scottish Human Rights Commission; and Sarah Crombie, acting director of corporate services, Victim Support Scotland. Do not take this the wrong way but, as you are the usual suspects and we have your written submissions, we will go straight to questions.

Elaine Murray: I do not know how much of the evidence of the previous witness you heard, but she described the bill as being flawed. Many of you have also expressed concerns about the bill, particularly the proposal to release people into the community without any support at the end of their sentence. You will know that the Custodial Sentences and Weapons (Scotland) Act 2007 proposed a different approach, whereby a sentence would have an imprisonment part and a community part. Will the witnesses comment on
the relative merits or demerits of those alternative approaches?

The Convener: As the witnesses know, they should just indicate to me if they want to speak and I will call them. Who would like to pick up that question? Nobody—right, that is the end of the session.

Sarah Crombie (Victim Support Scotland): Victim Support Scotland quite likes the 2007 act, as it allows the victim to have a clearer knowledge of and is more transparent about the amount of time that an offender will spend in custody and the amount of time that they will spend in the community. It is crucial that victims are aware of any conditions that may be attached to an offender’s sentence and are given that information proactively so that, if they have any safety concerns, they have time to raise them and to put measures in place. As an organisation, we believe that victims should know what to expect, so knowing how much time an offender will spend in custody and how much time they will spend undergoing rehabilitation and reintegrating into the community is a positive thing.

Pete White (Positive Prison? Positive Futures): I agree with Sarah Crombie and her focus on the need for victims to know when someone will be released. However, the 2007 act was drafted before the Scottish Prison Service went through a transformation in its view of how it can work to help people in prison to leave in a better state. There is scope to carry out a review of the 2007 act and the bill together so that a wider range of options can be taken into account than are currently available.

We need to help the justiciary to recognise that prison is the last resort, not handy, and enable it to be more comfortable with handing down community sentences in the first place, because that would be better for everybody. Some parts of the bill are highly commendable, but it is flawed. We need to look at the whole system, from someone being charged through to their return to the community as a citizen, rather than look at bits and pieces of the process.

The Convener: Would anyone else like to comment on the flaws?

Lisa Mackenzie (Howard League Scotland): Do you mean the flaws in the current proposal?

The Convener: As compared with the 2007 act.

Lisa Mackenzie: I have to be honest and say that the 2007 act predates my role, so I am not very familiar with it. I know that the Howard League Scotland opposes—and, I presume, opposed at the time—bringing it into force. I also know that the McLeish commission identified a number of concerns with the act. I do not feel that I am terribly well qualified to say much more than that.

The Convener: I will not press you. You make a fair point.

Lisa Mackenzie: The policy memorandum indicates that the current proposals are being advanced on a platform of increasing the likelihood of reducing reoffending and improving public safety, so we ought to measure them against the evidence base that suggests that that might be the case.

I presume that part of the reason why the proposals are being advanced is that there is a desire to retain some people in custody until the end of their sentence. Like Dr Barry, we have concerns about the idea of those people being spat out of prison, cold, with no supervision or support. It is hard to see how that would increase public safety and reduce reoffending.

Clearly, there is a desire to retain some people in prison until the end of their sentence. Otherwise, I assume that the proposals in the bill would not be being advanced. Let us measure the proposals against the policy objectives. We have some concerns that they will not live up to them.

Victim Support Scotland has made the point that there is a lot of public misunderstanding about the criminal justice process. We really do not want to run the hazard of increasing public cynicism about the criminal justice system. Automatic early release is not terribly well understood as it stands. If the Government stands on a platform, saying that its new proposals will increase public safety and they do not do so, there is a real hazard that levels of cynicism could increase. It is important to keep that in mind.

The Convener: We have had evidence, which you might have heard—I am not saying that it is right or wrong—from the SPS and the cabinet secretary and ministers that prisons now take the preparation of packages for individual prisoners much more seriously. It is not the case that one day someone is in prison and the next minute they are out.

That preparation is not just about releasing people on a day of the week other than Friday that is more convenient, to enable them to deal with services such as social work and housing; it is about ensuring that there is other support when people are released from prison and the fluidity to ensure that they have general practitioner services and so on. Is it fair to say that the bill should be viewed in the light of that? As has been said, prison is changing.

Lisa Mackenzie: Yes, although that is different from statutory supervision—people are compelled to comply with statutory supervision licence
conditions. It is absolutely right that when someone comes out of prison, the best efforts should be made to ensure that they have adequate housing and can access GP services, addiction services and so on, and that there should be programmes in prison to prepare people for being released.

However, we heard Dr Barry express concern that those programmes are not always available, and the other point that we make in our submission is that if the programmes are not available and prisoners are saying, “I want to put myself forward for parole, but I cannot access the programmes,” we might lay open the way to further legal cases in which prisoners say, “I am being arbitrarily detained. I would like to prove to everyone that I am no longer a risk, but I am unable to do so because I cannot access programmes.” That is another real concern.

Pete White: It is fair to say that the SPS has changed its attitude and its approach to planning, but it has not been able to change the way in which prisons are run on a day-to-day basis. The access that prisoners have to education and to courses is minimal compared with what is required. Huge resource reallocation is required to make the approach viable. If someone is going to spend any time in prison, it is important that they are provided and can connect with services to help them on their path back to being a contributing citizen. That is currently a vastly underresourced and unrecognised problem.

For example, in Edinburgh, where there are more than 800 prisoners, only 43 can attend education at any one time. That is a huge disparity with what is required. I know that education is not the only requirement, but it is a problem and presents in other ways.

Professor Alan Miller (Scottish Human Rights Commission): To pick up on the last few comments, as we have found out, good intentions do not always lead to good practice; they are not enough.

You have heard from witnesses that the resources within and outwith prisons are not seen as being adequate. The legislation will increase the spotlight on whether resources are adequate. We know that we are in a time of austerity and that that will not go away in the immediate future. Therefore, there is a danger that, despite the best intentions, there will be unintended consequences, which are foreseeable—there is a danger that the legislation will increase the risk to public protection and will not reduce reoffending or achieve the good intentions that we all recognise.

Elaine Murray: On reading the submissions that have come in so far, I have become increasingly concerned that, to a certain extent, the legislation is tokenistic. It will only affect around 1 per cent of the prison population.

Should we not be taking a deeper look at the whole sentencing policy and process and at what prison and post-prison means? Perhaps the legislation is a reaction to pressures from the media rather than consideration of the problem.


Does the panel want to comment on that comment?

Lisa Mackenzie: It is a fair observation. The Scottish sentencing council is recruiting staff and it seems a shame to be, in a way, pre-empting its existence when this is, I presume, the sort of thing that it might be able to look at in more detail—as you say, it might view the big picture rather than look at it piecemeal.

The Convener: I never thought that I would hear myself say this, but let us defend the media a little bit: is it not the case that the public also want to see an end to early automatic release, because people feel that the sentence should be the sentence—as simple as that?

Pete White: That is why a sentence planning review is required. We are basically in a medieval or Victorian process, in which the sentence that is handed down—the length of time to be spent in prison—is based on what has been set before, and that is then cut. That is the bit that people do not understand because, particularly for short-term prisoners, there is no condition attached to that reduction. People do not have to behave themselves to be released after half their sentence has been served; they can be as rowdy and as uninterested in connecting with anything as they like in prison and they are still released.

If, when someone said “I sentence you to 12 months”, that meant 12 months, people would better understand that conditions about how someone engages can be attached to the sentence. However, at the moment, the situation is a bit of a Frankenstein’s monster: bits are bolted on to sentencing that do not add up to a complete being.

Sarah Crombie: I agree with what has been said on victim support. It would be good if the introduction of the Scottish sentencing council enabled courts to deliver similar outcomes for the same crime so that there are no disparities across the system.

Victims are often confused because they do not understand what the sentence means. We must remember that victims experience a lot of distress and trauma when sentences are handed down, so taking in any information can be difficult. There must be transparency and clarity.
When offenders are released, victims’ views must be taken into account. No one wants to see the expansion of the victim notification scheme to include all victims of all crimes, so I am referring to the victims that we have cited. Their views on any supervision or community reintegration that might take place should be considered so that, if they want to, they have the chance to plan for their personal comfort and safety or, at the very least, they are aware that there is a chance that they might bump into the offender on temporary release while the prisoner is being educated at the local college.

The Convener: I thought that they were told that just now.

Sarah Crombie: They are, but in the current victim notification scheme there is a difference between those who are escorted and those who are unescorted, which is being looked at.

11:00

Roderick Campbell: In the earlier evidence session I talked about incentives. The Government states in the policy memorandum that the ending of automatic early release will make prisoners realise that there is an incentive to engage with schemes to modify their behaviour, because not engaging with those schemes will mean that they serve their full term, whereas at present prisoners can just say, “Well, I’ll be out anyway at two thirds.” Will the panel comment on that?

Professor Miller: I think that that is true. I completely agree with that analysis. An inevitable consequence of taking away automatic early release is that those who are sentenced to serious custodial sentences will be released back into the community cold, without any compulsory supervision. However, as you say, removing automatic early release could also incentivise prisoners to engage more with whatever programmes—adequate or inadequate—are in existence, because they will make more applications to the Parole Board.

As I said, the spotlight will therefore increasingly be on the programmes’ adequacy. If more people are demanding them—rightly, because society has said that that is the deal—and if the Parole Board has to make more decisions than in the past on the adequacy of the programmes, the spotlight will be on those arrangements. The committee has heard evidence from a number of witnesses that the spotlight might not be very favourable, because the programmes will be seen to be inadequate.

There will be a big dilemma for the Parole Board in cases when it knows that there is no automatic early release and that a person could at the end of their sentence be released cold into the community without any compulsory supervision. Does the board take a calculated risk and put the person out on licence because there will be some kind of compulsory supervision and less likelihood, on balance, of their reoffending? That might go wrong and the person might offend, in which case the board would be held accountable. Alternatively, does the board play safe and say, “No, we’re not letting you out—complete your sentence,” when it knows that that is basically transferring a potential risk to the public, whose right to life and security could be jeopardised by someone being released at the end of their sentence without any compulsory supervision?

A lot of the spotlight will be cast on what has up to now been largely an invisible area, which is what there is in prisons that prepares prisoners for release and reintegration into the community. Resources must therefore be considered hand in hand with ending automatic early release.

Having looked at the bill’s human rights impact statement, I think that it is simply not adequate. All that it addresses is whether the measures in the bill will immediately violate prisoners’ human rights, and the answer that is given is no. However, we must look at the foreseeable consequences of ending automatic release—the jeopardy that the public might be put in and the consequences for prisoners’ rights if they are not given the rehabilitation programmes that they will be looking for more than in the past. The committee has to look at those unintended consequences and I welcome the fact that it is doing so.

Roderick Campbell: That is a helpful answer. Does anyone on the panel have comments about reoffending rates for prisoners who are released on licence conditions and rates when those conditions do not apply and there is no supervision? Can anyone throw any light on that?

Pete White: In our experience, people who have served long sentences and are released on licence are less likely to reoffend than, for example, short-term prisoners who are released with no particular support after half their sentence has been served.

As Dr Barry mentioned, licence conditions and the criteria on breaches of them are rather restrictive and lead to people being recalled for a breach of licence for doing something that would not normally merit a jail sentence. That is a harmful way of dealing with things. Reoffending rates must come down, and that will not be helped by strict and inconsistently applied criteria for breaches of conditions.

The reoffending rate of people who come out of Shotts prison through the open estate is far lower than that of those who are released through the...
gate of Shotts prison, who are the ones who have not complied with programmes and have not engaged. There is a way forward for the work that is done in prisons to reduce reoffending among people who are in there for a considerable time.

Margaret Mitchell: Given that recidivism tends to occur more among low and medium-risk offenders, should there be a more wide-ranging system of reform?

Lisa Mackenzie: That would be much more justifiable. It came out in many submissions that it is not entirely clear why the bill homes in on the two chosen categories of offender. The international evidence on sex offenders in particular seems to bear out a trend of their recidivism levels being lower than average. However, as we know, people who commit low-tariff offences, who are often in prison for a very short time, are much more likely to reoffend.

Conversely, the reoffending rate is higher among violent offenders. I am looking at the submission from the Law Society of Scotland. Admittedly, the numbers are very small—I think that the Law Society took them from Parole Board figures on recalls, which apparently are no longer available. In 2005 or 2006—I am not sure which—of 21 people who were released on licence for sex offences then recalled, 14 were recalled for non-compliance, three for crimes of dishonesty, one for drug offences and three for sex offences. Of 184 violent offenders who were released on licence and recalled, 65 were recalled for further violent offences, which is more than a third.

The message that I took from a lot of the other submissions was that offence type or sentence length is not necessarily the best or most reliable indicator of the likelihood of a risk to the public on release. It might be worth while for the committee to do further digging in the next few weeks to unpick that a bit. I know that the committee will hear from a panel of academics next week. You might be in a better position to dig into those statistics.

Sarah Crombie: I agree with Ms Mackenzie. The Scottish Women’s Aid submission says much the same thing. It comments that the proposals exclude the vast majority of prisoners and do not cover perpetrators of domestic abuse, who can be considered as being at high risk of reoffending, although they often do not have sentences of 10-plus years, so that group is excluded.

Pete White: I agree that wider-ranging reform would be welcome. It would make quite a difference to look at everything, from the possibility of diversion from prosecution in the first place through to using prison as a last resort rather than a convenient one.

To pick up the point about austerity, it is a lot more cost-effective to keep somebody out of prison properly than it is to keep them in prison for any length of time. The scope for change is huge. My only concern is that, if the bill is not passed somehow or other, the excellent idea of changing Friday release to release one or two days earlier might be lost. That would be tragic for some people, because of the risk of harm and reoffending on Friday release. I find myself in a cleft stick—

Margaret Mitchell: Dr Barry suggested that two days would not do much in the grand scheme of things and that the throughcare that needs to be put in place—to arrange housing and so on—should be arranged many weeks in advance.

Pete White: There are two issues. Work should be done in prison to make practical arrangements, but that is not always achieved in the last few weeks of a sentence. Some of the practical arrangements that are put in place for people who are released on a Friday are impractical in reality.

For example, if someone is released from Inverness prison on a Friday and they have to attend a housing appointment in Stornoway, they will not make it, because by the time they get to Stornoway—they get to Stornoway—given public transport and the like—the housing office will be shut. That immediately leads to a problem.

I realise that the change is seen as only very small. More people are released on a Friday than on any other day of the week. The people who are released on a Friday and who do not make appointments are those who reoffend, commit self-harm, overdose or commit suicide, or who reoffend to get back into prison because they have nowhere else to go. I would not want that point to be lost in what we are talking about.

Margaret Mitchell: That is a useful clarification, which puts the issue in perspective.

The Convener: Can Pete White explain to me why a release has to be on a Friday? Can that be changed in some other way?

Pete White: I am not here to tell politicians and Parliament how to change legislation or make things possible.

The Convener: Yes, you are—you are here to give us your experience and to tell us what is flawed and not flawed and how we could make things better. Did you not know that that is why you are here?

Pete White: I will claim naivety on that one, thank you very much.

The Convener: That is not you. Anyway, let us hear why it has to be a Friday.
Pete White: Sometimes services are open for a shorter time on a Friday than they are on any other day.

The Convener: I meant to ask why people have to be released on a Friday. I do not know.

Pete White: When a sentence is laid down, the length of time from that date can be extended by the calendar. People who would otherwise be released on a Saturday or a Sunday are released on a Friday, because they cannot be released on a Saturday or a Sunday.

The Convener: So the weekend people become the Friday people, which creates the bulge.

Pete White: The weekend people join the Friday people.

The Convener: I understand.

Pete White: If someone can be released a day or two before the technical date when their sentence ends, they have a better chance of engaging with services that will support them.

The Convener: Does anyone else wish to comment?

Pete White: I would agree with that.

The Convener: I have a feeling that I have curtailed your submissions, Mr White, but never mind.

Pete White: That might not be a bad thing.

Christian Allard: I want to ask the same question that I asked of the previous person who gave evidence. Do you think that the bill targets the wrong type of offenders? I note, Mr White, that your written submission states: "We do not consider it appropriate to dismantle the automatic early release of prisoners in a piecemeal fashion."

I also noted that Ms Mackenzie spoke about things being done in a piecemeal fashion. When you say that, do you mean that the bill targets only a few offenders and that it would make more sense if the bill targeted everybody?

Pete White: I agree that it would make more sense if the bill did not just target those two groups. We need a review of the way in which people are sentenced and sent to prison in the first place, and I do not think that we should pick on those two groups in particular. As was said in previous comments, media focus on those groups may be the reason why they have been picked first, but a wider range of understanding could be extended to all people in prison to ensure that everyone understands from day 1 when their sentence will end, how it will end, and how they will be managed back into the community in a constructive way. That would help a great deal.

Lisa Mackenzie: As I said earlier, and as has been said in other submissions, there does not seem to be any evidence that offence type or...
sentence length is a reliable indicator of the likelihood of someone being a risk to the public on release. I cannot come back with a better answer than that, but perhaps the panel at your next meeting will be able to dig deeper and shed a bit more light.

**Christian Allard:** If the bill wanted to pilot the changes, would you have targeted other types of offenders?

**Lisa Mackenzie:** Are you asking me? I do not know.

**The Convener:** Excuse me, but I want to ask Professor Miller about that. Could you pilot it so that one group of prisoners was subject to one regime in one part of the country and another group elsewhere was not, or would that breach the rights of those who were still entitled to automatic early release?

**Professor Miller:** I do not think that that would fly at all. It is difficult to understand the logic that underpins the bill. When a judge sentences someone, they will pass an extended sentence if they think that the person needs to be subject to compulsory supervision when they return to the community. We know that the biggest recidivists are the shorter-term offenders, but the Government has decided to target a category of offenders on whom judges do not pass extended sentences because they do not think that they are the most serious offenders, and whom we know are not the most likely to reoffend. The Government has said that it has chosen that group of prisoners because of the length of their sentences and because they should stay in prison for public protection, but it is that category that the Government has isolated for special attention who will then be released cold into the community, making them more likely to reoffend than if they were not released cold and subject to automatic release.

The bill turns things on their head. From a public protection point of view, it increases the risk to the public of reoffending by those individuals. It is difficult to understand why the Government does not want to look at the whole criminal justice system. If there is a particular problem with a category of prisoners, it is difficult to see what the bill will achieve. It is counterintuitive, because it will have consequences that will increase the risk to public protection.

**The Convener:** The purpose of the bill is

"to allow prisoners serving all but very short sentences to be released from prison on a particular day suitable for their re-integration into the community."

I do not think that it would be possible to amend the bill to bring in lower sentences; that would not fit within the purpose. Is that a fair comment? If so, is it possible that the Criminal Justice (Scotland) Bill could move into that territory? Perhaps the committee could look at that later.

**Margaret Mitchell:** VSS’s written submission refers to the 2008 Scottish Prisons Commission report’s call for automatic early release to be ended for those convicted with custodial sentences of two years or more. Recommendation 21 of that report was that "the provisions around risk assessment, conditional release and compulsory post-release supervision arrangements should be reserved for those serving 2 years or more".

Can you comment on that aspect of your written submission?

**Sarah Crombie:** As far as Victim Support Scotland is concerned, the issue is all about ensuring that, whatever system is taken up, there is clarity and transparency, and victims have the required knowledge and information. We believe that no matter what crime has been committed all victims should receive that information and be able to be safe in their own homes. They should be aware of when offenders are being released and any conditions attached to their release, and it should not really matter whether the sentence in question is for 10 years or two. As far as short-term and long-term prisoners are concerned, victims should receive information about what is happening.

**Margaret Mitchell:** Do you also agree with recommendation 21 in the Scottish Prisons Commission report that "risk assessment, conditional release and compulsory post-release supervision" should apply to those serving sentences of two years or more?

**Sarah Crombie:** Yes.

**The Convener:** It is fatal to say this, but I do not think that anyone else wishes to ask a question. I will therefore put my blinkers on and thank the witnesses very much for their evidence.

Next week, we will hear from criminal justice social work; Professor Tata should be able to come; and there will be evidence from the Risk Management Authority, the Parole Board, the staff associations and Professor McNeill. It will be interesting to put to them the issues that have been raised appropriately with us.
Scottish Parliament  
Justice Committee  

Tuesday 20 January 2015  

[The Convener opened the meeting at 10:00]

Prisoners (Control of Release) (Scotland) Bill: Stage 1

10:01  
The Convener: Item 2 is consideration of the Prisoners (Control of Release) (Scotland) Bill. This is our second day of evidence taking at stage 1.

I welcome to the meeting our first panel of witnesses: Professor Cyrus Tata, professor of law and criminal justice at the University of Strathclyde, and Peter Johnston, convener of the Risk Management Authority. Professor Fergus McNeill has sent his apologies as he is unwell, but he has given us a written submission; members will appreciate that the submission has come in late because his absence was unexpected. I thank the other witnesses for their written submissions.

We move straight to questions.

Margaret Mitchell (Central Scotland) (Con):  
Professor Tata’s submission questions whether the bill’s provisions distort sentences and gives the example of early release automatically kicking in for a nine-year sentence but not for a 10-year sentence. Will you expand further on that?

Professor Cyrus Tata (University of Strathclyde): The bill purports to increase public safety. It does that on the basis of the length of time for which someone has been sentenced, not on the basis of any assessed actual risk. In fact, someone who has been convicted of a non-sexual crime and sentenced for, say, nine years may be more likely to reoffend than someone who has been sentenced for 10 years, and yet it may be that the person with a slightly longer sentence, over the arbitrary cut-off point of 10 years, ends up in prison for even longer. It could lead to the quadrupling of that extra year that I mention in my written evidence.

Far from making sentencing clearer, the bill makes sentencing less clear. I share some of the criticisms that have been widely made about release. It is a thorny and difficult issue, but the bill attacks the very part of the release system that is most justifiable, rather than the lower end, where it is less justifiable. It will lead to incoherence, less clarity and less proportionality.

Margaret Mitchell: Is there a need for more wide-ranging reform of the system of early release? If so, where would you start?

Professor Tata: We are looking at back-door release, as we might call it, or back-door sentencing. You have to look at that together with front-door sentencing—judicial sentencing.

The Convener: Can you explain what you mean by “back-door sentencing”?

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Professor Tata: By back-door release, I mean the release of prisoners by the executive branch of the state. We must look at that in relation to front-door sentencing, which is to say, judicial sentencing. The two things have to be put together. We cannot pretend that one works in isolation from the other.

That is the best way of having a proper root-and-branch review of the issue, which has been going on for decades. It is a difficult issue, and I have great sympathy with the successive Governments that have tried to tackle it. The Custodial Sentences and Weapons (Scotland) Act 2007 attempted to do so and had some merit in it, but it had a lot of serious problems. The bill that we are considering is in some ways even worse, I am afraid.

Margaret Mitchell: Do you have anything to say, Mr Johnston?

The Convener: If either of the witnesses wants to comment they should just indicate to me that they want to respond. Do you want to come in on that, Mr Johnston?

Peter Johnston (Risk Management Authority): Unless it is felt that I can help further, I think that the point has been well covered by Professor Tata.

The Convener: Is it your position that there has to be a review of sentencing policy in parallel with the proposed reforms, and that we cannot do one without the other?

Professor Tata: Yes. You have to look at both sentencing and release policy. In reality—this is why many people are cynical about release—release has been used as a form of back-door resentencing, particularly at the lower end, to cut the prison population. We have to be honest about that and look at it in the round, together with sentencing policy. That is why people are cynical and I understand their cynicism, because it is a surreptitious form of resentencing.

The top end, with long-term prisoners, is where the system actually works best and where there is most need to have some sort of managed process of release under supervision. However, although that is the very part of the system that is most coherent, most defensible and best in terms of public safety, the idea is to abolish it, supposedly because keeping people in prison for longer will make the public safer. We need to explain to members of the public that eventually prisoners have to come out and that if someone is released cold they are more likely to reoffend. I do not think that it is difficult for people to understand that.

Margaret Mitchell: Are you making a distinction between the cold release that would be the outcome of the proposals and the present system of release on licence?

Professor Tata: Absolutely. The public debate must be informed about what happens when people are institutionalised, no matter what great work the Scottish Prison Service does—and I applaud its excellent work in recent years—because we can never prepare someone for release in prison as well as we can by supervising their release and helping them upon release. There has to be supervision on release, otherwise this is just irresponsible. We are playing fast and loose with public safety if we just release people cold because they are deemed to be the most likely to reoffend. If they are released cold, that makes them even more likely to reoffend.

The Convener: Does Mr Johnston wish to comment on that from the point of view of the Risk Management Authority?

Peter Johnston: Our view is very clear, and it has to be because we focus largely upon effective assessment of risk followed by effective management of risk. From our standpoint, the rationale that underpins early release on licence is that the whole process of risk management, support and supervision in the community is vital to rehabilitation, successful return to the community and a reduction in the likelihood of re offending.

Anything that produces a cold release, as Professor Tata has described, is a matter for concern from our point of view, and that is the nub of the challenge. It goes against what we believe Government has done well in tackling a difficult challenge, and we are concerned that cold release, which is perhaps an unintended consequence of the bill, could constitute a retrograde step. If, as is well documented—and, I think, universally accepted—effective supervision is vital, removing the possibility of that assistance is very worrying.

It is interesting that a lot of research establishes that offenders who are successful in returning to the community typically thank those who have been involved in their supervision and support. Their attitude is that they could not have achieved their rehabilitation without that support and supervision. That is why we are concerned about that aspect of the bill.

Another aspect that gives us some concern is that we believe there is a misunderstanding that sex offenders are riskier and more dangerous than violent offenders or other offenders in the round. Interestingly, Parole Board for Scotland statistics—albeit that they are from a few years back—support the proposition that sex offenders are less likely to reoffend and that if they do
reoffend, quite often it is in a way that is nothing to do with sexual offences.

We think that the differential aspect—removing automatic early release for sexual offenders serving sentences of four years plus and for violent offenders serving sentences of 10 years plus—has got it wrong and threatens to perpetuate that misunderstanding. It is very easy to understand where the misunderstanding arises, because the public are quite properly terrified of sexual offending, although the consequences of violent offending—which one hears about if one speaks to the victims concerned—can be pretty drastic, as well.

The Convener: It is a difficult issue in terms of public perception and from the point of view of the victims, quite rightly.

Roderick Campbell (North East Fife) (SNP): Further to Mr Johnston’s point, the Government’s policy memorandum states at paragraph 40:

“While data about reoffending rates does not generally show a higher risk of reoffending by sex offenders, it is the very specific devastating impact that sex offending and reoffending behaviour has on victims, their families and wider communities which led to the development of these special arrangements in order to help protect the public and reduce levels of fear and alarm.”

The Government is aware that the arrangements are not based on the statistical risk from sex offenders; that is made quite clear in the policy memorandum.

Professor Tata: That is true, but it is a sentencing matter. It is about denunciation—marking the gravity of the offence, the harm, the culpability and so on. It is not about assessing likelihood of reoffending—it is a sentence. The policy memorandum says elsewhere that the measure will not interfere with sentencing, but in fact it will. It will also encourage the use of extended sentences. I will come on to that.

Christian Allard (North East Scotland) (SNP): Good morning. I want to concentrate on Peter Johnston’s submission and in particular on the positive comments at the start about the aims of the bill’s provisions. I would like to develop two of your recommendations, one of which is about the limit to the offenders whom the bill will target. In paragraph 19, you say:

“Limiting the scope of the current Bill to prisoners serving extended sentences may merit consideration.”

You recognise that the Government wants a staged approach. Would you like the bill to target fewer offenders? Does the bill’s scope target too many offenders?

Peter Johnston: Our point at paragraph 19 is that if the bill is to proceed, we think that it would be more logical to confine its scope to those who are on extended sentences. That would limit the occurrence of release without conditional post-release supervision, where it is appropriate. Underlying that is our strong feeling that the process should be driven by a focus not necessarily on the offence but on the risk of real harm to the public. However, we really make that point because those who are on extended sentences will have the opportunity of post-release supervision.

Christian Allard: You talk about post-release supervision. We could extend the scope by introducing to the bill an element of pre-release supervision. If there was mandatory pre-release supervision for two or three months before the end of a sentence, would that remove some of your concerns?

10:15

Peter Johnston: Professor Tata made a good point: the SPS does a lot of valuable work, but in my view you cannot replicate the challenge for a long-term prisoner in returning to the community. It is a very challenging business indeed: there are anxieties about accommodation and the offender wonders whether they will get employment, whether they will have any money, how they will survive, whether they will have any friends and whether society will accept them back. The challenge is seriously heightened for the sex offender, because they can be hounded by the media and neighbours, as soon as it is known that a sex offender is in a given location.

There are two aspects to the issue. Critically, it is about public safety, but it is also about the rehabilitation of offenders. There must come a point at which society recognises that the seriousness of the offence has been recognised and the punishment has been served. The challenge is then to rehabilitate the offender, return them to the community effectively and reduce the risk that he presents to the public.

Pre-release supervision might help, but it is like having a mock trial. A mock trial is quite useful to teach law students, but it is no substitute for an actual trial.

We must understand that although the system as it stands has failings and challenges with resourcing, as everything does, it works very well a lot of the time. A lot of thought goes into the system and there is multi-agency involvement. The Parole Board, for example, has huge expertise in looking at the risk that the released offender will present. A whole body of effort goes into the process, which by and large works very well.
Of course there is reoffending—there always will be—but the system actually works. In colloquial terms, “If it ain’t broke, don’t fix it.”

Christian Allard: Is there a failure to explain how well the system works? There is a public perception, and victims and their families strongly believe that the system is not working.

Peter Johnston: There is scope for education. Politicians and the Government should say more to extol the virtues of what we have. There is huge effort across the board—by police, social workers, prisons, the Parole Board and other agencies in the system—and a lot could be done to reassure the public by explaining that early release does not mean that somebody has got away with it. One of the respondents made the point that being subject to supervision is quite a weighty business; it is not an easy road. In a sense, it is an additional burden when someone is trying to get back to normality, but it is a burden that is very helpful.

Professor Tata: There are problems with the system, but I agree with Mr Johnston. It is much more difficult to justify such things as half-time release and so on in the lower end of the system, which is completely ignored in the bill. That is where there is understandable public and judicial cynicism, and I share some of the concerns.

At the higher end, we probably need to do more. The key point is that rehabilitation is not simply a matter of being nice to a convicted sex offender or violent criminal. I am not interested particularly in trying to do that; rather, we are interested in public safety. Effective reintegration is the prerequisite for public safety. If the Government decides that it does not want to bother with the people who are most likely to reoffend and those who are most dangerous and just releases them cold, surely that would be irresponsible?

Christian Allard: You agree with the aim of the bill, but you do not think that it targets the right offenders.

Professor Tata: That depends on what you mean by the aim of the bill. If that is simply to increase public safety, I would of course agree with that. However, there are arbitrary problems with the bill—it arbitrarily picks sentences of four years and 10 years. You must ask why that is, in terms of the evidence.

The bill seems incoherent. The Government is saying that the people who are most likely to reoffend and who pose the greatest risk and fear among the public—that risk is referred to repeatedly in the policy memorandum—will be the very people who are kept in prison and then let out cold to reoffend. Who will get the blame for that? It seems to me that blame shifting could be going on here in order that someone can put a tick in a box to say that we have started abolishing automatic early release. First, the Parole Board is potentially being sold a dilemma under the guise of empowerment. Secondly, community supervision more generally will get the blame. Reputationally, they are being set up for failure.

If someone is released early and they reoffend seriously while on supervised release we know about that—that is the current situation. However, if someone, such as a sex offender, were to be released cold and they reoffended seriously soon afterwards, such a case, as you know, would be all over the media. When it emerges that the person was released cold and that they had no support network, questions will be asked. Why were they released cold? Why were they not given any proper supervision? Why were they not assisted? What is going on? Such an approach would be irresponsible.

Christian Allard: What safeguard are you looking for to stop the increase in cold releases?

Professor Tata: You must have a period of supervised release, particularly for the most dangerous individuals who are given determinate sentences. You can call that what you want. The policy memorandum uses the term “extended sentences” and suggests that there should be more of them or, indeed, more orders of lifelong restriction. However, someone could reoffend while they are on the release part of the extended sentence so that does not get us anywhere. Therefore, the extended sentences suggestion simply re-invents the same problem; we return to the same difficulty.

Elaine Murray (Dumfriesshire) (Lab): Unfortunately, Professor McNeill is not able to be with us today, but I will read out part of his submission:

“I would support the view of other witnesses that the current Bill should be abandoned and that the complex question of how best to manage early release should be referred to the Scottish Sentencing Council, when it becomes established. Until then, our current arrangements seem likely to me to better protect the public (and support reintegation) than what is proposed in the Bill.”

Do you agree? Should the Justice Committee suggest to the Government that the bill be abandoned, or can the bill be amended to improve it?

The Convener: I think that Professor McNeill’s email was sent to members this morning. In any event, members now have a copy of the text in front of them.

Elaine Murray: I was quoting the final paragraph.

Professor Tata: I will base my response on what you said.
I agree with Professor McNeill. The bill would have to be amended out of all recognition if I were to be able to support it. There is a central contradiction and incoherence at the bill’s heart. It claims that it will increase public safety whereas, in fact, it is playing fast and loose with public safety so that someone somewhere can tick a box to say that they have taken steps to abolish automatic early release.

The sentencing council is the sort of body that should look at these issues; I hope that it is minded to do so. It is the sort of thing that we should look at in the round, by looking at both judicial sentencing and release policy.

In many ways, the provisions regarding sexual offenders serving sentences of four years plus and violent offenders serving sentences of 10 years plus are a form of resentencing, because what is being said is, “We think those offences are so serious that people who commit them should, under certain circumstances, not get early release.” That is really a matter of denunciation and of sentencing policy; it is not fundamentally a matter for the Executive.

The sentencing council has a role to play. One of the beauties of such a body is that it can be a buffer between the judiciary, the parole board, the SPS, social work and other parts of the system that are trying to do their job and, if you like, penal populism. It can take the heat out of the situation. If a case is given to the sentencing council to be looked at, that immediately takes it away from the control of ministers and the political pressures that they are under. A body such as the sentencing council can definitely make a contribution.

Peter Johnston: You will have seen in our written response that we think that the bill would benefit from

“re-focussing its inclusion categories on risk of serious harm rather than offence type.”

That is coupled with the point that I made about the misunderstanding, as we see it, about sexual offences.

We have also recommended that further scoping should be undertaken, which basically means that more thought needs to go into quantifying the risks and benefits that the bill’s provisions as drafted would create. We recommend that further thought be given to the bill, rather than proceeding with it as it stands.

Elaine Murray: Parliament has had a stab at this in the past—although, as one witness said, that was more about ending unconditional release—in the Custodial Sentences and Weapons (Scotland) Act 2007. The McLeish commission pointed out that the measure would be extremely expensive and difficult to implement, and the 2007 act was amended by the Criminal Justice and Licensing (Scotland) Act 2010. Do you have any views on that approach, as opposed to the sort of approach that is proposed in the bill?

Peter Johnston: There is no doubt that that approach would be expensive and that very careful consideration would need to be given to provision of appropriate resource—just how much it would cost. However, in these circumstances, one must always bear in mind how much reoffending costs, one way or another. That cost is colossal and is often quite hidden. If you start to work out what reoffending costs society, both psychologically and in hard cash, what you find is quite frightening.

The 2007 act was in many ways very thoughtful. Of course, it would have meant a vast increase in post-release supervision. However, sitting as we are, putting great store by effective risk assessment and management and the rehabilitation of offenders, all in the interest of public safety, we would have to take that view.

Professor Tata: The 2007 act was described as unworkable by a very senior civil servant. In a previous incarnation of the committee, I was highly critical of the bill a couple of times: there were a lot of problems with it, particularly at the lower end. That said, I can understand the attempt to label sentences as kind of combined sentences, with an attempt to be up front and say, “Look: when someone is sentenced to a period of imprisonment of, say, two years, part of that will be supervised release,” rather than let people think, “Oh well, he only served a year. He got away with it.” However, there were so many fundamental problems and contradictions in the bill’s details that that was a serious problem.

I return to the point that the fundamental difficulty with the bill was that it looked at only the release end—the back-door, if you like—and not what went in. We have to look at the two things together. At the end of the day, that is where the incoherence comes from. It would be very good if the sentencing council was willing to and really wanted to look at that.

10:30

Elaine Murray: I think that the 2010 act enabled ministers not to bring in measures in the 2007 act for very short sentences. Obviously, there was an attempt to address issues to do with the overload that would have occurred if the measures in the 2007 act had come in as they were.

Professor Tata: Yes.

Alison McInnes (North East Scotland) (LD): Mr Johnston, the Risk Management Authority’s written submission says:
“We are aware that the Scottish Government is currently considering the feasibility of extending the scope of the MAPPA to establish arrangements for certain non-sexual offenders”.

Does not that suggest that some part of the Government understands the issue? Therefore, is it not contradictory to bring forward the bill at the same time?

**Peter Johnston:** I would certainly hesitate to suggest that the Government does not understand. We have pointed to what we think is an unintentional consequence, which we regard as unfortunate. We are certainly working on the extension of multi-agency public protection arrangements, as I am sure members know. We think that extending MAPPA to other offences beyond sex offences could be most valuable.

**Alison McInnes:** What legislative framework is needed to extend MAPPA?

**Peter Johnston:** I am not sure that I am qualified to answer that question. I assume that at least some form of order or possibly primary legislation would be needed.

**Professor Tata:** Mr Johnston is better qualified to talk about this, but I want to make a point. Whatever is done with MAPPA simply will not fill the gap that the proposals to abolish supervised release for the people who are most likely to reoffend would leave. I am talking about the tailored, individualised work that those release arrangements put in place.

**Alison McInnes:** Okay.

**Peter Johnston:** Yes; it would be helpful rather than a panacea.

**The Convener:** Will you clarify something for me? The bill does not say that if we abolish automatic early release, we will abolish supervision. To make things plain for anybody who is listening, why is that a consequence of doing that?

**Peter Johnston:** Because the sentence has been served.

**The Convener:** Correct. I have seen MAPPA in operation in my constituency. Are you saying that if we could bring in MAPPA provisions in some way, whether in the bill or by the existing means of doing so—I do not know what they are, but we will get a note on that—that would allay your concerns about cold release?

**Professor Tata:** There is a problem in doing that. The implication of your question is that these are determinate sentence prisoners. The judge has said that there is an end point.

**The Convener:** Yes, I appreciate that it is on licence, but is there a way of doing things? I do not know whether there could be relabelling or whatever. We in the committee appreciate your concerns that there is no improvement if there is cold release, but if we bring in something with it, particularly for sex and violent offenders, so that there is some statutory support for people if we end automatic early release, would that alleviate some of your concerns?

**Professor Tata:** I suppose that the question then is: are we not just reinventing parole and giving it another name?

**The Convener:** So your answer is no: it would not really help.

**Professor Tata:** I think that my answer is no. The only benefit of doing that—as far as I can see—would be that someone somewhere could say, “We have abolished automatic release.” It is called that, but we would have something similar anyway, which we have had to reinvent.

**The Convener:** I am chewing that over.

**Roderick Campbell:** I direct the witnesses to the policy memorandum which, for the record, states that if there is no automatic early release at the two-thirds point, there is an incentive for prisoners to engage with efforts to change their behaviour, as they will know that, if they do not engage, it is likely that they will do the full sentence. Do the witnesses have any thoughts on that?

**Professor Tata:** For some prisoners, that might be helpful. Other witnesses, such as Peter Johnston, will be able to answer the question better than I can.

The fundamental problem here is that there is not, for the most part, a lack of interest among prisoners in getting on the programmes. There will be litigation in this area; prisoners will say, “You’re saying to me that I now have to demonstrate that I’m not an unacceptable risk, and the best way that I can show that is by going on the programme, but I cannot get access to it.”

This is not a criticism of the SPS, but the committee may be aware that there might be difficulties and resource issues in getting prisoners places on those programmes. There will be litigation, because a prisoner will say, “Look—that’s not fair. I’m not being given a fair opportunity to demonstrate that I’m not a risk. I believe that I’m not a risk, but I am not allowed to show that because I can’t get on the programme.”

If the bill goes through, we should expect more headlines about outrageous human rights cases brought by prisoners complaining that they did not have those opportunities, and more criticism of prisoners’ human rights by the red-tops, fulminating and frothing at the mouth, unless there is a huge or major increase in investment in those programmes.
Mr Johnston may be able to say more on that point.

Peter Johnston: One can speculate on the matter, but the people who can best advise the committee in that regard are probably the experienced prison governors who, day and daily, see how prisoners react and co-operate—or do not co-operate, as the case may be.

I am interested in the assertion that has been made, and I have spoken with one such experienced prison governor. His attitude was that there are some prisoners who co-operate—funnily enough, sex offenders tend to co-operate in prison and in post-release supervision much more than violent offenders do—and respond to engagement, but there are other prisoners who do not.

I am not able to give you a firm answer to the question, but I have spoken to a person who should know, and that was his attitude.

Roderick Campbell: Is there any international experience that we can draw on?

Peter Johnston: There may be, but I am not aware of any. If it would be at all helpful, I have colleagues in the RMA who could probably answer the question swiftly. I could get a note passed to the convener in a day or so, I would hope.

Roderick Campbell: We touched on the use of extended sentences earlier. Can anything further be said on their use? How feasible would a significant expansion be?

Peter Johnston: Anything that we would be able to say on that has been said in our written submission. Clearly the disposal is very useful in appropriate circumstances, but, as I have said, we feel that the focus should be on the risk of real harm. That is what it goes back to.

It is really horses for courses. A variety of sentences are available, for very good reasons. The current situation as regards available sentences is comprehensive and largely satisfactory.

The Convener: I call Gil Paterson, to be followed by John Finnie and Jayne Baxter.

Gil Paterson (Clydebank and Milngavie) (SNP): Convener, my questions were about the area of rehabilitation programmes in prisons that Roderick Campbell asked about. As far as I am concerned, the matter has been adequately covered.

The Convener: In that case, we will move on to John Finnie.

John Finnie (Highlands and Islands) (Ind): Good morning, panel. You will have read Professor Fergus McNeill’s evidence. He makes a plea to the committee to raise the level of public debate, which I thought was very interesting and challenging, given that terms such as “sex offender” and “violence” are involved.

Earlier on in his submission, Professor McNeill talks about definition and clarifications, saying: “The question of the ‘conditionality’ is much more complex. In my view, it is not helpful to refer to early release of short sentence prisoners as ‘unconditional’.”

I certainly subscribe to that view. Can you point the committee to ways in which we might address the terminology issue and raise the public debate on this matter?

Professor Tata: I, too, read that in Professor McNeill’s submission and perhaps enjoyed it in the same way as you did.

There are two issues to highlight. The first is that we need to reclaim or, indeed, claim the tough ground by making it clear that we are not opposing the abolition of automatic release for the most dangerous individuals because we want to be nice or soft or kind to dangerous people. I would want to turn that around and say that such a position is all about being tough and ensuring public safety. We need to claim that ground and make it clear that, on the contrary, it is the idea behind the proposals that is soft and irresponsible and weak.

Secondly, I want to follow up on the comments that Professor McNeill has sent the committee this morning about raising the public tone. The best way of doing that is to give the matter to a body such as the sentencing council that is relatively insulated from the populism that, as you have suggested, surrounds issues of violent offenders and sex offenders. In any case, I do not think that it is difficult to say to people, “You might not like violent offenders or sex offenders or what they have done. Neither do I, but this is all about public safety.” The best way of ensuring that the public are safe is with managed, controlled and supervised release in which an individual’s needs are addressed and their behaviour monitored.

John Finnie: I do not think that Professor McNeill is capable of putting anything in a crude way, but further on in his submission he says: “To put it crudely, simply ‘storing the risky’ for a little bit longer doesn’t in fact serve to reduce it—the key issue for public safety is the condition in and conditions under which people are detained and then released, not how long they serve.”

Would you subscribe to that view?

Professor Tata: Yes. It stores up risk.

Peter Johnston: One has to come to that view. What good is it doing to the prospect of rehabilitation and return to the community if a person simply sits around for their four-year sentence? Well, they would not be in prison for
that long, but they would be hanging around and would then be released into the community at the end of the period. We could say, “Well, as long as that person is in prison, the public are safe”, but the risk must be heightened if there is no supervision or support. It has to be heightened; I cannot see how it would not be.

10:45

**John Finnie:** I know that there are some very dedicated people doing a lot of really good work in the Scottish Prison Service. Setting the proposal in the bill aside, is there an opportunity to enhance what is already in place?

**Professor Tata:** What do you mean?

**John Finnie:** If the proposal is, as we are told, about enhancing public protection, could we instead beef up what is already in the system?

**Professor Tata:** There are two points in that respect. One concerns the good work that is being done within the limits of resources. The work that the SPS does, and the imagination that it has shown, have been great. However, I return to the point that, no matter how good our work with people in prison is, and no matter how much we help and encourage them and so on, it can never be a substitute for managed supervision on release. We cannot replicate the outside world inside.

**Peter Johnston:** I have to agree with that.

**The Convener:** There is more to it than risk management—it is about the public wanting to see punishment. I see that you are nodding, Professor Tata. It is also to do with making the sentence the actual sentence that is served. That brings us back to the sentencing council.

You have not mentioned punishment. It may be liberal—I use the term in the nicest possible way—to talk about rehabilitation, but you can understand why many of the public want punishment. They do not give tuppence whether a prison is rehabilitating the person who trashed their house, or the sex offender. They want those people to be punished.

**Professor Tata:** You are right—you have hit the nail on the head—but that is a sentencing matter. The policy memorandum says that the bill has nothing to do with sentencing and will not affect it. In fact, however, in looking at the bill, one realises that it is a way of trying to change sentencing by suggesting extended sentences and trying to increase the length of time that people serve.

With regard to the public discourse, one has to make the point that supervised release is not about being nice to sex offenders or other prisoners. They are entitled to a certain level of humanity, but supervised release is about public safety. It is hard-headed, and it is tough. Arguing that supervised release for the most dangerous prisoners should just go is not tough at all; it is weak. I would turn the assumption of weakness around.

**The Convener:** Yes. It is a hard sell, though.

**Peter Johnston:** Yes, it is a hard sell, but the message should be along the following lines: yes, rehabilitation benefits the offender but, more importantly, if we rehabilitate the offender and they do not reoffend, the benefit to the victim and to society in the round is to know that the offender will not do it again.

As has been said, successful rehabilitation is not about being nice.

**The Convener:** No—that is not my view. I am just making the point that I can understand why people say, “It’s all right for the chap or the woman who gets out of prison—look at all the stuff that’s in place to help them, and it’s costing us.” There is an argument in that respect.

**Professor Tata:** Absolutely. I appreciate that it is all very well for us to say what we say, but you have to face the points that people raise—

**The Convener:** Everybody has to face them.

**Professor Tata:** Indeed, and that is where the sentencing council or a similar body could take the heat out of the situation. We could give the matter to the council to deal with.

**The Convener:** I am not speaking on behalf of the red-tops, by the way—I just wanted to raise the point.

**Jayne Baxter (Mid Scotland and Fife) (Lab):** I will move on to another aspect of the bill, which concerns early release for community reintegration. We have talked a great deal this morning about transitions and the need for prisoners to be supported as they move back into community living. The bill allows for the SPS to release sentenced prisoners up to two days early when that would help their reintegration. I am interested to hear your views on what has provoked the need for the provision and whether it will make a difference. Will it add any value? What is it all about?

**Professor Tata:** I think that I am right in saying that the proposal was not in the earlier incarnation of the bill. Of course, one has to welcome the proposal, in that it represents a tiny chink of light in the context of doing the sort of work that we have been talking about, which is absolutely necessary.

All the evidence that I am aware of says that, for long-term prisoners, the first year or two after release is the most risky time in relation to reoffending. Other people will know a lot more
about the practicalities of getting housing and employment, but it is not just about securing housing, benefits and so on. It is about family and relationships, whether the person meets an old offender acquaintance and is drawn back into that circle, and how they are treated by the community. It is about social relationships, and we cannot deal with that in a day or two, even if the other things could be dealt with in a day or two, which might be a little overoptimistic.

It is interesting that the proposal is in the bill, because it is a tacit recognition that we cannot just release people cold. I noticed that the explanatory notes make the point that supervised release can cut reoffending by up to 20 per cent—I think that that figure comes from Government work. Of course, that supervised release is not for a day or two but for a much longer period. In a way, the provision is a tacit admission that cold release is not sensible, so it is welcome, but it really does not amount to much.

**Peter Johnston:** The provision is practical and welcome. It deals with a real problem for someone who is unfortunate enough to get out on the wrong day, which is a bit like buying a car made on a Friday—it is never going to work as well. The released person simply cannot get to the people who they need to do things immediately to make the first days of their release from prison bearable. I entirely welcome the provision; it is good common sense.

**Professor Tata:** That is true, but I come back to the point that, if someone has spent eight, nine or 10 years in prison, a day or two is not much. It is better than nothing, of course, but after such a period of institutionalisation a person will need more support and more monitoring.

**The Convener:** But the provision will apply to all prisoners, so there is merit in it.

**Peter Johnston:** Yes.

**Professor Tata:** Yes. I am not saying that there is no merit in it; I am just saying that we have to put it in context.

**The Convener:** Thank you. That concludes this part of the meeting. I thank the witnesses very much for their evidence.

10:53

*Meeting suspended.*

10:54

*On resuming—*

**The Convener:** I welcome our second panel of witnesses, who were present in the public gallery for the previous evidence-taking session. Colin McConnell is the chief executive of the Scottish Prison Service; John Watt is the chair of the Parole Board for Scotland; and Phil Thomas is from the Scottish national committee of the Prison Officers Association. Thank you all for coming.

After the evidence that we have just taken, it will be useful to hear from you about the practicalities of rehabilitation and so on in prison, and the role of the Parole Board. We have your written submissions, so we will go straight to questions.

**Elaine Murray:** In the evidence-taking session that you have just heard and in the one last week, there was a lot of praise for the work that SPS does with offenders while they are in prison. However, one concern is that the bill will mean that high-risk prisoners who do not engage particularly well with rehabilitation in the prison will go straight out into the community without any sort of supervision. Professor Tata said that we cannot replicate the outside world in prison. Is there more that could be done in prison to prepare people for going into the outside world, or do you think that a period of supervision in the community is necessary to rehabilitate high-risk offenders?

**Colin McConnell (Scottish Prison Service):** A lot of common sense has been spoken. In responding directly, I would say that there are of course serious limitations to what can be done within the context of custody, particularly when it is viewed as a process towards reintegration. However, it has also usefully been said that a lot can be done and is being done. We make no pretence that what happens in prisons is in any way like what happens when someone returns to the community. It is seen as part of an integrated process.

There is a need to look at the issue in the round. It is absolutely necessary that those who pass into our care have on-going contact with the community and some high-value and high-quality preparation for the move back into the community when the sentence is over. However, there is also a challenge to those who deal with custody and those in the community in relation to more in-reach. Regardless of some of the comments that have been made about the bill, there are real opportunities for us to consider further how we on the custody side can integrate more and provide more opportunities for the community to come into the context of custody. In that way, we can make the two elements less distinct and ensure that they are more seamless and integrated.

**The Convener:** Does anyone else want to comment on that?

**Phil Thomas (Prison Officers Association Scotland):** With regard to what happens inside, the independent living units that we have in some prisons are probably the closest that prisoners are
going to get to learning how to handle having a house and so on. They are a positive development and are seen by our members as doing good, meaningful work in the prisons. They are as close as we can get to the situation in the community. However, I understand the chief executive’s point and agree with it.

**John Watt (Parole Board for Scotland):** From the point of view of the Parole Board, it is extremely useful to have information about how a prisoner has progressed through the system. It is equally or more useful to know how they have behaved when they are on community release from the prison.

Ultimately, whether a prisoner succeeds is down to the prisoner. They can have as much support as they want—the more the better, probably—but it has to come from within them. When they are left to their own devices in the community, that is when they are able to establish best that they can cope with freedom in a way that is not likely to harm others.

**Elaine Murray:** I expect that you all have considerable experience of offenders who do not engage with programmes and do not address their behaviour. Do you agree that there is a particular danger in those people being released into the community without some form of supervision afterwards?

**Colin McConnell:** Generally, I would agree that the period at the end of any custodial sentence is highly risky. Professor Tata gave a timescale of one to two years, but my experience is that the first six to 12 weeks after release can be extremely risky, as people try to establish links and support in the community space.

There are things that can be developed and that are under development that I think can run parallel to the current proposals and which would go some way towards enhancing the transition from a period of custody back into the community. My emphasis is on making custody itself less distinct and less disconnected from the community, and you have heard me talk in this forum on many occasions about the way forward. That includes moving our resources—our prison officers—much more into the community to work alongside citizens who are moving from a period of custody back into the community. It also involves working alongside other agencies, be they in the public sector or in the voluntary and not-for-profit sector, to ensure that families and those who have been in a period of custody are connected and supported in the best way.

11:00

There is no doubt that going out unsupported is hugely risky. It probably leads to higher rates of failure than for those who are supported. I entirely take on board John Watt’s comments that, ultimately, the desire and drive to succeed and the personal ambition have to come from within the person, but I believe that they have to be connected to other things and to other support, along with a willingness on the part of the community to accept the person back.

**Elaine Murray:** Professor Tata also raised the possibility of human rights challenges if a prisoner is not able to get on to a sex offenders programme because there are not sufficient places. There could be human rights implications if a person cannot be released because they cannot prove that they have tried to reform their behaviour. Is it a major problem within the Scottish Prison Service that prisoners who want to be on programmes are unable to get on to them because there are not enough places?

**Colin McConnell:** I do not want to hog the discussion—others may wish to comment—but a wee bit of myth busting has to be done here.

We need to be clear about needs and wants. I understand that fellow citizens coming into our care would wish to get access to programmes or opportunities, which they link to their earliest point of release. My goodness, it would be crazy not to understand that fellow citizens coming into our care would wish to get access to programmes or opportunities, which they link to their earliest point of release. My goodness, it would be crazy not to understand that. However, there is also an issue of needs, appropriateness and timing.

The SPS approach probably mirrors the international approach. Through working with individuals and using the appropriate level of assessments, we match our resources—some of which are highly specialised, particularly when we are dealing with people who have been sentenced for sex offences—so as to schedule interventions or programmes at the time when they are most likely to have a beneficial effect. The consequence is that we get challenges and pressure from those in our care who feel that they are being kept waiting longer than they would want to wait to get access to services.

In general, my view—which is being tested in courts all the time—is that, as sensitively as we can, we should prioritise and sensitise the opportunities that best match the needs of the individual. I recognise, however, that we do not always match their wants.

**Elaine Murray:** So you would not recognise a description of a situation in which prisoners need and are waiting to get on to programmes but have not been able to because there are insufficient resources or insufficient programmes available for them.

**Colin McConnell:** It is an absolute fact that there are people waiting to get on to programmes—if you wanted to call that a waiting list, that would not be inappropriate. Some of them
may wish to get access to those programmes more quickly than we think is appropriate, and they challenge our approach and our decisions. Within the context of the resources and the highly specialised skills that are necessary and that we have, we try to prioritise those programmes and opportunities as best we judge fits people’s needs—but perhaps not their wants.

The Convener: I appreciate the difference between needs and wants. It reminds me of being a girl guide and getting lots of badges on your arm because it looked good. Someone could say, “I've been on all these courses,” but it is not necessarily appropriate that a prisoner goes on certain courses just so that they can say, “I have all these courses under my belt.” I appreciate that the courses need to be appropriate. However, in evidence last week, Dr Barry said:

“given that only around 25 or 30 per cent of people who go forward for parole actually get it, there is not much incentive there, and prisoners know that it is unlikely, depending on their offence, that they will get parole.” — [Official Report, Justice Committee, 13 January 2015: c 5.]

That is the first point. We also heard evidence that a lot of people who wanted to go on education courses could not get on them. I would have thought that that is a need—period—so I do not know whether the situation across the prison estate is quite how you portray it, Mr McConnell.

Colin McConnell: If we look at the situation in a monochrome way, I certainly accept that point. However, I do not think that it properly represents the situation in custody. I go back to that distinction between needs and wants. Ideally, we would want to have a rich environment in prison custody, where we could encourage people to grow and to have legitimate ambition and where, along with colleagues in the community, we could help them to prepare for that. However, with a population of 7,500 in custody, there have to be checks and balances. I would be the first to admit that we are not always in the position to meet all the demands and the wants—

The Convener: No, I am talking about needs—keep to needs.

Colin McConnell: I am glad that you went back there, because I—

The Convener: I was always there. I was not for the idea of people just collecting a whole lot of courses so that they could go to the Parole Board and say, “I’ve done all these things.” I appreciate that distinction. However, I would have thought that becoming literate is a need, not a want, but we are being told that there are queues for education courses.

Colin McConnell: There are queues. That brings the situation into sharp relief. I do not want to get into the fundamental principle of what prisons are for. However, people pass into custody who, by and large, have not been able to reach the attainment levels that we would normally expect or aspire to for our citizens. What can be done depends, in the first place, on the length of the sentence and on their willingness and capacity to engage. We have to be realistic. Although we accept that some criticism is absolutely appropriate, with our resources and our relationships with other professional providers, by and large we have in place the appropriate capacity to respond to most of the needs. In particular cases—I do not know who the individuals might be—I accept that we might fall short in some way but, generally, we have the resources and the capacity to address most needs.

Phil Thomas: The organisational review, whose implementation is probably in its infancy, just covering structures so far, focuses on education and meaningful and purposeful activity. Our members are looking forward to the change and to doing something more constructive in line with that. As a trade union looking in, we see that the organisation is never going to achieve the ultimate goal of getting all the professionals in to do everything that is required, but we see that our members are making their best efforts as a uniformed service.

John Watt: There is a developing body of law in relation to availability of courses and I am sure that the SGLD will be able to advise the committee on the significance of that.

The Convener: What does SGLD stand for? The Scottish Government legal—

John Watt: The Scottish Government legal department—or division, or directorate, or whatever.

The Convener: Something like that. Yes.

John Watt: The board occasionally asks to consider cases where a programme is outstanding—where it has been identified but not yet delivered—but the courts recognise that resources are not infinite and that there will be delays.

John Finnie: Good morning, panel. We have a lengthy written submission from Scottish Women’s Aid, which has a lengthy section on post-release supervision of prisoners who are released early into the community. You will understand that that organisation wants reassurance for women, children and young people affected by domestic violence and it wants to have appropriate conditions. The submission makes a clear statement about the existing arrangements, stating:
That is just wrong, because there are so many conviction, the prisoner ought to be released. In the sense that there is a feeling that, if there is not a dilemma, in the additional complication is that the board is then a relatively minor breach of the law, but the would impose for what he or she might see as a sentence that a sheriff is likely to be longer than a sentence that a sheriff face. It is a fact that there are those who breach licence conditions and are returned to custody, and we deal with those individuals as they come back into custody and serve the rest of their sentence.

Colin McConnell: It is probably not appropriate for me to offer a view on that from an SPS perspective. It is a fact that there are those who breach licence conditions and are returned to custody, and we deal with those individuals as they come back into custody and serve the rest of their sentence.

John Finnie: How is that dealt with?

Colin McConnell: Depending on the nature of the individual, a further assessment takes place to help them to understand what factors led to the breach. Then we continue to work with them for the remaining period of their sentence to ensure, as best we can, that they are appropriately prepared for their eventual release.

John Finnie: Mr Watt, what is your view on that?

John Watt: Criminalising breaches would be a matter for legislators, of course, and then it would be for the Crown Office to make a judgment. The Parole Board treats alleged breaches of licence conditions seriously and looks at all the circumstances surrounding a breach. It may be criminal in the sense that it involves an assault, for example, in which case it is for the Crown to decide what to do, but, whatever the Crown does, the board can still look at the case, because the onus of proof is different. For the board it is a balance of probabilities, and for the prosecutor it is beyond reasonable doubt; he needs corroboration and the board does not.

The board will look at the circumstances surrounding the allegation, such as whether the prisoner has returned to alcohol or drug abuse, whether he was mixing in bad company or going somewhere he should not have been. We will look into whether he was doing something that increased his risk level to a point where it was no longer manageable, and recall to custody in those circumstances means that SPS social work will consider what the board ought to be doing. The board will look at the circumstances surrounding the allegation, such as whether the prisoner has returned to alcohol or drug abuse, whether he was mixing in bad company or going somewhere he should not have been. We will look into whether he was doing something that increased his risk level to a point where it was no longer manageable, and recall to custody in those circumstances means that SPS social work will consider what the board ought to be doing. For the board it is a balance of probabilities, and for the prosecutor it is beyond reasonable doubt; he needs corroboration and the board does not.

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A recall to custody may last two years, and that is likely to be longer than a sentence that a sheriff would impose for what he or she might see as a relatively minor breach of the law, but the additional complication is that the board is then faced by what some may see as a dilemma, in the sense that there is a feeling that, if there is not a conviction, the prisoner ought to be releasable. That is just wrong, because there are so many factors surrounding and leading up to the behaviour that results in the conviction, much of which could be a ground for recall.

I suppose that that could create confusion about what the board ought to be doing—not in the board’s mind, but perhaps for the public and the legal profession, who would say, “My client has been acquitted. You must let him out.” If we say no, a lawyer might say, “Well, let’s put off the hearing until the prosecution is complete,” but that could be quite a long way down the line. There is the potential for confusion and delay if you go down the line of criminalising breaches per se, but that is not to say that a crime committed that is a breach of the licence ought not to be pursued. That is the board’s position. The rules that are in place just now seem to work pretty well.

Alison McInnes: As a supplementary to that question, do you have discrete data on the rate of reoffending among people who have breached the conditions of their release and are recalled?

John Watt: No. We have lots of statistics and many figures, and I am happy to get those figures for you if you let the board know exactly what you need. All that I can say is that it is clear that those who are released on non-parole licence—at two thirds of the way through their sentence and without an assessment of risk—tend to be recalled in significantly greater numbers than those who are released on parole licence, where there is an assessment of risk.

11:15

Roderick Campbell: Good morning, gentlemen. I am sure that most of you heard the evidence in the previous session, in which I asked about the impact of proposed changes on incentivising prisoners to engage with rehabilitation programmes. What would the bill’s provisions do in that respect?

John Watt: My answer to your question is likely to be much shorter than Mr McConnell’s. The changes will incentivise some prisoners who at the moment are happy to wait until they get two thirds of the way into their sentence in the knowledge that they will get out. Knowing that they had a significant period to go after that would have to incentivise some, but how many? Who knows?

Colin McConnell: That is probably how it is. Some will be motivated to engage in order to get released early, while others will not. I am more interested in engagement for the purpose of not coming back to prison and in how we as a system and society gear up to help people make that transition.

Phil Thomas: I have nothing to add.
Roderick Campbell: We touched on MAPPA in the previous evidence session. Do you have any views on its role and how it might be enhanced?

John Watt: I know about MAPPA; it is just an umbrella under which various agencies co-operate to try to mitigate the risk that is posed by individuals in the community. Some will be on licence, and some will not. I am not quite sure what the criteria are, but if an individual is released cold at the end of a sentence, they might be drawn into the MAPPA net as potential offenders, not as released prisoners. Their history would be significant, but it would not be connected to the sentence.

The Convener: We will get a note for the committee on this, but I thought that an offender had to be on licence for MAPPA to be in place. I am not sure whether there are other discrete circumstances.

Margaret Mitchell: Good morning, gentlemen. The common theme in evidence from a couple of panels of witnesses seems to be that the bill is fundamentally flawed in its concentration on sentences rather than risk assessments and that focusing on, say, a 10-year sentence or sexual offence sentence is the wrong approach. Do you agree?

Colin McConnell: It is not for me to comment on the Government’s proposals.

Margaret Mitchell: If you cannot comment on the policies, I want to take you back to your earlier assertion that some of these community sentences could just as easily be carried out in prison. Mr Johnston said that it was a bit like having a mock trial, not an actual trial, and that it was no substitute for the real thing.

Secondly, I do not know how many years we have been talking about the lack of adequate throughcare in prison, but you have come before us this morning, saying, “I think that we can deliver this in prison.” Given past experience, why do you think that? What has changed?

Colin McConnell: I want to make two particular points. First, I certainly did not say that community sentences could be adequately carried out in prison, and I am not aware that the other panel members did so.

On the second point, I am not saying at all that you can replicate the community in prison. Actually, I have said quite the opposite; I agreed with the previous panel members that you cannot create the community in prison. The challenge that we face—and indeed the direction that we are going in—is to connect community and prison in a more integrated and systematic way.

A long-standing challenge that we face, which is not unique to Scotland—

Margaret Mitchell: To what end, though?

The Convener: Please let Mr McConnell answer.

Margaret Mitchell: I do not understand the distinction that you have just made.

Colin McConnell: My explanation is that a long-standing issue is that there has been too much of a disconnect between the period of custody and community.

Some might say from a philosophical basis that that is wholly intended and necessary as a mark of the wrong done and the retribution being had, but the direction of travel generally, and certainly in Scotland, is to integrate more clearly what happens in custody with the resources and connectivity that are required in the community. That is for the benefit not just of the individual in question but of their family and the other social circumstances that affect the individual and his or her community. To be clear, I am not at all trying to make the case that prison can do everything for everyone—it cannot. Prison works best when it is integrated with the resources and the relationships in the community in the context of the individual who is being cared for.

Phil Thomas: As a result of a burning desire among POA members a couple of years ago, along with the Scottish Prison Service and Colin McConnell, an initiative has been set up involving throughcare support officers, with investment from the Scottish Government for 32 additional members of staff. Our members carry out a great professional role in the prisons and we now want to go out into the community to help with the transition. We called it the beyond the walls initiative. The POA and our members recognise that we have a role in that. It is about providing support in the community when people do not have family support. We will have many roles in that, on issues such as housing. People have built up a rapport with officers over the years while they have been in prison. The union recognised that and asked how we could help with the process. Now, our role does not stop at the prison gate—it goes out into the community. The initiative is in its infancy, but we hope that it will be a success and that we can work jointly on it.

Margaret Mitchell: I return to short-term prison sentences. Is any of that support available for short-term prisoners, who we have heard pose the greatest risk? The bill is supposed to be about public safety.

Colin McConnell: To pick up on what Phil Thomas said, our ambition is to make that service as widely available as we can, but it will probably have to be targeted on a needs basis. It is fair to say that many people who pass through our custody have caring family relationships and good
contacts with families and communities. Not everyone who passes into our care has a chaotic and disconnected life, but many do. For those people in particular, we are trying to develop a service that reaches out beyond the prison walls and encourages communities to reach back in. That is the way that we work together to get a more integrated service.

Margaret Mitchell: I have a question for Mr Watt on a different issue. It has been suggested that the bill could almost be setting up the Parole Board for failure. Do you have a comment on that?

John Watt: The Parole Board is always happy to account for its decisions. Its sole deciding factor is risk. It is not as though cold release is new to the board. For example, when a prisoner is released on licence at his earliest liberation date, two thirds of the way into his sentence, and is then recalled, we might get to a point when the board has to consider whether to release him, despite the fact that he is a risk, so that he can have some supervision in the community. We might say that the risk is too great and that he will not get out until the end of his sentence, with all that goes with that. The board already makes such decisions on the basis of the evidence that is before it.

I can see where Professor Tata is coming from, but I am pretty sure that the board can cope with that.

Margaret Mitchell: Is the point not more that the public expectation might be greater if the bill is passed? It is supposed to be about public safety and you will make more such decisions, so the focus will be more on you.

John Watt: That is what we are there for. We fulfil a judicial function, in the same way as a sheriff or High Court judge does. They get it right most times and they occasionally get it wrong. We might be more in the public eye, I suppose, but we would need to live with that, and it does not cause me great concern. We will always be in a position in which we can make a perfectly good decision based on the information before us, but then something changes after a prisoner is out and he reoffends. We will never get away from that. We will not get it right 100 per cent of the time and, even when we get it right, it might yet fail in the community. We will have to wait and see how that pans out.

We will have to provide a suitable explanation although I know that it is not easy when the press have an angle and are coming at an issue from a particular direction. The committee will know better than I what that means. Sometimes, that is driven by coverage that is inappropriate or not entirely accurate. I suppose that we must find a way of getting the message across.

The previous witnesses tried to explain that there is always an element of risk when you release somebody and that that risk must be balanced against the management plan that is in place, which is a matter that I do not think has been considered in any great detail. There is the risk—there is always a risk—that is the level of harm that may crystallise if the risk is not properly managed, and there is how you manage the risk. Those three factors are balanced when you decide whether a risk is manageable in the community. I do not know how far you can explain that in a one-minute soundbite. That would be a challenge.

Margaret Mitchell: Does it muddy the water between sentencing and risk assessment?

John Watt: No—it need not. I suppose that Professor Tata’s argument is that, if a 12-year sentence is imposed, the judge knows that that in fact means eight years. Were that to change and the bill passed and a 12-year sentence meant a 12-year sentence, everyone would know that because the law would not, I imagine, kick in retrospectively; it would be for sentences that are imposed in the future. Therefore, I do not think that it need muddy the waters. Perhaps some clarification would be required when you are talking to victims and you are having to explain that the sentence was imposed at a time when a 12-year sentence meant an eight-year sentence. That would just be a challenge that you would have to overcome.

The Convener: I will bring in Rod Campbell with a supplementary, after which we will have Alison McInnes—oh, I see that Alison is out now—then Christian Allard. I want no complaints; I am just putting down that marker.

Roderick Campbell: My colleague was talking about throughcare. Will Mr McConnell clarify what the statutory throughcare provisions are?

Colin McConnell: Prisoners serving more than four years are subject to statutory throughcare provision. That throughcare is not for the Prison Service to provide; community resources provide it. However, community and custody resources come together to plan what that service provision might look like. Those serving less than four years do not have statutory throughcare provision, but there is a general expectation that resource will be made available where they want to access it.

The Convener: Jayne Baxter has a question. No, I am sorry, it is Christian Allard now. People are being deleted—metaphorically.

Christian Allard: I will add to John Watt’s point about cold release cases happening now. We are talking about the principle of the bill as if it will apply to every prisoner, but the number of prisoners involved is very limited. The bill will affect only very few prisoners, so how will the
service cope? Do we welcome the fact that the bill will target only a few prisoners? What do you think about the Scottish Government wanting to stop early release for other prisoners?

John Watt: The numbers that may be affected by how the bill is framed will be relatively small and will not increase to what might be a problematic level for a number of years—and who knows what the future might hold? If the numbers were to increase, if sentences were to be reduced and more prisoners were drawn into the net, there would be resource implications. What they would be would depend very much on how much more widely the net was thrown.

Colin McConnell: From a custodial point of view, the impact will be scaled depending on what the eventual solution is. By and large, the SPS could be expected to address the issues that that would throw up.

Phil Thomas: From a union perspective, the estimate of 120 could be easily absorbed—we have coped with a lot more than that. Indeed, last week, the SPS chief executive was saying that we are covering 7,500 prisoners. However, if the numbers increased dramatically, we would be having different discussions about whether we had the infrastructure or enough staff. We have processes and policies in place under which we can go to the employer and say, “We need to address these issues,” but the union has no immediate concern.

The Convener: Thank you very much for your evidence. I suspend the meeting and ask members to stay put.
Prisoners (Control of Release) (Scotland) Bill: Stage 1

10:02

The Convener: Agenda item 2 is our final evidence-taking session at stage 1 of the Prisoners (Control of Release) (Scotland) Bill. I welcome to the meeting Michael Matheson, the Cabinet Secretary for Justice, who is accompanied by the following Scottish Government officials: Philip Lamont, head of the criminal justice and sentencing unit; Jane Moffat, head of the rehabilitation and reintegration unit; and Ann Davies, from the directorate for legal services.

I understand, cabinet secretary, that you do not want to make an opening statement—so far, you have won friends. We will go straight to questions. I will take Christian Allard, Elaine Murray, Gil Paterson, Alison McInnes, Margaret Mitchell, Roddy Campbell and then John Finnie. Why not join in, Jayne?

Jayne Baxter (Mid Scotland and Fife) (Lab): Okay.

The Convener: There we are. You are all down for questions. Now I have forgotten who I am starting with. Is it Elaine? [Interruption.] No. It was Christian, was it not? The clerk has not written the names down fast enough. You were too fast for him, Christian. Off we go.

Christian Allard (North East Scotland) (SNP): Good morning, cabinet secretary. During the evidence-taking sessions, we have heard a lot of concern about cold release; indeed, I think that every witness and submission has raised very great concerns about the issue.

In response to the question of how we ensure that on their release prisoners are safely integrated back into communities, Sacro said that the answer was not to remove automatic early release entirely but to reduce it to the last three months of an individual's sentence to allow for a brief period of compulsory supervision for the individual's reintroduction into the community. That is important. Indeed, on the issue of mandatory pre-release supervision, some of the people who gave evidence thought that it might be an idea to amend the bill in that way. Have you had any thoughts on the matter?

The Cabinet Secretary for Justice (Michael Matheson): I am aware that in some of the evidence that you have received concerns have been raised about what you have described as cold release and its implications. However, it is worth taking a step back to consider certain issues. Although the intention of the bill is to end automatic early release, there is still provision for
parole-conditioned release, and those who are released on conditions set down by the Parole Board for Scotland will have a level of supervision. That is the case at the moment, and that will remain the case when automatic early release ends. At present, you can apply for parole halfway into your sentence, but does it actually matter if you are refused it if you get automatic early release two thirds of the way in? When that element of the sentence ends, there will be no supervision in place.

Aside from individuals released under conditions set by the Parole Board, there are also a significant number of prisoners who receive extended sentences from the courts. Once individuals who are on that kind of determinate sentence have served that period, they are then subject to a period of supervision.

There is a final category of individuals who might not qualify for parole or any form of early release and who might simply be released at the end of their sentence. Given the evidence that the committee has heard, I am open to exploring with it whether any measures can be put in place to address the concerns that have been raised. For example, Sacro has suggested that, in the three months prior to those individuals' release, they should have supervision to help them back into the community and to address any issues that they might have. I am open to considering such suggestions, and I would welcome the committee’s input and views on that particular approach.

However, it is worth keeping in mind that not all prisoners will be in that situation. Some will get parole release and some will have been on extended sentences that were imposed by the court, and both of those groups will receive supervision. For the smaller category of individuals that we are talking about, I am more than willing to explore any further measures that we can take to improve the bill.

Christian Allard: Peter Johnston made it very clear that with regard to prisoners who were on extended sentences there was no problem at all with post-release supervision. As you have said, cabinet secretary, we are talking about only a very small number of prisoners, but if you were able to reassure most of the people who gave evidence about the prisoners who could end up on cold release without any mandatory pre-release supervision being in place, that would help greatly.

Michael Matheson: I am prepared to look at the issue. I take it that Sacro is suggesting that the prisoners in question would receive parole release three or six months before the end of their sentence to ensure that their move back into the community was supervised. If that is a more appropriate means of managing some of these risks, I am open to exploring it and any other way in which we can improve the bill in this area. If other committee members have suggestions, I am content to consider them as we move forward with the bill.

Christian Allard: Thank you.

The Convener: I do not know whether you have had an opportunity to see Professor McNeill’s written submission to the committee, which we received on 20 January.

Michael Matheson: No, convener.

The Convener: He said:

“I spent last week in a meeting with European experts from several jurisdictions and many of them were expressing concern about the increasing numbers of prisoners opting to ‘max out’ on their sentences, in order to avoid ... the painful uncertainties attendant on discretionary release schemes and ... the more and more intrusive and sometimes disproportionate forms of post release supervision emerging in many jurisdictions.”

In other words, there are prisoners who are not looking for early release or parole, because they know that when they get out they will be free and easy. I do not know whether you addressed that in your response to Christian Allard.

Michael Matheson: We have that at present with automatic early release. Prisoners just have to serve two thirds of their sentence and they can be released, even though in previous years the Parole Board for Scotland may have considered them as being a risk and as being unsuitable for release into the community. I am more than prepared to consider whether, for those who get to the end of their sentence, there are measures that we can take to try to address some of the concerns that have been highlighted to the committee.

I should also emphasise that provisions are open to the courts at present to apply an extended sentence for individuals who have been sentenced and who they think will continue to pose a risk. If I give you a couple of statistics, that might demonstrate the scale of use of extended sentences. In 2013-14, 42 per cent of sex offenders getting a sentence of four years or more received an extended sentence, 50 per cent of sex offenders getting a sentence of 10 years or more received an extended sentence, and 32 per cent of non-sexual offenders receiving a sentence of 10 years or more received an extended sentence. At present, in considering a case, courts have the flexibility to use the option of extending an individual’s sentence at the time of their period in custody, if they believe that they will continue to pose a risk. The issue may be more around some members’ feelings about whether that option is being used sufficiently by the courts, and whether
there are measures that could be taken to extend that further.

The Convener: I shall let other members in and perhaps return to other issues later.

Elaine Murray (Dumfriesshire) (Lab): We heard a number of pieces of evidence. Professor McNeill said in written evidence that the "question of how best to manage early release should be referred to the Scottish Sentencing Council".

Professor Tata agreed with that, saying that he could not support the bill as it is and that the sentencing council should be looking at such issues. Peter Johnston of the Risk Management Authority also recommended "that further thought be given to the bill, rather than proceeding with it as it stands."—[Official Report, Justice Committee, 20 January 2015; c 9.]

Lisa Mackenzie of the Howard League Scotland said:

"The Scottish sentencing council is recruiting staff and it seems a shame to be ... pre-empting its existence".—[Official Report, Justice Committee, 13 January 2015; c 14.]

I wonder what is happening with the Scottish sentencing council. Would it not be better placed to examine these issues?

Michael Matheson: First of all, I am open to improving the bill, but I am also committed to ending automatic early release, as we have set out clearly in the bill. It is for the Scottish sentencing council to determine its work programme. Of course, we could ask it to look at further issues around automatic early release at some point in the future. The Scottish sentencing council is due to be up and running by the end of this year, which is a piece of work that is being taken forward by the Lord Justice Clerk, who will head up the Scottish sentencing council.

I note the quotations that you have referred to. I am open to looking at how we can improve the bill, but I am also clear about our commitment to ending automatic early release. If the committee and others have a view on how we can improve the existing bill, I am more than content to consider the issues. Equally, if, in ending automatic early release in the way that we have set out in the bill, further areas arise that should be considered at a later stage, the Scottish sentencing council could consider them, but I do not think that we have to wait to make a decision on ending automatic early release until the Scottish sentencing council comes to a decision on the matter.

Elaine Murray: It is true, though, that the proposals will end automatic early release for only about 1 per cent of the prison population. Could you explain the thinking behind that? An alternative approach was postulated through the Custodial Sentences and Weapons (Scotland) Act 2007. The McLeish commission found a number of problems with that, particularly because the Scottish Prison Service could not cope with the increased number of people who would be kept inside. Your Government amended that act through the Criminal Justice and Licensing (Scotland) Act 2010, which enabled ministers to bring in a phased implementation of a sentencing regime in which there would be a defined period in prison and a period under supervision in the community. I wonder why, instead of progressing with that approach, which your own Government agreed with, this other, rather contradictory, approach has come in, which will affect only 1 per cent of the population.

10:15

Michael Matheson: It is 1 per cent of the population based on the timescales that we have set out in the bill—10 years for non-sexual crimes and four years for sexual offences. If the committee has a view on whether that threshold should be lower, I am prepared to consider that. I know that there are some stakeholders who believe that the threshold should be lower for both categories of prisoner, which would mean that a bigger percentage of the prison population would be impacted.

On the wider issue of other possible routes that could be taken, there is still the matter of addressing automatic early release. The issue was to provide transparency in sentencing policy, so that there is the period in custody and the period in the community. What we are doing by ending automatic early release is ensuring that an individual will be required to have their case considered by the Parole Board, and the Parole Board will determine whether they should be released early. At present, we do not have that at all once a prisoner gets to two thirds of their sentence.

The other thing that is worth keeping in mind around the other approach to changing sentencing arrangements is that, as Henry McLeish pointed out, a number of other issues would have to be addressed before such an approach could be introduced. A large part of that would be about addressing short-term sentences in order to create capacity in the prison estate to keep prisoners in prison for longer periods of time. A number of things would need to be done before that would be possible, some of which we are already doing, but it is also important that we send out a clear signal about ending automatic early release.

Elaine Murray: Surely the issue for victims and for the community is that a sentence should mean what it says. The approach in the 2007 and 2010 acts was about people serving the sentences that they were given rather than coming out early,
which is the public’s objection to automatic early release—they think that somebody is going away for six years and they go away for only three. The other approach would tackle that perception issue without potentially releasing people at the end of their sentence with no support at all, which is one of the concerns about the bill. As Christian Allard said, people could end up with no support at the end of their sentence. They may have served what they were supposed to serve, but there would be nothing to support their transition back into the community.

**Michael Matheson:** That would be the case for a small proportion of prisoners and there may be other ways in which that can be addressed. In ending automatic early release, the certainty that a victim will have is the knowledge that the individual responsible will not be released automatically when they have served two thirds of their sentence, irrespective of the risk that they may continue to pose. The bill gives us a way of addressing that more effectively, so that the arrangements are clearer for victims.

I reinforce the point that only a small proportion of prisoners who get to the end of their sentence can be released will have no supervision. That is why I am more than happy to explore ways in which we can address the concerns.

**Elaine Murray:** Will you bring in the provisions of the 2010 act in relation to the orders that you could make? There was going to be a more staged approach.

**Michael Matheson:** As Henry McLeish pointed out, a range of other things would have to be done to deal with short-term sentencing to address that shift. We are committed to doing that. We have already moved for a presumption against sentences of less than three months. If the committee has a view on moving that further, I would be more than happy to explore with members ways of tackling the effectiveness of short sentences. That is one of the key things that Henry McLeish highlighted in his report.

**Elaine Murray:** Is this the first stage? Do you intend to end automatic early release? The bill does not end automatic release—not in the vast majority of cases. Do you intend to move further?

**Michael Matheson:** I am prepared to consider whether, as some stakeholders believe, the thresholds should come down further. I am not in a position to say that I will bring it down to X level at present, but the four and 10-year thresholds that we have set are the Government’s starting position and I am prepared to look at extending that further once I have considered the issues. If the committee has a view, I am happy to explore it with you.

**Gil Paterson (Clydebank and Milngavie) (SNP):** Good morning, cabinet secretary. I want to consider post-release rehabilitation programmes. I was involved with the save Peterhead campaign, so I travelled up to Peterhead and met lots of people who were involved in the programmes at the prison whose success rate drew world attention. I believe that that success continues to this day. Prisoners with sentences of more than four years who volunteered to participate in the programmes did so because they were serious sex offenders who felt that their behaviour needed to be addressed or because they were lining up to benefit from the Parole Board’s appreciation that they were doing something positive. However, no matter whether they were doing the programmes for the right reasons or to get out early, it was concluded that prisoners in both categories got a lot of benefit from the programmes. Apparently, the outcomes were no different for the two categories.

We heard in our first stage 1 evidence-taking session on the bill that, if we do away with early release, it follows that, as night follows day, there will be more people who could benefit from rehabilitation programmes in the prison setting. However, two issues came up in the evidence. First, because resources are a bit squeezed at present, some prisoners who have volunteered for programmes are not benefiting from them. Secondly, because there will be higher numbers of prisoners in the programmes, resources might be further squeezed.

If what the bill proposes goes ahead, more people will have longer terms in prison, and there is an opportunity for them to engage in very positive programmes. Can you assure the committee that there will be sufficient resources for that engagement?

**Michael Matheson:** You spoke about the save Peterhead campaign, and I imagine that you were referring to the STOP programme to rehabilitate sex offenders, for which Peterhead prison was one of the pioneers. I know that in his evidence to the committee, the chief executive of the Scottish Prison Service, Colin McConnell, said that he was expecting an increase in the number of prisoners who take up rehabilitation programmes. If a prisoner knows that they will be automatically released after serving two thirds of their sentence, there is less of an incentive for them to participate in a programme. However, if they wish to secure paroled early release, they will have to demonstrate that they are making progress in addressing their offending behaviour. There is obviously an incentive for those prisoners to take up the programmes.

How resources will be deployed to meet the increase in demand for programmes will be a
matter for the Scottish Prison Service, which will have to manage demand from within its resources. There will always be pressure on resources, just as there are financial pressures on every department in Government. That makes things challenging and is why it is important that the programmes that the Scottish Prison Service runs have better outcomes and make a difference.

The SPS must therefore focus on providing the programmes, and I assure the committee that the Scottish Prison Service will do its best within the resources that it has. If more prisoners undertake rehabilitation, that will reduce their potential to commit further offences in the future, which has the medium to long-term benefit of reducing demand on the system. My preferred approach is to invest in rehabilitation programmes in order to reduce demand at a later stage.

**Gil Paterson:** Lots of women's groups that look after women and children who have experienced serious sexual attacks were in the vanguard of the save Peterhead campaign—of course, Peterhead prison was eventually saved—because of the programmes at Peterhead. Are you comfortable with assuring the committee and women's groups that the Prison Service can handle the greater numbers who will take part in rehabilitation programmes, and that that will increase the number of prisoners who will change their behaviour?

I listened carefully to what the Scottish Prison Service had to say, and it was reassuring. As you said, the SPS will do the job as best it can, but I am very concerned that we use the opportunity of ending automatic early release to tackle those who do not participate in programmes but who would benefit from them. There might be a resource issue, and I would be grateful if you could look at the matter to reassure yourself, me and the committee that there will be enough resources.

**Michael Matheson:** I am more than happy to discuss with the chief executive of the SPS how the service will address any additional demand, if Mr Paterson wishes me to do that. However, I am confident that the SPS will be able to cope with the additional demand.

**Gil Paterson:** I am grateful for that. Thank you.

**Alison McInnes (North East Scotland) (LD):** I want to pursue that issue a bit further with you, cabinet secretary, if you do not mind. You said that you hope that the ending of automatic early release will “act as a driver”, but we have heard mixed views on that. We heard from Professor Miller that equity in the provision of and access to programmes across Scotland will become more important and that there will perhaps be a human rights issue if prisoners are not able to access release through parole because they have not had access to the proper programmes due to demand pressures or programmes not being available in a particular area.

Professor Miller referred to the "consequences for prisoners' rights if they are not given the rehabilitation programmes that they will be looking for more than in the past."—[Official Report, Justice Committee, 13 January 2015; c 16.]

He said that the committee needs to consider that as a foreseeable consequence as we go forward. Will you reflect on that?

**Michael Matheson:** I am more than happy to do that. It is also worth keeping in mind that ending automatic early release will not increase demand tomorrow. Given the turnover of prisoners, it will kick in over a 10 to 11-year timeframe, so there will be time to allow for the planning for and development of programmes to meet the increasing demand. However, I have a very clear view of how to address the issue of Scotland's prison population: a big part of the focus has to be on tackling the underlying causes of offending behaviour.

I also recognise that prisons are not the best places in which to rehabilitate people, but while individuals are in prison we must take the opportunity as best we can to achieve their rehabilitation. Rehabilitation is an important element, and having adequate provision for rehabilitation is one of the three pillars of our prison system.

I am more than happy to ensure that we continue to explore how we provide equity in the provision of rehabilitation services in our prison estate so that we can be confident that we are maximising the potential of rehabilitation while individuals are in prison, notwithstanding the current financial constraints.

I mentioned an 11-year timeframe. That gives us some time to do the planning and other
additional work that will be necessary. However, I am confident that, given their professionalism, our prison officers and the Scottish Prison Service will be able to provide the additional support and assistance that will be required in rehabilitation.

Alison McInnes: Thank you.

10:30
Margaret Mitchell (Central Scotland) (Con): I want to pursue that issue a little further, cabinet secretary. The problem is not new. For many years—in excess of 10—we have looked at the inadequate provision of rehabilitation programmes for prisoners. It boils down to resources.

Dr Monica Barry highlighted that
“There is not a demand problem with programmes”
in prison; rather,
“there is a supply problem.”—[Official Report, Justice Committee, 13 January 2015; c 3.]

Therefore, it does not matter how professional the SPS is or how many discussions there are: unless the resources are in place, we will have the same kind of situation that is referred to in the report on HMP Shotts, which found that there
“is still a lack of meaningful and productive work available for prisoners”.

That is not a good state of affairs for anyone.

Michael Matheson: Yes. You will be aware of the updated report on HMP Shotts, which said that significant improvement has been made in providing purposeful activity. HMP Shotts has therefore addressed a number of the concerns that were highlighted in the previous inspection report. It is important to recognise the work that the professional staff there are undertaking in addressing some of the deficiencies that were highlighted.

The Convener: What is the date of the updated report, cabinet secretary?

Michael Matheson: The updated report on the progress that has been made on the challenges that were identified in HMP Shotts was published a few months ago. If I recall correctly, I think that I referred to it just before Christmas in answer to a question from Alex Fergusson, who raised the matter in the chamber.

Part of the challenge in the prison estate is ensuring that we use the resources in a way that can best effect change. For example, although there are people who oppose the idea that we should have a presumption against short-term sentences, it has been demonstrated that short-term sentences are very ineffective in dealing with offending behaviour. Even sentences of up to six months are very ineffective in addressing offending behaviour, but they take up a tremendous amount of the Scottish Prison Service’s resources.

There is a desire to ensure that we are much more effective in rehabilitating prisoners in the financial environment in which we operate, but we also have to be realistic about how we achieve that. We need to ensure that we provide the greater provision of rehabilitation that some people may believe is necessary in an equitable fashion and in a way that results in better outcomes for the prisoners who are targeted so that they deal with their offending behaviour. That also means being honest and realistic when we look at short sentences, which we know are extremely ineffective in addressing offending behaviour and which cost the taxpayer a very large amount of money and take up a large amount of the SPS’s budget. That money could be better used to rehabilitate more serious offenders who pose a greater risk to our communities.

I am more than happy to debate and explore those issues, but my view is very much that we need to take a balanced approach to how we make better use of rehabilitation in our prison establishments.

Margaret Mitchell: For various reasons, people end up with short-term sentences if they have gone through all the other disposals and there has been a breach. Very often, a short-term sentence is the only disposal that is left. I would have thought it more important that rehabilitation programmes were available for people in that circumstance—for example, to identify literacy and numeracy problems, which we know a large percentage of the prison population has.

Are there plans to consider early testing for such problems and to provide even just a signpost to indicate where more support can be found, for example for people with dyslexia? Such things help to rehabilitate people who have offended for various reasons. We know that difficulties with literacy and numeracy can lead to criminal behaviour. Is there resource in prison that could be used to stop recidivism? With the revolving door, people are going back to prison, which is, I would argue, a greater cost to the community.

Michael Matheson: I am all in favour of stopping the revolving door—I think that everybody on the committee would sign up to that—but it is about using an effective approach to stop the door from revolving, and we need to be very clear about how we achieve that. You are correct that a big part of that involves addressing the causes of offending behaviour.

The evidence shows that the situation for many prisoners, particularly if they are serving a sentence of three or four months and have
automatic early release after two thirds of their sentence, means that the Scottish Prison Service has a tiny window in which to try to address those issues. It is unrealistic to expect the SPS to be able to deal with a prisoner’s literacy issues and so on in what can be an extremely small timescale while that individual is in prison. Part of the challenge is whether that is an effective use of resource.

The Convener: Sorry to interrupt—

Margaret Mitchell: I sense that the convener wants us to move on.

The Convener: It is a very interesting debate but we are opening it up now to the revolving door, short sentences and so on. Those are important issues, but we are examining the bill in front of us, which is not about short-term issues. It is a big and interesting debate but we are digressing.

Margaret Mitchell: I ask your opinion, cabinet secretary, on Professor Tata’s comment that, rather than making sentencing clearer, the bill muddies the water. A 10-year sentence is 10 years, but somebody with a nine-year sentence, for example, will be released after two thirds, or six years, of the sentence. Is the bill just complicating the sentencing process rather than making it easier to understand and more effective?

Michael Matheson: I do not agree. I am aware of that view and the evidence that was given to the committee. I believe that if we end automatic early release, victims will have certainty that the offender will not automatically be released two thirds into their sentence, irrespective of the circumstances.

Margaret Mitchell: Would that be the case if automatic early release was abolished for everyone, rather than for a small group?

Michael Matheson: If your view, or that of Professor Tata, is that the threshold should be lower and that we should put a larger number of prisoners into the category of not qualifying for automatic early release, you are talking about a different scenario. As I have said, I am prepared to look at the thresholds. I am more than prepared to explore what the threshold should come down to. However, by ending automatic early release we are giving a clear indication that someone will not be released just for the sake of it because they happen to have got to two thirds of their sentence.

Margaret Mitchell: I sense that you want to move on, convener.

The Convener: I am looking at the purpose of the bill, which is key. It applies to “certain long-term prisoners”. As I understand it, the sentence has to be four years and over, whatever happens. If we want to get into that debate, we may have to do so through other legislation. I do not know whether the bill could be amended, even if one sets one’s path in that direction.

Michael Matheson: Do you mean if you were to look at going below four years?

The Convener: Yes. I do not think that the bill could be amended.

Michael Matheson: The provisions of the bill are restricted by its long title.

The Convener: That is right, so we would be talking about different legislation.

Roderick Campbell: Notwithstanding the acceptance in the policy memorandum that reoffending rates for sex offenders serving sentences of more than four years were not necessarily higher, we heard concerns—in particular from Peter Johnston—about the selection of sex offenders and the logic for that because of generally low rates of recidivism. Will you comment on that?

Michael Matheson: The approach of this and previous Governments has been to deal with sex offenders in a different way, largely because of the impact that sexual offences have on victims, their families and the wider community. That is why we have in place a range of provisions to safeguard the community against sex offenders. Given that, we believe that it is appropriate to have a lower threshold for sex offenders than the 10-years threshold that we have set for serious offenders in non-sexual crimes.

Roderick Campbell: Peter Johnston said that sex offenders generally co-operate in prison, in terms of accessing programmes. In his view, they are not the people on whom the bill should be focused. Do you have anything to add to that?

Michael Matheson: Numbers of sex offenders will participate in different programmes, but it is important that we have a threshold for sex offenders and, if they do apply for early release, that we have in place appropriate supervision, which a parole release would help to provide.

Some of the evidence that the committee has received suggests that an increasing number of sex offenders will participate in rehabilitation programmes. Colin McConnell said in evidence that sex offenders’ uptake of offered programmes is currently about 50 per cent but would move up to about 67 per cent after automatic early release is ended. That would help us to increase the number of sex offenders who participate in programmes to address their offending behaviour, which will assist us in reducing their risk once they return to the community.

Roderick Campbell: I return to cold release, which we started with. Colin McConnell said in evidence:
“my experience is that the first six to 12 weeks after release can be extremely risky ... My emphasis is on making custody itself less distinct and less disconnected from the community ... That includes moving our resources—our prison officers—much more into the community to work alongside citizens who are moving from a period of custody back into the community.”—[Official Report, Justice Committee, 20 January 2015; c 19.]

Will you comment on that?

Michael Matheson: That goes back to Christian Allard’s question about whether we should put in place provisions that would mean that when someone comes to the end of their sentence there is a period of supervision if they have not qualified for parole release.

It is worth keeping in mind that the Scottish Prison Service is undertaking a significant amount of work to better manage throughcare of prisoners—particularly those who are going back into the community—with a named officer within their establishment and links with social work and housing. You will be aware of the cross-portfolio programme that my predecessor set up, which is looking at housing, health and other areas that can support individuals in moving back into the community. That work has to start early in prison, to ensure that prisoners’ release is properly planned for and support can be implemented when the individual is released from prison.

Much more is happening in terms of managing prisoners’ throughcare and planning for their liberation. Alongside that, measures to address the issue of folk ending their sentences without any supervision, which Christian Allard asked about, could assist us in trying to address some of the concerns that have been raised.

Roderick Campbell: So in essence, the emphasis on throughcare continues anyway, irrespective of the detail of the provisions.

Michael Matheson: Of course.

10:45

John Finnie (Highlands and Islands) (Ind): Good morning, cabinet secretary. Professor McNeill’s submission, which you will have seen, exhorts the committee to lift the quality of public debate. In that respect, I commend your comments about the ineffectiveness of short sentences and about prevention and rehabilitation.

Professor McNeill refers near the start of his submission to the use of the word “unconditional” in relation to early release. He states that that is not helpful, because individuals

“remain liable to return to custody to serve the remainder of their sentence if they commit a further imprisonable offence”.

There is a suggestion that there is a populist background to such legislation, particularly with reference to sex offenders. I will not repeat Roderick Campbell’s questions, but he referred to the level of co-operation.

I will ask about the multi-agency public protection arrangements—MAPPA. First, what is the purpose of the bill. Is it to enhance public safety?

Michael Matheson: MAPPA is a framework for dealing with sex offenders and people with mental health conditions. It brings agencies together to plan for when it is required that supervision must be in place for a person. MAPPA cannot apply in circumstances in which that is not the case.

The Government is undertaking internal work on using for violent offenders the MAPPA principles that are used for sex offenders. That work is due to be completed this year and is examining how we can extend the MAPPA principles, framework and approach to violent offenders. Many values and principles in the MAPPA approach could be used for non-sexual violent offenders. I expect to be in a position by the end of the year to look at how we could extend the provision to violent offenders and non-sexual crimes.

John Finnie: That is helpful. I am sure that the committee would be grateful if you could keep us updated on progress, because that work aligns with some of our other work.

If the priority is protection of the public, to what extent would putting in place MAPPA for violent offenders offset provisions in the bill? Many people would imagine that legislation that has been in place since 2005 should have been implemented by now.

Michael Matheson: When an individual has served two thirds of their sentence, if no extended sentence provision is put in place and they do not qualify for parole, they are currently being released without supervision being in place. I take it that your question is whether MAPPA should be used as an alternative in order to provide such supervision. Is that correct?

John Finnie: In the scheme of things, legislation that is in place in relation to a purpose
that the bill asserts to be addressing has not been implemented. Are things out of kilter? For instance, an offender can serve a full 10-year sentence for a violent offence and not co-operate with the prison authorities throughout it, but be let out the prison gate at the end, full stop.

**Michael Matheson:** That is one reason why we are looking at using the MAPPA principles for violent offenders.

**John Finnie:** I question the priority and the urgency.

**Michael Matheson:** We are looking at taking something forward once the work that I mentioned has been completed. The bill will have an impact over 10 to 11 years, so I do not think that there is a conflict between the timelines. I expect that we could have in place provision in relation to the work that we are undertaking around the MAPPA principles for violent offenders well before the provisions in the bill have a significant impact on our prison population.

**John Finnie:** If that had already been in place—it should have been—many of the issues that have been raised about cold release and so on would have been addressed, because you would have been able to offer MAPPA as an answer.

**Michael Matheson:** Bear in mind that a supervision provision needs to be in place for the individual. If the person gets to the end of their sentence and there is no extended sentence in place, MAPPA does not apply.

**John Finnie:** It could be a very violent person who has been released into the community.

**Michael Matheson:** This goes back to Christian Allard’s point. I am more than happy to explore with the committee how we can use the bill to make supervision provisions for individuals who get to the end of their sentence and who would not currently have any such provisions in place for going back into the community.

The number of individuals concerned is very small. At present, when courts are sentencing someone who they think is violent and who could pose a risk at the end of their sentence, they have the option to provide an extended sentence after the person has served their period in custody.

**John Finnie:** The public might reasonably expect us to encourage you to put in place the full provisions of legislation that has been on the statute book for 10 years, rather than adopting new legislation that might, in turn, contain provisions that would not be imposed for 10 years. That is what I am keen to encourage you to follow up.

**Michael Matheson:** I hope that you are reassured by the work that we are doing just now.

**John Finnie:** We understand that the work is on-going.

**Michael Matheson:** We will have by the end of this year done the work on MAPPA. I hope that that provides you with reassurance.

**John Finnie:** It does indeed. Thank you.

**The Convener:** When will the work on how MAPPA operates crystallise? Will it be at the end of the year?

**Michael Matheson:** That work started at the end of 2013. It has been done over the course of 2014 and is due to be with ministers by the end of this year.

**Philip Lamont (Scottish Government):** Yes. The expectation is that recommendations will be made to ministers during the course of this year. Following any decision, it will then come before Parliament.

**The Convener:** It would be useful to keep our eye on the matter and to have a meeting on it at some point. There are issues about the way in which MAPPA is currently operating. I do not want to digress, having rebuked somebody else for digressing, but it is my understanding that prisoners are currently in the first instance released back to where they were resident. That might be where the crime was committed, which means that there could be vigilantes and all kinds of things. There are issues around how provisions operate now, so I hope that the committee will take an opportunity to examine that. That is a matter for us. It is an important question, and the arrangements have flaws, as they operate at the moment.

**Michael Matheson:** I am more than happy to keep the committee informed of progress on the matter and of details as they come to us.

**The Convener:** That would be very good, thank you. We have all had examples in our constituencies of the arrangements not operating in the way that one would wish.

Jayne Baxter has been very patient, but I know that this will be worth waiting for.

**Jayne Baxter:** Thank you, convener, and good morning, cabinet secretary.

John Finnie stole my question—I was going to ask about MAPPA. I have experience from a past life of how it works, and I am interested in the scope for MAPPA to deliver a bit more on its objectives. However, that issue has been dealt with.

I will therefore ask about another aspect of the bill: early release for community rehabilitation. Some witnesses have said that it is a somewhat tokenistic approach, but other witnesses have said...
that it is a very practical response to prisoners’ need for help and support on their release. How much value will a couple of days make at the end of a sentence? How many prisoners will the measures affect?

Michael Matheson: Those measures came about as a result of work that is being carried out in the ministerial group on tackling reoffending.

I will give a practical example. I sat on that group as Minister for Public Health, and I now chair the group under my current portfolio. One of the challenges that was highlighted concerned an individual who had been in Barlinnie prison. The person was liberated on a Friday and resided in Oban. By the time they got to Oban, the offices for housing and other services had closed, and they were not able to get access to a general practitioner or other practical provisions.

That goes back to the point about improving through-care and managing prisoners back into the community. As we know, if we do not manage that effectively, we are in danger of continuing with the revolving door, to which Margaret Mitchell referred, such that some individuals end up homeless and think that there is only one way to get back in somewhere: they end up committing offences and going back into prison again. Managing that period is extremely important. It requires a multi-agency response from health, housing and others.

A practical response is to give the Scottish Prison Service the flexibility to release prisoners up to two days early. To return to my example of the individual in Barlinnie prison who resided in Oban, it may be that for practical reasons, in order to manage their move back to the community, such releases should happen on a Wednesday. We can then get the housing, benefits and health provision sorted out before the weekend, so that we are not setting up the person to fail.

That small practical change could make a significant difference. It would be used at the SPS’s discretion. It would not be used routinely, but would allow the SPS a level of flexibility to accommodate such cases as and when they arise.

Jayne Baxter: I am interested in how local authorities and other public sector agencies work together to support prisoners on release, which is part of the rehabilitation programme. Is there any scope to develop through community safety approaches a stronger network and stronger partnership working between housing and health and all the other agencies that you spoke about, so that they are better prepared as a team to cope with prisoners who are being released into their communities?

Michael Matheson: There is definitely a role for community planning partnerships in that regard. As the committee will be aware, there is a commitment in the programme for Government to make changes to community justice partnerships. Part of that work will be to look at how we can effect better planning in those areas.

I will give another example. We have work taking place in Perth prison, which is working with housing agencies. Housing is the key issue that is flagged up to me by the people who work with offenders; if it is not managed everything else quickly breaks down. The prison is running a pilot on how it works with housing partners for its offenders, and the approaches that it uses to ensure that that is managed and planned much more effectively. We are also doing research on approaches that are used in other parts of the country to manage housing on prisoners’ release.

It is not just for community planning partnerships but for local authority housing departments and housing associations to recognise that they have a part to play in working with the SPS to deliver. The SPS can do only so much, so the other organisations need to see themselves as partners in the work. The tomorrow’s women Glasgow project is work that we have commissioned off the back of the Elish Angiolini report. There is a housing official in the team whose job is to create the link with housing when offenders are moving back into the community. When I was chatting to that official, it was clear that her mindset had changed since she had come into the role. She was a housing official who now views the situation entirely differently; she finds that she is going to her old colleagues and saying, “No, you’re going to have to think about this” and challenging their normal way of working.

I want to see similar approaches being taken, and more of them, elsewhere. It is important that we do not just expect the SPS to sort out the matter, because the other stakeholders have a part to play in helping to address the issues.

Jayne Baxter: Sometimes, the revolving door starts to birl at the custody stage. There is a need to provide the support right through the prison system. Indeed, that should be provided once people are in the system, so they must be supported pre-court and pre-trial. However, that is for a different bill and a different meeting.

The Convener: I just like the word “birl”. It is a great Scottish word—it is visual.

On that note, we end our question session. I thank the cabinet secretary and his officials. As previously agreed, we are moving into private session, so I ask that the room be cleared, please.

Meeting continued in private until 11:30.
On resuming—

Prisoners (Control of Release) (Scotland) Bill: Stage 1

The Convener: Item 4 is another round-table evidence session, the purpose of which is to allow participants, many of whom have given evidence to the committee, to comment on the Cabinet Secretary for Justice’s recent letter, which indicates that the Scottish Government will at stage 2 lodge amendments that would potentially significantly alter the bill. Copies of the letter have been circulated with committee papers.

I welcome participants. I will waive going round the table, because we know pretty well the organisations that the participants represent, and everyone has a copy of the plan.

Who has not done a round-table session in Parliament before? I see that a few witnesses have put up their hands. This is like being at school.

The session is mainly a matter of witnesses interacting among themselves, with committee members playing a lesser role, although they will come in with questions. That can be a more efficient way of getting evidence.

If witnesses indicate to me when they want to speak, I will take names and call out the list of those who are waiting to participate.

I see that Professor Tata wants to start us off.

Professor Cyrus Tata (University of Strathclyde): I got very excited—

The Convener: That is enough; we will just stop you there. Don’t spoil it. [Laughter.]

Professor Tata: I got very excited when you said that there was a plan in front of each of us. I thought that it would be the plan for what we were going to do. Of course, I see now that it is the seating plan. [Laughter.]

The proposals would see one of the most far-reaching changes for a good 20 years to the system of release. That is not to say that there should not be change, but we must think about the proposals much more carefully. There needs to be proper consultation and a proper process. It is worrying that significant changes would be introduced at stage 2. My feeling is—it may be others’ feeling, too—that it would be rather late on to do that. We need proper and systematic consideration of, and proper consultation on, the proposals.

Professor Fergus McNeill (University of Glasgow): I agree. I also suggest that the timing
is important in the sense that most sentencing scholars and reintegretion scholars would agree that you cannot look at release in isolation from sentencing. If we were looking at hospital management, we would have to think about discharge and admissions at the same time.

Given that it has recently been announced that the Scottish sentencing council will be established and operational this year, it seems to me to make sense at least to pause and consider the possibility of consultation of the sentencing council on the connection between what we sometimes refer to as front-door sentencing—the sending in—and back-door sentencing, which refers to release arrangements.

11:30

The Convener: I think that the committee appreciates that very strong connection.

Ms Gailey was nodding. Do not nod or I will come to you; it makes you a target.

Yvonne Gailey (Risk Management Authority): The RMA’s perspective on this is from the angle of risk and public protection. Some of the changes that the cabinet secretary’s letter referred to, or alluded to, appear to be relevant to that perspective.

From that perspective, I also think—going back to what Professor Tata said—that there is a need to understand the particular individuals and cases that are causing the concern that is behind the policy move. There is a need for scoping—of the numbers, the characteristics and the circumstances that lead to concerns—so that resources can be targeted at the right group.

Sean McKendrick (Social Work Scotland): I concur with both sets of comments so far, and will say something about both, because they are slightly separate.

On consultation, the committee will know that we are currently evaluating the multi-agency public protection arrangements. Although the detail of how we might manage individuals post-release is far from clear, it is reasonable to assume that managing them will require a multi-agency approach. That MAPPA evaluation is on-going. It may be wise to roll the lessons that are learned from it into practice in management of the group of offenders to which we are referring. That is important.

I also want to endorse the focus on risk and risk management, and the importance of professionals from a variety of disciplines understanding individual risk and the risk management plans that mitigate those risks.

My contribution is to confirm the two statements that have been made so far today.

The Convener: When is the MAPPA review due to conclude?

Sean McKendrick: The national report should be published around summertime of this year.

The Convener: Thank you. Professor McKendrick—I mean Professor McNeill. I am sorry.

Fergus McNeill: Because I have this tie on, I assumed that you would get the name McNeill right away, but never mind. [Laughter.]

The Convener: I am sorry, but what was it that you said while my back was turned? [Laughter.]

Fergus McNeill: It is the ancient McNeill tartan of Colonsay.

The Convener: I am so sorry that I am not au fait with the McNeill tartan. I will remedy that tonight.

Fergus McNeill: Never mind. It is a small but important point.

The Convener: Well, you have made a big issue of it. This is a bad day.[Laughter.]

Go ahead, Professor McNeill.

Fergus McNeill: On the question of risk, it is important to be clear that release arrangements effectively change the duration for which we choose to store the risk, to use a crude expression. However, in terms of the timing of release, the release arrangements do not in and of themselves do much to mitigate risk.

Investment in risk reduction and, thereby, in public safety is about how we configure our prison regimes, but it is also about how we configure post-release support. If we take a rough estimate of 400 additional prison places to accommodate the numbers in this instance—we think that it is a conservative estimate—that £40,000 per place per annum will cost £16 million. We have to be pretty sure that that investment is buying us improvements in public safety. I do not think that storing risk for longer buys us improvements in public safety. That is my caution.

Lisa Mackenzie (Howard League Scotland): I would echo the comments that have been made so far.

We have two concerns. One, which the Law Society of Scotland pointed out in its submission, is that no evidence-gathering exercise was carried out prior to the legislation being mooted early last year. In fact, the Law Society goes so far as to say that there is no solid empirical basis for the proposals; I think that the Howard League would echo that.
The Convener: My goodness! That is a bombshell.

Lisa Mackenzie: Well, as Professor McNeill said, if we are going ahead with this, do not we owe it to the public to be more sure of our ability to deliver on the policy objectives that were stated in the initial memorandum, given the potential increased cost to the public purse? The issue is not just an increase in the number of prison places; there could also be increased numbers of legal cases being taken on. If you have more people in prisons who cannot access rehabilitative programmes—we know that the offer in that regard is already inadequate—you might find that, as we said in our initial submission, people will make claims of arbitrary detention by saying that they want to prove that they are not a risk but cannot do so, which means that they are being detained arbitrarily.

Another concern that I have, and which I mentioned in our most recent submission, concerns the fact that we are discussing an issue that will significantly alter the bill on the basis of a two-page letter. As I went through the submissions, I was struck by the fact that all that I had were more unanswered questions. Has the judiciary been consulted, given that it is a key stakeholder? We do not know. What impact will there be on the prison population? The Scottish Prison Service says that it will need more resources. How much money has been set aside for that? Prison is expensive, so what is the likely total cost to the public purse? We do not know.

We do not know about the guaranteed period of supervision. Will it be tagged onto the end of a full custodial sentence? Will it be incorporated? There are many unanswered questions. I am concerned about the fact that the committee is moving towards its stage 1 report without having any of that detail in an updated policy memorandum.

The Convener: Do not worry about the committee—I think that some of the questions that you have raised are in our heads, too. You have added some, but I am sure that members had questions about how the policy can move forward without looking at sentencing, and whether the period of supervision will kick in during the sentence or after it has been served. I think that we are all aware of those issues.

Pete White (Positive Prison? Positive Futures): The discussion so far fits very well with our point of view. Taking time to work all this out in a coherent way rather than doing it piecemeal would be tremendously helpful. There is a huge amount that we can do to draw things together; we can look at the whole picture from the point at which someone is arrested right through to the end of the process—whether that involves their release, or diversions from prosecution, or custody. If we tie it all together, we can come up with something that will work properly for individuals and will fit with what the SPS seeks to do.

The Convener: It will also fit with what society wants.

Pete White: Yes.

Sarah Crombie (Victim Support Scotland): I recognise and acknowledge the previous comments, but Victim Support comes at the issue from the victim’s perspective and we support the ending of automatic early release, the extension of the bill to all long-term prisoners and a period of post-release supervision for prisoners.

We want greater clarity and transparency in the system, so that victims and the community are better able to understand sentencing. In our experience, a lot of victims do not currently understand the system; they do not understand what part of the sentence is custodial and what part is served in the community. We want to work towards something that provides more clarity to them.

Eric Murch (Scottish Prison Service): To some extent, we are discussing the unknown unknowns. However, there are also known knowns. Last Friday, the SPS had 7,475 people in custody. We had 318 on home detention curfew, giving a total of 7,793. We have current design capacity of about 8,000, and we have housed significantly more. Some of the current arguments are not based on the fact of the number of people that we can house.

The second issue is that the SPS is not paid on the basis of cost per prisoner place; there are additional costs that we are trying to work out. Those costs are based on a small proportion of individuals potentially being motivated to take on programmes further to moving through a parole process, rather than being liberated. It will not be a huge number, but we are still trying to work our way through what the numbers mean for the SPS.

My final point is on the impact of the policy. We have estimated from Scottish Government figures that there would be about 410 additional people in custody at the end of a 12-year process starting two years from now.

Those are some of the knowns in the system. I am happy for people to discuss the unknowns.

Fergus McNeill: On that, I would just say that it may take 12 years to get to the point of having to spend the extra £16 million, but you will then have to keep on spending because the overall increase in the prison population will work through the system and you will be left with larger capacity needs than existed before because of a legislation.
change that is not based on evidence around public safety, as far as I am concerned.

On Sarah Crombie’s point, I agree that there is a problem about clarity and truth in sentencing and that the current arrangements do not sufficiently explain or make clear to the public or to victims of crime, or indeed to people who are sentenced for offences, what the effect and meaning of the sentence is. When something that is currently called a custodial sentence is passed, something much more complicated happens, which is that people are required to submit to a range of different forms of penal control, some part of which is custodial and some part of which is community based. In fact, in order to meet effectively the objectives or purposes of sentencing, those elements need to be combined; it is not possible to do the rehabilitative and reintegrative part of the punishment effectively unless there is a properly designed and resourced community part.

For that reason, I agree with Sarah Crombie’s point. I think that a change in the language and the way in which the arrangements are described is crucial to enhancing public understanding and public acceptance—although that is not the same thing as actually changing the arrangements.

The Convener: No.

Mr White is next.

Pete White: I support what Fergus McNeill has just said. I think that clarity in sentencing is a—

The Convener: Fergus, Pete—you are all cosy in here. I do not know.

Mr White.

Pete White: Thank you, Ms Grahame—[Laughter]—convener.

Recalibration of sentencing—so that when a sentence is announced or laid down in court it relates to a real time, rather than its being something that has been chopped and changed around—would be very helpful indeed for everybody involved, from the perpetrator who has been convicted, to the victim. A huge amount of clarity is required, but we have the potential to join things together and to come up with something coherent, which we do not have at the moment.

Lisa Mackenzie: I, too, have sympathy with the view that there is a real lack of clarity and transparency in sentencing, but provision of clarity is not how the bill is being advanced; it is being advanced on the basis that it will improve public safety. It does not have as a stated policy objective that it will improve clarity in sentencing.

The Convener: No, it does not, but that is an interesting point to make while we are considering the bill.

Christian Allard: Some interesting points have been raised that were not raised previously. I have a particular question on the spirit of the bill and how it was put forward in a staged manner to try to end automatic early release for all offenders. I think that that was welcomed by Sarah Crombie, for example. However, has the view changed, such that people around this table do not now believe that a staged approach should be accepted? I do not remember hearing that when witnesses gave us their views previously. We heard a lot about how a staged approach was maybe too little or not safe enough; whereas now some maybe believe that the Government is taking too big a step. I just want your views on whether we should have a step-by-step approach or whether we should stop that approach altogether and consider everything as a whole.

Professor Tata: In an ideal world, one would look at the whole thing together. I might be wrong, but I think that Victim Support asked in its submission why we should look only at long-term prisoners. I have some sympathy with its view. If we were really looking at the issue seriously, we would look at the whole thing. Indeed, back in 2005, the Sentencing Commission for Scotland produced a report on release that also noted that there would need to be recalibration of sentencing, so it looked at the whole thing. Unfortunately, the Custodial Sentences and Weapons (Scotland) Bill as introduced made a bit of a hash of the commission’s report.

However, ideally one would want to look at the whole thing systematically. The problem is, of course, that we just do not know how. We have two laudable aims, but that is all they are. The big question is this: how do we combine those two things? We are trying to square the circle in that regard. As Miss Mackenzie said, we are just left with more questions than answers.

11:45

The Convener: Does somebody else want to come in? Witnesses have to indicate to me that they want to speak.

Professor McNeill: I am open-minded on the question of reforming the arrangements for short-term prisoners. There are pragmatic reasons why it makes sense for such prisoners to be processed in a slightly more automated way, but the problem in Scotland is that those who serve sentences of less than four years are not subject to post-release support and supervision. Those people are often at the highest risk of reoffending, even if they are not likely to cause very serious public harm.

The £16 million figure that I have mentioned would roughly triple the budget of the Scottish Government’s change fund, which is a recent
initiative to try to enhance support for the specific population that I have mentioned through public social partnerships. That would be a massively more effective investment in public safety than spending £16 million on 400 new prison places.

**The Convener:** We are aware that there is no statutory support for people who serve sentences of less than four years. We have raised the issue regularly in the Parliament.

Who would like to speak next among the witnesses before I move on to another committee member? Mr White wants in.

**Christian Allard:** I wanted to—

**The Convener:** Mr White wants to comment; then I will come to Christian.

**Pete White:** I will repeat something that I said to the committee on my previous appearance. The bill enables governors to release prisoners one or two days before the end of their sentence. As I have said, it is very important that, whatever happens with the rest of the bill, that opportunity is made available now.

**The Convener:** I think that we are all happy about that bit.

**Pete White:** I am delighted that you are happy—thank you.

**The Convener:** Perhaps I should say that we are content. The bit that you mention is not an issue for the committee; the issue is the other changes that are being made.

**Christian Allard:** I seek clarity. Are the witnesses against the ending of automatic early release?

**Professor McNeill:** I am not against changing how it is described, and I am in favour of the concept that, when a judge determines that it is essential for reasons of justice that somebody serves a custodial sentence, they should serve a custodial sentence and they should be supported and supervised on release to ensure their reintegration. That is a matter of both public safety and rights, because they should be restored to a position whereby they can contribute effectively as a citizen in the same way as we are all expected to.

In the experience of imprisonment—Pete White can speak about the issue better than I can—in many respects the release phase is the most difficult phase, and if we do not get it right and give people the support they need to make a contribution to society, we all suffer the consequences. Combining the custodial part of a sentence with a community part, whereby guaranteed support is made available, makes very good sense to me.

It is unhelpful that historically we have described the system as automatic release; it was even more unhelpful when we called it automatic unconditional release, because it was not unconditional. That led to poor—I was going to be rude about the previous political discussions of the issue. There was poor policy making because there was a reaction to political debate about a set of arrangements that were not poorly conceived in the way that they operated but were poorly presented to the public. Those are two completely separate issues. The truth-in-sentencing issue is important for public confidence, but it has very little to do with public safety. Therefore, the way that the system is described is important. However, for public safety reasons, and for reasons to do with the right of reintegration, it is critical that the system combines custodial sentences with post-release support.

**The Convener:** You say that the sentence should have a custodial part and a community part, so that all that is embraced within a sentence of sorts. How would you technically put that into legislation? When the courts declare a sentence, would they have to say, “You will serve X years as custodial and X years as community”? Alternatively, would the system be more flexible than that?

**Professor McNeill:** Two systems immediately come to mind. In many continental jurisdictions, an initial judge or judge at first instance says, “The punishment that you deserve for this crime is 10 years,” and the case is then passed to what is called an implementation judge or—I will do my French—a juge de l’application des peines.

**The Convener:** See these McNeills? [Laughter.]

**Professor McNeill:** It is the auld alliance.

The JAP—to use the shorthand—then determines the best way to execute or implement the sentence. That judicial figure has the authority to determine the point of release and the conditions of release, so they have a function that in our system is currently fulfilled by the Parole Board. Because they are judicial authorities, they have due process protections and are compliant with the European convention on human rights. That is their mechanism for dealing with it.

In that system, you do not necessarily specify at first instance how the split in the sentence between the custodial part and the community part will work out. That allows you to incentivise the person in prison to co-operate with the regime and to participate, in the way that our parole system is intended to do, but it retains a judicial involvement in determining the meaning of a judicially imposed sentence. For that reason, that system has merit.

Parole systems function in many common-law jurisdictions, and they function relatively well to
protect public safety and help with deliberations about the correct moment of release, but they are bedevilled by the problem of being unable to express clearly and simply what the sentence means, because that changes in response to how the person reacts to it. We have to decide whether we want a system that is absolutely transparent and explicit but is blunt in how it handles individual cases or a system that is a little bit complicated and in which we have to trust discretionary decision makers to exercise professional judgment in the collective best interests of the public. That is a political choice.

The Convener: Ms Mackenzie, do you want to comment?

Lisa Mackenzie: No.

The Convener: Oh—I was told that you were next. We cannot get the staff. I call Elaine Murray.

Elaine Murray: Although, in principle, I like what is now being suggested better than the previous suggestion, I am uncomfortable with the way in which it is being done. It was originally an amendment to the Criminal Justice (Scotland) Bill at stage 2, it came back as a bill, and now the bill is going to be significantly amended at stage 2. I am uncomfortable with that process.

Professor Tata mentioned the Sentencing Commission, which reported in 2005, and there was subsequently legislation, with the Custodial Sentences and Weapons (Scotland) Act 2007. However, I understand that there were a number of issues around that, some of which were flagged up by the McLeish commission, and the act was amended by another act in 2010, which I think was the Criminal Justice and Licensing (Scotland) Act 2010. How different is what is being proposed from what was possible after that act?

Professor Tata: It is a very interesting question. I suppose the answer is that we do not know, because there are no principles in what is being proposed. There are just two bold intentions—that is all—and we end up simply speculating about what things might look like.

One option might be to use one part of the Sentencing Commission’s 2005 recommendations, which was then followed up by the 2007 act, which is the combined sentence regime that Professor McNeill alluded to. I agree that that has merit, because we can say, “This is the custodial part and this is the community part,” and they are part of one overall package. That is a fairly sensible thing to do.

Again, however, we are speculating, as we do not know what is intended. It is an incredibly thorny issue, so I have great sympathy with the Government and the officials who are trying to work out what to do, but that is why we need a proper process of reflection and review to work it out.

Elaine Murray: So the recommendation would still be that the bill is withdrawn and the sentencing council considers it, rather than that we press on with a preferable amendment to the bill.

Professor Tata: I would guess so. If you can keep the bit that Mr White mentioned about the one or two days, that would be good, but with the rest of it, one is left scratching one’s head about what is intended. We end up speculating, and I am not sure that that is the best way of going about it. However, I agree that the combined sentence idea has real merit.

Professor McNeill: You will have seen from the evidence submitted this time that we, as witnesses, round-table participants or whatever we are today—

The Convener: You are witnesses.

Professor McNeill: —are all in a difficult position, because we do not know what is being proposed. We have option A and option B, and we have tried to interpret the minister’s intentions.

If the intention is that we have a system in which the prisoner, if they do not satisfy the Parole Board, may max out and complete their custodial sentence and then be subject to further compulsory supervision, that could not be supported and I doubt its legality. There is a fundamental problem with that, if that is the proposal.

If the proposal is that we have a period of compulsory supervision that is part of the original sentence, we will be back to a variation of what we currently have. We would just be changing the moment in the process at which we determine that we must release.

Neither of those proposals strikes me as being adequate and neither of them will address the truth-in-sentencing objective or the broader questions of retributive justice. The evidence base on which we could assess their likely effect on public safety has not been presented to us, but my general understanding of the issues, from criminological research, is that there is very little reason to believe that lengthening the time spent in custody will have a net positive effect on post-release outcomes. There is no reason to believe that that will be the case, so it is back to the drawing board, to be frank.

Professor Tata: In answer to Elaine Murray’s very interesting question, I should say that the key difference in the 2007 act is that it, unlike the commission’s 2005 report, failed on—or chose to ignore—front-door sentencing. That was the biggest problem of all—as well as the fact that it
tried to push things down to 14 days, which is the other key difference.

Elaine Murray: So that was not rectified by amendments introduced by the 2010 act.

Professor Tata: No. You have to look at front door and back door together, as Professor McNeill said earlier. That is crucial.

Margaret Mitchell: There is a danger that we are missing the point. As Professor McNeill said, for eight years we have been looking at automatic early release. We have a bill in front of us that is not fit for purpose and we are now looking at a stage 2 amendment that will radically improve the bill, but it will not give total transparency in sentencing. If you want that, you move to Victim Support Scotland’s point of view and do away with all automatic early release.

The point that is being missed is that the bill’s raison d’être was supposed to be public safety and, if that is the case, reoffending rates and the revolving door must be looked at. There is a very real danger that if we put this issue to the sentencing commission, we put it into the long grass. We would delay things even further and not look at what is happening now in prisons or even whether prison sentencing, including community sentencing, is the proper disposal and whether decisions on it are based on the full facts available. Are the full facts available at the point of sentencing?

At this stage, we are very much in danger of saying, “Yeah, it would be great to have consultation,” and, “Yeah, it would be good to put it to a sentencing commission,” but what would the remit be, how long would a commission take to report and what would happen to the rehabilitation of people—that we know is not taking place in prison now—so that they do not present a threat to the public? By just narrowly looking at what early release will mean once the automatic part is out of it and how we deal with the problem of cold release, we are missing the big picture, which is very dangerous.

The Convener: I think that you were giving evidence there. Who am I to challenge you? You frighten me sometimes—but only sometimes.

Margaret Mitchell: Well, that’s an achievement. [Laughter.]

Professor McNeill: I agree to a certain extent. At the end of my submission with Dr Barry, there is a suggestion that if we really want to look at public safety, we have to look much more seriously at reintegration. That is clearly related to the question of release, but the technical arrangements for how you do release do not address the question of reintegration at all.

To be fair to the Prison Service, in its organisational review, the resulting reform efforts and its response to the committee’s work on purposeful activities, energy and effort are going into reforming prison regimes constructively. However, that will take time and resources. If the Prison Service’s resources are deflected into absorbing increases in the prison population, the service’s likely capacity to do the creative and constructive rehabilitative work that we all want will be diminished. Therefore, we have to hold the prison population down in order to improve the quality of prison regimes and so that we can spend the money making the reintegration process effective. That is why we have to deal with the front-door issue at the same time, because if we are not serious about how we control and manage the prison population in the first place, we can forget rehabilitation and reintegration. That work just will not happen and we will have an overcrowded and inefficient system that warehouses people and then ejects them back into society in conditions that are dangerous for them and for others.

12:00

Pete White: The argument that it will take a long time before we can agree on a good way forward to deal with release for those on long-term sentences misses the point that long-term prisoners are less likely to reoffend than short-term prisoners. We should thank the SPS for the work that it does to support long-term prisoners, because its effectiveness is evident. We should not gloss over the fact that it is short-term prisoners who go out and come back. At the moment, there are more than 20,000 liberations from prison a year, and those are not all long-term prisoners—not by a long shot. It would be helpful to get rid of that, but to rush into—

The Convener: I am sorry Mr White, but I want us to focus on the bill. I perhaps should have said that earlier. We agree that there are all those other issues, but the bill was apparently flawed at the start and, from what you are saying now, it is still flawed.

Pete White: Yes.

The Convener: Big changes are proposed that have not been properly consulted on, and there is the impact of that and we have the sentencing council. I want us to focus on that, because we have to write our stage 1 report for the Government about the issues. Obviously, you know about that from listening to the discussions.

Pete White: My apologies for straying.

The Convener: It is not your fault. I let the discussion run a bit, but we need to be focused. I think that we can accept the provision on releasing
people on different days of the week. That is not an issue. However, there is an issue about whether the other measure in the bill is curable or whether we just say that it cannot be amended.

As we know from the Criminal Justice (Scotland) Bill, stage 2 can be set forth and then a long time can be given to take evidence. We need to consider whether the bill can be amended in the way that the Government is suggesting or whether it is so big an issue that we have to start again, notwithstanding the important point that Margaret Mitchell raises that we have been a long time getting here. I seem to be hearing from you that we need to start again, but it would be helpful to the committee to make that clear.

**Pete White:** I think that we should start again.

**Professor McNeill:** I agree.

**Lisa Mackenzie:** I agree.

**Roderick Campbell:** The Government makes it clear in the policy memorandum that there has been no formal public consultation, as the measures are a manifesto commitment. Where does a manifesto commitment come in?

**Professor Tata:** I think that a manifesto—sorry, convener.

**The Convener:** That is fine. Just interact.

**Professor Tata:** If I am not mistaken, it was a manifesto commitment in the 2007 election, although I know that there was a minority Government after that. I think that most of the parties had that as a kind of slogan.

**The Convener:** It was not a slogan.

**Professor Tata:** As a headline point, then.

**The Convener:** As a principle.

**Professor Tata:** Indeed—as a principle.

**The Convener:** Thank you. That is what we are talking about.

**John Finnie:** Forgive me, Professor McNeill, because I do not have your original written evidence, but you have alluded to the point that I wanted to raise. It is about the circumstances in which we as parliamentarians find ourselves discussing things and the extent to which public opinion, whatever it may be, shapes that. Earlier, you talked about the background that has given rise to those manifesto commitments. We might say that it is positive that we have a cabinet secretary who in a short period has listened. Will you comment on the circumstances in which law has been made and whether this is the best way to do it?

**The Convener:** I do not want to open up a big discussion on that.

**John Finnie:** It relates very much to the circumstances, which have changed in a short period.

**The Convener:** This is a stage 1 inquiry, so I want to focus on the specifics of the bill. We would perhaps accept that there are good intentions but, because the Government has, as a result of evidence that we took previously, proposed changes, we want to see where we are going with the bill so that we do justice to the issue.

You seem to agree that you want to end automatic early release—I did not hear dissent from Christian Allard’s point—but are you saying that this is not the best way to do it?

**Fergus McNeill:** This is maybe too philosophical, but you can have populist democracy or deliberative democracy.

**The Convener:** Or both, combined.

**Fergus McNeill:** My point is that in an area of policy making as complicated as this, in which it is important to get it right, you need a deliberative process that involves public consultation, debate and dialogue about the issues, which is not reactive to the misrepresentation of the existing system in the media and public discourse. That is what happened in 2006-07. When the Custodial Sentences and Weapons (Scotland) Act 2007 was passed, when I was advising the then Justice 2 Committee, the deliberative process in the committee was excellent, but there was an election looming and stage 3 went a different way from where I thought the evidence had been leading the committee. I understand the realities of that; I am not naive about it. However, it is critical for there to be cross-party political leadership in a deliberative democratic process about how to get this right. It is too important to mess with in the populist way.

**The Convener:** I do not think that we dispute that.

**Roderick Campbell:** I wanted to ask Mr Murch for further evidence beyond what we heard from Mr McConnell about the workings of rehabilitation programmes—for want of a better term—in the Prison Service for reducing reoffending. How much of a delay is there in getting on these programmes?

**Eric Murch:** Last year we delivered around 1,400 programmes of approved activities to prisoners around the estate. There is a waiting list. We base that on critical dates, but it is more complex than that. Some prisoners will deny that they have a problem until very close to their critical date and then they will try to move up the list. Some people are recalled into custody. We currently have about 675 recalls in the system who we have to mobilise quickly, which means that it is
not reasonable to expect that we can always catch everybody who scores with a lower need.

On the Supreme Court, the point was made about potential legal challenge. There is no jurisprudence that would suggest that there was a risk with determinate sentence prisoners. We would have to say that at this juncture. The organisation review has been mentioned. The Scottish Prison Service is looking to turn around a number of its processes, including conducting a full psychology programme review to ensure that we see the gaps and are able to mobilise better. We are changing the way our staff operate to ensure that they can do brief interventions and different types of intervention activity, not big programmes.

This is not just about programme delivery. Prisoners change and are rehabilitated in work that builds their social capital. There are linkages back into society as well; they learn skills and think in different ways about how they do things. As for the past year, the Prison Service for the next five years will be concentrating on changing how it does its business and the role of prison officers. That is quite a big ask. It is a big training task for the organisation. It is about changing how we do business.

We have also committed to having 42 throughcare support officers. The reason for that is that the Prison Service recognises the importance of throughcare and the fact that real rehabilitation happens in the community and people need support in order to reintegrate back into the community. In other words, it is about waking up to the fact that it does not stop at the prison gate.

**The Convener:** The committee is well informed on that.

**Sarah Crombie:** I reiterate that we support the ending of automatic early release. To us, it takes away from the complexity for victims in understanding when the offender is going to be released. We often get phone calls from people saying that they did not understand the sentencing at the front end and now they have received a letter to say that the offender is up for release into the community.

We absolutely recognise the importance and relevance of supervision and reintegration into the community. It is a matter of ensuring that the victim has their choice, and that they are aware of it. They should have a choice when it comes to any perceived risk to their personal safety. If they do not wish to bump into the offender in an area where they know they may be, it is their choice to avoid that area or to move their kids from school if they so wish. It is important to the victim to have that awareness and understanding.

**The Convener:** Would your organisation have concerns if the ending of automatic early release—whatever we call it—was deferred for a considerable period?

**Sarah Crombie:** I believe that we would, yes.

**The Convener:** That is where we need your assistance with regard to the letter from the cabinet secretary and how it would be possible to move the bill forward rather than kicking the matter into the long grass for a long time, as Margaret Mitchell was saying.

**Professor Tata:** I can see that. The problem is that the letter from the cabinet secretary is trying to combine two things, but how do you do that is a big question. Both things are virtuous, and we would probably agree with both of them. To that extent, it is a good thing, but the big question is how to do it. There is a whole range of questions of principle, practice and logistics. The basic principles need to be thought about first.

There is a worry about rushing it. As Margaret Mitchell said, we have had eight years, perhaps for understandable reasons, but it now feels as if there is suddenly a desire and an urgency to do things straight away.

**The Convener:** Even if it is possible for a committee to ask to defer a stage 2—or for the Government to do so—or for the committee to take further evidence on specific amendments, how would one manage that? Would it be manageable to do that, rather than deferring the matter for years and years again? At least if we have something in front of us, we have to do something—we cannot just extend the process.

**Professor Tata:** The work of the committee is absolutely to be welcomed, but I guess that the committee has then to respond to the Government amendments. The question is how the Government will come up with such amendments if it does not consult and have time to think them through.

**The Convener:** That is what I am saying. It is not necessary to keep to a short timetable at stage 2. The committee can ask for time to take evidence on amendments, almost like another stage 1.

**Professor Tata:** True, but that is necessarily to react to amendments lodged by the Government, and my concern is how well thought through those amendments will be and how imaginative the committee can be in that situation.

**Professor McNeill:** To pick up on a point that Sarah Crombie made, if the Government and the committee choose to persevere with the bill and choose option B—not involving additional supervision but working within the framework of the existing sentence—to meet Victim Support
Scotland’s legitimate demand for clarity, the bill would have to include provisions to change the way in which sentencing is described, explained and made clear in the first instance. That is not currently a purpose or stated intention of the bill. There is a problem there. That might be remediable through parliamentary procedure, although I am not an expert on that.

Professor McNeill: A second point is that, if we go down that route and consider option B, which is a period of compulsory supervision within the existing sentence, the key question is what evidence base you would review at stage 2 in order to arrive at a determination about the timing issues. You have already identified that in your questions to us in advance of this evidence session. We have not been very able to answer them clearly, because we do not know the clear intentions of the bill. Monica Barry and I have given you our best guess about how we would frame it if that was the intent.

To me, the fundamental problem is that we are muddying the waters by talking simultaneously about clarity in sentencing and public safety. Those two issues are related and they are both important, but we cannot tackle one by doing something that claims to be about the other. Victim Support Scotland’s position is completely understandable from the perspective of victims’ legitimate interests in having clarity and understanding the situation that they are in, but I find it hard to see how the bill, which is crafted around public safety, can address their legitimate interests.

12:15

The Convener: Before I bring in Ms Mackenzie, I have just been checking and I have been advised that it might be possible to get that clarity about sentencing and so on in the Criminal Justice (Scotland) Bill, which has a much wider remit. I might be clutching at straws, but that might be a possibility.

Lisa Mackenzie: Some of the points that I wanted to make have been covered by Professor Tata and Professor McNeill, but I return to the point that an assumption is woven into the bill that keeping people in jail for longer is what will improve public safety. A lot of us are asking where the evidence base is for that.

As I said at our previous meeting, if you advance a bill on the platform of improving public safety and you trumpet the measures that you are taking, saying that they are wonderful and they are going to improve things, but then something happens, you run the risk of increasing public levels of cynicism about the criminal justice system, which as we know—and as Victim Support Scotland has said—are already quite high. People do not understand a lot of sentencing policy. If you advance something on a platform, you must deliver on it. Otherwise, you could increase cynicism about the criminal justice system, which is not what any of us wants.

The Convener: I do not think that we are content about cold release. I think we have taken that point.

Gil Paterson: A point was made about the committee reacting to the Government and the letter. Of course we need to do that, but we also need to react to what we hear in evidence from the panels that come before us, and my recollection is that we have concentrated pretty well on cold release. It seems to me that the Government’s letter proposes that cold release does not happen. I would like to hear some comments on that. Have I got it wrong? Is that not what we have been told by the cabinet secretary?

Professor McNeill: That is what the letter says, but it does not tell us how. That leaves us in a conundrum about option A or option B. As I said, option A is not workable, from my understanding of the law and the evidence. Option B is workable, but it does not address Victim Support Scotland’s concern, because in effect it creates a new system of automatic early release but calls it something else and changes the dates. That is the net effect of option B. Unless the bill can be amended or some other legislative device can be found so that something is done about clarity in sentencing in the first instance, we cannot address Victim Support Scotland’s concerns appropriately or deliver what it is requesting.

Elaine Murray: I invite the witnesses to comment on an alternative. We know that the 2007 act and the amendments in the 2010 act were passed but not implemented. Would another possibility be to pass the bill but not implement it until some of the front-end issues have been addressed?

Professor McNeill: We have been there. The 2007 act is still sitting on the statute book unimplemented. That is part of the political pressure that led to the current effort. I do not think that it makes sense to pass legislation that you know you are not intending to implement.

Elaine Murray: It would not be implemented until certain other things have taken place. That is what was supposed to happen.

Professor McNeill: You are right about that, but we are still a long way off the 5,000 figure, which the McLeish commission recommended as the point at which the 2007 act might be implemented.
Professor Tata: I agree. I am not sure that Elaine Murray was suggesting this, but I am slightly uneasy about passing legislation that we think is probably not very good, in the hope that the Government of the day will sort things out. We might trust the current Government, but it worries me that another Government might be far less responsible.

The Convener: I think that Elaine Murray meant to explain that the legislation would be deferred while other mechanisms were put in place.

Elaine Murray: Yes, such as the sentencing council.

Professor Tata: In the meantime, we must ensure that any legislation that is passed is the very best that it can be. It will be the most radical change for 20 years.

The Convener: That is certainly the committee’s view, as well. Please understand that.

Professor Tata: I know.

Roderick Campbell: I want to pick up on Lisa Mackenzie’s point on empirical evidence. What are you suggesting that empirical evidence elsewhere would show, in relation to public safety? Is there empirical evidence out there?

Lisa Mackenzie: I am probably not the best person to answer that, because I am not an academic. However, I am not sure whether evidence suggests that holding people for longer, rather than releasing them and supervising them for the remainder of their sentence, is likely to lead to fewer incidents of reoffending and thereby to increase public safety. Other people around the table might want to say something—Fergus McNeill has his hand up.

Professor McNeill: Recently, the National Academy of Sciences published a report by a very high-powered commission led by the world’s leading criminologists under the leadership of Professor Jeremy Travis of John Jay College of Criminal Justice in New York. The report is on the consequences of the rise in imprisonment in the United States; it considers its effect on crime rates and reaches a conclusion that criminologists have reached before, which is that even massive increases in incarceration rates produce only marginal effects on crime rates. That is a different question from the more specific question that the bill seeks to address in relation to public safety. Obviously not all crime raises major issues of public safety, although all crime is of legitimate public concern.

I am not aware of any credible evidence that lengthening sentences in and of itself guarantees the more effective risk management that the bill seems to be trying to bring about. I am not able to put it more forcefully than that, because for obvious reasons of justice it is very difficult to do the kind of research that would experimentally test different release arrangements. We do not really get to do that kind of experiment in criminology, for very good reasons.

I can say that evidence on desistance from crime, which is more my specialised subject, suggests that it is not the timing of release, but the experience of imprisonment, access to the services that are needed, the manner of release, the support that follows release and wider issues about public acceptance and reintegration in the community that matter in the medium and long terms, in relation to someone’s potential risk or otherwise to public safety.

The Convener: I have to laugh because while you were saying that Professor Tata indicated that he wanted to come in, then that he was out, then he was in, then he was out. [Laughter] You have obviously covered everything. Believe you me, that is a fact.

Margaret Mitchell: There is a false argument that keeping people in prison longer improves public safety. It will improve public safety only if on release they are a threat to the public. Surely a custodial sentence should be based first on foremost on whether the individual presents a threat to public safety. If they do and there is no other way to eliminate that, there should be a custodial sentence. There should be more clarity and transparency in custodial sentencing, so I agree with Victim Support Scotland that we should abolish all automatic early release.

The key question is this: what do we do with the individual while they are in prison? We are not focusing on that. We have heard very good things from Eric Murch, but the point is that the resources are not there. Christian Allard is quite right that people on short-term sentences are reoffending more, and the way that that is escalating presents a threat to the public. I met Circle yesterday to talk about an individual who was on a short-term sentence, and for whom there was no support; none of the throughcare that is supposed to be there was there. The individual was saying that he was excited about getting out, but he wondered whether he was better off in prison. He knew that he had no housing to go and that there would be temptations when he got out. Until we address that fundamental point, neither the bill nor where are going with this discussion are fit for purpose.

The Convener: You have got that off your chest and we would probably agree with a lot of it. My point is that we should get back to the bill that we are dealing with. I was quite attracted to suggestion about custodial and community parts, but that will have to be dealt with by the sentencing council and it would have to be clear
for Victim Support Scotland. It may not fit into this bill.

I am sure that the cabinet secretary is listening to this. Do parliamentary procedures give us the opportunity either to cease at stage 1 and have a really thorough pause at stage 2 while there is some consultation, or for the committee to move to stage 2 and get time from the Parliamentary Bureau to take evidence and take longer over amendments, rather than park the bill?

If we did that, it would also park the issues that Pete White raised regarding release at different times of the day. I do not think that we could just go ahead with that, to be frank. The question is how we manage this so that we keep the foot on the accelerator. That would not just be for the sake of doing so; it would be in order to deliver good legislation and to get on with it, rather than going on for years again. That is what I am looking for when it comes to the witnesses’ evidence. We accept many of the issues that you have raised; I suppose that I must go round you and ask for your views.

Sarah Crombie: Victim Support Scotland supports the ending of automatic early release. However, we acknowledge that further evidence may be required.

The Convener: You would continue the bill process in some manner.

Sarah Crombie: Absolutely.

Professor Tata: Automatic early release could be ended, but to ensure—as per the aim in the cabinet secretary’s letter—that everyone gets a mandatory period of conditional supervision, as I assume they would, it would have to be reinvented, perhaps using another name. There are ways of doing that.

You are asking about the process, convener: I am not sure that I am the best person to answer the question.

The Convener: I am not asking you about process. There are ways of resolving the matter. We accept the issues that you have raised, and we note the points about complexity and interaction with the sentencing council and other things, but how should we as a committee deal with the matter? Should we just throw the bill out and start again? Should we seek to amend the bill to make it fit the principles that the Government has come forward with? It can be done, but I do not know whether that is what you want to do, or whether you think that it is worthwhile.

Professor Tata: At the moment, all that we have from the Government is a letter with two intentions.

The Convener: Correct.

Professor Tata: If the bill is not withdrawn, the question is then what will the bill look like. We are necessarily responding to that. My concern is not so much with the committee, which is clearly trying to do what it can. How will the Government bring forward its proposals, and on what basis? How will it consult? Will it consult? One can try to react imaginatively, but one is reacting to what the Government puts forward.

The Convener: We could have the cabinet secretary in front of us and we could raise those issues. No doubt the Government is listening to this evidence. We could set out the issues that have been raised before the committee and ask whether it has solutions.

Professor Tata: My concern is that this is—as everyone around the table knows—a technical and incredibly complex area of law. However, as you know, the matter is also politically charged: there are two elections coming up, which makes the option of giving the matter to an impartial body to consider a little bit more attractive.

The Convener: I do not know what impartial body you are talking about.

Professor Tata: I mean the Scottish sentencing council, for instance.

Professor McNeill: I do not know parliamentary procedure, so I do not know exactly what your latitude is in persevering. If you were to persevere, minimally extending the period of deliberation so that it can involve dialogue with the sentencing council and others about their plans and views on the relationship between first-instance sentencing and release decision making would necessarily be a part of that extended stage 2 process.

My fundamental problem is this, however. When the then First Minister Jack McConnell announced in Parliament that automatic early release would end, he did it under pressure, on a truth-in-sentencing point, which I think came from the Opposition in 2006-07. When all the parties on the committee at the time except the Scottish Socialist Party voted to let CSAW—the Custodial Sentences and Weapons (Scotland) Bill—go forward to stage 2, they agreed that the principles were good, but that there were flaws in the detail. They did that under pressure of an imminent election, and they were responding to popular opinion about the fact that automatic early release did not seem to be delivering justice as people understood it.

12:30

We are now in a similar situation again, where, for political reasons, a new minister—I maybe should not go this far, but I will—wants to grasp the nettle and address the issue. That means
saying that justice policy in Scotland is going to be smart and progressive, and that it will take social justice seriously but it will not be soft and cuddly. Grasping the nettle makes a degree of political sense. However, muddying that up with an extended discussion about risk and public safety causes a fundamental problem with what is before us.

To return to a point that I made earlier, a lot depends on whether the committee and the Government want clarity, which is Victim Support’s core point, or whether they want to pursue public safety or, which would be better, balance those two important objectives. It is feasible to pursue option B, with an extended stage 2 deliberation involving dialogue with the sentencing council and others. If I had my way, I would tear up the bill and start again and do the things properly and comprehensively. If it is important to persevere for other reasons, however, there would have to be an extended stage 2 process.

**The Convener:** That is fair enough. That is a fine, extensive explanation of your position, which is what we want.

**Sean McKendrick:** My comments are less about ethics and more around how we manage the process for public protection. For me, there is an outstanding question; I refer to my earlier comments about how effective our current arrangements are and the review of MAPPA. Wherever the detail is, it will require a multi-agency response. That is important for us, and the question is around the effectiveness of our current arrangements.

Secondly, we are in straitened financial times, so the resource for managing the increased number of individuals and the greater intensity of service provision that they will require needs further examination.

We are in a process of significant public change in health and social care and we are moving from community justice structures to community planning. How effective is that, and what analysis is being done of those changing arrangements? How will integration of health and social care and the associated policy commitments impact on the set of arrangements in the bill? Such operationally focused matters require greater deliberation. If those can only complement the more procedural aspects, or the more ethical aspects around the complications of how you make law and how you address facets of law, that leads me to suggest that a further period of reflection, consultation and analysis is required.

**The Convener:** The point that you make is very important. There is no point in making law that cannot for practical reasons be implemented.

**Sean McKendrick:** I add that it is also a matter of understanding the impact of the law.

**The Convener:** The financial impact—absolutely.

**Eric Murch:** I am not sure that it is for the SPS to comment, except to say that we will contribute and, if and when the bill is enacted, we will be ready for it.

**The Convener:** Thank you.

**Yvonne Gailey:** I wish to follow up on Mr McKendrick’s points. If the concern is about public protection and the management of the risk that is posed by those who present the greatest risk of serious harm, we want to get to a point where release is carefully considered: its timing, the support that is provided, and its planning and management. Given the resources that would be involved in that for the Parole Board for Scotland and community services, we need further scoping and understanding of the number, characteristics and circumstances of the cases that give particular concern at the moment. In taking the matter forward, it would be valuable to get more evidence about that.

**Pete White:** I find myself in a tricky position here. Ideally, I would tear up the bill and start again. However, given the evidence from Victim Support Scotland and from the academics, I recognise that it is important to be positive and to move forward. If I can be assured—as I feel I can be—that the stage 2 process can embrace the concerns that are being expressed around the table, I will go with it.

**Lisa Mackenzie:** I agree with Professor McNeill. My ideal would be to start again and present the empirical base for the bill to proceed. The stage 2 extension is less than ideal, but pragmatically that might be all that the committee is able to do.

I return to the point about the release period, as stated in the two-page letter. I cannot see that option A—tagging compulsory supervision on to the end of the sentence—is workable.

**The Convener:** We are all shaking our heads.

**Lisa Mackenzie:** However, option B is automatic early release by another name. That is what I mean about public cynicism—I was not talking about cold release. I completely agree with the need for clarity on sentencing, but people would say that option B is just automatic early release called something different. In which case, why should we do it?

**The Convener:** Whether the cabinet secretary and the Government thank you for your evidence is another matter, but I thank you very much for your evidence.
On resuming—

Prisoners (Control of Release) (Scotland) Bill: Stage 1

The Convener: Item 3 is our final evidence-taking session at stage 1 of the Prisoners (Control of Release) (Scotland) Bill. We have the Cabinet Secretary for Justice back to respond to issues raised in the letter of 3 February and in the evidence that we heard in last week’s round-table session. I welcome Michael Matheson, Cabinet Secretary for Justice, and Neil Rennick, acting director, justice, at the Scottish Government. We can go straight to questions from members.

Roderick Campbell: Good morning, cabinet secretary. In our evidence session on 24 February, misgivings were expressed about the evidence that the bill will improve public safety and public protection. Can you give the committee any additional evidence or supporting facts in relation to those concerns?

The Cabinet Secretary for Justice (Michael Matheson): Are you asking about the approach of ending automatic early release?

Roderick Campbell: Yes.

Michael Matheson: There is evidence that the committee and Mr Campbell might find useful. In 2012-13, 476 prisoners were subject to supervision in the community after parole release and 403 were subject to supervision in the community after non-parole release—they would have had automatic early release. The rate at which non-parole-released prisoners breached their licence conditions was 37 per cent, compared with 5.5 per cent for parole-released prisoners. Someone who has been released automatically is seven times more likely to breach their licence conditions than someone who has been released after the Parole Board for Scotland has made a decision. That is a significant gap, which I think adds significant weight to the reasons why we should end automatic early release.

Roderick Campbell: Thank you for those figures. In your view, the bill will improve public protection. Can you say anything further about the use of extended sentences, which we did not touch on in our most recent session?

Michael Matheson: I have no doubt that ending automatic early release for long-term prisoners will help to improve public protection. A significant number of prisoners who receive a long-term sentence of four years or more already receive an extended sentence, which the court imposes when the sentence is handed down, based on the judgment that those prisoners require a period of extended community supervision after they have been released from prison. It is entirely down to the courts to determine that, but the number of prisoners who have received extended sentences has increased. I suspect that it would be for judges and sheriffs to determine the extent to which they continued to use those sentences and to what level.

Roderick Campbell: In your view, the bill, together with the continued use of extended sentences, will improve public protection compared with where it is at present.

Michael Matheson: Yes—I believe so. Part of the reason for introducing extended sentences was to allow the courts to impose an extended period of community supervision post someone’s release from prison, which would allow them to be supervised and would allow any further measures to be taken once the person moved back into the community, for the purposes of protecting the public.

Roderick Campbell: The second purpose of the bill is rehabilitation of offenders. Can you add anything further on programmes to assist rehabilitation in prison and in the community at large?

Michael Matheson: I know that the committee has had evidence from Colin McConnell, the chief executive of the Scottish Prison Service, who is reviewing the way in which the Prison Service delivers its rehabilitation programmes and courses in the prison estate. There has been a tendency in the past to deliver programmes en bloc and slot prisoners into them. I know that the Prison Service is keen to look at developing programmes that are much more aligned to the assessment of the prisoner’s needs to make sure that programmes are more tailored and reflect more what prisoners require. That is a significant undertaking for the Prison Service, but it wants to move in that direction, which it feels would be a more appropriate way to deliver rehabilitation programmes.

We are keen to support the SPS to move in that direction. I have no doubt that the SPS will start to take a much more bespoke approach to how rehabilitation programmes are developed for prisoners in order to improve the delivery of those programmes and the outcomes that can be gained from them.

Roderick Campbell: We heard a lot at last week’s evidence session about what were described as option A and option B. It was suggested that your letter to the committee lacks clarity about what your proposals for stage 2 mean.

The Convener: What are options A and B?
Roderick Campbell: I think that option A is some form of supervision at the end of an offender's sentence. Option B is supervision that forms part of the sentence. There seemed to be confusion among witnesses about what your letter meant. Will you clarify that?

Michael Matheson: When I previously appeared before the committee, it was clear that it had concerns about prisoners who do not qualify for early release through parole, who could be released at the end of their custodial sentence without any supervision being in place. I made it clear to the committee that I am open to exploring how that concern could be addressed.

Having considered that, I think that a guaranteed period of supervision would be the most appropriate way to ensure that the prisoner, when they are released, has a period of supervision in the community. That period could be three or six months towards the end of the prisoner's sentence. However, I am open to the committee's views, based on the evidence that it has heard, about the best timeframe to set.

Elaine Murray: As Roddy Campbell suggested, last week's witnesses found it a bit difficult to comment because they had not been able to see precisely what you were suggesting. When might the amendments be available, so that people can see what the proposals are?

Michael Matheson: That will be at stage 2.

Elaine Murray: Clearly. Our problem with the bill is that originally its provisions would have been stage 2 amendments to the Criminal Justice (Scotland) Bill, then they were introduced as a stand-alone bill, and now this bill will be significantly amended at stage 2. That makes it difficult to consult properly on the bill. Would you be amenable to an extension of stage 1 or an extended stage 2, so that the committee can take evidence on the proposals?

Michael Matheson: There are two aspects. First, the general principle of the bill, which is ending automatic early release for long-term prisoners, has not changed, but the timeframe is to change. The timeframes for the different groups were four years for sex offenders and 10 years for those serving long-term sentences for non-sexual crimes. For a consistent approach, that will be changed to four years and four years. If automatic early release for long-term prisoners is to be taken away, it is better to do that consistently. That is quite a straightforward and direct change.

The second aspect is the provision of a guaranteed period of supervision. That reflects the evidence that the committee received at stage 1 and the views that it expressed to me on the issue. I said that I was open to considering the provision of a guaranteed period of supervision. I would debate whether that is a significant change to the bill, but it is a change that it is appropriate for us to consider.

If the committee recommends in its stage 1 report a particular approach to implementing the guaranteed period of supervision, I will reflect on that and respond to it. If the committee wishes to have further time at stage 2 to take more evidence on that, it can suggest that to me.

Elaine Murray: The problem for some of the witnesses last week was that, if the compulsory post-early-release supervision is to be tagged on at the end of the sentence, rather than being part of the sentence, there could be human rights issues. There is the issue of option A and option B, and there has been no clarity yet on a minimum period of compulsory post-release supervision. Evidence needs to be taken on those changes, as I would argue—certainly after hearing what the witnesses said last week—that they are not insignificant.

Michael Matheson: That is the witnesses' view, but I take a slightly different view, and I am conscious that some of the witnesses do not support the idea of ending automatic early release per se. If the committee wants to consider taking further evidence at stage 2, I am happy for it to pursue that course.

My view is that a period of six or three months at the end of a sentence could be created within the sentence period. I am more than happy to explore that with the committee. It is not for me to say to the committee that it should not take more time at stage 2—that is clearly in the committee's gift. It would be inappropriate for me to say that I do not think that the committee should have sufficient time to do that.

Elaine Murray: Do you appreciate that it is important for us to see what the Government is proposing so that we can take evidence on it? We need to have the substance of the proposed changes.

Michael Matheson: I say with all due respect that you have been around this place for as long as I have and that you know that committees have had to deal with amendments that have been lodged at stage 2 at that point. I have seen even more significant changes made to bills at stage 2 without any extra evidence taking.

If the committee feels that it needs more time to consider the issue, given what we are proposing to do, it can decide on that. It is not for me to direct the committee.

Elaine Murray: I appreciate that such things have happened before—indeed, I have argued against my own Government when it tried to make
changes at stage 2—but it is not ideal for consulting and getting views from stakeholders.

Michael Matheson: That is one point of view. I think that it is very reasonable that I have come along to the committee at stage 1 to respond to concerns. The committee has flagged up concerns about the idea of cold release and indicated that there should be some supervision towards the end of a prisoner’s sentence if we end automatic early release.

My response to the committee is that I am prepared to address that, and we are looking at whether the period should be within the existing sentence and how it would be managed. I have said to the committee that, if it feels that the guaranteed period should be a minimum of six or three months, I am content to listen to its views. I am responding to concerns that the committee has flagged up, which it is perfectly reasonable for me to do.

Elaine Murray: I presume that there will be a revised financial memorandum.

Michael Matheson: The effect of any changes will have to be considered. Whether any changes to the financial memorandum will be needed will depend on the approach that we take.

The Convener: One of the issues concerns the use of the word “guaranteed” as opposed to “compulsory”. A technical difficulty is that, if someone is to fulfill the entire sentence, to say that you guarantee supervision at the end does not mean that you have to do it, because it is not compulsory. That is the issue that we are finding difficult. It would be more likely that that would have to be included in the timeframe of the sentence itself—for example, a 10-year sentence of nine-and-a-half years plus six months of compulsory supervision. That is the issue for us. Those two words cannot just be interchanged.

Michael Matheson: If the committee was to come back with a view that there should be a compulsory period of community supervision of three or six months towards the end of a sentence, I would be happy to consider that.

The Convener: The problem would arise if you said that someone had completed their sentence, and then there was something compulsory, which would become the sentence as well. That is the difficulty that we are struggling with.

Michael Matheson: That would have to be—

The Convener: I respect that you have taken a different tack from the previous cabinet secretary, as you are entitled to do.

12:00

Michael Matheson: Of course, but it is worth keeping in mind that the bill deals with a select group of prisoners. There are those who will be released on parole prior to the end of their sentence, and they are entitled to apply for such release after they have completed half of their sentence. There are also those who are serving an extended sentence, which will have been imposed when their original sentence was handed down. Finally, we are left with those prisoners who have not qualified for parole but who are coming to the end of their sentence, and the question is whether they are reintegrated into the community on either a compulsory or a guaranteed period of community supervision.

The Convener: That is the issue. As we heard in evidence, people might serve their sentence, come out cold and say, “Well, you’re guaranteeing me supervision, but I dinnae want it and I don’t have to take it.”

I call Christian Allard.

Christian Allard: I have a couple of questions—

The Convener: Have you moved, Christian? You were over there before.

Christian Allard: Indeed, convener.

Cabinet secretary, you have said that you were concerned about people objecting to the ending of automatic early release, but in last week’s evidence session, Victim Support Scotland made very clear its support for the ending of automatic early release. Indeed, when I asked all the panel members about this, they highlighted in their answers why they supported it. Can I perhaps push you on this? Who do you think does not support the ending of automatic early release?

Michael Matheson: I am sorry if I have misinterpreted this. The fact is that although everyone might support the ending of automatic early release, they might have different views on how that might be achieved and might not agree with our approach. Of course, they are entitled to their views on the matter.

Christian Allard: With regard to the approach, can you reassure us that we will not end up with a situation such as we had with the Custodial Sentences and Weapons (Scotland) Bill? In that case, the principle was good—and, in this case, everyone agrees that the principle of ending automatic early release is good—but the fact is that the language that is used must be on a sound footing and the Custodial Sentences and Weapons (Scotland) Bill was flawed in its detail. Can you reassure us that there will be no more changes to the scope of the bill and that, at stage
Michael Matheson: When the committee publishes its stage 1 report, we will respond to the issues that have been flagged up and then consider how to amend the bill at stage 2. As I said to Elaine Murray, if there are specific aspects of our response that the committee feels it needs more time to consider, it will be up to the committee to decide whether to examine and take more evidence on that.

That said, anything that we take forward has to fit within the terms of the bill. The principle of ending automatic early release is not changing, but we have said that we will bring down the threshold for crimes of a non-sexual nature, and that we are minded to take an approach that reflects the concerns that have been expressed about cold releases and which the committee raised with me when I previously gave evidence on the matter.

The Convener: I should point out that it is up to the committee to ask the Parliamentary Bureau to extend the time for considering the bill. For example, we can decide to produce a stage 1 report to flag up our concerns and then have a longer stage 2 with evidence-taking sessions, but we will still have to approach the bureau ourselves. The committee’s members include bureau members; they will understand the situation and will be listening to these comments.

Gil Paterson: Cabinet secretary, one of the main criticisms of the bill concerns whether the Scottish Prison Service has the resources to cope with a situation in which more individuals require supervision and whether, if more resources are needed, they will be put in place.

Michael Matheson: The evidence that you received from the chief executive of the SPS was that there is a timeline for when the ending of automatic early release will start to impact on prisoner numbers. It will take several years before the change works through into the system.

I do not look at the issue of dealing with prisoner numbers in isolation. It is not the case that all we will do is something on ending automatic early release. We need to do more on short-term sentences, to ensure that they are delivered much more effectively. If we look at the churn of prisoners, we see that when they go through our prison estate on short-term sentences it takes up a massive amount of the service’s resource. The evidence also shows that short-term sentences are not very effective in addressing offending behaviour.

We need to look at how we can improve that approach. Measures have been taken over recent years on different types of disposals—for example, the presumption against sentences of less than three months—that are trying to address some of the issues. Within the Government, I am looking at how we can take some of those measures further, to ensure that we are not spending so much time with a churn of prisoners on short-term sentences, the outcomes of which are very poor. Of course, those who have to go to prison should do so, but we are continuing to send to prison individuals whose needs could be better addressed through community disposals.

We have several years in which to take forward some of those measures before the impact of any change to automatic early release feeds into overall prisoner numbers, and I want to look at prisoner numbers in the whole, rather than look in isolation at the effect of the removal of automatic early release.

Gil Paterson: I am a great supporter of various programmes. I was vice-convener of the cross-party group in the Scottish Parliament on men’s violence against women and children, which looked at world-renowned work that was being done in Peterhead. I anticipate that there are people who are serving sentences for serious sexual offences who may well want to participate in programmes such as the one at Peterhead.

The SPS says that it will be able to cope with whatever is decided, but perhaps that is civil-service speak. Nevertheless, more people might volunteer—the Peterhead programme was voluntary. The right reason for people to volunteer is to address their behaviour, but even if they volunteer for the wrong reasons such programmes are so successful that people benefit from them. Can you assure me that resources will be available in those circumstances? Are you assured of that yourself? Like night follows day, there will be an increase in numbers. It might be minimal, but the Peterhead programme was a good programme and I would not like to see more people volunteer for such programmes but not be able to benefit from them.

Michael Matheson: You raise a good point about access to programmes, which we touched on earlier, and the review work that is being done in the Scottish Prison Service on how it can improve the delivery of its rehabilitation programmes. You referred to the STOP programme at Peterhead, which had a significant reputation for how it worked with sex offenders.

The evidence that you received from the chief executive of the SPS said that it believed that the current uptake of sex offender programmes, which is approximately 50 per cent, would increase to around 67 per cent with the ending of automatic early release. That is why it is important that the review programme of work that is being taken forward includes how the service can ensure that
the way in which it delivers the programme, with increasing demand, is much more tailored to the individual prisoner’s needs, in order to address them much more effectively.

There is no doubt that that will be challenging. One part of that is that, within the prison system, a sizeable part of the resource is taken up by dealing with the churn of short-term prisoners, which draws resource away from tackling some of these issues. The challenge is to get that balance right.

Some of the things that we are considering concern ways in which we can much more effectively deal with short-term prisoners and have much more effective programmes for them, while ensuring that the programmes for long-term prisoners have the necessary resources that will enable them to be delivered in a much more individualised way.

A number of things have to be done in the system in order to achieve that. One of the important aspects, which was highlighted by Henry McLeish in his report, is that prisons should be used much more effectively for those for whom prison is the appropriate place to be. The bill, along with other policies that we are taking forward, will help us to achieve that balance much more effectively.

Margaret Mitchell: You mentioned that one of the reasons for changing the proposal in the bill was consistency. However, surely it would be consistent to include short-term sentences and abolish automatic early release for them as well.

Michael Matheson: In this bill, we have set out that we will do that for long-term prisoners—achieving that is within the confines of the bill. You will be aware that the independent prisons commission recommended that, before the ending of automatic early release for short-term prisoners, a range of other measures would need to be taken, such as dealing with the churn of short-term prisoners and providing more in the way of community disposals.

Some of that work has started and some of it needs to be accelerated. That is what I am looking at doing. Once we are in a position to take that forward, I am content for us to consider the issue of ending automatic early release for short-term prisoners, too. However, as was highlighted by the independent prisons commission, we are not yet at that point. When we are, we can revisit the issue of automatic early release for short-term prisoners.

Margaret Mitchell: In the interests of public safety, given that we know that the highest percentage of people who reoffend and end up back in the system are short-term sentence prisoners, would it not be better to end automatic early release while you are considering proposals, doing the evaluation of whether a community sentence is more appropriate and examining how short-term sentence prisoners are handled just now? Throughcare is not there at the moment. We hear about it all the time, but it is just not evident. Every day, people are released without having the throughcare that is necessary to help them not reoffend.

The Convener: I do not think that that would be consistent within the bill, because it will become “An Act of the Scottish Parliament to end the right of certain long-term prisoners to automatic early release”.

Margaret Mitchell: I understand that. I am suggesting—and it was being suggested by the majority of the round-table panel members last week—that automatic early release of all prisoners should be scrapped, perhaps through the Criminal Justice (Scotland) Bill, and that we should start to get down to providing the rehabilitation programmes for which demand far outweighs supply in prison. We must start getting at the experience of prisoners in order to ensure that prison rehabilitates people. My proposal would deliver the stated aim of protecting the public and provide clarity and transparency in sentencing.

Michael Matheson: There is a range of issues to consider. First, it is wrong to say that there is no throughcare in prisons. There may be areas in which throughcare needs to improve, and I know that work is being progressed to achieve that, but it is simply wrong to make that statement. I have witnessed at first hand the delivery of throughcare in a range of areas. The Scottish Prison Service has committed to employing 42 throughcare officers who have that responsibility. The officers are working with the different agencies to support prisoners in moving from prison into the community.

12:15

These things take time, but it is important to put on record that a significant amount of work is undertaken by our prison officers—sometimes in very difficult circumstances, such as working with prisoners who come from very difficult backgrounds—to deliver throughcare as effectively as possible. That is not always achieved as well as it could be, because the Scottish Prison Service cannot deliver on its own: it needs to work in partnership with other agencies. I am progressing work through the ministerial group on offender reintegration on housing, health and all the other areas that come into play in ensuring that throughcare for prisoners is delivered much more effectively.

The second issue concerns the ending of automatic early release for short-term prisoners.
Notwithstanding the fact that it would not be competent to do that through the bill that is before us today, the independent commission on prisons—as I have mentioned—looked at the issue in detail and recommended a range of measures that would have to be put in place before that aim could be achieved. Some of that work has started and, as I have indicated, I want to look at how we can accelerate it further.

Margaret Mitchell raised the issue of rehabilitating people and protecting the public. There is no doubt that prisons have an important part to play in protecting the public, but we have to look at the evidence base on short-term prison sentences. It shows that, very often, short-term sentences are not effective in tackling offending behaviour. We need to ensure that we take an approach that takes account of that evidence base, which I am keen to do.

I made it very clear when I decided not to go ahead with the plans for Inverclyde prison that we need to ensure that the approach that we take and the model that we use is much more effective in tackling offending behaviour, rather than simply facilitating a revolving door with people going in and out of prison. Expecting a prison, in a short period of time, to be able to turn around an individual’s situation completely is entirely unrealistic.

If we want to address those issues, we have to look at the best ways in which we can deliver short-term sentences. Some sentences may be served in prison, while others may be dealt with through a community disposal. We need to ensure that we deliver in a consistent way that produces better outcomes and assists us in reducing reoffending.

Those are big issues in penal policy. It would be far too simplistic to think that, if we end automatic early release for all short-term prisoners and provide just a wee bit more rehabilitation—or even a significantly greater amount—in prisons, we will be able to deal with those things much more effectively. The evidence shows us that that is not the best way to go in dealing with the issue. We need to focus on disposals that are much more effective in tackling offending behaviour. That means using community disposals that deliver on our aims more effectively in a number of ways.

Margaret Mitchell: I ask the cabinet secretary for clarification on one point, because it was not clear in his evidence this morning. Does he intend to lodge an amendment at stage 2 to provide for a minimum period of guaranteed supervision, so that we can see what the Government is proposing?

Michael Matheson: I have listened to the views that committee members have expressed on the matter, and we will reflect on the recommendations in the committee’s stage 1 report. I recognise the concerns that the committee has raised with regard to the idea of cold release, and I am prepared to consider a period of supervision, whether it is guaranteed or compulsory, that must be provided at the end of a sentence.

I am prepared to lodge an amendment in order to achieve that, given the concerns that the committee has raised. The final detail of the proposal will reflect the concerns and issues that the committee raises in its stage 1 report.

The Convener: We are having a debate about guaranteed and compulsory supervision. I presume that if the supervision happens within the sentence period, it is guaranteed and, if it happens post the sentence, it is not only guaranteed but compulsory because the person will have finished their sentence.

Michael Matheson: If the supervision was going to be provided over and above the sentence that was handed down by the courts, it would have to be an extended sentence.

The Convener: That is right. However, it is compulsory if someone is still serving their sentence and it comes in the middle of it. I just wanted to get those two words clear in my head. You are looking at me as though I have not done that, John, but I have.

Alison McInnes: Cabinet secretary, I acknowledge that you have acted in good faith in responding to what the committee said earlier. However, if the period of compulsory supervision is itself part of the sentence rather than subsequent to it, how would you respond to the suggestion that it is only automatic early release by another name? Is it just a rebranding?

Michael Matheson: It is unfair to say that it is a rebranding in that sense. For a long-term prisoner, automatic early release occurs at the two-thirds point of their sentence no matter what the circumstances are. There is currently no control whatsoever over that period, and that will not be the case in the future. We are prepared to give the Parole Board the power to determine what the period of compulsory or guaranteed supervision should be on the basis of the individual’s circumstances. Right now, the Parole Board is absolutely powerless to prevent anybody who qualifies for automatic early release from getting it. We propose to give the Parole Board the power to determine that, which will give it more control over what is happening and over the supervision measures that are put in place for an individual. The data that I offered to Roddy Campbell earlier demonstrate the marked difference that that can make to whether a prisoner breaches their supervision. We are extending the Parole Board’s
powers so that it will be able to determine what the supervision period should be towards the end of an individual’s sentence. We are removing the automatic element of it.

**Alison McInnes:** That is helpful. During the hypothetical compulsory supervision period, would there be a power of recall?

**Michael Matheson:** Yes, there would be.

**Alison McInnes:** Ms Murray pressed you on the financial memorandum, and you said that you might update it. Surely, in considering the issues, you must have considered what the financial resource implications would be. Have you had discussions with, say, Social Work Scotland about your revised proposals?

**Michael Matheson:** It is worth keeping in mind that we are talking about a very small number of prisoners and that it will be several years into the future before any of this will start to have an impact. There would be a danger in starting to put some limits on it now, thinking about what we may require in five or six years’ time. If there is a need for some additional resource going forward, we will be alive to that and will seek to address that. However, we must get the balance right. If there is a need for additional resource—as I say, that will be a number of years ahead—we will look at that, but, as I have mentioned, it is also about the balance in the system. Some of the resource that we have got tied up in dealing with the churn of short-term offenders may be better directed to dealing with issues around the end of a sentence. It may be a matter of reallocating existing resource in order to make the balance more effective.

**Jayne Baxter:** It is clear from what we have heard this morning, that some of these topics are quite complex and interconnected. Would there be any benefit in waiting to hear from the Scottish sentencing council about the impact of the reforms on sentencing policy?

**Michael Matheson:** The Scottish sentencing council will be up and running from October or November, and it will develop its own programme of work. I am not entirely sure what the benefit would be of what you suggest, as it would only delay our taking the matter forward. The Government has made it clear that we are ending automatic early release for long-term prisoners. The Scottish sentencing council may want to look at things such as the use of extended sentences and so on, but I am not entirely persuaded that there would be any benefit in delaying the bill to allow the sentencing council to look at the issue. I suspect that many victims would find it difficult to understand why, when there is a bill before Parliament that could end automatic early release, we would decide to delay it for an indeterminate period of time.

**Jayne Baxter:** I think everyone is agreed that transparency of sentencing is very important. I was trying to clarify whether there is an on-going interaction between the bill and the work of the sentencing council. I would like to hear your views on that.

**Michael Matheson:** There is not at the moment, on the basis that the Scottish sentencing council is not up and running as yet. The council can play an important part in sentencing policy in the years to come, and it will provide an invaluable insight. Once the council is operating, we will be engaging with it on an on-going basis.

**John Finnie:** I welcome your acknowledgement of the cold release aspect and your encouragement of greater use of non-custodial disposals, noting the resource that is tied up and the shift that can take place.

You have mentioned the independent commission on prisons on a number of occasions. As a number of colleagues have said, various issues overlap here. I note what you have said about awaiting receipt of the stage 1 report before formulating amendments. Would it be possible to get a copy of where things stand for the Scottish Government with regard to each of the proposals of the independent commission on prisons, just to see where that sits in relation to everything else?

**Michael Matheson:** Of course we can provide the committee with such a response.

**John Finnie:** Thank you very much.

**Christian Allard:** I want to return to a particular point made by Margaret Mitchell. Some people asked in evidence last week for the bill to be scrapped. They all came back afterwards, at the end of the evidence session, when they heard from Victim Support. That is clear.

I would like you to tell us what your thinking is on stage 2 with a view to getting the balance right between the rights of the families of victims and the process that we must go through under the bill. I do not think that that point has been addressed very much this morning.

**Michael Matheson:** On the point about trying to get the balance right, I have already indicated to the committee that I want all automatic early release for long-term prisoners to come to an end, so that there is a consistent approach and transparency—so that there is no staged approach for crimes of a non-sexual nature with a long-term sentence. That consistency of approach is important from a victim’s perspective.

The other aspect is the evidence showing us that the supervised release of prisoners helps to reduce significantly the risk of those individuals breaching their supervision and thereby...
committing another offence that has a further impact on victims.

The point about having a guaranteed period of supervision at the end is to reduce the risk of the individual going back into the community and potentially committing further offences. It is about managing that in a way that allows the person to be recalled as and when necessary, and it is about helping to protect the public.

Ending automatic early release, the transparency that that creates, having an equalisation at four years across offences and the guaranteed period of supervision towards the end of the sentence help to provide victims with greater transparency as well as offering greater public protection.

Roderick Campbell: You spoke about throughcare officers. The bill deals with long-term offenders serving sentences of four years or more. I believe that I am correct in saying that statutory throughcare applies to prisoners serving sentences of four years or more.

Michael Matheson: Yes.

The Convener: We all know that.

Roderick Campbell: Yes, but I wanted to get it on the record.

Michael Matheson: That has helpfully reminded me of another part of the bill that has not been explored in great detail—the Prison Service’s ability to vary release by two days.

The Convener: We are all happy with that.

Michael Matheson: It is a good example of an area in which the Prison Service has flagged up difficulties with throughcare because of the system being so rigid. It reflects how we have tried to address some of the issues in legislation to help to improve throughcare.

The Convener: The committee has known that for a long time, so we are happy with that, because it was a practical issue that we had come across. I thank the cabinet secretary for his evidence.
ANNEXE D: WRITTEN EVIDENCE RECEIVED BY THE JUSTICE COMMITTEE

Written submissions were received in response to the Committee’s call for evidence.

Further submissions were received in response to the letter from the Cabinet Secretary for Justice, dated 3 February 2015, outlining the Scottish Government’s proposals for amendments at Stage 2.

All the written submissions, including that letter, are therefore organised in this volume in date order.

Law Society of Scotland, 9 December 2014
South Lanarkshire Council, 22 December 2014
Faculty of Advocates, 5 January 2015
Victim Support Scotland, 5 January 2015
Glasgow Community Justice Authority, 6 January 2015
Parole Board for Scotland, 6 January 2015
Police Scotland, 6 January 2015
Sacro, 6 January 2015
Scottish Human Rights Commission, 7 January 2015
Scottish Women's Aid, 7 January 2015
Risk Management Authority, 12 January 2015
Social Work Scotland, 19 January 2015
McNeill, Professor Fergus, University of Glasgow, 20 January 2015
Correspondence from the Cabinet Secretary for Justice, 3 February 2015
Parole Board for Scotland (supplementary submission), 6 February 2015
Parole Board for Scotland (supplementary submission), 9 February 2015
Risk Management Authority (supplementary submission), 12 February 2015
Law Society of Scotland (supplementary submission), 13 February 2015
Scottish Human Rights Commission (supplementary submission), 13 February 2015
Positive Prison? Positive Futures, 14 February 2015
Barry, Dr Monica, University of Strathclyde and McNeill, Professor Fergus, University of Glasgow, 16 February 2015
Howard League Scotland, 16 February 2015
Scottish Prison Service, 16 February 2015
Prison Officers Association (Scotland), 17 February 2015
Victim Support Scotland (supplementary submission), 17 February 2015
Barry, Dr Monica, University of Strathclyde (supplementary submission), 23 February 2015
Social Work Scotland (supplementary submission), 23 February 2015
Tata, Professor Cyrus, University of Strathclyde, 23 February 2015
Introduction

The Law Society of Scotland (the Society) aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interest of solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

To help us do this, we use our various Society committees which are made up of solicitors and non-solicitors and ensure we benefit from knowledge and expertise from both within and outwith the solicitor profession.

The Criminal Law Committee of the Society (the Committee) welcomes the opportunity to consider the Scottish Parliament’s Justice Committee’s call for written evidence on the Prisoners (Control of Release) (Scotland) Bill.

The Committee previously responded\(^1\) to the call for written evidence from the Scottish Parliament’s Justice Committee on the Scottish Government’s proposals to end automatic early release of some categories of prisoners which were set out in the letter from the then Cabinet Secretary for Justice, Kenny MacAskill to the Justice Committee Convener, Christine Grahame, dated 3 September 2013.

The Committee has the following comments to put forward in relation to the Prisoners (Control of Release) (Scotland) Bill.

Comments

Q.1 Whether the scope of the proposed reforms is appropriate

The present system as introduced in 1993 followed a thorough and detailed investigation into the sentencing system in England and Wales (Report of the Carlisle Committee) and Scotland (Kincairn Committee\(^2\)). No similar evidence-gathering exercise has taken place in advance of these proposals. The Committee therefore suggests that there may be merit in commissioning research similar to that which resulted in Linda Hutton and Liz Levy’s Report in 2002\(^3\).

The most coherent reason for the existence of a system of mandatory release on licence prior to the expiry of the entire sentence is that it allows a degree of testing in the community while offenders are subject to conditions, breach of which can result

\(^1\) http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/AER8._Law_Society_of_Scotland.pdf

\(^2\) *Parole and Related Issues in Scotland*, 1989, Cm. 598

\(^3\) *Parole Board Decisions and Release Outcomes*, Scottish Executive Central Research Unit, 2002
in a return to custody (see, for example, the responses to Q.11 of the Sentencing Commission for Scotland’s Report on Early Release and Supervision, 2006)\(^4\).

It is not immediately clear to the Committee why the current proposals should only apply to certain categories of long-term prisoner. In our view, there is no conclusive evidence that the nature of the offence committed, or the sentence imposed, is in itself a reliable indicator of future risk. Indeed, there is some evidence that those serving the longest sentences are proportionately less likely to reoffend in a serious manner than those convicted of lesser offences. For example, the Society understands that since the coming into force of Convention Rights (Compliance) (Scotland) Act 2001, only one life prisoner released on licence has been convicted of a subsequent murder. The however, it is recognised that there is a small percentage of serious offenders who are wholly non-compliant with sentence planning, and further prisoners who are involved in misconduct or drug misuse throughout their sentences. As the Committee understands, a significant percentage of that group has their licence revoked.

It is expressly stated that “Sex offenders pose a particular risk to the public”, as is already reflected in the special arrangements that apply for sexual offenders sentenced to short-term sentences who, when released, are released on licence (in contrast with other short-term prisoners).

However, it is far from clear that this is correct. While the most recent Parole Board Annual Reports do not specify details of the reasons for revocation of licence, figures in the 2005 and 2006 annual reports\(^5\) disclose that over these two years 48 offenders granted early release on parole and 246 offenders granted statutory release at the two-thirds point of their sentence were recalled to custody. Of these 294 recalled prisoners, only four were facing fresh charges of sexual nature, one of whom was initially sentenced for a drugs offence.

Of these licensees, 21 were on licence for sexual offending. Fourteen (66.7%) were recalled for non-compliance with supervision, three for offences of dishonesty, one for drugs offences, and three (14.2%) for further allegations of a sexual nature. Thus the evidence from less than ten years ago does not seem to support the proposition that sexual offenders pose a greater than average risk. This seems to bear out the findings\(^6\) of Hood and Shute et al.

In addition, Dr David Thornton’s Scoring Guide for Risk Matrix 2000\(^7\) indicates that “there is a trend for older men to have lower sexual recidivism rates than younger men”. Research studies indicate that, within the group of offenders aged over 60 years, at some point risk becomes materially lower than would be expected in terms of the RM2000 risk bands. As a significant number of those convicted and sentenced to over four years will be convicted of offences many years, perhaps decades, previously, a percentage of this group will be statistically amongst the least likely to reoffend. In terms of managing the risk posed by sexual offenders in particular, the

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\(^5\) [http://www.scottishparoleboard.gov.uk/pdf/Parole%20Board%202006.pdf](http://www.scottishparoleboard.gov.uk/pdf/Parole%20Board%202006.pdf)


\(^7\) February 2007 version
Society also understands that MAPPA (Multi-Agency Public Protection Arrangements) have been in place in every local authority since 2008.

In contrast, it might perhaps be noted that of the 184 violent offenders recalled, 65 (35.3%) were facing charges of violence, 32 (17.3%) were facing “other charges”, a category that includes possession of weapons, and 27 (14.6%) were facing theft charges or similar. Therefore, there may be some greater merit in requiring the Parole Board to scrutinise the risk factors of serious violent offenders, and in certain circumstances for them to have a statutory power not to direct release. However, given the importance of licence conditions in allowing for supervision of offenders in the community, and in enabling those who require them to access community supports in areas such as accommodation, addictions counselling and job search, the default position should be for there to be a period of community-based supervision (with the sanction of recall) for all but the most dangerous offenders, who need not necessarily be those who have committed the most serious offences.

Q.2 What impact the proposals would have on the work of CJSWs and others

This is not a topic on which the Committee has a particular opinion. The Committee do note, however, that there will certainly be an increase in the work undertaken by both prison-based and community based social workers in respect of preparation or reports for the Parole Board. However, if as expected the effect of this is to reduce the number of long-term prisoners released on “non-parole licence”, the increased cost in preparing reports will be offset to some extent by the reduced workload in supervising offenders within the community.

Q.3 The impact on prisoner numbers and the work of the Parole Board

The general trend since the coming into force of the Convention Rights Act in October 2001 is for proportionately fewer prisoners to be released on parole, the percentage having reduced from over 50% to a little over 30%. In sexual offence cases, the Committee understands that less than 10% of long-term prisoners are released prior to the date upon which their release is mandatory in terms of the Prisoners and Criminal Proceedings (Scotland) Act 1993. From these two trends it seems certain that there will be an increase in the number of long-term prisoners in custody. Unless there is a marked decline in the number of short-term prisoners, it is therefore likely that the prison population will increase slightly.

The Committee suggests that there will be two impacts upon the work of the Parole Board. If, as seems likely, a significant proportion of long term prisoners whose release is affected by the Bill are not released at the two-thirds point of their sentence, their cases will require further review by the Board on a periodical basis until their ultimate release. In addition, it seems almost certain that many of those who either do not now engage in the parole process or are happy to do so by way of “paper review” will now elect to have their cases dealt with by an oral hearing, at which evidence will be led. This may result in an increase in the workload of the

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8 See, for example, *Surprising Trends from the Parole Board’s Annual Report*, SCOLAG 413, March 2012
Board, particularly in its need to appoint sufficient legally qualified persons to act as tribunal/hearing chairs.

**Q.4 The appropriate use of determinate sentences as opposed to life sentences/OLRs**

This question relates to sentencing practice, which is a judicial function. It is not the role of the Committee to offer guidance to the judiciary on sentencing matters, nor, given that sentencing must in every case be based solely upon the circumstances of the offence and the offender, can the Committee express a view on the appropriateness of particular sentences in protecting the public. Those passing sentence in solemn proceedings are aware of their sentencing powers, and of the reports necessary before an extended sentence or an OLR can be passed.

**Q.5 Whether the proposals are consistent with the provisions of the Custodial Sentences and Weapons (S) Act 2007**

The Committee observes that the parts of that Act relating to sentencing have not yet come into force, seven years after the Act was passed. It is of course a matter for the government whether and when to bring the Act into force, and that is not a matter on which the Committee can comment.

The Committee notes, however, that the law still in force is that contained within the Prisoners and Criminal Proceedings (Scotland) Act 1993, and that the proposed amendments are to that statute rather than the 2007 Act. Section 6 (7) of the latter Act provides that –

“The court may not make an order specifying a custody part which is greater than three-quarters of the sentence.”

The Committee understands that the rationale behind that provision was that it is generally preferable for all persons released from custody after serving a significant period of imprisonment or detention should spend a period subject to compulsory supervision within the community, with the sanction of a recall to custody in the event of non-compliance with that supervision. The provisions in Section 1 of the Bill simply propose to disapply entirely the automatic early release provisions of Section 1 of the 1993 Act in certain limited circumstances. Obviously were Section 6 of the 2007 Act to be brought into force in its current form, the two sections would be contradictory. It is not for the Committee to seek to persuade the Parliament which section would better protect the public from the risk of reoffending. That is a matter on which expert evidence is required.

**Q. 6 & 7 Power of early release for community integration**

Given that the proposed statutory maximum period for such early release is two days (proposed Section 26C), and that the practice will largely be an administrative one, the Committee has little to add. It does seem more logical, though, for the decision upon release expressly designed to benefit reintegration and thus to protect the public, to be made by the Scottish Government rather than the Scottish Prison.
Service. The Committee has no comment upon the guidance which the Scottish Government and Scottish Prison Service propose to produce.

The Law Society of Scotland
9 December 2014
Justice Committee

Prisoners (Control of Release) (Scotland) Bill

Written submission from South Lanarkshire Council

I write to advise that South Lanarkshire Council fully supports the general principles of the above Bill. As a Council, we previously forwarded our views in writing in September 2013, when there was a Call for Evidence from the Scottish Parliament, as the Bill was going through the draft process.

With reference to the Restriction of Automatic Early Release, the proposed principles will allow prisoners to have a more structured return into their community. This will enhance prisoner release arrangements and promote supported integration into the community through allowing time to establish required links within the community before the actual release date. Research and working knowledge inform that the hours following release from prison can be critical in determining whether a person desists from offending or re-enters criminality. It is essential that the work undertaken by prison staff is maximised in order to break the cycle of offending behaviour.

The Council supports the introduction of defined flexibility to prison release arrangements which should help to improve links to services in the community. This measure will allow the prisoner to re-establish links with family supports where available.

In conclusion, this Bill reinforces the principles of the work undertaken in Criminal Justice in challenging offending behaviour and making communities safer.

Harry Stevenson
Executive Director
22 December 2014
Justice Committee

Prisoners (Control of Release) (Scotland) Bill

Written submission from the Faculty of Advocates

The Faculty welcomes the opportunity to comment on the Scottish Parliament's Justice Committee call for written evidence on the Prisoners (Control of Release) (Scotland) Bill which was introduced in the Parliament on 14 August 2014.

The Faculty notes that the Bill seeks to end automatic early release for sex offenders sentenced to determinate custodial sentences of four years or more and other offenders sentenced to determinate custodial sentences of 10 years of more. The Faculty notes also that the Bill would allow the Scottish Prison Service, acting on behalf of the Scottish ministers, to release sentenced prisoners up to two days early where this would help facilitate community reintegration.

With regard to the specific issues on which views are sought, the Faculty makes the following observations:

Restriction of Automatic Early Release

1. Whether the scope of the proposed reforms is appropriate?

This is a policy matter and the Faculty traditionally does not comment on such matters.

2. What impact the proposals might have on the work of criminal justice social workers and others in trying to ensure that released prisoners are safely reintegrated back into communities?

The Faculty considers that criminal justice social workers and others currently involved in trying to ensure that released prisoners are safely reintegrated back into communities are better placed to predict the impact the proposals may have.

The Explanatory Notes to the Bill state that there is likely to be an increased demand on prison-based social work services. For the reasons given in the Explanatory Notes, this seems likely.

3. What impact the proposals would have on prisoner numbers and the work of the Parole Board?

The Faculty considers that others such as the Scottish Prison Service and Parole Board are better placed to predict the impact the proposals may have on prisoner numbers and on the work of the Parole Board.

For the reasons given in the Explanatory Notes, the Faculty agrees that some prisoners no longer eligible for automatic release would be likely to spend longer in prison than at present. The Faculty agrees that the workload of the Parole Board would increase due to the need to schedule additional casework meetings for those
prisoners not released after serving two thirds of their sentences who previously would have been released automatically at that stage.

4. The appropriate use of determinate sentences as compared to non-mandatory life sentences (e.g. orders for lifelong restriction) in terms of protecting the public from dangerous offenders?

The appropriate sentence in an individual case is a matter for the sentencing judge, applying any methodology which may be prescribed by Parliament and guided, where appropriate, by relevant case law.

As the Faculty submitted in its written submission dated 27 January 2012 to the Justice Committee on the Criminal Cases (Punishment and Review) (Scotland) Bill the law governing the fixing of punishment parts in non-mandatory life sentences is complex.

The High Court of Justiciary recently considered a number of sentence appeals against the imposition of orders for lifelong restrictions ["OLR"] in the cases of Ferguson & Others v HM Advocate 2014 S.L.T. 431. The court held *inter alia*: (i) it was for the sentencing judge to determine whether there was a likelihood that an offender would seriously endanger the public and the answer would depend upon a consideration of the particular offence and any pattern of individual behaviour; (ii) that “likelihood” had been defined as “something that was likely; a probability”; the court required to be satisfied, before making an OLR, not just that there was a substantial or real chance of serious endangerment but that such endangerment was more likely than not to happen or, put another way, that it would occur; (iii) that the time for assessing the likelihood of serious endangerment was, and could only be, at the time of sentencing but the assessment was looking forward to the point at which the offender would, but for the OLR, be at liberty; the approach envisaged the court assessing the risk posed at the time of sentencing and an assessment of whether any custodial or post release regime, short of an OLR, would have any material impact on that risk and (iv) that in determining whether there was a likelihood of serious endangerment, there was no alternative question to be posed and answered; it was only if the judge determined there was no such likelihood that he would then go on to consider other sentencing options and, in particular, whether any tests for the imposition of these options had been met.

The Faculty believes that the provisions of the Bill will have a bearing on the sentencing judge’s assessment of the likelihood of serious endangerment. As a result of the Bill, a sex offender sentenced to a notional fixed sentence of four years or more would not be released automatically after serving two thirds of his sentence; the offender may not be released until the full sentence had been served. Likewise, a non-sex offender sentenced to 10 years or more would not automatically be released automatically after serving two thirds of his sentence; the offender may not be released until the full sentence had been served. In deciding whether or not to impose an OLR, a sentencing judge dealing with a case to which the provisions of the Bill applied, would have to consider what bearing, if any, the later notional release date of the offender may have on the likelihood of endangerment posed by the offender upon release.
5. Whether the proposals are consistent with the thus far un-commenced early release provisions set out in the Custodial Sentences and Weapons (Scotland) Act 2007 (as amended by the Criminal Justice and Licensing (Scotland) Act 2010?

The Faculty believes that the proposals in the Bill to end automatic release for certain offenders are inconsistent with section 19(1) of the Custodial Sentences and Weapons (Scotland) Act 2007. Section 19(1) provides that the Scottish Ministers must release (on community licence) a custody and community prisoner who has served three quarters of the custody and community sentence. The effect of section 19(1) is to provide for automatic release after three quarters of the sentence.

Power of Early Release for Community Reintegration

6. Whether the Scottish Prison Service should be given this power (including reasons for this view)?

The Faculty agrees that the Scottish Prison Service should be given the power to release prisoners one or two working days in advance of their release date to facilitate the person’s reintegration into the community. The Policy Memorandum to the Bill sets out the importance of the successful reintegration of prisoners into communities. The ability of persons released from prison to access key public services such as housing, welfare and addiction services on the day they are released can play an important part in helping the person to reintegrate into the community and break the cycle of reoffending.

7. How tightly the use of such a power should be constrained by guidance which the Scottish government proposes to produce in conjunction with the Scottish Prison Service?

The Faculty does not believe at this stage that the use of the power of the Scottish Prison Service to release a prisoner one or two days early should be constrained by guidance. The policy aim is to provide a degree of flexibility in order to best manage the reintegration of prisoners into communities. The proposed period of early release of one or two days is, on any view, short. Instead, the Faculty suggests that the frequency of and reasons for the early release of prisoners should be kept under review. If it was felt that the power was being used inappropriately and/or excessively by the Scottish Prison Service then guidance could then be introduced.

Faculty of Advocates
5 January 2015
Justice Committee
Prisoners (Control of Release) (Scotland) Bill
Written submission from Victim Support Scotland

Victim Support Scotland is the largest organisation in Scotland supporting people affected by crime. We provide practical help, emotional support and essential information to victims, witnesses and others affected by crime, both in the community and in every Sheriff and High Court in Scotland. The service is free, confidential and is provided by volunteers. Victim Support Scotland supports the Scottish Government in its attempts to tackle the matter of the ‘automatic early release’ of prisoners. In providing further written evidence to the Committee on this subject, we would like to take this opportunity to explain our concerns and suggest improvements. We will also provide our views on section 2 of the Bill which looks are improving offenders’ reintegration with the community on release from prison.

The current proposals

Victim Support Scotland supports the Scottish Government in their aim to change the current system of automatic early release. However, we have highlighted that the proposals as they stand would “further complicate an already confusing system”\(^1\). VSS wants to see a system that is clear from the stage of sentencing as to what effect the sentence will have in reality, especially in relation to the offender’s release.

We are also conscious that the proposals may unintentionally be removing statutory support and supervision on release from prison for those who are at the highest risk of reoffending, resulting in a possible increase in reoffending rather than a decrease. We note the point made by Professor Fergus McNeill that under the current proposals, an offender could spend their full term in prison if assessed by the Parole Board to be a risk of harm to the public; this would create “an exceptionally abrupt transition, and would leave them highly vulnerable (and in some cases perhaps potentially dangerous) in the period immediately after release.”\(^2\) Victim Support Scotland is therefore alive to the fact that a period of parole (or an alternative arrangement to prepare for release) is required to facilitate enhanced reintegration into the community and support of desistance from further offending, in effect, protecting the public from harm.

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\(^1\) Victim Support Scotland (2014), ‘Proposals to end the automatic early release of certain categories of prisoner - Written submission from Victim Support Scotland to the Justice Committee’, AER2 p.2
http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/AER2_Victim_Support_Scotland.pdf

\(^2\) Professor Fergus McNeill (2014), ‘Proposals to end the automatic early release of certain categories of prisoners – Written submission from Professor Fergus McNeill, University of Glasgow’, AER9 p.2
http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/AER9_Professor_Fergus_McNeill.pdf
The issues with automatic early release

The underlying issue for Victim Support Scotland with the current system of sentencing and release of prisoners is the lack of clarity and transparency, which results in confusion, frustration, and an inaccurate understanding of the criminal justice system for victims and the general public. Firstly, many individuals do not have knowledge on early release provisions, with research showing that a third of the public think that short-term offenders will serve more than half of their sentence\(^3\), when in fact this category of offenders are released automatically halfway through their sentence. Furthermore, research tells us that “there is a sense...that the public is being `conned' or `cheated' - that it is being told something at the time of sentence that is very different from what actually happens”\(^4\); it is our experience that victims and their families are especially confused and upset to learn that their offender has been released ‘early’ from prison with no explanation as to why the judge ‘did not mean what they said’ at sentencing.

It is also difficult for victims to understand why no restrictions or supervision arrangements are placed on short-term offenders when released. Victims are often looking for an element of reassurance that the remainder of the offender's prison term ‘matters’, for example, that their behaviour will at least be monitored in some way. It is very common for victims to be fearful at the time of the release of their offender from prison, and such individuals would benefit from the knowledge that the offender has conditions in place so as not to approach them, their home or place of work. They should also know the consequences of a breach of these conditions, and how to report such breaches.

We agree that “lack of clarity about the true effect of sentences...may produce mistrust”\(^5\) and it is our view that in order for victims and the public to have faith and confidence in the criminal justice system, there is a need for clearer and more transparent sentencing. This would assist all parties, especially victims, in their understanding of how the sentence has been decided on, the minimum period that an offender will spend in prison, and what the remainder of the sentence will consist of. When releasing an offender from prison, consideration should be given to the victim and the impact that this will have on them; victims should be consulted regarding what conditions should be in place to address their personal safety concerns; and they should be kept up-to-date on the release date and other relevant information to ensure that they can prepare themselves for this.

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\(^3\) Section 4.4.6 of Justice 1 Committee report (2002), ‘Public attitudes towards sentencing and alternatives to imprisonment’. SP Paper 537

http://archive.scottish.parliament.uk/business/committees/historic/justice1/reports-02/j1r02-pats-02.htm

\(^4\) Ibid


http://issuu.com/esmefairbairn/docs/crimecourtsconfidence-report/3?e=0
Suggestions for change

Victim Support Scotland notes the previous attempts to resolve some of these issues through legislation, namely the Custodial Sentences and Weapons (Scotland) Act 2007 as amended by the Criminal Justice and Licensing (Scotland) Act 2010. We strongly support the principle behind this currently un-enacted legislation, as we believe the relevant provisions would go a long way to addressing the problematic elements of the current system, as we have raised. Through the creation of ‘short-term custody and community’ and ‘custody and community’ sentences, this legislation would not only ensure that the punishment part of the sentence was clearly stated (for which the offender would spend a minimum period in custody), but would reassure victims and the public that all prisoners would be released on community licence. This would be easily understandable to victims, who would have clear knowledge of when the offender would be eligible for release, and be reassured by the fact that the rest of the sentence would be served, albeit in the community, with conditions in place.

Creating a clear and transparent criminal justice system for victims of crime and the general public in Scotland will not be achieved solely through changes to the release of prisoners; a more holistic approach is required to look at improvements in victim notification and representation, and sentencing practices more generally. Regardless of the changes made to the current system of automatic early release, it is of paramount importance that victims are kept informed of the release arrangements of their offender, including any conditions that are in place for the community part of their sentence. The views of the victim(s) should also be taken into account in relation to the release of the offender, especially regarding what conditions should be in place to address their personal safety concerns. VSS calls for a review of the current Victim Notification Scheme, as we believe that changes are required to ensure that all victims are kept informed and able to provide representations to the relevant authority on the release of the offender.

We also look forward to the establishment of a Scottish Sentencing Council through implementation of the Criminal Justice and Licensing (Scotland) Act 2010. We believe this will lessen local disparities in sentencing and enable courts to deliver similar outcomes for the same crime type across Scotland. To demonstrate the delivery of more consistent sentencing across the country and increase public confidence in the criminal justice system, VSS recommends the establishment of a public domain of sentencing where victims may look for sentencing trends to compare with circumstances in their own case, allowing more informed and reasonable expectations.

Section 2 – Community reintegration

Victim Support Scotland is aware that, “Moving from prison back into the community is the time when people are most at risk of returning to their offending behaviour” and recognise that early access to key public services is important in facilitation of prisoners’

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reintegration into the community. We therefore support the Bill’s proposals to allow the Scottish Prison Service to release prisoners up to two days early in circumstances in which retaining the original release date would present challenges to the offender’s reintegration into the community. If the decision is made to bring the release date forward however, the victim must be informed as quickly as possible, ensuring that this happens before the offender is released. In keeping with the creation of a clear and transparent criminal justice system, the reasons for this should be explained to the victim at the time this information is given.

Victim Support Scotland
5 January 2014
Justice Committee

Prisoners (Control of Release) (Scotland) Bill

Written submission from Glasgow Community Justice Authority

Power of Early Release for Community Reintegration

1. The Glasgow Community Justice Authority (CJA) fully supports legislation to provide flexibility for early release of Prisoners to support more effective community reintegration.

2. The current system of liberations poses difficulties both for those being released from custody on a Friday (or Thursday prior to a bank holiday Friday) and for support services in the community. Many services are not resourced to cover weekends/holidays and local partners have identified cases where this has limited access to benefits, accommodation, addiction support etc. during the critical first few days post-liberation.

3. It is recognised that lack of access to appropriate services on release can lead to re-offending. In cases where there is a bank holiday, those due for release on the Holiday are currently released on the immediate prior weekday – causing blockages in the system. Flexible liberation will allow for more co-ordinated planning, ease the burden on community services and improve the prospects of prisoners reintegrated into their communities upon release.

4. Provisions in the Bill around flexible release provide some mitigation to the risk of non-availability of support services and should lessen the risks of those being released from custody re-lapsing into addiction, rough sleeping etc. reducing the risk of re-offending.

5. The Glasgow CJA supports providing the Scottish Prison Service (SPS) with the authority to manage release dates flexibly where this will enhance positive reintegration. SPS already manages assessment of risk to public protection for those released early under Home Detention Curfews, with a view to improving successful community re-integration.

6. Through established partnerships with service providers (in particular, newly established mentoring schemes to support the release of short-term prisoners), SPS are well placed to connect service providers and prisoners to establish robust release plans.

7. The Glasgow CJA would not support overly proscriptive guidance, but proposes flexibility is maintained by the SPS to maximise the potential of the new authority. The CJA would encourage early monitoring and review of the application of the new powers and that this is undertaken within a partnership context.

8. Local research by the Glasgow CJA, in partnership with SPS, has identified key throughcare management issues. In particular, in Glasgow access to accommodation on release remains of critical concern in addressing reoffending
levels. A recent study in HMP Barlinnie (including a survey response from over 1000 prisoners and a ‘Café Conversation’ exercise with two dozen prisoners) found that while 15% of prisoners entering the prison were homeless on reception, 42% will leave homeless. Managing release and reintegration is part of the local strategy for reducing this percentage, and therefore reducing reoffending levels.

**Restriction of Automatic Early Release**

9. The Glasgow Community Justice Authority (CJA) has no evidence to submit in relation to provisions within the Bill relating to restriction of automatic early release.

Tom Jackson
Chief Officer
6 January 2015
Justice Committee

Prisoners (Control of Release) (Scotland) Bill

Written submission from the Parole Board for Scotland

The Parole Board for Scotland is a Tribunal Non-Departmental Public Body (NDPB) which exists under the provisions of the Prisons (Scotland) Act 1989, the Prisoners and Criminal Proceedings (Scotland) Act 1993 ("1993 Act"), the Convention Rights (Compliance) (Scotland) Act 2001, the Criminal Justice (Scotland) Act 2003 and (if commenced) the Custodial Sentences and Weapons (Scotland) Act 2007.

1. The statutory functions and powers of the Board

The Board has powers to:

- direct Scottish Ministers to release determinate sentence prisoners serving four years or more and it may also make directions to Scottish Ministers as to the licence conditions of such prisoners;

- direct Scottish Ministers to release prisoners serving extended sentences where the custodial term is 4 years or more, make directions to Scottish Ministers as to the licence conditions of such prisoners and make directions to Scottish Ministers regarding the licence conditions of extended sentence prisoners where the combined custodial and extension period is 4 years or more;

- direct Scottish Ministers to release life sentence prisoners on life licence once they have served the punishment part of their sentence imposed by the court;

- recommend (in practice direct) Scottish Ministers to revoke the licence of and recall to custody offenders sentenced to 4 years imprisonment or more, life sentence prisoners, extended sentence prisoners and short-term sex offenders in circumstances where such action is considered to be in the public interest.

The Board may direct the Scottish Ministers to re-release any prisoner who has been recalled to custody without a recommendation (direction) of the Board (i.e. recalled by Scottish Ministers without referral to the Board) or any prisoner who has been recalled with such a recommendation (direction). The re-release of life prisoners and certain extended sentence prisoners who are recalled to custody must be considered by a Tribunal of the Board.

The Parole Board (Scotland) Rules 2001 set out the matters which may be taken into account by the Board in dealing with cases referred to it by the Scottish Minsters for consideration for release under the various statutory requirements.

In this submission the Board will focus on the Scottish Government’s proposals for ending Automatic Early Release for certain long-term prisoners and the flexibility to advance release of prisoners by up to 2 days.
2. **Long-Term prisoners**

Long-term prisoners are those who are sentenced to a custodial term of four years or more. They are entitled to be considered by the Parole Board for release between the half-way point and the two-thirds point of their sentence. If the Parole Board has not directed release by the two-thirds point of the custodial term, they are released automatically. Such prisoners are released on licence and can be sent back to prison at any time during the remainder of their sentence if the risk which they pose is no longer safely manageable in the community, usually, because they have breached a condition of that licence.

Long-term prisoners are reviewed for possible release at a Casework Meeting of the Parole Board. The Casework Meeting will comprise three members of the Parole Board who will consider relevant reports to determine whether the prisoner should be released on parole. Where necessary in the interests of justice, the case will be considered at an Oral Hearing of the Parole Board attended by the prisoner and their representative. An oral hearing is chaired by a legally qualified member and sits with two other members. The Casework Meeting or Oral Hearing will set the date for a further review if it decides not to direct release.

3. **The Board’s response to the proposals**

These proposals do not have any impact on Life sentence or Order for Lifelong Restriction prisoners.

Under current arrangements, all long-term prisoners are considered by the Parole Board for release at the half-way point of their sentence. Where they have not been released on parole this will have been because the Board considered that the risk posed by the prisoner could not be managed in a community setting. Depending on the length of the custodial sentence, such prisoners are either considered again by the Board or are released automatically at the two-thirds point of their sentence. While there is scope for progress to be made so that the risk could be safely managed in the community, it is unlikely that all cases would make such progress.

Removing the option of automatic release for serious offenders serving 10 years or more and sexual offenders serving four years or more will ensure that such offenders are only released before the end of their sentence where the Board judges that the risk can be safely managed in the community. This will necessarily increase the work to be undertaken by the Board. In addition to ensuring that these categories of offender are only released where the risk is manageable, it should also encourage greater engagement with the parole process with the potential for offenders to undertake more work regarding their offending behaviour.

The proposals to allow the Scottish Prison Service the flexibility to advance the date of release by up to 2 days are supported as early access to relevant support agencies is considered valuable to prisoners on release. The Board supports work that will encourage community reintegration and reduce the risk of further offending or other potential breaches of release licence.

Parole Board for Scotland
6 January 201
I am writing to provide a response on behalf of Police Scotland to the consultation on the Prisoners (Control of Release) (Scotland) Bill.

The approach suggested by the Bill to end the practice of automatic release is welcomed as it would be assessed that the introduction of an informed and risk based decision would be more conducive to public safety than 'automatic' release once two thirds of a sentence is served. It is also recognised that those released prior to completion of their sentence will be subject to appropriate conditions to assist in their management within communities.

The proposal to allow release dates to be varied by a day or two to allow engagement with appropriate services to assist re-integration into the community are also assessed to be positive. It would be important to ensure that relevant notifications to all relevant parties were not omitted through the adjustment of a release date.

I trust you will find these points of assistance.

Mike McCormick
Assistant Chief Constable
6 January 2015
Justice Committee
Prisoners (Control of Release) (Scotland) Bill
Written submission from Sacro

Introduction

1. Sacro welcomes the opportunity to contribute to the Justice Committee’s deliberations on the Prisoners (Control of Release) (Scotland) Bill. The following points (below) relate to the questions raised about the specific provisions in the call for evidence.

Who we are and what we do

2. Sacro is a Scottish voluntary organisation that works to create safer and more cohesive communities. Our vision is for a safer Scotland, where conflict is resolved constructively and offending and its consequences dealt with effectively. Sacro has over 40 years of experience in this field, including extensive experience of working with prisoners on their release from prison. We provide a wide variety of services across the community justice continuum: ranging from conflict resolution to prevent disputes escalating at one end, and at the other, we have been involved in recent initiatives to promote a more integrated system between prison and community services. This approach includes working across statutory and third sector organisations, to manage the risk to communities by supporting/supervising prisoners on release from custody, some at the very serious end of offending behaviour.

3. There has been significant investment in throughcare services for short term prisoners recently, through the Scottish Government’s Reducing Reoffending Change Fund, and Sacro is playing its full part in these developments. For example, Sacro is the lead organisation in the Shine Women’s Mentoring Public Social Partnership (PSP) and a service delivery partner in the New Routes and HMP Low Moss Throughcare PSPs. All three PSPs work with short term prisoners who are not subject to any form of statutory supervision. Thus, the work we do with our service users enables us to listen to their voices and to build their experiences into what works best in helping to reduce reoffending and the risk to communities.

Restriction of Automatic Early Release

Is the scope of the proposed reforms appropriate?

4. Sacro notes that the provisions in the draft legislation are designed to end the automatic early release of certain categories of prisoners, viz. those who receive

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1. *Shine* is focused on supporting female offenders on release from custody, as well as those women who are in the community and at risk of custody because they may breach their community payback order. *New Routes* works with short term male prisoners aged between 16-25, who are considered prolific offenders, i.e. they have committed ten or more offences. The HMP Low Moss PSP provides a voluntary throughcare service to prisoners in that establishment who are returning to the Glasgow or North Strathclyde Community Justice Authority areas.
terms of imprisonment of four years or more for sexual offences and those who receive periods of custody of 10 years or more for all other offences. Sacro accepts that it is a matter for Scottish Parliament to decide on the legal framework within which the release of prisoners is determined but we appreciate the opportunity to contribute to its consideration of this complex matter. We understand the drive to demonstrate to victims that the justice system is responsive to their experiences but we have some concerns that there could be unintended consequences in the current proposals which need to be thoroughly considered by legislators.

5. In addition, much progress has been achieved over recent years in integrating services between prison and community both to manage risks more effectively and to achieve efficiencies in the way the services work together and we are sure that the Parliament will want to ensure that any reforms are designed to support this work and do not, however unintentionally, make this more difficult.

What impact would the proposals have on the work of criminal justice social workers and others in trying to ensure that released prisoners are safely reintegrated back into communities?

6. Sacro has an extensive track record in working with the public authorities in helping resettle and monitor offenders on release from custody. A considerable part of that work - such as Sacro’s Intensive Support Packages, and Circles of Support and Accountability for sex offenders works with high risk offenders serving long sentences - has been carried out under the Multi Agency Public Protection Arrangements (MAPPA). Sacro considers this work vitally important in reducing the risk of reoffending posed by individuals. If one of the unintended consequences of the proposed legislation were to be that some long term prisoners might not be required to be statutorily supervised by local authority criminal justice social work services on release, then this might hinder the policy imperatives associated with protecting the public from serious harm. Whilst in principle, it would be possible to offer a voluntary service to prisoners who had not been granted early release in these circumstances, in practice Sacro’s experience is that it would prove difficult to engage them meaningfully in accepting a service or maintaining contact for a prolonged period when license conditions and the powers of community based authorities, to supervise them no longer can be applied. We are concerned that the current proposals could indeed, despite the policy intention, reduce the scope for effective risk management and safe reintegration into the community if it means that the most serious/dangerous offenders would be released unconditionally and with no form of community supervision when we know that the period of transition between prison and community is the most challenging. Consideration should therefore be given to mechanisms which could be introduced to provide both support to the offender and protection for the public. Possible options could be:

   a) Not to remove automatic early release entirely but reduce it to the last three months of the sentence to ensure that there was some brief period of compulsory supervision to oversee reintroduction to the community. This would afford support to the prisoner who by definition will have been in long term custody and also afford some enhanced protection to the public over the often difficult immediate post release period.
b) Consider reconstructing the sentence such that the full custodial sentence could be served if the risk necessitated that but with a period of compulsory supervision imposed at the release date. Recall for non-compliance would not be an option since the full sentence would have been served therefore another mechanism such as a separate offence of non-compliance with such a requirement thereby allowing referral to the court. The importance of this is that it will be the highest risk offenders who are not considered to be suitable for early release by the Parole Board therefore having a means of overseeing their return to the community is of the highest importance. The number falling into this category is likely to be small but the risk thereby is very high. Reconfiguring sentences to accommodate a period of community based reintegration should include the appropriate safeguards to avoid sentence creep and to provide for proportionality and fairness in sentencing.

*What impact would the proposals have on prisoner numbers and the work of the Parole Board and others?*

7. Sacro notes that the Financial Memorandum projects a possible rise in the average daily prison population of 140 individuals. The memorandum also notes the financial cost associated with the expected rise in work for the Scottish Prison Service (SPS) and the Parole Board. There are no costs shown as falling on local authorities or other bodies. Whilst Sacro would accept that the majority of the costs are likely to fall on those directly responsible for the administrative and legal functions whilst the prisoner is in custody, it is surprising that there is no similar detail on the impact for key partners in the community. As an example, the total one-off costs for training SPS staff in the proposed changes and their implications is £67,000 in 2015/16. There is no similar costing shown for the training of other staff in other sectors. In addition, the role/responsibilities of MAPPAs would increase in managing the risks posed and consideration should be given to how continued/increased funding for this work would be secured.

**Power of Early Release for Community Reintegration**

*Should the Scottish Prison Service be given this power (including reasons for this view)?*

8. Sacro welcomes this proposal because it enhances prisoner-release arrangements and promotes community safety. Our experience, which is supported by research, tells us that the better the planning and preparation for release, the more likely the individual will successfully resettle. Introducing greater, defined flexibility to prison release arrangements (i.e. up to a maximum of two days) should help deliver improvements, notably in terms of accessing important health, housing and social care services.

*How tightly should the use of such a power be constrained by guidance, which the Scottish Government proposes to produce in conjunction with the Scottish Prison Service?*

9. Sacro believes that it would be helpful to produce robust guidance on the use of this power. Doing so could provide a degree of assurance to the wider community that the process was being properly managed and meeting specific aims. Clear
guidance would also assist all the professionals involved in the decision-making process. The Scottish Government has previously issued a range of similar guidance (for example, previous Justice Department Circulars) and such an approach would be beneficial again. Sacro would propose that any guidance issued should reflect the responsibilities of those key organisations operating in prison and in the community. Lastly, Sacro would suggest that the guidance should be accompanied by appropriate information/literature for prisoners and their families who will be key stakeholders in the new process.

Sacro
6 January 2015
Justice Committee
Prisoners (Control of Release) (Scotland) Bill

Written submission from the Scottish Human Rights Commission

Please see below some general views on the Bill, which we hope they help the Committee to consider the human rights perspective:

We would like to note that there clearly are a level of human rights impacts for offenders in relation to Articles 5 and 8 of the Convention and for the public in Articles 2, 3 and 8 of the Convention.

We are concerned as to whether the Bill really achieves the aim of greater public protection because it effectively ends compulsory non-parole supervision in the community, which is an important aspect of re-integration and non-recidivism (others have made similar comments).

There are real issues being raised with the Parole Board and in JRIs at the moment about whether resources are available for programmes in custody to give people a proper opportunity to reduce their level of risk.

We also have a concern about extending the use of civil orders to control risk as these are extremely restrictive and are a significant interference with private life. This measure, as the Committee is aware, has to pass the test of legality, proportionality and necessity (Convention).

Diego Quiroz
7 January 2015
Foreword

Scottish Women’s Aid ("SWA") is the lead organisation in Scotland working towards the prevention of domestic abuse. We play a vital role in campaigning and lobbying for effective responses to domestic abuse.

We provide advice, information, training and publications to members and non-members. Our members are local Women’s Aid groups which provide specialist services, including safe refuge accommodation, information and support to women, children and young people.

An important aspect of our work is ensuring that women and children with experience of domestic abuse get both the services they need, and an appropriate response and support from, local Women’s Aid groups, agencies they are likely to contact and from the civil and criminal justice systems.

We welcome the opportunity to comments on the proposals in this Bill.

Introduction

The Scottish Government’s proposals in the Bill relate to the ‘automatic’ element of early release, so there is, effectively, nothing to prevent a relevant offender still being eligible for release after serving one-half of the sentence. The proposals thus continue to allow the possibility for most long-term prisoners to be released automatically at the two-thirds point of their sentence on non-parole licences.

SWA’s position on early release

Our position on early release was set out in our submission to the Scottish Prisons Commission in 2008¹, … “the process of early release does not take account of the legitimate fears and distress experienced by women, children and young people experiencing domestic abuse, and results in a loss of confidence in the criminal justice system, especially when someone released early from prison early, whether or not on licence, commits another serious offence.

This works against transparency and clarity in sentencing. When a woman experiencing domestic abuse hears the court impose a custodial sentence of a particular length, she has a legitimate expectation that that is the actual length of time that the abuser will serve in custody, particularly if she has no previous experience of the criminal courts. It therefore comes as an unpleasant and dangerous surprise to learn that this will not be the case, particularly if the woman has not been informed of the abuser’s impending release and either meets him in

public or is told by a third party that he is free. Seeing the offender can be, and is, distressing.

The system of early release is meant to convey the principle of the offender “serving” the remainder of their sentence in the community. In reality, there is no penalty whatsoever levied on the offender and they are free to behave as they so wish, which undermines any concept of reparation and justice for the victim. Confidence in the justice system is important for women in assisting them in the process of recovering from the abuse.”

We support the ending of early release and note that the Policy Memorandum states that “The Scottish Government is committed to ending automatic early release for all prisoners once the conditions set by the McLeish Commission are met and these reforms are an important step towards that goal.”

The difficulties will arise in implementing the reforms and ensuring that dangerous offenders are controlled and we have set out below issues that will require to be addressed in the Bill and through supporting guidance, specifically:-

- limitations on the effectiveness of the proposals posed by time limits and categories of prisoner prescribed in the Bill
- the need for appropriate and robust risk assessment before prisoners are released early
- the necessity of ensuring post-release supervision for prisoners released early into the community
- work done in prison with prisoners who are not released early

Clause 1 - Restriction on automatic early release

The proposals seek to restrict the current regime of automatic early release allowing prisoners to be released at either the half-way point or two-thirds of their sentence, for some long-term (but not life) prisoners, namely sex offenders sentenced to custodial sentences of four years or more and other offenders sentenced to custodial sentences of ten years or more

1) Limitations on effectiveness of the proposals posed by time limits and categories of prisoner prescribed in the Bill

There is an issue that the time limits and categories of prisoner do not accurately reflect patterns of offending.

- 97% of offenders given a custodial sentence are sentenced to a term of less than four years; therefore implementation of the Bill proposals with the current time limits would exclude the vast majority of prisoners.
- There is disparity in terms of the nature of the offences that the proposals will cover. If put into effect, the proposals would mean that sex offenders sentenced to prison sentences of 4 years or more could potentially have to serve all their sentence in prison if they were considered too much of a risk for early release. However, perpetrators of domestic abuse would only come under this scheme if they are sentenced to 10 years or more, unless part of

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their overall sentence includes a custodial sentence of 4 years or more relating to a sexual offence.

The proposals do not recognise the risk that perpetrators of domestic abuse pose to women and the high incidence of repeat offending by these perpetrators.

Domestic abuse statistics recorded by the police in Scotland for 2012-13\(^3\), showed that for incidents where information regarding repeat victimisation of domestic abuse was available, 61% (31,397) involved victims who had previously experienced domestic abuse, the same as in 2011-12. Also, 30% of cases involved a single previous incident, 30% of cases involved two or three previous incidents, and 39% involved four or more previous incidents. The most common crime or offence was common assault, at 42% with threatening or abusive behaviour the second most common crime or offence, accounting for 19%.

It also ignores the fact that the majority of perpetrators of domestic abuse are prosecuted under summary procedure, where the maximum sentence is less than 12 months and most receive a sentence of less than 3 months. In terms of sentencing, a response to a Parliamentary Question (S4W-14791) indicated that in 2011-12 a total of 8,869 offenders were convicted of crimes relating to domestic abuse, of which 2,739 were admonished; 2,253 were given community sentences, while 2,683 received a monetary penalty. 12% (1,104) were given custodial sentences, of which 79% of them were short term sentences of less than 6 months.

Both the category of offenders and custodial sentence periods covered by the Bill should more appropriately reflect these positions. The Bill should therefore be amended to allow the provisions to apply to both any category of offender and a lower threshold of sentences between six months to two years, which would be a positive move toward achieving the McLeish Commission recommendations on ending automatic early release for all prisoners.

2) Assessment of risk before prisoners are released early

The current rules on early release from a custodial sentence provide that short-term prisoners (apart from sex offenders) sentenced to a period of less than four years must be released after serving one-half of the sentence, without specific licence conditions or restrictions.

Long-term prisoners, serving four or more years, may be released on either a discretionary basis by the Parole Board, following an assessment of whether the prisoner is likely to present a risk to the public if released, or automatically after serving two-thirds of the sentence. Long-term prisoners are, irrespective of the proportion of sentence served in custody, released on licence (under conditions set by the Parole Board) and subject to supervision by criminal justice social work. The licence, unless previously revoked, continues until the expiry of the whole sentence.

\(^3\)Domestic Abuse Statistics recorded by the Police in Scotland for 2012-13
As we have stated above, the proposals relate to the ‘automatic’ element of early release, so there is nothing to prevent a relevant offender still being eligible for release after serving one-half of the sentence and thus the possibility that most long-term prisoners could continue to be released automatically at the two-thirds point of their sentence on non-parole licences. Given that prisoners released on such licences are considered to be “generally those whose conduct in prison and other circumstances (e.g., failure to address drug issues) present an unacceptable risk of re-offending without supervision”, this proposal does not act to protect the public.

Eligibility for any release prior to completion of the whole custodial sentence would be at the discretion of the Parole Board. The issue here is the form of risk assessment the Parole Board will be obliged to undertake before deciding whether the prisoner was in any way suitable for release prior to serving the full term of their sentence, or if they instead required to be detained until they had served the full term of their sentence, and if released, how the risk posed by the prisoner would be properly and closely managed in a community setting.

This raises a number of issues that will require to be adequately and appropriately addressed:

- Risk assessment- the Parole Board will require to have appropriate risk assessment tools and processes in place to determine whether an offender was suitable for early release and the license conditions which would then be applied. The prisoner’s conduct in the prison environment is not a particularly appropriate indicator of how perpetrators of domestic abuse will conduct themselves when released. Accordingly, any assessment of these perpetrators will necessitate the Parole Board obtaining formal and appropriate risk assessments from the Scottish Prison Service (“SPS”), both prison-based and community-based Criminal Justice Social Work, from Police Scotland on their risk assessment of the offender and from organisations such as Women’s Aid groups supporting the female partners of perpetrators and advocacy organisations such as ASSIST.

- Impact of release on victims- under the changes brought about by sections 27-29 of the Victims and Witnesses (Scotland) Act 2014, the views of victims of crime, particularly those involving domestic abuse and/or rape and sexual assault, on the risk posed to them by the offender, may also have to be considered. There are also requirements placed on the Scottish Government by the EU Directive establishing minimum standards on the rights, support and protection of victims of crime (“the EU Directive”),4 which came into force on 15th November 2012, (The UK as a Member State, and thus, the Scottish Government, too, has 3 years to translate the requirements into law/procedure or ensure that existing law and procedure complies), that “…The victim also has the right to be informed of applicable protection measures in line with the individual and risk assessment that the authorities carry out.”5

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5 EUROPEAN COMMISSION, DG JUSTICE, December 2013; Guidance to Member States on the victims’ rights directive: page 19;
• Training- this will be crucial for Parole Board members, SPS staff, social workers and any other agencies charged with managing offenders. It must be suitably resourced and appropriate in issues relating to domestic abuse, so that risks posed by perpetrators can be identified and assessed before decisions to liberate are taken, supervision conditions are suitable and an ongoing risk assessment and supervision plan is in place for offenders.

• Resources- in terms of extending the role of the Parole Board to assess eligibility for early release accompanied by licence conditions, this will require the Parole Board to have the appropriate level of resources to carry out this increased function, in addition to support for the work that will be required by police, social work and other parties.

The Bill does not address the matter of guidance on risk assessment and training and should therefore contain a provision requiring Scottish Ministers to produce guidance on the operation of the early release provisions, to ensure that these procedures are carried out.

3) Post-release supervision of prisoners released early into the community

Potentially, the proposals could end the supervision of sex offenders and dangerous perpetrators on their release; a relevant sex offender or perpetrator of domestic abuse could serve potentially the whole of their sentence in custody with no early release, meaning that there would be no period of supervision in the community licence under license conditions although they would have “appropriate access to support services” and possibly be supervised under Multi Agency Public Protection Arrangements (MAPPA) but this has not been put forward as an option.

We noted above that long-term prisoners released automatically at the two-thirds point of their sentence on non-parole licences are considered to be “generally those whose conduct in prison and other circumstances (e.g., failure to address drug issues) present an unacceptable risk of re-offending without supervision.” Although long-term prisoners are subject to conditions, these do not appear to offer adequate protection to the public and there is a perception, often reflected in reality, that breach of license is not taken seriously and punished appropriately.

For most short-term prisoners, this release is not subject to licence conditions and, thus, they are not subject to supervision by criminal justice social work.

In line with the Scottish Prison Commission’s recommendations, the Bill should provide that all prisoners, including specifically short-term prisoners who are not made to serve their full sentence and are released early, should have conditions placed on their release, regardless of the length of their sentence. This would instil reassurance in women, children and young people experiencing domestic abuse that the perpetrator’s behaviour is, indeed, being monitored after release and would also act as both a possible deterrent to the perpetrator harassing the victim.

This will require a wholesale review of the regime of supervision on release along with the introduction of a suite of appropriate and robust conditions, which are rigorously enforced, to protect victims.
The restrictions and requirements of release conditions would depend upon the nature and severity of the offence, with an appropriate risk assessment based not solely upon their behaviour in prison, but also on the index offence, information from Police Scotland and social work on the nature of the offending and the risk posed by the perpetrator to the victim. On the matter of risk assessment and release of offenders generally, and the relevance of electronic monitoring considerations to early release, we would draw the Committee's attention to our submission in response to the Scottish Government’s 2014 consultation on use of electronic monitoring.\(^6\)

This assessment process and imposition of conditions should be supported by mechanisms which facilitate quick and effective responses to breach of conditions, particularly to provide protection to victims where these breaches pose a threat to their safety and security, and a process which swiftly presents offenders in breach before the court and back into prison to serve the remainder of their sentence.

Breach of licence conditions must be regarded as a crime punishable in its own right resulting in the imposition of further penalties, and not just solely a recall to custody to serve the unexpired term of the original custodial sentence. Recall to prison on breach of the terms of supervision should be mandatory, with the offender serving the remainder of the unexpired part of the custodial sentence in addition to any penalty imposed for offences committed during the supervised release period, to serve as an effective deterrent to re-offending.

Again, the Bill is silent on these matters but since other procedures and legislation will require amendment to address them, and the appropriate guidance is also required, this must be taken into consideration in the Bill.

**4) Work in prison with prisoners who are not released early**

There is also no indication of whether perpetrators of domestic abuse who are not released early, particularly where they were assessed as posing a risk, would require to, or be encouraged to, attend the equivalent of the Caledonian Programme while in prison.

As a general position, in working to change the attitudes of abusive men, particularly toward demonstrating that they have accepted responsibility for their abuse, a consistent programme of appropriate and informed work with perpetrators of domestic abuse, based on the RESPECT and Caledonian Programme principles and delivered by organisations such as White Ribbon Scotland and the City of Edinburgh Safer Families (Working with Men) should be developed in prisons in both the SPS and private prison regimes.

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5) The Bill and the provisions of the Custodial Sentences and Weapons (Scotland) Act 2007

It is noted that provisions in Chapter 2 of the Custodial Sentences and Weapons (Scotland) Act 2007, as amended by the Criminal Justice and Licensing (Scotland) Act 2010, reform the current rules on early release but are not yet in force.

These provide for two categories of prisoners; the first category of “short-term custody and community prisoners”, would be released after serving one-half of their sentence, potentially without supervisory conditions unless they fell within a very narrow defined category, and assessed and managed by the local authority. This “short-term” period has not yet been fixed in subordinate legislation but the Scottish Prisons Commission recommended that this be 2 years. 7

The other category was “custody and community prisoners”, namely offenders sentenced to a determinate period equal to, or greater than that fixed for the “short term” prisoners. This category would have a custody part set by the court (“the part of the sentence that the court considers appropriate to satisfy the requirements of retribution and deterrence whilst ignoring any period of confinement necessary for the protection of the public”), which would be between one-half and three-quarters of the total sentence.

Before the custody part expired, the prisoner would be assessed by the Parole Board to determine whether they were “likely to cause serious harm to members of the public if released at the end of the custody part.” Depending upon the assessment, the prisoner would then either be released or have their case referred to the Parole Board for decision as to whether they would be released at that point or later. Regardless of which category they fall under, the prisoner must be released after serving three-quarters of the total sentence.

However, even if implemented, since they have major shortcomings, these provisions still would not address, or improve, the deficiencies in the existing process, which the Bill goes further toward addressing

- Unlike the Bill, the 2007 Act provides for automatic release. While the Act’s two year sentence qualification would clearly bring more prisoners into the regime than those sentence lengths currently proposed in the Bill, the Act’s requirement of automatic release at the half-way mark for short-term custody and community prisoners is detrimental. It allows these prisoners both a potentially faster route to early release, as they would be in prison for a much shorter time than the Bill requires, and release without adequate licence terms and close supervision.
- Early release under the 2007 Act cannot be totally restricted, as opposed to the proposals in the Bill, and prisoners under either category must be released after serving three-quarters of the total sentence.

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8) Use of Extended sentences

It has been suggested in the Policy Memorandum that another way of ensuring that there is a period of supervision in the community for prisoners released early might be through an increased use of extended sentences.

Currently, a court may impose an extended sentence on a person convicted under solemn procedure of a sexual or violent offence, where it considers that: “the period (if any) for which the offender would, apart from this section, be subject to a licence would not be adequate for the purpose of protecting the public from serious harm from the offender”; in relation to violent offences only, this power is further restricted to cases where the custodial sentence is of at least four years. The imposition of an extended sentence does not alter the custodial element of the whole sentence. What it does is to add a further period (the ‘extension period’) during which the offender is subject to supervision in the community. This extension period may be up to 10 years (five years where sentenced by a sheriff).

However, unless the extended sentence procedures and relevant legislation is amended, this option would be of no use in dealing with the majority of perpetrators of domestic abuse, in that the majority of perpetrators are prosecuted under summary procedure, where the maximum sentence is less than 12 months.

Clause 2- release timed to benefit re-integration

The Bill would also allow the SPS, acting on behalf of the Scottish Ministers, discretion to release sentenced prisoners up to two days early where this would help “facilitate community reintegration (e.g. by allowing for early access to key public services”).

There are already instances reported by women using our local Women’s Aid services of perpetrators being released without women being given accurate and sufficient notice of release dates, which has implications for the protection of women and their children. This uncertainty and shifting of previously notified dates can impact on safety planning, both for women and for partner agencies, in that deadlines and time limits on actions to protect women and their children, possibly through moving them into refuge spaces or away from the home, or making court applications for emergency protection orders are needed, are accelerated and become more immediate.

If there is to be any adjustment to release dates, this can be anticipated well in advance by calculating the dates based on the statutory time limits. Where offences have involved domestic abuse, sexual offending, and/or stalking and there is any concern for the safety of the victim and their family, as identified by statutory or support agencies or previously expressed by the victim themselves, the SPS must immediately notify the police, who, in turn, contact women personally with details of revised and accelerated release dates as soon as possible.

Women, and any agencies such as Women’s Aid supporting them, should be told far in advance of projected release dates and locations, and it is vital that any change to these is communicated immediately to the woman in person, as opposed to relying
on postal notification. We would reiterate to our comments above on the provisions of the Victims and Witnesses (Scotland) Act 2014 and the EU Directive on victims’ rights in terms of the obligations on notifying victims and consideration of safety issues.

The Policy Memorandum published along with the Bill states that the Scottish Government would work with the SPS to produce guidance on the circumstances in which this discretion would be applied. We would comment, firstly, that this commitment should be reflected on the face of the Bill itself as an obligation, and not left as a discretionary action in the Policy Memorandum. Further, this collaboration must be extended to include consultation and input from statutory organisations such as the police and social work and organisations such as Scottish Women’s Aid, in order that the issues facing victims, in our case women, children and young people experiencing domestic abuse, are fully taken into account and the procedures referred to are fully integrated into practice when the discretionary release is applied.

Scottish Women’s Aid
7 January 2015
Justice Committee

Prisoners (Control of Release) (Scotland) Bill

Written submission from the Risk Management Authority

Introduction

1. The Risk Management Authority (RMA) is a non-departmental public body (NDPB), established in 2005 by the Criminal Justice (Scotland) Act 2003 to set standards for and promote effective practice in the risk assessment and management of serious violent and sexual offenders. Within this remit, the RMA has specific responsibility to administer and oversee a number of practices and processes relating to the Order for Lifelong Restriction (OLR).

2. Our evidence is on the aspects of the Bill relating to automatic early release.

3. We welcome the opportunity to provide evidence to the Justice Committee and understand the aim of the Bill to promote public protection by focussing attention on those who pose significant risk of serious harm. We recognise that it is difficult to weigh up the relative merits of post-release supervision and continued detention in cases where there is a likelihood of serious harm to others, and such challenges are pertinent to this proposed legislation. We will discuss these challenges and reflect discussions we have had with Scottish Government colleagues on these matters.

The scope of the provisions in relation to automatic early release

4. We hope it will be helpful to an understanding of the scope of the provisions to define the offenders and the circumstances that are being addressed by the Bill. These provisions relate to long term prisoners serving determinate sentences for serious offences, who have failed to satisfy the Parole Board on at least one occasion that they should be released on parole. This means that they have been deemed by the Parole Board to pose an unacceptable level of risk to the public. This decision will have been informed by risk assessment, which will have taken into account the nature, seriousness and pattern of previous offending, and the likelihood, nature and seriousness of future offending. The assessment of the likelihood of re-offending will have been influenced by the presence of factors in the person’s character and circumstances that continue to predispose them towards offending, as well as by information about engagement and progress in interventions, conduct, and progression through the regime, while in custody. Under the present legislation (the 1993 Act), they are released automatically at the two-thirds point of the sentence subject to licence conditions and statutory supervision.

5. Therefore, a profile of the typical long term prisoner to which the relevant provisions of the Bill apply is that of an offender who has failed to progress through the prison regime, failed to mediate his or her behaviours sufficiently to be deemed manageable in the community, perhaps due to a lack of response to interventions in prison for whatever reason, and/or resistance to change, and/or intentional efforts to evade post-release supervision. Accordingly, it is reasonable to assume that such a
prisoner would be approaching release having been assessed as posing a continuing risk of serious harm to the public.

6. The aim of the Bill’s provisions, to ensure that the release of such prisoners is no longer automatic and that they should remain in custody, thus enabling the risk associated with their release to be further considered by the Parole Board, is sound. However, we consider that the consequence that some may be released without any post release supervision needs to be explored. To understand the implications of this, it is necessary to consider the various types of offender and sentences to which its provisions may be relevant. The policy memorandum usefully highlights the particular relevance of the extended sentence.

7. If the prisoner is serving an extended sentence, a period of post-release supervision will be provided, regardless of whether the full custodial part is served. This provides for supervision and monitoring in the community and recall to custody if appropriate. If the offender is a sex offender subject to notification requirements, a further range of measures, multi-agency arrangements and civil orders is available to monitor risk at the end of the sentence.

8. However, if the prisoner is serving a determinate, but not extended sentence, the impact of the Bill’s provisions could be that s/he may be released at the end of the sentence, unconditionally, without a period of statutory post-release supervision. The continued imprisonment may have had a temporary impact on public safety by delaying release, but it would be difficult to argue that it would have mitigated risk other than in the short term. If the prisoner is not subject to notification requirements as a sex offender, there would be no formal means by which to monitor or manage risk.

9. It is this eventuality that we suggest may be an unintended consequence of the Bill, although the frequency with which it would occur is not known. Essentially, a violent or other serious offender, whose risk has been deemed unacceptable by the Parole Board, may be released unconditionally and with no formal authority or powers available to the community agencies to monitor or regulate his/her whereabouts or behaviour.

10. In the case of sexual and violent offenders, the primary means to limit this eventuality lies in the extended sentence, which is available to the Court in cases where, at the point of sentencing, future risk is assessed as requiring additional post release supervision. The exceptions would be cases where awareness of risk emerged during the course of the custodial sentence. This underlines the policy memorandum’s assertion that the Bill brings into sharp focus the relevance of the extended sentence, and also highlights the importance of risk assessment.

11. The prospective nature of the Bill should ensure that the implications of its provisions would be known to Courts and those providing risk assessments to sentencers - matters for consideration on future implementation. But we consider that it would be judicious, at this stage, to estimate from current statistics the number and nature of cases in which the unintended consequence of such an offender being released unconditionally at the end of the sentence may occur.
12. We think this is important as, while no framework of measures can eliminate risk, risk can be managed when it is understood. There is a balance to be struck between the advantages of ending automatic release of serious offenders and the disadvantages of releasing some unconditionally at the end of their sentence. The risk that arises from this consideration needs to be fully understood to determine whether it is tolerable, and how it may be managed.

**The importance of supervision in the community**

13. We note distinctions between the principles of the Custodial Sentences and Weapons (Scotland) Act 2007 (as amended by the Criminal Justice and Licensing (Scotland) Act 2010) and the current Bill. The aim of the Bill to ensure that the risk associated with early release is further considered by the Parole Board while the offender remains in custody is consistent with the earlier legislation, and prioritises those who may pose the greatest risk. However, it is our understanding that the earlier legislation sought to end unconditional release, rather than automatic early release, by ensuring that a period of community supervision is the norm during the transition period, which is identified as a time of greatest change and risk of re-offending. As explained above, the current proposals could result in a small number of serious offenders being released unconditionally and with no form of community supervision during this difficult transition period following release from prison.

14. The rationale underpinning early release on licence is that risk management, support and supervision in the community following a period of imprisonment are vital to reintegration and rehabilitation. This rationale has been upheld by expert committees over the last two decades, and is supported by a wide criminological literature. That literature contains research indicating that certain services and interventions, particularly when delivered in the community, can be effective in reducing re-offending and further research that demonstrates that those who desist from offending identify supportive relationships and opportunities as being most influential in their transition to a prosocial lifestyle.

15. Release from prison following a lengthy sentence is a difficult transition. Even the ‘ideal’ parolee experiences numerous stresses adapting to life in the community. Successful reintegration is even more challenging when the individual continues to have needs and difficulties that increase his or her potential to further offend and, when that offending is likely to result in serious harm, careful balanced risk management is required to promote safe reintegration. A very significant benefit of post-custodial supervision is that it provides a means to access housing, rehabilitative services, mental health treatment, addiction therapies etc., services from which offenders who are not subject to supervision are often excluded, for a variety of reasons. These services may make the difference between successful reintegration and re-offending.

16. The Prisoners and Criminal Proceedings (Scotland) Act 1993 provides for long term offenders who have failed to secure parole to be released at the two-thirds stage of their sentence on ‘non-parole licence’. This release, then, is automatic but conditional, with licence conditions, statutory supervision and the potential for recall. At the outset it was recognised that non-parole licensees would form a particularly challenging group for community criminal justice services to manage, given that a
combination of an absence of risk reduction, failure to progress and/or non-compliance would be the likely reasons that the Parole Board considered they posed an unacceptable level of risk for parole. Experience confirms that this group does account for a high proportion of recalls, although this does not negate the value of the provision, as it is clear that a number does successfully complete the licence.

17. While acknowledging that this group presents challenges, we consider that, where a proportionate balance of support, supervision and restriction is provided, it is possible that risk may be managed and reduced. Conversely, if the individual serves the entire sentence in prison and is released without licence conditions, monitoring, supervision and relevant support, it is likely that risk will remain, if not increase. Long term prisoners, who, under the proposed legislation, were not released at the two-thirds point, would remain eligible for consideration of release on parole. However, we believe that, in such cases, the Parole Board would face additional challenges in balancing the risks associated with early release on parole, on the one hand, and release without any form of supervision at the end of the sentence, on the other.

18. Realistically, with the exception of those serving life sentences including the Order for Lifelong Restriction, some prisoners will eventually exhaust the option of conditional release whether due to the presence of persistent behaviours and/or intent. However, if this occurs as the result of the provisions in the new Bill which has the stated aim of promoting public safety, it would be necessary to provide contingency measures to minimise the resulting risk.

19. Unlike other determinate sentences, the extended sentence limits the occurrence of release without conditional post-release supervision when it is appropriate on the basis of risk. Limiting the scope of the current Bill to prisoners serving extended sentences may merit consideration.

The differential approach

20. The proposals detail a phased and differential approach to the end of automatic release. A cautious and considered approach, with a focus on those who pose the greatest risk is a sound starting point. But it is a common misperception that sex offenders pose a particular risk. The provisions of the Bill appear to perpetuate this, in that the removal of the right to early release applies to sex offenders serving 4 years or more, whereas it applies to other offenders who are serving 10 years or more. In reality, the position is more complex and requires some qualifications.

21. The nature of some sexual offending, the characteristics of some sex offenders and the impact on victims may be distinctive. Further, the pattern of offending differs in that sex offenders generally re-offend less frequently and later than others, often with non-sexual offences. While sex offenders are known to often deny or minimise the impact of their behaviours, they are generally more compliant with supervision and motivated to avoid custody. In contrast, violent offenders re-

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offend more frequently and earlier and often pose greater challenges in relation to compliance with supervision.

22. While evidence might better support an assertion that sex offenders pose a different kind of risk rather than a particular risk, it also identifies that they have particular needs when attempting to re-integrate into the community. Accommodation issues, isolation, community reaction and media attention can undermine reintegration efforts and make the support and monitoring of statutory supervision invaluable. It is, therefore, preferable to maintain, rather than limit, the occurrence of statutory supervision for sex offenders.

23. Multi-agency public protection arrangements, notification requirements and civil orders provide particular measures to monitor and manage sex offenders during, or in the absence of, statutory supervision.

24. The group whose risk is particularly exposed by the proposed legislation comprises a small number of challenging, non-sexual violent offenders serving determinate sentences of ten years or more who will be released unconditionally at the end of their sentence, and without the MAPPA and other measures available to support the management of sex offenders.

25. We are aware that the Scottish Government is currently considering the feasibility of extending the scope of the MAPPA to establish arrangements for certain non-sexual offenders whose risk necessitates collaborative and active management. This important policy development work runs parallel to the current proposals and is clearly highly relevant. It is also being developed in a phased way, beginning with consideration of those subject to statutory supervision.

26. Violent offending whether sexual, domestic, physical or psychological can have a devastating impact on those against whom it is perpetrated. Whilst it is certainly true that sexual abuse has been empirically associated with a number of negative clinical, behavioural and social outcomes there is evidence that on some outcomes psychological/emotional abuse, physical violence and exposure to domestic violence can be as least as deleterious as sexual abuse. This is captured in the currently operational definition of ‘risk of serious harm’, in that regardless of the nature of the offending it is considered against its potential to cause physical or psychological damage from which recovery could be expected to be impossible or unlikely. We suggest that there may be merit in discussing whether ‘risk of serious harm’ would better determine the criteria for consideration in the Bill rather than offence type.

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27. This would be consistent with the policy development work in respect of MAPPA, and also with one of the stated aims of the current Bill, which is to re-focus our collective resources and efforts on risk.

The relevance of the Extended Sentence and the Order for Lifelong Restriction (OLR)

28. The proposals target a small group of serious violent and sexual offenders serving determinate sentences, who are challenging, who resist or fail to respond to rehabilitative measures, and who present an enduring risk of serious harm to the public. Therefore the proposed legislation brings into focus the relevance of two ‘risk’ based sentences: the extended sentence and the OLR.

29. The OLR has been available to the High Court since 2006; it is an indeterminate sentence intended to be an “exceptional” provision for “exceptional individuals”, that is individuals who pose an enduring risk of serious harm to the public. The legislation requires that the High Court be informed by a comprehensive expert risk assessment, and that when the High Court considers that the statutory risk criteria have been met, it is to impose an OLR. Thereafter the individual is managed for the remainder of his life whether in custody or the community, by means of a multi-agency risk management plan. That risk management plan is evaluated by the RMA initially to ensure that it meets the required standard before being approved; and thereafter on an annual basis to ensure that it is being delivered appropriately.

30. The required standard involves risk management that is balanced and proportionate, that provides appropriate levels of restriction and monitoring, but also elements of supervision and intervention necessary to promote safe reintegration in the community. From the outset it is required that plans evidence this balance, ensuring attention to public safety and rehabilitation.

31. This level of restriction and resource is only justified by the degree of risk such exceptional individuals pose. For this reason, it is vital that its application is subject to stringent tests and criteria, that its use is not extended and, in particular, that it remains a disposal available to the High Court at the point of sentence. On the last of these points, we welcomed the Scottish Government’s response to the recommendations of a Significant Case Review report which were conveyed to the chair of the Justice Committee in a letter by the Cabinet Secretary in July 2012.

32. Since 2006 the High Court has imposed 130 OLRs, this number being within the predicted range of 15-20 per year. In those cases that have been considered by the High Court not to have met the ‘risk criteria’ for imposition of an OLR, an extended sentence is the most common disposal.

33. Given the framework provided by the extended sentence and the OLR for cases in which future risk of serious harm is a concern and the fact that the proposed

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legislation would be prospective, it may be that the numbers that would be affected by it would be very small.

34. For us, this suggests that further exploration of the number, characteristics and circumstances of the cases that may fall within the proposed changes, with reference to the criteria for the extended sentence and the OLR, would be valuable. Such analysis would identify the scope of the problem is understood, and help to inform our understanding of the roles played by various sentences.

**Conclusion**

35. We conclude with a summary of our key points:

a) We support a considered approach to the release of prisoners who continue to pose a risk of serious harm to the public.

b) It is advisable that unconditional release without measures to enable supervision or monitoring is the exception, and that post-release statutory supervision is the norm. We believe that this is consistent with existing legislation and evidence on the rehabilitation and reintegration of offenders. It is best considered as a last resort when it cannot be avoided, rather than a contingency measure to mitigate the immediate risk of release. But, if introduced as proposed, it would need to be supplemented by further measures to manage risk on eventual release to have any meaningful effect on public safety.

c) The Scottish Government recognises the role of the extended sentence in promoting post-release supervision of sexual and violent offenders. We tentatively suggest that it may merit consideration that the provisions of the Bill apply only to extended sentence prisoners. It offers greater scope for post release supervision and is focussed on risk.

d) For the relatively few challenging offenders who pose the greatest and most enduring risk, the OLR already provides the means for the management of this group.

e) The Scottish Government recognises that certain categories of offenders other than sex offenders may require the extension of multi-agency public protection arrangements. This policy development is focussing on the assessment and management of those who pose the greatest risk of serious harm and is relevant to the current Bill by beginning to redress the differential approach to sex offenders.

f) We recommend that the Bill could further its stated aims by re-focussing its inclusion categories on risk of serious harm rather than offence type. This would also enhance an evidence based approach by challenging the differential approach to sex offenders.

g) We recommend that further scoping should be undertaken to quantify the risks and benefits that would be created by the provisions of the current Bill.

We offer our full support to the Scottish Parliament and the Cabinet Secretary in this matter.

Yvonne Gailey
Chief Executive
Risk Management Authority
12 January 2015
Justice Committee
Prisoners (Control of Release) (Scotland) Bill
Written submission from Social Work Scotland

1. Restriction of automatic release

Social Work Scotland agrees with the principle inherent in this Bill that decisions on early release should be based on assessment of the risk which an offender may post to the community. We also agree that it is appropriate for the two categories of prisoners name in the Bill to be subject to these restrictions. A further category of prisoners which Scottish Ministers may wish to consider are those prisoners who committed offences against children. This can include offences of physical violence and neglect.

We would be concerned however if the impact of this Bill was that the most serious prisoners left prison with no form of statutory supervision. In our experience such supervision can be critical to minimising risk and ensuring effective monitoring of people who pose a serious risk to others. We note, however, that courts will have the option to consider extended sentences, albeit that these do not currently appear to be widely used.

We would highlight that the costs associated with these provision are not necessarily cost neutral for Criminal Justice Social Work Services. Additional costs are likely to be incurred in the delivery of through-care services, in particular prison based social work services. Furthermore a great use of extended sentences would have a clear impact on workload.

We would agree, however, that the overarching concern is public safety and so are supportive of these proposals provided they are adequately resourced.

2. Power of early release for community reintegration

Social Work Scotland welcomes the additional powers which this Bill would give to the Scottish Prison Service to authorise early release to facilitate community reintegration.

We would strongly urge the production of guidance to prison governors which would require them to consult with statutory Criminal Justice Social Work Services in the prison prior to granting any early release. This will ensure effective coordination of release arrangements.

Social Work Scotland
19 January 2015
Justice Committee
Prisoners (Control of Release) (Scotland) Bill

Written submission from Professor Fergus McNeill

Yesterday, I reviewed the written submissions and the record of last week's session. I wonder if you might pass on these two observations to the Committee:

Firstly, I would simply reiterate that it seems to me that the proposed legislation would serve not to reduce risk, but to store it up for a little longer. In my assessment this is as likely to increase risk as to reduce it. I spent last week in a meeting with European experts from several jurisdictions and many of them were expressing concern about the increasing numbers of prisoners opting to 'max out' on their sentences, in order to avoid (a) the painful uncertainties attendant on discretionary release schemes and (b) the more and more intrusive and sometimes disproportionate forms of post release supervision emerging in many jurisdictions (which are not always combined with significant support). As some of those who submitted evidence have made clear, the proposals risk introducing this possibility (of maxing out) in Scotland -- and many have serious concerns about this for both in terms of risk and in terms of reintegration.

Secondly, I note that several witnesses referred positively to the principles of the Custodial Sentences and Weapons Act (2007) as an alternative potential set of reforms. I served as expert adviser to the Committee in its deliberations on that Bill. If the current members care to examine the then Committee’s stage 2 report, they'll find that the evidence pointed to a very significant number of serious problems with the Bill. The Committee's final endorsement of the Bill's *principles* and its subsequent passage at Stage 3 reflected the political realities of an imminent election; it passage was not in my view supported by the evidence or by the critique that the Committee delivered of the Bill's detailed provisions. That is why the Act has never been implemented -- it couldn't be. The costs of doing so -- both in terms of increased work for criminal justice social work and the Scottish Prison Service -- were and remain unaffordable. Moreover, much of the new work would have been pointlessly bureaucratic and a distraction from existing challenges and tasks; for example, the Bill required risk assessment prior to release of everyone serving over 14 days, which would have tied up precious staff time and resources in making decisions about short sentence and low risk of harm prisoners.

That said, the principle of clearly articulating every sentence of imprisonment in terms of its custodial and community parts remains, in my assessment, a good one. If nothing else, it might assist with the problems of public misunderstanding and media misrepresentation that I allude to in my written evidence.

For these reasons, I would support the view of other witnesses that the current Bill should be abandoned and that the complex question of how best to manage early release should be referred to the Scottish Sentencing Council, when it becomes established. Until then, our current arrangements seem likely to me to better protect the public (and support reintegration) than what is proposed in the Bill.
Fergus McNeill
Professor of Criminology & Social Work
University of Glasgow
20 January 2015
3 February 2015

Dear Christine,

I was grateful for the opportunity to provide evidence to the Committee last Tuesday 27 January as part of its consideration of the above Bill.

The Scottish Government is committed to ending the current system of automatic early release of prisoners, brought in by the then UK Government in 1993. Our Bill provides a step towards achieving that aim. However, we have stated our willingness to listen to views within Parliament and to relevant stakeholders to improve the current Bill and make further progress towards ending automatic early release.

I have reflected on the issues raised by Committee members during my evidence session last week and the earlier written and oral evidence from stakeholders. In light of this, I think it would be helpful, ahead of the Committee’s Stage 1 Report on the Bill, to state clearly the Scottish Government’s intentions in response to the issues raised.

Stakeholders, including victims’ organisations and academics, have raised particular concern that, following the end of automatic early release, prisoners who are considered by the Parole Board to pose a continuing risk to public safety, could be released from prison at the end of their sentence without a period of supervision in the community. As I explained during my evidence, there are existing arrangements under which a court can impose supervision conditions on offenders which extend beyond the term of their custodial sentence, both for sexual offenders and people convicted of other types of crimes.

However, in light of the concerns raised, I can confirm formally that we will bring forward proposals at Stage 2 of the Bill to guarantee that all long-term offenders, i.e. anyone serving a sentence of 4 years or more for any crime, being released from prison will be subject to a minimum period of compulsory supervision in the community. The focus of such supervision will be on ensuring both the immediate and longer-term protection of public safety.
The question has also been raised whether the ending of automatic early release could be extended to wider categories of prisoners. The current focus of the Bill is on long-term prisoners serving 4 years or more for sexual offences and 10 years or more for other offences. Having considered this issue, I can confirm that we will also bring forward amendments at Stage 2 of the Bill to extend the provisions to end the existing system of automatic early release for all long-term prisoners, i.e. those sentenced in future to sentences of 4 years or more, whether for sexual offences or any other form of offence. Approximately 450 people convicted of crimes each year receive a custodial sentence from the courts of 4 years or more.\(^1\)

As you noted during the evidence session, the provisions in Part 1 of the Bill do not extend to short-term prisoners, who receive sentences from the courts of less than 4 years, who are subject to separate early release arrangements.

Our aim in ending the current system of automatic early release for all long-term prisoners is to improve public safety. Taken together, these new measures will ensure that decisions about the early release of all long-term prisoners will be taken by the Parole Board in the interests of public safety, whilst also guaranteeing that all long-term prisoners leaving custody will have a period of compulsory supervision in the community. This approach is consistent with the Scottish Government’s vision for the use of custody, and the recommendations of both the McLeish Prisons Commission (2008) and Angiolini Commission on Women Offenders (2012), that prison is the right place for those offenders who commit the most serious crimes and who pose a continuing risk to public safety.

I hope the above information is helpful to the Committee as it takes forward its consideration of the Bill.

\[\text{MICHAEL MATHESON}\]

Justice Committee

Prisoners (Control of Release) (Scotland) Bill

Supplementary written submission from the Parole Board for Scotland

At the evidence session on 20 January 2015, the Chairman of the Parole Board agreed to provide additional information on the number of offenders recalled to custody while on parole or non-parole licence.

These figures are for 2012/13 and are as follows:

<table>
<thead>
<tr>
<th>Licence Type</th>
<th>Number on licence</th>
<th>Number where breach reported to the Parole Board</th>
<th>Number where breach resulted in recall to custody</th>
<th>Proportion of licensees recalled to custody</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parole</td>
<td>476</td>
<td>26</td>
<td>18</td>
<td>4%</td>
</tr>
<tr>
<td>Non-parole</td>
<td>403</td>
<td>140</td>
<td>88</td>
<td>22%</td>
</tr>
</tbody>
</table>

We hope this information is helpful to the Committee.

Parole Board for Scotland
6 February 2015

Note: the number of offenders on licence is taken from figures published on the Scottish Government [website](#)
Supplementary written submission from the Parole Board for Scotland

This is a further submission from the Parole Board for Scotland requested by the Justice Committee in response to changes to the Bill proposed by the Scottish Government.

1. The Board’s response to the proposed changes to the Bill

These proposals do not have any impact on life sentence or order for lifelong restriction prisoners.

As previously noted, removing the option of automatic release for categories of long-term prisoner will ensure that such offenders are only released before the end of their sentence (subject to the proposed separate arrangements for a minimum period of compulsory supervision) where the Board judges that the risk can be safely managed in the community. In addition to ensuring that these categories of offender are only released where the risk is manageable, it should also encourage greater engagement with the parole process with the potential for offenders to undertake more work regarding their offending behaviour. The proposed changes to the Bill will necessarily increase the work to be undertaken by the Board to a greater extent than first envisaged and while the Board will endeavour to do so within existing budgets, it may need some support from Scottish Government to manage the impact. As previously noted, the impact would not be felt until three years after implementation.

The proposal regarding a minimum period of compulsory supervision in the community is welcomed. It is expected that this will have little or no impact on the work of the Board.

The Chairman is unable to attend the round table discussion with the Committee on 24 February 2015 due to a prior commitment.

We hope this information is helpful to the Committee.

Parole Board for Scotland
9 February 2015
We welcome the Scottish Government’s openness to concerns expressed by respondents, and in particular the steps that are to be taken that reinforce the essential role of community supervision in rehabilitation, reintegration and protection of the public. While we are unsighted on the detail, it is our understanding from the Cabinet Secretary’s letter of 3rd February 2015 that the Scottish Government will bring forward amendments at Stage 2 of this bill that will ensure that release decisions in respect of those serving sentences of four years or more will be taken by the Parole Board and that all such persons will be subject to a minimum period of statutory supervision in the community.

The Cabinet Secretary identifies that there are existing arrangements for the imposition of statutory supervision in the form of the extended sentence. There is also provision in the existing arrangements for standard determinate sentences in the form of parole and non-parole licences. The distinction between the existing arrangements and the proposals contained in the Cabinet Secretary’s letter appears to be that the Parole Board will be involved in decisions about the release of all long-term prisoners. We welcome this.

The profile of the typical long term prisoner to which the provisions of the Bill apply is that of an offender who has failed to progress through the prison regime and to mediate his or her behaviours sufficiently to be deemed manageable in the community, perhaps due to denial of the offence, a lack of response to interventions in prison, and/or resistance to change. It is reasonable to assume that such a prisoner would be approaching release having been assessed as posing a continuing risk of serious harm to the public. Accordingly, it is appropriate that the focus of the proposed amendments is on protection of the public.

The RMA has published standards and guidelines for risk assessment and management practice in respect of those who pose a risk of serious harm to the public. Those publications emphasise the need for practice that balances rehabilitative and restrictive measures in an evidence-based and proportionate manner, communicated in a plan to ensure transparency and effective collaboration.

We recognise in the proposed amendments the opportunity to ensure that the release of all long term prisoners is considered and individualised; the duration and conditions of the supervision determined by an assessment of risk; and the measures identified to reduce risk incorporated in a proportionate, balanced plan.

1 RMA (2011) Framework for risk assessment, management and evaluation (FRAME)
2 RMA (2013) Standards and Guidelines for Risk Management
http://www.rmascotland.gov.uk/standardsandguidelines
We offer our continued support in the consideration and development of the proposed legislation.

Yvonne Gailey
Chief Executive
Risk Management Authority
12 February 2015
Introduction

The Law Society of Scotland (the Society) aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interest of solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

To help us do this, we use our various Society committees which are made up of solicitors and non-solicitors and ensure we benefit from knowledge and expertise from both within and outwith the solicitor profession.

The Criminal Law Committee of the Society (the Committee) previously responded to the Scottish Parliament’s Justice Committee’s call for written evidence on the Prisoners (Control of Release) (Scotland) Bill. The Committee notes that the Cabinet Secretary for Justice has now confirmed that the Scottish Government intends to table amendments at Stage 2 to extend the provisions of the Bill to end the automatic early release for all categories of long term prisoners.

The Committee, having considered the additional proposals, as detailed in the correspondence dated 3 February 2015 from the Secretary to Justice to the Justice Committee, wishes to provide the following additional comments:

Comments

The Committee notes with a degree of concern that what may be the most radical change in custodial sentencing policy for twenty-two years is to be introduced by way of a government amendment to a Bill at present before Parliament, where the Justice Committee has already received both written and oral evidence. It notes that the proposals for an amended system of post-sentence supervision were not contained within the Bill as introduced.

Before addressing the new proposals as announced on 2nd February, the Committee considers it essential that the reason for the inception of the present system be understood. Prior to 1967, there was no formal statutory system of parole, although there had been provision for remission, based upon good conduct in custody, for some fifty or so years. The Criminal Justice Administration Act 1914 provided that by good conduct and industry prisoners may earn modification of their sentences, dependent on the sentence type. Males sentenced to the former sentence of penal servitude could be liberated on licence after serving three-quarters of their sentence, and females after two-thirds. Prisoners sentenced to one month’s imprisonment or

more could earn remission of up to one sixth of the sentence. Youths in Borstal who were of good conduct would generally be released on licence at the two thirds point. Those whose sentences had been remitted in part could not be recalled in the event of reoffending, but those released on licence could have their licence revoked or forfeited, and be ordered to serve the remainder of the sentence consecutive to the new sentence (Penal Servitude Act 1864, s.9).

This system subsisted until after the Second World War. Section 20(1) of the Prisons (Scotland) Act 1952\(^3\) provided that rules made under that Act may make provision whereby, in such circumstances as were prescribed by the rules, a person serving a sentence of imprisonment may be granted remission of such part of his sentence as may be so prescribed on the grounds of his “industry and good conduct”. Central to this system was the notion that certain prisoners might deserve earlier release than others.

Parole was introduced into Scotland by virtue of Part III of the Criminal Justice Act 1967, and the Parole Board for Scotland first sat in 1968, although at this time its function was purely advisory; if a Minister disagreed with a recommendation for parole, it was not granted. That position was changed, gradually and incrementally, and often as a result of adverse court decisions restricting the level of political control over sentencing, until by 2003 the Parole Board’s decisions were directive and binding upon Ministers in every case (although it should be noted that Ministers retain a statutory right to revoke an offender’s licence in certain circumstances). The Act followed the recommendations contained in Lord Longford’s Paper for the Labour Party Study Group entitled “Crime- A Challenge To Us All” which was followed by a Government White Paper in 1967 entitled “The Adult Offender”\(^4\).

The central theory underpinning the 1967 Act was that prisoners’ rehabilitation would be increased if they were released into the community subject to supervision for the latter parts of their sentences. Under s.60 of the 1967 Act (repealed by the Criminal Justice Act 1991\(^5\)), a prisoner serving a determinate sentence was eligible for parole after serving one third of the sentence or twelve months, whichever was the longer. However, under that system, once a prisoner was released, if he was over 21 years old he was not subject to licence conditions and thus there was no statutory basis upon which he could be returned to custody. A person aged under 21 when sentenced was released subject to licence, and could be returned to custody for a maximum period of three months for breach of licence conditions.

At this time it should also be noted that prisoners had no express rights. The Prisons and Young Offenders Institutions (Scotland) Rules 1952 vested rights only in the governor of a prison, and that a governor had the power to delay a prisoner’s release into the community by virtue of his power to award a number of days loss of remission for breaches of prison discipline, this being done at hearings within the establishment at which prisoners had no right of representation. This power continued to exist until 2001, although it was significantly limited to one-sixth of the length of sentence after 1993, and could not have withstood scrutiny under the European Convention on Human Rights. A system of release on licence with

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possibility of revocation in the event of non-compliance then applied only to life sentence prisoners.

These provisions attracted remarkably little public comment for around twenty years, although the “treatment model”, that held that offenders’ deviation from social norms could be addressed in a quasi-medical manner had fallen out of favour. By the mid-1980s, changes had been made by the UK Government that extended parole to prisoners serving shorter sentences, but restricted parole in respect of long term prisoners. That policy was introduced into Scotland in December 1984. The English policy was upheld by the House of Lords in Findlay v Secretary of State [1984] 3 All E.R. 901.

It may not, however, be coincidental that the years 1986-1990 saw some of the worst examples of rioting in Scottish penal history, with Peterhead, Perth, Shotts, Edinburgh and Glenochil seeing major disturbances and a number of incidents involving officers being held hostage. It became clear that there were serious concerns over the whole Scottish prison system.

In December 1987, some months after the creation of the Carlisle Committee to review parole in England and Wales, a committee was set up under the chairmanship of Lord Kincraig, a Senator of the College of Justice. During the same period as the Kincraig Committee was considering parole, the Scottish Prison Service published two consultation documents, Custody and Care (March 1988) and Opportunity and Responsibility (May 1990). The issue of prison reform was thus the subject of full debate.

The Kincraig Committee reported in February 1989, and the bulk of its recommendations were incorporated, with some amendments, in the Prisoners and Criminal Proceedings (Scotland) Act 1993. While amended on several occasions, that remains the core statute for determining release of prisoners. The present system as introduced in 1993 thus followed thorough and detailed judicial investigation into the sentencing systems in England and Wales and Scotland. No similar evidence-gathering exercise has taken place in advance of these proposals. There might thus be merit in commissioning research similar to that which resulted in Linda Hutton and Liz Levy’s Report in 2002.

The central plank of the Kincraig report was the recommendation that no part of a prison sentence could be in effect “written off”, as could and often did happen under the previous system. The final part of a long sentence would be served in the community, subject to compulsory supervision, with the sanction of a recall to custody available should the prisoner in the community fail to comply with licence conditions at any time until the final day of the sentence. Those serving shorter sentences were to have their release made conditional upon not reoffending during the remainder of the calendar sentence; further offending offered a court the opportunity to reimpose all or part of the unexpired portion of sentence (1993 Act, s.

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6 Its terms of reference are set out in full in Professor J. J McManus’ commentary to the Prisoners and Criminal Proceedings (Scotland) Act 1993 in Current Law Statutes Annotated
7 Parole and Related Issues in Scotland, 1989, Cm. 598
9 Parole Board Decisions and Release Outcomes, Scottish Executive Central Research Unit, 2002
16). The most coherent reason for the existence of a system of mandatory release on licence prior to the expiry of the entire sentence is that it allows a degree of testing in the community while offenders are subject to conditions, breach of which can result in a return to custody (see, for example, the responses to Q.11 of the Sentencing Commission for Scotland’s Report on Early Release and Supervision, 2006). In addition, the Kincraig Committee expressly had in mind the need to recognise the possibility of change in a prisoner that might render him or her fit to return to the community prior to the expiry of the sentence. The key difference from the pre-1967 system was that release was no longer predicated upon “good behaviour”, but upon an assessment of risk.

Given the terms of the current proposals, it might be instructive to note that the Kincraig Committee made clear that it did not consider it necessary for the protection of the public for Ministers to continue to operate the blanket restrictive policy that had been introduced by the Government in 1984 and had precluded early release for most long-term prisoners.

While statutory changes, often following court decisions adverse to previous policy, have resulted in the 1993 Act being widely amended, the core framework for prisoner release remains that in the 1993 Act. The general trend since the coming into force of the Convention Rights (Compliance) (Scotland) Act 2001 is for proportionately fewer prisoners to be released on parole, the percentage having reduced in little over a decade from over 50% to a little over 30%. The most recent (2013-14) report by the Parole Board for Scotland demonstrates that the figure seems to have stabilised at around the lower level. In sexual offence cases, the Committee understands that fewer than 10% of long-term prisoners are released prior to the date upon which their release is mandatory in terms of the current provisions. The majority of prisoners released early on “parole licence” do not breach licence conditions and remain at liberty to the end of their sentence. In the group of those considered to present an unacceptable risk in terms of parole, who are released on “non-parole licence”, the majority remain compliant, although to a lesser statistical extent in terms of numbers having licence revoked than in the former group. It is thus difficult to see a solid empirical basis for the current proposals; if the Parole Board continues to release barely one in three prisoners before their mandatory release date, the majority of those released on licence comply with licence conditions and remain at liberty to the end of their sentence. In the group of those considered to present an unacceptable risk in terms of parole, who are released on “non-parole licence”, the majority remain compliant, although to a lesser statistical extent in terms of numbers having licence revoked than in the former group. It is thus difficult to see a solid empirical basis for the current proposals; if the Parole Board continues to release barely one in three prisoners before their mandatory release date, the majority of those released on licence comply with licence conditions, and risk assessment tools have not reached the level of sophistication that enables them to predict individual risk with a high degree of accuracy, then it appears to follow that the result of this enactment will be that a significant number of offenders will remain in prison when they could safely be released into the community. The existence of a mechanism for review by the Parole Board does answer any question of compliance with Article 5.4 of the European Convention on Human Rights, but there must remain a concern, based upon the statistics, that the Parole Board, when faced with a narrow decision and granted a statutory power not to direct release until the sentence end date, will tend to adopt a risk-averse strategy.

12 See, for example, Surprising Trends from the Parole Board’s Annual Report, SCOLAG 413, March 2012
13 http://www.scottishparoleboard.gov.uk/docs/Parole%20Board%202013.pdf
In looking at cases where licence has been revoked, it might perhaps be helpful to consider the figures contained in the Board’s annual reports for 2005 and 2006, the last years in which detailed reasons for revocation of licence were published\(^{14}\). The Society notes that of the 184 violent offenders recalled, 65 (35.3%) were facing charges of violence, 32 (17.3%) were facing “other charges”, a category that includes possession of weapons, and 27 (14.6%) were facing theft charges or similar. There may thus be some merit in requiring the Parole Board to scrutinise the risk factors of serious violent offenders, and in certain circumstances for them to have a statutory power not to direct release. However, given the importance of licence conditions in allowing for supervision of offenders in the community, and in enabling those who require them to access community supports in areas such as accommodation, addictions counselling and job search, the default position should be for there to be a period of community-based supervision (with the sanction of recall) for all but the most dangerous offenders, who need not necessarily be those who have committed the most serious offences. At present it is not clear what form of statutory supervision is proposed, and what sanction might be competent in respect of a prisoner who has served their full sentence.

**The impact on prisoner numbers and the work of the Parole Board**

The general trend since the coming into force of the 2001 Act is for proportionately fewer prisoners to be released on parole, the percentage having reduced between 2001 and 2012 from over 50% to a little over 30% by 2012\(^{15}\). In sexual offence cases, as stated above fewer than 10% of long-term prisoners are released prior to the date upon which their release is mandatory in terms of the Prisoners and Criminal Proceedings (Scotland) Act 1993\(^{16}\). From these two trends it may be suggested that there will be an increase in the number of long-term prisoners in custody. Unless there is a marked decline in the number of short-term prisoners, based upon the projections above it is therefore likely that the prison population will increase noticeably.

The Committee suggests that there may be two impacts upon the work of the Parole Board. If a significant proportion of long term prisoners whose release is affected by the Bill are not released at the two-thirds point of their sentence, their cases will require further review by the Board on a periodical basis until their ultimate release. In addition, it seems almost certain that many of those who either do not now engage in the parole process or are happy to do so by way of “paper review” will now elect to have their cases dealt with by an oral hearing, at which evidence will be led. This may result in an increase in the workload of the Board, particularly in its need to appoint sufficient legally qualified persons to act as tribunal/hearing chairs. The Committee notes that Ministers and the Board are aware of this and merely observes that it seems essential both that the Board be provided with sufficient additional funding in order to carry out its further responsibilities effectively and efficiently, and that it continues to appoint legally qualified members with experience in the field of parole and risk assessment.

\(^{14}\) [http://www.scottishparoleboard.gov.uk/pdf/Parole%20Board%202006.pdf](http://www.scottishparoleboard.gov.uk/pdf/Parole%20Board%202006.pdf)

\(^{15}\) *Surprising Trends from the Parole Board’s Annual Report, SCOLAG 413, March 2012*

The Committee further notes that the proposed new provisions may in some cases go substantially further than the maximum custodial part specified within the Custodial Sentences and Weapons (Scotland) Act 2007\textsuperscript{17}. Section 6 (7) of that Act provides that –

“\textit{The court may not make an order specifying a custody part which is greater than three-quarters of the sentence.”}

The Committee understands that the rationale behind that provision was that it is generally preferable for all persons released from custody after serving a significant period of imprisonment or detention should spend a period subject to compulsory supervision within the community, with the sanction of a recall to custody in the event of non-compliance with that supervision. The provisions in Section 1 of the Bill simply propose to dis-apply entirely the automatic early release provisions of Section 1 of the 1993 Act to all long-term prisoners. Thus it must be presumed that Section 6 of the 2007 Act is no longer under consideration. In its previous response, when considering the options of enacting the Bill as then drafted or opting to adopt the unenacted provisions of the 2007 Act, the Committee’s response ended by saying “\textit{That is a matter on which expert evidence is required}.” The Committee’s view on this has not changed.

As stated above, the parole system was introduced following a detailed report and the publication of a Government White Paper. The present provisions contained in the 1993 Act were enacted following two reports, the Scottish one under the chairmanship of a senior judge, which conducted its deliberations over a period of fourteen months. No analogous enquiry has been undertaken in this case, and indeed there was no such proposal contained in the Report of the Scottish Prisons Commission (The “McLeish Report”)\textsuperscript{18} in 2008. To propose such a radical change to penal policy without the prior consideration of a large body of expert evidence, and to amend proposals significantly when a Bill is already before the Justice Committee is of concern, and the Committee would further suggest the creation of a body of experts with power to hear evidence from persons with professional knowledge in the field before this Bill progresses.

Brian Simpson  
Law Reform  
13 February 2015

\textsuperscript{17}http://www.legislation.gov.uk/asp/2007/17/contents  
\textsuperscript{18}http://www.scotland.gov.uk/Publications/2008/06/30162955/0
Justice Committee

Prisoners (Control of Release) (Scotland) Bill

Supplementary written submission from the Scottish Human Rights Commission

1. The Commission welcomes the Scottish Government response following our participation in the evidence session to the Committee on 13 January 2015. The Commission expressed concerns about the potential impact on public safety of the Bill following the end of automatic early releases of prisoners into the community without any adequate supervision. We are pleased to see the Government recognition of the serious consequences of its earlier proposal in terms of an unnecessary risk to the public and the commitment to bring forward proposals to ensure this does not happen.

2. The Commission is, however, concerned about the Scottish Government’s intention to bring amendments to extend the Bill’s provisions to end the existing system of automatic release for all long-term prisoners. We are particularly concerned about the impact and practical application of this measure.

3. By extending the provisions to a group of prisoners who will no longer be eligible for automatic early release, applications to the Parole Board will increase. There are concerns already about inadequate rehabilitation programmes available to prisoners. If more prisoners apply to the Parole Board and the Parole Board does not grant them early release, this may well lead to prisoners raising appeals on the grounds that they have been denied their right to liberty under Article 5 of the ECHR given insufficient rehabilitation within the prison system. These proposals shall therefore invite more scrutiny of the adequacy of the rehabilitation programmes within the prison system. The Commission recommends that the prison rehabilitation programmes be fit for the purpose of meeting increased demand.

4. In the past we have raised concerns about overcrowding in the prison system. On the face of it, this move would certainly seem to be increasing the number of prisoners in the system. The Commission recommends the Scottish Government fully assess the impact of this proposal on the prison population and explain how it is going to be managed in the current budgetary climate.

5. As a general principle, the Commission recommends that any change on the current policy on automatic early release should be based on robust and up to date evidence. The assumption in the Bill seems to be that public safety is better served by a person being in jail longer. While this proposition may have some limited validity, the length of sentence is not always directly related to public risk. It is usually reflective of gravity of offence. For example, a serious fraudster might get more than 4 years in prison, but realistically present a low risk to public safety. The Commission would be interested to be made aware of any evidence available to the Government.

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1 See for example SHRC policy submission to the United Nations Committee Against Torture, p. 7 available at http://www.scottishhumanrights.com/resources/policysubmissions/CATreportnews2013
that indicates that prisoners on automatic early release reoffend at a higher rate than those who serve the full term.

6. While the compulsory supervision will assist with reintegration into the community, the aim of public safety is not necessarily served by the removal of early release. An additional question that arises with the new proposal is over the length of period of supervision. There is a lack of clarity in terms of its application: will this vary depending on the offence or on whether the individual is subject to parole? If it does not take account of the period on parole, will it be potentially disproportionately affecting those who pose less risk if they have to be supervised for a period at the end of their parole licence period. For this proposal to be effective it requires more clarity and precision.

The Commission will offer further evidence on the human rights implications of the new proposal to the Scottish Parliament’s Justice Committee on February 24.

Scottish Human Rights Commission
13 February 2015
Justice Committee
Prisoners (Control of Release) (Scotland) Bill

Written submission from Positive Prison? Positive Futures

We are pleased to respond to the request to provide a written submission which supplements our previous one submitted on 6\textsuperscript{th} May 2014 and our evidence given to the committee on 13\textsuperscript{th} January 2015.

1 The proposed widening of the terms of the bill to cover all people sentenced to 4 years or more is acceptable in that it addresses the issues relating to human rights discussed at the committee session on 13\textsuperscript{th} January. It is unclear, however, how the removal of automatic release aligns with the aim of reducing the prison population in Scotland. (refer to item 2.04 of our original submission\textsuperscript{1}).

2 The proposed minimum period of compulsory supervision in the community on release from a long-term sentence is also acceptable in principle although the process and timing of how the length of this minimum period will be worked out requires further discussion and/or explanation. Will it be a blanket minimum or one tailored to each individual?

3 We seek assurances that the Parole Board and others would be sufficiently well resourced to deal with all the people on long-term sentences as their time in custody approaches the two-thirds point. The numbers of people they would be dealing with will be increased by the widened terms of the bill.

4 We also seek assurances that the resources appropriate to provision of supervision in the community are sufficient and well resourced. It may be beneficial to review the caseloads of community teams to ensure that the supervision provided is effective and not simply a tick box exercise.

5 We consider there is scope for making use of electronic monitoring in the community for some people as part of their early release programme, possibly in advance of the two-thirds point in their sentence if they have made clear progress in terms of their rehabilitation.

6 The effectiveness of the changes proposed in this bill depend very heavily on the prison staff and management making progress in terms of their reorganisation and bringing about the cultural and organisational changes as part of their new vision as being in the ‘citizen recovery business’.

7 In the interest of clarity we wish to restate our support for the section of this bill that would make it possible for people to be released one or two days early to make it much more possible for them to connect with appropriate services and agencies thereby greatly increasing their opportunities to reintegrate.

\textsuperscript{1}http://www.scottish.parliament.uk/S4_J usticeCommittee/Inquiries/AER6._Positive_Prison_Positive_F utures.pdf
In conclusion we can see the value in proposed changes to the automatic early release of prisoners but only as part of a comprehensive review and restructuring of the criminal justice system from arrest through to release and re-joining the community.

Pete White
Chief Executive
14 February 2015
Response to the letter from the Cabinet Secretary for Justice on bringing forward proposals designed for Stage 2 of the proposed Bill

We welcome the opportunity to comment on the Government’s reaction (in the Cabinet Secretary’s letter dated 3rd February 2015) to the evidence provided during January to the Justice Committee on the abolition of automatic early release for certain categories of prisoner.

As we understand it, the Government now proposes to bring forward plans for Stage 2 of the Bill: namely to amend the legislation so as to widen the categories of prisoner affected by the proposed abolition of automatic early release to all long-term prisoners (i.e. those serving a custodial sentence of 4+ years); and to subject these long-term prisoners to a compulsory period of supervision in the community post-release.

This additional change to the proposed Bill may be a response to criticism from some commentators that a) sex offenders are the most compliant of licensees with the lowest risk of further offending; and that b) there is no justification for singling out sex offenders for longer periods of incarceration. However, by widening the net to all purportedly high risk offenders (i.e., those serving longer prison sentences because of the severity of their crimes), the new proposal fails to acknowledge that public protection is currently being addressed through the compulsory supervision of all long term prisoners on release, either through parole or non-parole licences and through the compulsory post-release supervision of all sex offenders serving 6 months or more (via Short Term Sex Offender Licences).

Thus the targeted population of prisoners for compulsory supervision post-release is already on the statute. What is new about the proposed changes is at what point in the sentence these long-term prisoners are released into the community. If they receive parole, it could be at the half way stage, but if they are not considered eligible for parole (for reasons relating as much to family circumstances as to propensity for harm), the Government is seeking to keep these ‘parole-ineligible’ individuals in prison for as long as the sentence allows. What is not clear in the Cabinet Secretary’s letter is whether the intention is (A) to add on compulsory supervision to sentences already completed in custody, or (B) to provide for compulsory supervision in the community for a fixed period within the existing custodial sentence.

If option A is the intention, we would have several serious reservations about the proposal:

- First, and crucially, the period of compulsory supervision would amount to a \textit{de facto} increase in the punishments imposed by the courts. In this regard,
have sought but not yet received any indication of whether the judiciary has been consulted about these proposed changes and what their views are on the matter – this might well help rather than hinder future policy making. The views of prisoners are also important in this regard. Under option A, prisoners would be very likely to question the legitimacy of the additional supervision/punishment; there is good evidence that when the perceived legitimacy of supervisory sanctions is lower, the supervisor’s job is made much more difficult.

- Second, this might risk litigation by prisoners or ex-prisoners under the Human Rights Act/the European Convention on Human Rights. This is because it is not clear to us that the Parole Board has the authority to increase the punitive effects of a court-imposed sentence; and that would be the effect of the Parole Board’s decision not to release early. We suspect prisoners could then litigate successfully in respect of various due process issues related to the conduct of Parole Board decision-making (e.g. rights to legal representation, legal aid, etc.).

- Third, option A would increase the prison population by delaying release for a proportion of long-term prisoners. We are not able to estimate the proportion involved, but any increase in our high prison population is problematic in our assessment, and would require to be well justified in terms of its effectiveness, given the high expense to the public purse. We see no credible evidence that Option A would increase the effectiveness of the existing early release provisions. Indeed, recent research undertaken by Dr Barry and colleagues in Scotland suggests that people on parole licence are more likely to comply with such supervision (including not to reoffend and to keep to the conditions of their licence) (89% compliance rate) than those people on non-parole licence (87% compliance rate) or those on extended sentences or short-term sex offender licences (85% compliance rate); however the differences are small and the overall rate of compliance is currently encouraging in respect of public protection. Any delays in when compulsory supervision ‘kicks in’ may well be counterproductive in terms of public protection.

- Fourth, a legal problem arises if compulsory supervision is over and above the sentence laid down by the court, since there will be no ‘capacity’ for recall to prison in the event of breach of supervision requirements if the sentence has already been served in full. Therefore, breach of conditions of the compulsory supervision would have to become a new offence. This would also very likely increase the prison population, since a number of those subject to supervision following the changes would likely breach the conditions (given the disincentives mentioned above) and thus face further custodial sentences as a result.

- Fifth, the proposal will increase the work (and therefore) costs of the Parole Board since some long term prisoners who are denied early release will have to be considered and reconsidered for early release several more times before the eventual expiry of their sentences.
For all of these reasons, we very much hope that the Government’s intention is better captured in option B above (i.e. a period of compulsory supervision within the period of the custodial sentence).

With respect to the Committee’s questions about the appropriate length of such a period of supervision, and assuming this is within and not in addition to the existing sentence, we would argue that it is important that, in principle, the period of supervision is proportionate to the length of the original sentence. It is inevitable that the longer one serves in prison, the longer one needs support in the community to readjust. But since it is also true that anyone who has served 4 years or over will have significant resettlement needs, we also see the case for a fixed minimum period of supervision of one year (within the existing sentence). So, we would suggest that the Parole Board continues to commence consideration of eligibility for release on compulsory supervision at 50% of the sentence (as presently) and that prisoners are released no later than a year before the expiry of their sentence on compulsory supervision. In policy, practice and public debate, this compulsory supervision should be described not as ‘automatic early release’ but rather as an important part of the whole ‘package’ of the sentence (with custodial and community parts), as per the Custodial Sentences and Weapons Bill 2007.

Finally, although it is reasonable to focus on the merits and demerits of these proposals in relation to public protection, it is also important to stress that the state owes a duty to those who are punished; a duty to support their reintegration. This flows not so much from a commitment to rehabilitation, but from retributive principles that insist that the punishment must not extend beyond the parsimonious and proportionate penalty imposed by the court. The weight of criminological evidence (including recent Scottish evidence reported in Dr Marguerite Schinkel’s (2014) book ‘Being Imprisoned’) is that in myriad ways, the pains of imprisonment and of release extend far beyond those intended and foreseen in the imposition of the punishment.

For these reasons – and with public safety in mind – some jurisdictions complement post-release supervision with certain legal guarantees in relation to reintegration. For example, we suggest that the Committee and the Government would benefit from examining the example of Norway where such a ‘reintegration guarantee’ exists, and assists in securing decent housing and immediate state benefits for prisoners on release. In essence, it expresses the duty of public bodies to support the reintegration of former prisoners. In the report of the Scottish Prisons Commission, ‘Scotland’s Choice’ (2008), similar measures were proposed:

“18. To ensure progress in developing services that are available nationwide to address the social and health related needs of many offenders, the Commission recommends that the Government promote recognition across all Government departments, all public services, all sectors and all communities of a duty to reintegrate both those who have paid back in the community and those who have served their time in prison” (Scottish Prisons Commission, 2008, Scotland’s Choice, p5).

In our assessment, and based on criminological evidence about reintegration, reoffending and desistance from crime, we suggest that this sort of measure would
do much more to protect the public and to support effective and just reintegration than altering the timing of early release arrangements.

Dr Monica Barry and Professor Fergus McNeill
16 February 2015

Additional research evidence to the Justice Committee in relation to the proposed abolition of early release from Dr Monica Barry, Law School, University of Strathclyde

This evidence is based on a recent (but as yet unpublished) research project across Scotland which explored, *inter alia*, prisoners’ and ex-prisoners’ views and experiences of compulsory supervision in the community post-release. Although the sub-sample of licensees was limited to 69 individuals, the findings support other research on offenders’ views and experiences of supervision, albeit in different jurisdictions.

Three issues relevant to the proposed Bill that have arisen from the interviews with offenders are briefly summarised below. These are:

1) reasons for breach of licence conditions;
2) experiences of recall resulting from breach of licence conditions; and
3) lack of programmes and open estate availability.

1. Reasons for breach of licence conditions

Younger offenders and those with mental health or drug problems are more likely to breach licence conditions¹, not because of further offending but because of so-called ‘technical’ breaches – failing to attend appointments or inform their social worker of a change of address, failing a drugs test, etc. Only a minority of breaches result from further offending and rarely is that further offending a repeat of the original offence. In other words, both violent and sexual offenders tended, in this research, to be breached not for committing violent or sexual crimes but for road traffic offences, breach of the peace and theft. Such technical breaches included not telling one’s social worker that a) the licensee had been questioned by the police but not charged; b) the licensee had developed a friendship with a female; c) the licensee had visited a friend’s house where an under-17 year old lived; and d) the licensee had slept at his girlfriend’s house overnight:

The only thing I never really complied with was telling the social worker that I was staying at my girlfriend’s house which I wasn’t really allowed to cos you’re not allowed to stay overnight unless you tell them. But I wasn’t really wanting to drag my girlfriend into that side of the police coming out to her house and searching her house and stuff like that just to see if it’s suitable for me. I didn’t think I had to put my girlfriend through that, do you know what I’m saying, because she’s never been in crime ever (24 year old breacher).

The relationship with the social worker is crucial to the cooperation of licensees with the conditions of their licences, and yet many respondents suggested that they did not trust their social worker, or lacked any confidence in the legitimacy of the criminal justice system more widely. Offenders know that supervising social workers, and indeed the Parole Board, tend to be risk averse when dealing with longer term prisoners on licence and they are naturally paranoid about ‘walking on ice’ whilst on licence, when all too often a breach of conditions results in recall to prison. Recently in Scotland, there has been a significant reduction in numbers of prisoners being granted parole and a significant increase in the numbers of released prisoners being recalled to prison because of breaching licence conditions (Scottish Government, 2012). In 2012-13, of those who had been breached post-release, the Parole Board for Scotland recalled 69 per cent on parole licence; 63 per cent on non-parole licence; 71 per cent on extended sentences; and 62 per cent on life licence (Parole Board for Scotland, 2013). In the last 10 years, there has been a 300 per cent increase in the adult daily recalled prison population and a 600 per cent increase in the young offender daily recalled prison population (Scottish Government, 2012).

2) Experiences of recall

The main issue with recall, for these respondents, was the fact that it could happen very easily, very quickly, unintentionally and on the basis of anecdotal, third party ‘evidence’, and that recall not only meant losing one’s job, family and home, responsibilities which are crucial to desistance, but also meant that many of these people languish in prison for a further few years without any right of appeal or finding of guilt. Once recalled to prison, many respondents felt that they were then forgotten and not given priority for further parole or tribunal procedures. One 41 year old respondent described it as the ‘warehousing’ of recalled prisoners. Several respondents who had been recalled described their difficulties in getting their voices heard about technical breaches, or of getting released following a ‘not guilty’ verdict on the offence for which they were recalled. It would seem from such accounts that the Parole Board may consider somebody a renewed risk if new information comes to light as a result of a technical breach and will therefore keep that person in prison for the remainder of their full sentence, irrespective of the relevance of the technical breach. For example, one man said that he was staying with his girlfriend following his eviction from his flat because of the owner wanting to sell. He had been offence free since his release two plus years ago, and had been working full-time for the last two years. He was afraid to tell his social worker that he was temporarily staying with his girlfriend, in case she reacted against his potential risk from homelessness:

Technically that’s me homeless and if I’m homeless, the parole board will say well, you’re serving a sentence, still serving a 7 year term; if you’re homeless…. Recall him back to prison… he’s been serving a sentence for a violent offence, he’s nowhere to go, we can’t keep tabs on him, put him back to jail (39 year old breacher).

Another man in his forties on life licence was recalled for road traffic offences; the procurator fiscal apparently dropped the charges because of a lack of evidence, but

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he was still recalled and had been back inside for nearly 3 years at the time of interview (see below).

3) Lack of programmes and open estate availability

A recalled prisoner will not be eligible for parole again unless s/he complies with programme interventions in prison, and invariably there is a waiting list for such programmes. Equally, a period of stay in an open prison is often required for parole eligibility, but spaces are limited. The Scottish Prison Service’s current inability to offer enough programmes and enough places in the open estate – on which parole is dependent – will undoubtedly mean an increase in judicial reviews.

The respondent mentioned in 2) above was recalled from life licence and therefore had to apply for parole again, but the lack of open estate availability was a barrier to his parole eligibility:

I’ve been up here [in prison on recall] for that’s nearly 3 years now, waiting to go to an open [prison]... [the risk management team in prison] will say, this guy needs to do some offence focused work, we’ll put him on a group works course, cognitive skills or some stupid thing, Constructs or something like that... I done it. This was about 2 years ago I done Constructs and the guy said at the time, you don’t even flag up for us, you’re not suitable for it but since you’re here, since you’ve been recalled, since you’re here, we’ll make you do it anyway and then at least you’ll have something, you’ll have done something while you’re here... [The Scottish Prison Service has] been given a mandate to say, right you’ve got to test these cases and see if they need any offence focused work, see if they need tested in an open [prison]. But they just – they’re let loose to do it in their own time... Maybe there’s some other form of offence work that he could maybe undertake apart from the Constructs... and [SPS] would like 12 months to look into this. The Parole Board went, aye, alright, here, we’ll give you 15 months... They shouldn’t put folk in jail... for things that they wouldn’t put other people in jail for. I’m on parole for a violent offence but they recalled me for a driving offence. I can understand if it was violence, if I had offended somebody, but it wasn’t violence... If they spent half the money trying to help me out side than what they did. It’s some amount of money they must have spent keeping me in the jail over the [last 3 years on recall] (Life licensee).

Although SPS apparently does not keep a record of who is back in prison on recall, since when and potentially for how long, there seem to be many people waiting to be re-released pending either programme or open estate availability, and yet they are dependent on the SPS and the Parole Board, whose administrative procedures seem to be both cumbersome and time consuming and could add months if not years onto a recalled prisoner’s sentence.

In conclusion, this research supports other findings which suggest that offenders on supervision are less likely to reoffend than those who are not. However, the supervising social worker’s attitude is crucial in ensuring a trusting and respectful working relationship with the offender. If an offender perceives that relationship or the legal requirements of an order or licence to lack legitimacy, then they are less
likely to be open and share information with the social worker which might be
deemed risky if recall is seen as the likely reaction. If the proposed Bill increases the
number of people on supervision and over prolonged periods, the criteria for
breaching licensees needs to be relaxed, so that people are not recalled for minor
technicalities. The Parole Board and Scottish Prison Service also need to tighten and
speed up their procedures for recalling and re-releasing, as well as to make
programmes available and the open estate more accessible to those who most need
them. As suggested also in my joint evidence with Professor McNeill, more
constructive and proactive support in the community for people on release from
prison is needed if the public is to be protected and offenders are to be encouraged
to desist from crime.

Dr Monica Barry
February 2015
Scottish Government's proposed revisions to the Bill

We are grateful for the opportunity to comment on the Scottish Government’s proposed revisions to the Prisoners (Control of Release) (Scotland) Bill.

We note that the Scottish Government intends to increase the scope of the Bill to end automatic early release for all prisoners serving sentences of over four years’ duration. We also note that the Scottish Government intends to bring forward proposals at Stage 2 to ensure that all prisoners serving sentences of over four years’ duration will be subject to a minimum period of compulsory supervision in the community.

We refer members of the Justice Committee to the evidence Howard League Scotland submitted on the Scottish Government’s earlier proposals to end automatic early release in May 2014:

It seems highly likely that these revised proposals will impact on a larger proportion of the prison population in Scotland than the original proposals. These proposals are therefore at odds with the Scottish Government’s aspiration to reduce the size of the prison population.

However, in the absence of further detail beyond that contained in the two page letter from the Cabinet Secretary for Justice to the Justice Committee Convener dated 3 February 2015, it is difficult for us to provide further comment on these proposals. Indeed, it is a matter of concern to us that the Justice Committee is being asked to form a view on these proposals as part of its Stage 1 report without sight of a revised policy memorandum, financial memorandum and explanatory notes on the Bill.

Howard League Scotland
16 February 2015
Justice Committee

Prisoners (Control of Release) (Scotland) Bill

Written submission from the Scottish Prison Service

Following the Scottish Parliament's Justice Committee request for views on the proposed amendments to the Prisoners (Control of Release) (Scotland) Bill in respect of the introduction of a minimum period of compulsory supervision for all offenders serving a sentence of 4 years or more and the extension of the ending of automatic early release to all categories of offenders serving 4 years or more, the Scottish Prison Service (SPS) views are as set out below.

The introduction of a minimum period of compulsory supervision for all offenders serving a sentence of 4 years or more

SPS supports the introduction of a minimum period of compulsory supervision for all offenders serving a sentence of 4 years or more. It is my experience that the first six to twelve weeks after release can be a challenging period for some offenders as they try to establish links and supports in their local community. Consequently during this period they may pose a risk to public safety. Therefore a period of compulsory supervision will help to support an offender’s transition into the community whilst also mitigating the risk to public safety.

The extension of the ending of automatic early release to all categories of offenders serving 4 years or more

It is not for the SPS to comment on the scope of the proposed reforms, rather it is my responsibility to provide the Committee with information concerning the operational impact of this proposal.

The main operational impact of ending automatic early release for all categories of prisoner sentenced to 4 years or more will be the impact on prison numbers. It has been estimated by Scottish Government colleagues that the long-term impact of this proposal will be a requirement for SPS to provide an additional 410 places. SPS will have the capacity to cope with the relatively limited impact in the early years. However SPS will require the Scottish Government to ensure that the overall pressures on the prison estate arising from these reforms, and other legislative reforms, are met through future justice spending review settlements

Eric Murch
Director of Operations
Scottish Prison Service
16 February 2015
Written submission from the Prison Officers Association (Scotland)

Response to the Scottish Government response of 3 February 2015

May I, in the first instance take the opportunity to thank the committee for hearing our evidence at the Justice Committee hearing held 20th January 2015.

Further to the response from the Scottish Government we have been asked to respond and I’m delighted to confirm that we welcome the response and in particular the extension to the scope of those covered by the Bill. We believe it is right and proper for all those prisoners serving over 4 years to be subject to close scrutiny on their suitability for release back into the community having taken account of their conduct and willingness to engage in the rehabilitation process and the extent to which they have recognised the impact of their crime on their victim(s).

The provision of compulsory supervision on release we believe is a positive step and may serve as a useful transition between long term custody and community reintegration which we believe prison officers have a role to play alongside our justice partners.

Given the likely impact on the level of prisoner numbers particularly in the short term we are content that whilst there may be sufficient capacity in the overall estate the approach adopted should be seen as one of a number of measures that addresses the wider issue of offender management and that alternatives to custody and other interventions amongst the short term offender and female population will reduce, or at least manage the prisoner population over time and release capacity.

I hope you find our response useful to the committee in its considerations of the Bill.

Andy Hogg
Assistant General Secretary
POA (Scotland)
17 February 2015
Justice Committee

Prisoners (Control of Release) (Scotland) Bill

Supplementary written submission from Victim Support Scotland

Victim Support Scotland is the largest organisation in Scotland supporting people affected by crime. We provide practical help, emotional support and essential information to victims, witnesses and others affected by crime, both in the community and in every Sheriff and High Court in Scotland. The service is free, confidential and is provided by volunteers. VSS welcomes the opportunity to provide updated evidence to the Committee in light of the letter from the Cabinet Secretary for Justice of 3rd February announcing proposed changes to the Bill.

Victim Support Scotland supports ending automatic early release of prisoners as we believe that this will lead to greater transparency and clarity in sentencing for both the general public and victims of crime. We welcome the Scottish Government’s announcement that the Bill will be extended to cover all long-term prisoners, as this will allow a far greater number of prisoners, and victims, to benefit from these changes. Most importantly, this will take us a step closer to achieving a system in which sentences are straightforward and understandable to the victim and the wider community.

VSS also supports the guarantee of a period of post-release supervision for prisoners, as we recognise the significant role played by community supervision, not only in facilitating enhanced reintegration into the community, but also in supporting offenders to desist from further offending. We are satisfied that the Bill is now better placed to achieve its aims of improving public safety and reducing reoffending, as well as helping victims of crime attain a greater understanding of sentencing and release.

To create as clear and straightforward a system as possible, Victim Support Scotland suggests that the approach to sentencing and release of short-term prisoners be re-considered. It is difficult for victims to understand why such prisoners are released automatically at the halfway point of their sentence with no restrictions or supervision arrangements. We would welcome the implementation of the McLeish Commission recommendation that all short-term prisoners be released with conditions, support and supervision. We note however, the restrictions of the long title of the Bill in relating specifically to long-term offenders. As such, we would welcome a future commitment from the Scottish Government to consider taking a similar approach to changing release arrangements for short-term prisoners as in this Bill.

Regardless of the changes made to the current system of automatic early release, it is of paramount importance that victims are kept informed of the release arrangements of their offender, including any conditions that are in place on release.

1http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/20150203_CSfJ_to.CG_AER_announcement.pdf
Knowing the release date of an offender can be extremely important to victims of crime; it allows them to put in place measures to ensure their safety, and can prevent situations in which they unexpectedly come face to face with their offender in the community. VSS continues to call for the expansion of the Victim Notification Scheme to allow all victims the opportunity to be kept informed and provide representations to the relevant authority on the release of the offender, as specified in Article 6(5) of the Victims’ Directive.\(^2\)

Victim Support Scotland
17 February 2015

I have just received the first statistics on our sample of 9,626 cases across 3 case study areas in Scotland, of which 736 cases were post-release licences (including life, extended sentences, parole and non-parole, SROs, etc). The main offences of these post-release people were predominantly violence (41%), followed by sexual offences (19%), both categories being serious offences which would have no doubt attracted a prison sentence rather than a community disposal.

Breach of post-release licence conditions arose because of further offending in the majority of violent offender cases BUT because of non-compliance with the conditions in the majority of sex offender cases. This is an interesting finding (that violent offenders are perhaps more prone to reoffending than sexual offenders) but we will need to explore this more in our forthcoming analyses. Where breach occurred, the vast majority of post-release licensees were recalled, irrespective of whether the breach resulted from a further offence or non-compliance with the conditions. No surprises there, I suppose!

Dr Monica Barry
Principal Research Fellow
Centre for Law, Crime and Justice,
School of Law, University of Strathclyde,
23 February 2015
Justice Committee

Prisoners (Control of Release) (Scotland) Bill

Supplementary written submission from Social Work Scotland

1. Thank you for providing Social Work Scotland with the opportunity to comment on the letter by Mr Matheson dated 3/2/15 to the Convenor of the Justice Committee regarding the proposal to end the automatic early release of certain categories of prisoners.

2. Social Work Scotland welcomes the guarantee that all long-term offenders i.e. anyone serving a sentence of 4 years or more for any crime, being released from prison will be subject to a minimum penal of compulsory supervision in the community. This partly addresses the concern Social Work Scotland previously expressed that prisoners may not benefit from community supervision and the benefits associated with this supervision in terms of resettlement and desistance. In order for the proposal to deliver better outcomes both in terms of public protection and rehabilitation it is unlikely to be cost neutral and will therefore require a consideration of additional resource to ensure effectiveness. In addition Social Work Scotland recognise both the need and the challenge in utilising custody for those who commit the most serious of crimes and who pose a continuing risk to public safety. It is the case that a proportion of those committing serious crimes will not pose a significant threat to communities post sentence. The information available does not specify the length and how post sentence supervision will be determined; principles such as assessment of ongoing risk and proportionality should feature in determining the period of post custody supervision.

3. Social Work Scotland would see the review of sentencing guidelines as a necessary piece of complimentary work to ensure the policy is effective.

Social Work Scotland
23 February 2015
Justice Committee
Prisoners (Control of Release) (Scotland) Bill

Written submission from Professor Cyrus Tata, Strathclyde University

Response to the letter from the Cabinet Secretary for Justice – intention to bring forward proposals at Stage 2 of the Bill

I welcome the invitation to give written and oral evidence about the Scottish Government’s response to the evidence provided during January 2015 about the Bill.

According to the Cabinet Secretary’s letter (dated 3\textsuperscript{rd} February 2015) to the Convenor of the Justice Committee, it is now the Scottish Government’s intention to bring forward proposals at Stage 2 of the Bill so as to:

- guarantee that all long-term prisoners, i.e. anyone serving a determinate sentence of 4 years or more for any crime, being released from prison will be subject to a minimum period of compulsory supervision in the community; and
- extend the provisions to end the existing system of automatic early release for all long-term prisoners, i.e. those sentenced in future to sentences of 4 years or more, whether for sexual offences or any other form of offence.

Can a proposed aim to change legislation made in haste make good law?

To the best of my knowledge at present, there has been no further definitive information about how the Scottish Government intends to achieve these two aims. Little is known about what principles are intended to be used to achieve the bald aims. This makes it difficult to comment in decisive terms.

The two aims put forward above would, at least on its face, be a radical alteration of the current arrangements. While I welcome the chance to discuss reforming the system so as to make it more comprehensible, clear and effective, it is worrying that such proposals that it appears to be proposed at Stage 2 of the Bill and without the benefit of consultation. Release (and sentencing) arrangements are both complex and politically sensitive. So it is for those reasons it would be sensible to ‘draw breath’ and seek wider consultation about the shape of legislation. Previous legislation in the area was based on the work of undertaken by impartial bodies. In effect, there has been an eight year gap between the last (unimplemented) legislation and the new aims announced on 3\textsuperscript{rd} February.

Can the circle be squared between abolition of Automatic Early Release [AER] and a guarantee of mandatory supervision?

On the one hand, the Scottish Government is now intending to abolish AER for all long-term prisoners. However, it appears now to be acknowledged that abolition of AER will mean that those considered least suitable for parole, (including those deemed pose the greatest threat to public safety), will be released ‘cold’ after a lengthy period of incarceration. This means that they cannot be subject to mandatory and conditional period of supervision and support. On the other hand, it is the now
also the Scottish Government’s aim that all long-term prisoners be subject to a minimum period of compulsory supervision in the community.

How, if at all, can these two aims be achieved?

There appear to be two obvious choices: Compulsory Supervision after the expiration of the custodial sentence OR community supervision within the custodial sentence.

Choice A: A mandatory period of supervision on top of the custodial period

The first is that there would be an extended period of mandatory and conditional community supervision after the custodial sentence period has expired. This appears to be the hope that extended sentences would be used far more by judicial sentencers than they currently are. This begs several questions:

Will there be ‘recalibration’ of sentences at sentencing to take account of the community extended supervision period?

The Scottish Sentencing Commission’s 2005 report Early Release from Prison and the Supervision of Prisoners on their Release noted that:

We recognise that, in the absence of measures to improve consistency in sentencing, there is a risk that some sentences will not be properly recalibrated. Such a development is likely to generate an increase in appeals against sentence, and it would therefore be for the appeal court to enforce the statutory requirement to recalibrate sentences. (para 5.8) ¹

It should be recalled that the executive branch of the state has no control over the use of extended sentences, and while this might, (or might not), be a matter on which the new Sentencing Council deliberates, it is contingent. Furthermore, even if there were to be, for example, a Sentencing Guideline judgement about such recalibration there remains the question of its impact on practice, which is far from assured.

If the use of extended sentences (or something similar) was to become far more widespread, what will be the impact on the custodial population? Has the Scottish Government carried out work to calculate the impact? Although the Scottish Government notes that 450 people are sentenced to four years or more of imprisonment², it does not follow that the impact of the prison population will only be 450 per year (even if sentencing patterns remained the same). A realistic calculation will need to include for example: the cumulative (year on year) impact of those long-term prisoners denied parole; the impact of recalls for breaches of licence conditions.³

¹ In acknowledging the net effect of its proposed changes to the release regime, the Scottish Sentencing Commission (2005) recommended that sentences would need to be ‘recalibrated’. When in 2006 the Scottish Government brought forward proposals to change release it did not to include any provision relating to recalibration.
² Letter from Cabinet Secretary to the Convenor of the Scottish Parliament Justice Committee, 3rd February 2015
³ It is presumed, (though it is not entirely clear from the Scottish Government’s stated aims), that the minimum period of compulsory supervision will be conditional. If so, then the impact of recall has to be considered.
Are judicial sentencers always best placed to determine the level of risk posed by an individual several years after sentencing? This is, of course, why we have a Parole Board. However, given that it is intended that AER be abolished for all long-term prisoners, it may be that there will emerge an (understandable) tendency to ‘play safe’ at the sentencing stage by passing an extended sentence when it may not always turn out to be what was required.

Choice B: Community Supervision within the Custodial Sentence

This choice might in effect be a re-branding of the current system of parole. It is true that the current system of AER can be confusing and leads to some sense of ‘dishonesty’ between the stated custodial sentence and the reality.

But how exactly should such re-branding be done? Would all long-term sentences have a custody and a community part – as in the (otherwise unworkable and unimplemented) 2007 Custodial Sentences and Weapons (S) Act?

What would be the minimum period of community supervision?

What conditions, if any, will apply? How will breach work?

How will the period of community supervision be calculated and by whom? How will it be proportionate to the overall sentence yet also guarantee a sensible minimum period?

The abolition of AER will mean that prisoners denied parole will be more likely to argue that they were not allowed fair opportunity to demonstrate that they do not pose an unacceptable risk to public safety. The most obvious issue will be about the non-availability of programmes in prison – this will need to be costed.

Conclusion

In sum, it would be sensible if, after having waited some seven years to address release arrangements, a little more time is devoted and consultation is facilitated. This will allow careful reflection on the issues of practice and principle in this complex and politically charged area.

Professor Cyrus Tata
Professor of Law and Criminal Justice
Strathclyde University
23 February 2015
DELEGATED POWERS AND LAW REFORM COMMITTEE

7th Meeting, 2015 (Session 4)

Tuesday 24 February 2015

Prisoners (Control of Release) (Scotland) Bill

Response from the Scottish Government

Background

1. The Committee reported on the delegated powers in the Prisoners (Control of Release) (Scotland) Bill\(^1\) on 2 December 2014, in its 71st report of 2014.

2. The response from the Scottish Government to the report is reproduced at the Annex.

Scottish Government response

Section 3 – Commencement

Provisions

3. Section 3(2) provides that the Scottish Ministers may by order bring section 1 and 2 of the Bill into force on an appointed day. (Section 8 of the Interpretation and Legislative Reform (Scotland) Act 2010 allows different days to be appointed for different purposes).

4. Section 3(3) provides that a commencement order may include transitional, transitory or saving provision.

Committee consideration

5. The Committee noted that a commencement order made under section 3 will not be subject to any form of parliamentary procedure (it will be ‘laid-only’). The Committee also noted that, as provided for in section 3(3), the order may contain transitional, transitory or saving provisions.

6. The Committee accepted in principle that transitional, transitory and saving provisions may be required in a commencement order under this Bill. However, the Committee considered that the use of such provisions could have a potentially significant effect on certain persons affected by the Bill. The Committee noted, for example, that a commencement order made under section 3 could contain transitional provisions relating to the adjustment of prisoner release dates. Further to

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\(^1\) Prisoners (Control of Release) (Scotland) Bill [as introduced] available here: [http://www.scottish.parliament.uk/S4_Bills/Prisoners%20(Scotland)%20Bill/b54s4-introd.pdf](http://www.scottish.parliament.uk/S4_Bills/Prisoners%20(Scotland)%20Bill/b54s4-introd.pdf)
this, the Committee considered that it may be possible for the powers to be exercised in such a way as to have a different effect on different prisoners. This possibility of differential effects on prisoners could, depending upon the provisions, raise consideration of rights which are protected by the European Convention on Human Rights.

7. The Committee wrote to the Scottish Government to ask whether it would consider bringing forward an amendment to make the power at section 3(2) subject to Parliamentary scrutiny in the form of either the negative or the affirmative procedure.

8. The Government’s response explained that the powers in section 3(2) and 3(3) will be used to make a ‘straightforward commencement order’ which will relate specifically to the commencement of the Bill. The Scottish Government therefore did not consider it necessary for the power to be subject to any form of Parliamentary scrutiny.

9. On considering this response, however, the Committee remained of the view that where a commencement order includes transitional, transitory or saving provision in terms of section 3(3) of this Bill, it should be subject to Parliamentary scrutiny.

10. The Committee therefore recommended that the Scottish Government bring forward an appropriate amendment at stage 2, to make a commencement order made under section 3(2) subject to the negative procedure, where it contains transitional, transitory or saving provisions.

Scottish Government response

11. The Government’s response to the report reiterated its view that it would not be appropriate for the power at section 3(2) to be made subject to any form of Parliamentary procedure (other than being laid before Parliament).

12. The Government also pointed out that the Parliament will be given an opportunity to express its views on the commencement order made under section 3 when it is laid before Parliament.
ANNEX

Correspondence from the Scottish Government, dated 17 February 2015.

We note the recommendation to amend the Bill at Stage 2 so that the commencement power in section 3(2) would be subject to negative procedure. As outlined in previous correspondence, our view is that additional procedure beyond laying is not appropriate in connection with the power (including as allowing for transitional, transitory or saving provision of the sort in contemplation). As ever, the Parliament can assess and offer views on the terms of the commencement order once laid.
Prisoners (Control of Release) (Scotland) Bill: The Committee considered the Scottish Government's response to its Stage 1 report and agreed that it would raise the issue of whether the power at section 3(2) of the Bill be made subject to Parliamentary scrutiny during the course of the Stage 1 debate on the Bill.
Prisoners (Control of Release) (Scotland) Bill: Stage 1

11:36

The Convener: Agenda item 4 is consideration of the Scottish Government’s response to the committee’s stage 1 report on the Prisoners (Control of Release) (Scotland) Bill. Members have seen the briefing paper and the response from the Scottish Government.

Do members have any comments?

John Mason: When we discussed the issue previously, I certainly felt—and I think that most of the committee felt—that it was quite a serious one. It is a bit disappointing that there seems to have been absolutely no give on the part of the Government.

I wonder where we should go now; I do not think that we should drop the matter completely. I stand to be corrected, but I think that the bill is at quite an early stage, so we have not had the stage 1 debate. Perhaps the issue could be raised in that debate.

Margaret McCulloch: I support John Mason’s suggestion.

Stewart Stevenson: I, too, suggest that the convener could express the committee’s view that the Government should look at the matter again, if the opportunity arises during the stage 1 debate. Failing that, any other member of the committee who participates in that debate could do so.

The Convener: Thank you, colleagues. We are unanimous in our view that we do not want to drop the matter, as it might give rise to significant issues. I hear what the committee says. If I get such an opportunity, I will take it; others might be able to do so. We will just have to see how the stage 1 debate goes—who gets to speak is not within our gift.

Are members comfortable with that approach?

Members indicated agreement.

The Convener: Are we content to note the response and, if necessary, to reconsider the bill after stage 2?

Members indicated agreement.
Thank you for the Justice Committee’s Stage 1 report on the Prisoners (Control of Release) (Scotland) Bill. Ahead of the Stage 1 plenary debate on Thursday 2 April, I enclose details in annex A of the Scottish Government’s initial response to the recommendations made in the report. Following the Stage 1 debate, I will provide a further response reflecting on the views offered by members and our own further considerations. I will also include an update on progress towards the McLeish Commission recommendations at that time.

I look forward to continuing to work effectively with the Committee and the wider Parliament in making the Bill as good as it can be to help reduce reoffending, protect public safety and make sentencing easier to understand.

I hope this is helpful.

Michael Matheson
Cabinet Secretary for Justice
1 April 2015
ANNEX A

SG response to Justice Committee’s Stage 1 report recommendations

(For ease of reference, the Committee’s comments are shown in bold and our responses are shown in italics)

1. The Committee endorses the report of the Delegated Powers and Law Reform Committee.

Scottish Government response

We note this.

2. The Committee notes the Cabinet Secretary for Justice’s commitment to end automatic early release for certain categories of prisoner and that these reforms, assuming their coverage is extended to all long-term prisoners, may be expected to affect around 3% of offenders receiving a determinate custodial sentence in any one year.

Scottish Government response

We note this.

3. The Committee welcomes the Cabinet Secretary’s willingness to reflect on the concerns and issues raised in respect of compulsory supervision and cold release.

Scottish Government response

We note this.

4. The Committee is in favour of all long-term prisoners being subject to a period of compulsory community supervision on release from custody. It calls on the Scottish Government to confirm whether its intention is that a guaranteed minimum period of compulsory supervision should, where the court has not imposed an extended sentence, take place during the period of custody imposed by the court. If this is not the intention, the Committee requires further details of how a minimum period of compulsory supervision would be guaranteed in practice. The Committee also notes the views of Professor Fergus McNeill and Dr Monica Barry that this might require the imposition of a new form of sentence.

Scottish Government response

We welcome support for the principle of ensuring all long-term prisoners leaving custody will have a period of mandatory control through supervision upon release.
It is of course the case that as discussed during evidence sessions with the Committee, many long-term prisoners will already have a period of mandatory control upon release as they will continue to receive Parole Board authorised early release and/or have in place an extended sentence.

We do accept though it is the case that for long-term prisoners who do not fall into either of these categories that new arrangements need to be made to ensure supervision will be in place and it is for this category of prisoner where we intend to lay relevant Stage 2 amendments to ensure a minimum mandatory control period in the community.

We note the comments from various stakeholders made in evidence that there are difficulties, including legal difficulties, in introducing post-sentence end controls over prisoners. For example, it is difficult to see how effective enforcement of breaches of any post sentence end controls could take place. Our view is therefore that ensuring a mandatory control period in the community towards the end of and part of a sentence is the most appropriate way of delivering the policy.

5. In relation to the length of any minimum period of compulsory community supervision, the Committee notes that periods ranging from three months to one year have been suggested in evidence, with the Cabinet Secretary suggesting between three and six months. The Committee believes that any guaranteed minimum period should be sufficient to allow effective post-release work with an offender following continuous risk assessment and should be proportionate to the length of the sentence. The Committee also requires the Scottish Government to provide information on what supervision and support might reasonably be achieved within the suggested periods and why these periods have been proposed.

Scottish Government response

We note this.

Any prisoner requiring guaranteed supervision through a mandatory control period will have, as a minimum, spent close to 4 years in custody. Our view is that the specific necessary period of control over a prisoner in this situation as compared to a prisoner leaving after, say, 10 years in custody is likely to be similar given both are extremely long periods of time to be incarcerated.

It was generally established during the evidence that the initial weeks and months following release that are often most critical for a mandatory control period to be in place. It is during this period when a prisoner leaving custody is required to re-establish themselves into their communities and when challenges such as accessing housing, employment opportunities etc. can be at their most acute.

We are minded to provide for a mandatory control period of 6 months as a minimum. This period would appear sufficient to have in place both any necessary protective conditions for prisoners leaving custody while also facilitating the work of criminal justice social work in assisting the prisoner with their reintegration and rehabilitation in the community while the period does not extend too far into the future.
We would welcome views from the Committee members, either in the Stage 1 debate or as part of Committee consideration ahead of Stage 2, as to what the appropriate length of the mandatory control period should be.

6. The Committee calls on the Scottish Government, in drafting any amendment, to fully consult the Parole Board for Scotland and representatives of criminal justice social work services on resource implications.

Scottish Government response

We note this and will consult in the manner suggested.

7. The Committee notes that debate on whether the extension of multi-agency public protection arrangements (MAPPA) might address some concerns about cold release has been overtaken by the terms of the Cabinet Secretary’s letter of 3 February. The Committee notes the consideration being given to extending MAPPA to other offences and the Cabinet Secretary’s commitment to keep the Committee informed of progress.

Scottish Government response

We note this and will provide the Committee with information about extending MAPPA to other offences in due course.

8. The Committee considers that the Cabinet Secretary’s proposal to extend the Bill to end automatic early release for all long-term prisoners is an improvement on the Bill as introduced.

Scottish Government response

We note this.

9. The Committee notes the Cabinet Secretary’s comments about the resourcing of the provisions and acknowledges that the changes will have effect over a relatively long period of time. Nevertheless, the Committee calls on the Scottish Government to provide updated estimates of the cost of the new provisions and how they will be resourced.

Scottish Government response

We note this and will provide the Committee with information about the financial implications of the proposed Stage 2 amendments alongside the lodging of the relevant amendments.

10. The Committee notes that the Policy Memorandum envisages that the provisions of the Bill will incentivise prisoners to engage with prison rehabilitation programmes. However, the Committee has concerns that demand for certain programmes may currently outweigh supply and recommends that an independent assessment be carried out to inform the
supplementary Policy Memorandum requested in paragraph 121 of this report. The Committee welcomes the commitment of the Scottish Government and Scottish Prison Service (SPS) to the development of prison rehabilitation programmes aligned to prisoner needs. The Committee calls on the Cabinet Secretary and the SPS to keep the Committee updated in relation to the development and resourcing of relevant programmes.

Scottish Government response

Following on from the Justice Committee 2013 Report Inquiry into purposeful activity in prisons, SPS recently concluded a Purposeful Activity review considering the full range of programmes and constructive interactions which promotes citizenship, develops learning and employability skills, builds life skills and resilience and addresses wellbeing and motivates personal engagement with both prison and community based services.

One of the recommendations of this review was that SPS carry out a full assessment of programme and psychology provision to ensure SPS continues to meet prisoners’ needs into the future. SPS are currently putting in place arrangements for this review to be carried by an external subject expert.

SPS has further advised that there are prisoners waiting to access prisoner programmes and in particular the key national programmes ‘Moving Forward Making Changes’ (sex offender programme) and ‘Self Change’ (violent Offenders). These programmes are resource intensive and require specialised delivery skills. In order to make the best use of these specific resources, SPS prioritises access to the programmes. Through Integrated Case Management, programmes are, where possible, delivered at the most appropriate time in their sentence, taking into account their willingness and readiness to engage and the availability of programme places.

SPS currently delivers 7 core Offender Behaviour Programmes to address prisoner key criminogenic needs and also a range of Approved Activities which are short, less intensive programmes. SPS has advised that in 2013-14 there were 751 Core Offender Behaviour Programmes completed and 490 Approved Activities.

We will continue to provide the Committee with updates in relation to the development and resourcing of relevant programmes.

11. The Committee notes the concerns of Professor Cyrus Tata that the Parole Board is being “set up for failure” but also notes the reassurances provided by the Board’s Convener, who disputed this comment and said he was “pretty sure that the board can cope with that”.
12. In light of the Board’s further written submission, the Committee calls on the Scottish Government to ensure that the Parole Board is sufficiently resourced.

Scottish Government response

We note this and will ensure sufficient resources are available to the Parole Board to carry out their expanded role under the proposals in the Bill.
13. The Committee notes the concerns of witnesses about the level of clarity for victims and the community in sentencing and is of the view that such issues should be prioritised for consideration by the Scottish Sentencing Council after it is established. The Committee also notes the comments of the Cabinet Secretary that the Bill provides victims with greater certainty in respect of the release arrangements for offenders, but also notes that Victim Support Scotland has called for greater transparency and clarity in the system.

Scottish Government response

We note the suggestion that the Scottish Sentencing Council, once established later this year, should consider prioritising work to look at the level of clarity for victims and wider communities in our sentencing system. We are keen for effective understanding of our system of sentencing as it is important for everyone, including victims, to understand how our courts carry out such a critical role within our justice system. We consider our reforms to end the current system of automatic early release at the two-thirds point of sentence will help improve understanding about how sentences operate for long-term prisoners.

As an independent body, it will be for the Scottish Sentencing Council themselves to consider its own work priorities in line with their overall statutory objectives which include ‘…promoting greater awareness and understanding of sentencing policy and practice.’

14. The Committee accepts that implementation of relevant reforms in the Custodial Sentences and Weapons (Scotland) Act 2007 (as amended by the Criminal Justice and Licensing (Scotland) Act 2010) may be problematic at this point in time. The Committee calls on the Scottish Government to review this area, with input from relevant stakeholders, to establish what wider reforms should be taken forward.

Scottish Government response

We will provide shortly a separate update on progress towards the set of recommendations contained in the 2008 McLeish Prisons Commission report. This update on progress should be seen within the context of one of the recommendations contained in the McLeish report indicating that fundamental reform to the system of early release could only be taken forward once all the recommendations of the report had been fully implemented and the prison population was at a much lower, sustainable level.

We note the recommendation to engage with stakeholders about further wider reforms and will undertake such engagement in line with the overall approach about the use of prisons as recommended by the McLeish report. The report

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1 Section 2(c) of the Criminal Justice and Licensing (Scotland) Act 2010 - http://www.legislation.gov.uk/asp/2010/13/part/1/crossheading/the-scottish-sentencing-council/enacted
recommended that the use of prison should be ‘...targeted where it can be most effective - in punishing serious crime and protecting the public.’

We are happy to provide the Committee with information about potential further reforms in due course.

15. The Committee notes the comments of witnesses about delaying the Bill until the Scottish Sentencing Council is established, but notes the Cabinet Secretary's comments that current reforms should not be delayed.

Scottish Government response

We note this.

16. The Committee is aware of ongoing concerns about the operation of automatic early release for short-term prisoners, but notes that the purpose of this Bill is the ending of automatic early release for long-term prisoners.

Scottish Government response

We note this.

17. The Committee is concerned that Professor Alan Miller advised us that the human rights impact statement is inadequate, for example with regard to the availability of rehabilitation programmes, and calls on the Scottish Government to revisit the statement.

Scottish Government response

We note the concern expressed by the Committee.

We ask the Committee to note that in relation to determinate sentence prisoners, which these provisions will impact upon, the jurisprudence to date would indicate that determinate sentence prisoners’ rights in terms of ECHR will not be impacted by failures to provide timeous access to offence focussed programmes, although that is currently the subject of challenge in certain cases currently before the courts.

SPS has provided their current position in relation to the availability and delivery of rehabilitation programmes in the response to recommendation 10.

We will consider further the request to revisit the human rights statement.

18. The Committee notes the clear support for the provisions of section 2 of the Bill and welcomes the flexibility that this provides for the SPS to better manage re-integration into the community.

Scottish Government response

We note this.
19. The Committee welcomes the Cabinet Secretary’s decision to act on evidence received at Stage 1. The Committee also welcomes the Cabinet Secretary’s willingness to reflect on the recommendations of this report in informing the detail of his Stage 2 amendments. Nevertheless the Committee considers that the level of detail provided in the Cabinet Secretary’s letter of 3 February 2015 was insufficient to inform the views of witnesses and the Committee on its proposed changes to the Bill. Given the extent of the proposed Stage 2 amendments, the Committee requests that the Scottish Government brings forward a supplementary Policy Memorandum alongside any other supplementary accompanying documents it may lodge at that point.

20. Again, given the extent of the proposed amendments, the Committee requests that the Scottish Government bring forward a supplementary Financial Memorandum at Stage 2.

Scottish Government response

We note this and will provide the Committee with information about the financial implications of the proposed Stage 2 amendments alongside the lodging of the relevant amendments.

21. The Committee supports the general principles of this Bill.

22. The Committee notes that, as set out in the Cabinet Secretary’s letter to the Committee of 3 February, the Bill will be amended at Stage 2. Whilst the Committee welcomes the broad policy intention of those proposed amendments, it requires further detail on their implications, and will seek sufficient time at Stage 2 to allow it to conduct the thorough scrutiny expected by witnesses and the general public.

Scottish Government response

We note this and are aware such decisions will be made in line with the normal arrangements of the Parliament.
Note: (DT) signifies a decision taken at Decision Time.

**Prisoners (Control of Release) (Scotland) Bill:** The Cabinet Secretary for Justice (Michael Matheson) moved S4M-12878—That the Parliament agrees to the general principles of the Prisoners (Control of Release) (Scotland) Bill.

After debate, the motion was agreed to ((DT) by division: For 70, Against 0, Abstentions 10).

**Prisoners (Control of Release) (Scotland) Bill: Financial Resolution:** The Deputy First Minister and Cabinet Secretary for Finance, Constitution and the Economy (John Swinney) moved S4M-11827—That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Prisoners (Control of Release) (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act.

The motion was agreed to (DT).
On resuming—

Prisoners (Control of Release) (Scotland) Bill: Stage 1

The Deputy Presiding Officer (Elaine Smith): Good afternoon. The first item of business is a debate on motion S4M-12878, in the name of Michael Matheson, on the Prisoners (Control of Release) (Scotland) Bill at stage 1.

Before I call the cabinet secretary to speak, I express my regret that he was late for proceedings—I consider that a discourtesy to Parliament—and therefore we have started late.

The Cabinet Secretary for Justice (Michael Matheson): I begin by apologising for my late arrival, which was entirely my fault and responsibility.

I welcome the opportunity to speak in this debate at stage 1 of the Prisoners (Control of Release) (Scotland) Bill. I thank the Justice Committee, the committee’s clerks and those who gave evidence during stage 1 scrutiny of the bill.

I welcome the support for the bill’s general principles that is given in the committee’s stage 1 report. The issue of the early release of prisoners has been raised in Parliament frequently since the current system was introduced nearly 20 years ago. Section 1 of the bill will fundamentally change the system of automatic early release for long-term prisoners. A long-term prisoner is anyone serving a sentence of four years or more. Currently, such a prisoner is entitled to automatic early release if they are still in custody at the two-thirds point of their sentence.

The system operates so that there is absolutely no discretion to keep dangerous prisoners in custody beyond the two-thirds point. In our view, that is not the right system. The system’s operation has regularly brought criticism because it is difficult to explain why dangerous prisoners have to be released in that way when one third of their sentence is left.

The alternative to automatic early release is discretionary early release. That is where the independent Parole Board for Scotland considers an individual prisoner’s case and decides whether to authorise early release on the basis of an assessment of the risk that the individual poses to public safety.

The evidence is clear: the rate at which prisoners breach their licence conditions when granted automatic early release is seven times higher than the breach rate for prisoners who are granted Parole Board discretionary early release.
The rate at which prisoners are recalled to custody when granted automatic early release is five times higher than the recall rate for prisoners who are granted Parole Board discretionary early release. The independent Parole Board does a challenging and difficult job well, and the bill will give it further powers to carry on its good work and to consider more individual cases in the future, rather than indiscriminate automatic early release taking place at the two-thirds point of the sentence.

We think that it is right to trust the Parole Board’s judgment by giving it that enhanced role. It will help to keep our communities safer while allowing parole release to aid a prisoner’s reintegration into the community when the risks to public safety are manageable in the community.

In early February, we announced that we would expand the bill’s reach to end the current system of automatic early release for all long-term prisoners. That is the right approach to apply our policy’s benefits to a wider group of prisoners.

If Parliament approves the bill, including our stage 2 proposals, that will mean that no prisoner receiving a sentence of four years or more will be entitled to automatic early release at the two-thirds point of the sentence. Decisions about early release will be left to our trusted independent Parole Board. Dangerous prisoners will no longer be entitled to leave custody two thirds of the way through their sentence. If a prisoner is assessed as posing an unacceptable risk to public safety, they will serve their sentence for a longer period in prison. That will help to reassure communities, reduce reoffending and protect public safety.

Concerns were expressed at stage 1 that, following our reforms, some long-term prisoners might be left in a position where they were subject to what has been called “cold release”—release without the ability to apply specific controls over the prisoner through supervision of them in the community. We have listened and responded to those concerns by committing to ensuring supervision through a period of mandatory control, which will now apply to all long-term prisoners leaving custody.

That mandatory control period will help to ensure effective assistance to reintegrate prisoners into their communities. Robust steps will also be able to be taken to bring prisoners back into custody if conditions of release are breached.

It is important to stress that the need for a mandatory control period will apply to a relatively small proportion of long-term prisoners. That is because many long-term prisoners will continue to receive Parole Board early release or will have an extended sentence in place. For those prisoners, a period of mandatory control will always be in place on release from custody, through licence conditions. However, when a prisoner does not receive Parole Board early release and does not have an extended sentence, a mandatory control period on release needs to be put in place, with the conditions set by the Parole Board.

The Justice Committee’s stage 1 report raised two important issues about the mandatory control period. First, the committee explored whether the period might be part of the sentence. It is clear that a mandatory control period after a sentence had ended would be problematic, given that the sentence has been imposed by the court and has ended. It is difficult to see how such a period of mandatory control could be effectively enforced if it was post sentence end. In line with the evidence that the committee received, we therefore consider that the mandatory control period in the community should be part of the sentence.

Secondly, the committee explored how long the mandatory control period in the community should last. Any prisoner requiring supervision through a mandatory control period will have spent, as a minimum, close to four years in custody. Our view is that the necessary period of control over a prisoner who has served close to four years is likely to be similar to that of a prisoner leaving after, say, 10 years in custody, given that both are extremely long periods to be incarcerated.

Members will be aware from the evidence that they have heard that the initial weeks and months following release are generally the most crucial for prisoners. That period after leaving custody is when prisoners have to re-establish themselves in their communities, when challenges such as those faced in accessing housing or work opportunities can be at their most acute and when a mandatory control period would be most appropriate.

At this stage, I am minded to provide for a minimum mandatory control period of six months. Such a period would seem a good balance, so that mandatory control is in place in the crucial first few weeks and months following a long period of incarceration, but it does not extend too far into the future. However, I would welcome further views in the debate about the appropriate length of the mandatory control period.

Reducing reoffending is a key justice priority for the Scottish Government. Earlier this week, we announced that the reconviction rate fell by nearly 6 per cent between 2011-12 and 2012-13 and that it is now at its lowest level in 16 years. That is welcome news. Coupled with recorded crime being at its lowest level in 40 years, that is testament to the commitment of the police, prosecutors, our courts, education and social services and other justice partners such as the Scottish Prison Service, which are working hard to address offending and its underlying causes.
Despite those significant improvements in recent years, reoffending has significant implications for public services and taxpayers’ money. Reducing reoffending requires more effective and closer links between the criminal justice system and wider public and third sector partners. A Scottish Government ministerial group on offender reintegration was established in October 2013 to address the demand for better integration between the criminal justice system and wider public services so as to facilitate a reduction in reoffending.

Individuals rely on key public and third sector services to address a range of basic and practical requirements on release from prison. Failure to address them in a timely and effective manner can hinder prisoners’ ability to turn their lives around and live a life free from crime. Section 2 of the bill will help in that important area.

In 2011-12, there were approximately 10,500 liberations of convicted prisoners, of which a large proportion—approximately 40 per cent—were released on a Friday or on the Thursday preceding a public holiday weekend. Release on the days preceding weekends and public holidays is consistently raised as a key barrier to plugging the gap between receipt of support in custody and access to wider services in the community. Access to key public services such as housing, welfare and addictions services on the day when prisoners are released can be crucial in helping them to break the pattern of offending. The problem can become even more acute when release happens immediately before a weekend or public holiday.

When there is evidence that suitable arrangements are required to address a prisoner’s reintegration needs and they cannot be addressed immediately on release, section 2 will allow the prisoner’s release to be brought forward by up to two days. I welcome the Justice Committee’s strong support for section 2.

The bill will improve the system of early release by allowing decisions about how and when long-term prisoners are released from custody to be informed by individual consideration of a prisoner, the risks to public safety that the prisoner poses and the need for effective supervision. That is the best of both worlds and ensures that dangerous prisoners do not get released automatically, while all long-term prisoners will receive a minimum mandatory control period in the community when they leave custody. That is the best way to protect communities and to reassure the public.

I move,

That the Parliament agrees to the general principles of the Prisoners (Control of Release) (Scotland) Bill.
reoffending recommences. Having timely access to services will help a person’s reintegration and ultimately reduce the chances of them reoffending, which is in everyone’s interest. It is a positive, progressive measure.

Although much of the focus of today’s debate will doubtless be on section 1, we should not lose sight of what is an important and practical move. At the outset, I want to put on record the committee’s whole-hearted endorsement of section 2.

I turn to section 1, on the restriction of automatic early release. I use the word “restriction” as I refer again to the bill as introduced, which was just going to end automatic early release for sex offenders receiving determinate custodial sentences of four years or more and other offenders receiving determinate—that is, other than life sentences—custodial sentences of 10 years or more.

The evidence that we received on section 1 was generally sceptical of the provisions of the bill as introduced, with witnesses such as the Risk Management Authority Scotland questioning the focus on sex offenders, given that—despite tabloid headlines—that category of prisoner is statistically less likely to reoffend, notwithstanding the fact that there have been some very serious and horrible exceptions. The committee was therefore pleased to receive, on 3 February, a letter from the cabinet secretary committing to lodge at stage 2 amendments to extend the bill’s provisions to all prisoners serving four years or more, thereby addressing the concerns that had been expressed about the focus on sex offenders.

Witnesses also questioned other aspects of the bill as introduced, such as whether it would achieve the objective of improving public protection. Academics such as Professor Cyrus Tata from the University of Strathclyde argued that the provisions would simply lead to an increase in cold release. That is because, if prisoners are released at the completion of their full sentence, there is no requirement for compulsory supervision—I know that the cabinet secretary has addressed that—hence the word “cold”, as in, I suspect, doing cold turkey.

Professor Fergus McNeill from the University of Glasgow described that as an act of “storing the risky”, as the types of prisoners who will be kept inside under the provisions of the bill are, by definition, those who have not engaged with the Parole Board for Scotland and who pose the greatest risk to the public. Witnesses worried that the bill as introduced would simply kick the can down the road and store up bigger problems for later years. It could also have a perverse effect, in that some prisoners might opt to do their full whack and thus avoid any supervision on release.

The committee was pleased to receive the cabinet secretary’s letter, which committed to lodging amendments to provide a minimum period of compulsory supervision in the community, as he has described today, for each long-term prisoner at the end of their sentence. I welcome the cabinet secretary’s willingness to listen to the evidence heard at stage 1 and to act accordingly.

Having said that, the committee has some remaining questions, which are rehearsed in detail in our report. We are still unclear as to how the compulsory supervision will be imported into the sentencing process, what the compulsory supervision will look like in practice and when it will apply, although we have now been told for how long. We also still have questions about the cost of the proposals and the impact that they will have on the likes of the Parole Board and criminal justice social workers, to name two of the stakeholders involved. We have therefore recommended that the Government publish supplementary financial and policy information at stage 2.

During stage 1, we received evidence about the availability of prison rehabilitation programmes, with some witnesses claiming that there was a supply problem with certain programmes, as opposed to a lack of demand. The Scottish Prison Service acknowledged some of those concerns, but countered that issues around supply may relate to prisoners’ wants rather than their needs. However, we would welcome updates from the cabinet secretary and the SPS on the development and resourcing of programmes, given that the bill’s policy memorandum envisages that the provisions of the bill will incentivise prisoners to engage with programmes.

Connected to that, we were told by Professor Alan Miller of the Scottish Human Rights Commission that the bill’s human rights statement was inadequate. That concerned us, and we have called on the Scottish Government to revisit that statement. For example, if there is no access to rehabilitation programmes and that imperils a prisoner’s release, that prisoner might have a claim under the European convention on human rights.

We also have questions about the impact of the bill on the Parole Board. Professor Tata argued in evidence that the Parole Board was being set up for failure. That comment was disputed by the convener of the board, but the board subsequently wrote to the committee stating that

“it may need some support from Scottish Government to manage the impact.”

We therefore called on the Government to ensure that the Parole Board is sufficiently resourced.
Clarity in sentencing is important to the victims. Some witnesses told us that the bill muddied the waters in respect of sentencing. That was disputed by the cabinet secretary, who argued that the bill gives victims the certainty that the offender will not be released automatically two thirds of the way into their sentence.

Alternative approaches were suggested. Some witnesses suggested an alternative approach would be to commence an existing statute, namely the Custodial Sentences and Weapons (Scotland) Act 2007, as amended by the Criminal Justice and Licensing (Scotland) Act 2010.

Other witnesses believed that the bill should be delayed until the Scottish sentencing council is set up in autumn this year. On balance, committee members were not persuaded of the merits of delaying the bill. However, we call on the Government to review legislation in this area to establish which wider reforms should be taken forward.

In conclusion, an overwhelming majority of committee members welcomed the general principles of the bill. There is no doubt, from the evidence that we heard, that reform of the court service is long overdue. However, in certain areas, as I indicated, we remain to be convinced that some of the measures will achieve what they set out to achieve. On behalf of the committee, I encourage the Parliament to support the general principles of the bill at decision time tonight.

14:55

Elaine Murray (Dumfriesshire) (Lab): I thank the clerks and the witnesses for their efforts in bringing a lot of issues to the committee’s attention during the stage 1 process.

The Scottish National Party manifesto in 2011 stated that the party would

“remain committed to ending automatic early release once the criteria set by the McLeish Commission are met.”

However, we must be clear about the fact that the bill does not end automatic early release. As introduced, it would have affected 1 per cent of offenders; with the suggested amendments, it will affect 3 per cent of offenders. The vast majority of offenders, and perceptions of sentencing among the vast majority of victims of crime, will not be affected by the bill even as amended.

Of people receiving a custodial sentence in 2012-13, 317 offenders were serving sentences of more than four years; 47 were serving life or indeterminate sentences; and 14,084 were given short-term sentences of less than four years. The offenders who are serving short-term sentences will still be released after serving one half of the sentence and—other than sex offenders who are serving six months or more—they will not be subject to supervision by criminal justice social work.

In 2011-12, the reconviction rate for offenders serving between three and six months was 53 per cent, whereas the rate for prisoners serving more than four years was 13 per cent.

The Scottish Government is not making much progress in achieving the reduction in prison population that was recommended by the McLeish commission. The cabinet secretary cited some figures today; however, the prison population statistics go up and down. In 2011-12, for example, there was an increase in the average prison population of 4 per cent over the previous year; a 9 per cent increase in those on remand; and a 3 per cent increase in the sentenced population, with a projection—from the Scottish Government’s own figures—that the average prison population would increase to 9,500 by 2020-21. It does not look as if automatic early release will be ended in the near future or even in the medium term.

The policy memorandum to the bill states that its provisions will improve public safety, but the extent to which they will do that is debatable given that the bill legislates for the cohort of prisoners with the lowest reconviction rates. Obviously, those offenders have been convicted for much more serious crimes, and therefore their reoffending could be more dangerous.

However, Dr Monica Barry of the University of Strathclyde told the committee when giving evidence on the original bill that

“sex offenders are the most compliant of ex-prisoners you will find.”—[Official Report, Justice Committee, 13 January 2015; c 2.]

The Risk Management Authority Scotland agreed, based on Parole Board for Scotland statistics, and suggested in written evidence that the bill should refocus on

“risk of serious harm rather than offence type.”

Dr Barry also advised the committee:

“If the Government is piloting this with high-risk violent offenders and sex offenders, it is probably piloting it with the wrong people. If it is going to abolish early release, it should be going for the lower end, such as dangerous driving, which is probably a higher risk to the public than sex offenders, or common street crimes such as shoplifting, theft or breach of the peace.”—[Official Report, Justice Committee, 13 January 2015; c 6.]

One of the major concerns over the bill as drafted was that violent offenders who did not qualify for early release would be released into the community cold, with no supervision. Sex offenders are subject to the multi-agency public protection arrangements—or MAPPA—with regard to the risk that they pose on release, but although
that the work of the Scottish sentencing council in the first place. The Howard League Scotland, front-door sentencing, or sending people to prison—release arrangements bill addresses only back-door sentencing offences. Unfortunately, as things stand, it is not clear how that will be achieved. Moreover, it will be achieved only for victims of a small number of albeit serious offences.

The Cabinet Secretary for Justice is to be commended for listening to the evidence of witnesses and subsequently proposing amendments that will extend the ending of automatic early release to all long-term prisoners and—importantly—ensure that all such prisoners are subject to supervision on release, including when they have served the full term of the sentence. However, without seeing the amendments, it is difficult to comment much further, other than to welcome the cabinet secretary’s recognition that the original bill was seriously flawed.

To what extent will the amended bill equate to a partial introduction of the provisions of the Custodial Sentences and Weapons (Scotland) Act 2007, as amended by the Criminal Justice and Licensing (Scotland) Act 2010, in introducing for long-term prisoners sentences that are composed of a part that must be served in custody and a part that will be served under supervision in the community? Witnesses in the final evidence session, which took place after the cabinet secretary had written to the committee on his intentions to amend the bill, were unclear whether the cabinet secretary was proposing to add compulsory supervision to sentences that had already been completed in custody, or the provision of compulsory supervision in the community as part of the original sentence. According to Dr Barry and Professor Fergus McNeill, the former would amount to a type of new sentence.

Scottish Labour agrees that there should be clarity in sentencing and that victims, the community and offenders should understand what the imposed sentence means in practice. Unfortunately, as things stand, it is not clear how that will be achieved. Moreover, it will be achieved only for victims of a small number of albeit serious offences.

Several witnesses expressed concerns that the bill addresses only back-door sentencing—the release arrangements—and does not consider front-door sentencing, or sending people to prison in the first place. The Howard League Scotland, Professor McNeill and Professor Tata suggested that the work of the Scottish sentencing council—which will, we understand, be set up at long last in October this year—is being pre-empted by the bill. Professor Tata told the committee:

“One of the beauties of such a body is that it can be a buffer between the judiciary, the parole board, the SPS, social work and other parts of the system that are trying to do their job and, if you like, penal populism. It can take the heat out of the situation. If a case is given to the sentencing council to be looked at, that immediately takes it away from the control of ministers and the political pressures that they are under.”—[Official Report, Justice Committee, 20 January 2015; c 9.]

We are all under those pressures, too, of course.

There are significant human rights concerns, as Christine Grahame has already said. Professor Alan Miller described the human rights impact statement as “not adequate”, and he had particular concerns about offenders’ rights if they are refused early release by the Parole Board for Scotland under circumstances in which rehabilitation programmes that may have made them eligible have not been available.

An answer that my colleague Graeme Pearson received last month revealed that, of the 900 sex offenders who were in custody, 120 had completed or were undergoing the moving forward: making changes sex offender programme and 150 offenders had been assessed as potentially benefiting from the programme. The answer that the chief executive of the Scottish Prison Service, Colin McNeice, provided said that they “may proceed to do so according to their case management plan, their continued motivation and”—this is important—“as resources allow”. He also said that 100 offenders had refused treatment.

The chief executive of the Scottish Prison Service spoke to the committee about the difference between wants and needs. That answer says that 150 sex offenders have been assessed as potentially benefiting from the programme, but they may get it only if resources allow. If any of those offenders is refused early release because they have not been able to access the MFMC programme because of a lack of resource, they may well have a human rights challenge. That really needs to be looked at.

As the cabinet secretary and Christine Grahame have said, section 2, which introduces early release for community reintegration, was welcomed by all the witnesses and, indeed, all the members of the committee, as it was seen that that would be of benefit to prisoners who may be released at the weekend without adequate services being in place for them after release.
The decision to substantially amend the bill at stage 2 means that neither the policy memorandum nor the financial memorandum is now accurate. We believe that, once the cabinet secretary has decided on the exact form of his amendments at stage 2, it will be necessary to issue supplementary memorandums that reflect the significant changes in the bill.

Had the cabinet secretary not indicated that he was prepared to amend the bill at stage 2, Scottish Labour would have voted against the bill as drafted. It would have ended automatic early release for a very small number of offenders—only 1 per cent—and would have had the unintended consequence of releasing dangerous, unreformed offenders cold into the community without supervision at the end of their sentence. Their automatic early release would have been withdrawn, but potentially they could have been of greater danger to the public at the point of release.

The original plan, of course, was to introduce the provisions as stage 2 amendments to the Criminal Justice (Scotland) Bill, which, as we know, is suspended pending the Bonomy review of any safeguards that are required by the abolition of the requirement for corroboration. Thankfully, that did not happen, because if the proposals had been brought in by way of stage 2 amendment to the Criminal Justice (Scotland) Bill, they would not have been subject to the degree of scrutiny that has been applied to the Prisoners (Control of Release) (Scotland) Bill. That scrutiny resulted in the current cabinet secretary listening to the concerns of witnesses and indicating that he was prepared to substantially amend the bill.

As the cabinet secretary has done that, we will support the bill at stage 1. We do not yet know what the amendments will be, or whether and how they will adequately address the points that witnesses made to the committee. Those are matters for discussion at stage 2 and stage 3, and we will come to our conclusions at those stages.

Scottish Labour wants to go further than the bill does on sentencing policy and on the transparency of sentencing. Even with the proposed amendments, the bill will not be enough, but we are prepared to give the Government the benefit of the doubt and to support the bill at decision time in the hope that, once it has been amended at stage 2, it will achieve—albeit to a limited extent—a better outcome than the current situation.

15:05

**Margaret Mitchell (Central Scotland) (Con):**
This stage 1 debate on the Prisoners (Control of Release) (Scotland) Bill is an important one. I thank the clerks, the convener and my fellow members of the Justice Committee for all their hard work, and I pay tribute to all the witnesses, who gave such invaluable evidence.

The bill has two main sections. Section 2 seeks to provide the Scottish Prison Service with the power to release prisoners up to two days early in order to facilitate community reintegration. That is a sensible provision that seeks to create the flexibility to ensure that appropriate throughcare, including housing and so on, is in place for prisoners on their release in an effort to deal with some of the problems that we know lead to reoffending after release.

I turn to section 1. Although I sympathise with the predicament that the new cabinet secretary has inherited, that does not alter the fact that the bill as drafted—and the proposed stage 2 amendments—is nothing short of a dog’s breakfast.

The aim of the bill is to reduce reoffending and increase public safety. That was the supposed rationale behind targeting the provision at offenders who had received sentences of more than 10 years and sex offenders who were serving sentences of four years or more. However, as witnesses pointed out, there is no logic in targeting that particular group because evidence shows that sex offenders have the lowest reoffending rates of all categories of prisoner.

In addition, the bill would apply to less than 1 per cent of offenders in Scotland. The cabinet secretary clearly recognised that the original proposals fall well short of the mark, so the Scottish Conservatives welcomed the improvement that the cabinet secretary announced when he indicated that he intends to extend abolition of automatic early release to all prisoners who are serving long-term sentences of four years of more. That means that at least we have moved from the bill covering 1 per cent of prisoners to its covering 3 per cent of them, but that does not alter the fact that 97 per cent of prisoners will still automatically be released early. As the cabinet secretary said in evidence to the committee,

“It is worth keeping in mind that we are talking about a very small number of prisoners and that it will be several years into the future before any of this will start to have an impact.”—[Official Report, Justice Committee, 3 March 2015: c 477.]

It is therefore a real concern that, as the Law Society of Scotland stated,

“the most radical change in custodial sentencing policy for twenty-two years is to be introduced by way of a government amendment”.

**Christian Allard (North East Scotland) (SNP):**
Will Margaret Mitchell take an intervention?
Margaret Mitchell: If Mr Allard does not mind, I will make some progress.

That is not a precedent that the Scottish Parliament should set or encourage, and nor is the cabinet secretary’s piecemeal filtering down of more information as recently as yesterday, in an attempt to address the numerous unanswered questions that the proposed change has prompted, any more acceptable.

Furthermore, evidence from witnesses such as the University of Strathclyde’s Professor Cyrus Tata highlighted the fact that the proposals could result in a prisoner being released without supervision on what has been termed “cold release”. He confirmed that, in such cases, released prisoners would be more likely to reoffend.

Moreover, instead of clarifying already complicated sentencing policy, the bill—to quote Dr Monica Barry from the University of Strathclyde—merely “muddies the water”.

Victim Support Scotland wants “greater clarity and transparency in the system, so that victims and the community are better able to understand sentencing.”—[Official Report, Justice Committee, 24 February 2015; c 14.]

That is why it supports the Scottish Conservatives’ call for the ending of automatic early release for all prisoners, which would provide clarity and honesty in sentencing.

Witnesses have also raised issues regarding the shortage of places on rehabilitation programmes in prison. With demand outstripping supply, there is—as Professor Miller confirmed—an issue about the human rights impact statements being inadequate. Therefore, the committee recommended that an independent assessment of the provision and availability of rehabilitation programmes in prison be carried out. I look forward to hearing the cabinet secretary’s response to that.

The Justice Committee’s task was to scrutinise the bill. In addition to dealing with all the flaws that I have just identified, it is being asked to form a view on a policy change that has been announced at the final hour, without having sight of a revised policy memorandum, financial memorandum or explanatory notes. That is hardly conducive to effective scrutiny. Stakeholders across the board have echoed that view, and many witnesses are calling for the bill to be withdrawn.

For those reasons, I dissented in committee from agreeing to the general principles of the bill. Those reasons are also why the Scottish Conservatives will abstain at stage 1.

Nigel Don (Angus North and Mearns) (SNP): I speak on the bill in my capacity as convener of the Delegated Powers and Law Reform Committee. Although the bill contains only one delegated power, the committee has concerns about how that power may be exercised. Indeed, the strength of the committee’s concerns is such that it agreed that I should take the unusual step of contributing to the debate from its perspective.

Section 3(2) provides that the Scottish ministers may, by order, bring sections 1 and 2 into force on an appointed day. Section 3(3) provides that such a commencement order “may include transitional, transitory or saving provision.”

In considering the bill, the committee noted that a commencement order made under section 3 will not be subject to any form of parliamentary procedure, irrespective of whether it includes transitional provisions. That provision for the attachment of transitional provisions to a commencement order, combined with the lack of opportunity for parliamentary scrutiny of such provisions, has prompted me to speak today.

The committee has accepted in principle that “transitional, transitory or saving provision” may be required in a commencement order under the bill, but it considers that the use of such provisions could have a significant effect on certain persons who will be affected by the bill. For example, the committee noted that a commencement order that is made under section 3 could contain transitional provisions relating to the adjustment of prisoner release dates and that it may be possible for the powers to be exercised in such a way as to have different effects on different prisoners. The possibility of different effects on prisoners could, depending on the provisions, raise consideration of rights that are protected by the European convention on human rights.

The committee wrote to the Scottish Government to ask whether it would consider lodging an amendment to make the power at section 3(2) subject to parliamentary scrutiny through negative or affirmative procedure. The Government’s response explained that the powers in subsections (2) and (3) would be used to make a straightforward commencement order that would relate specifically to commencement of the bill. Therefore, the Scottish Government did not consider it necessary for the power to be subject to any form of parliamentary scrutiny.

However, on considering the response, the committee’s view remained that where a commencement order includes transitional, transitory or saving provision under section 3(3), it
should be subjected to parliamentary scrutiny. Therefore, the committee recommended in its report that the Scottish Government lodge an appropriate amendment at stage 2 to make a commencement order made under section 3(2) subject to negative procedure if it contains such provisions.

However, the Government’s response to the report reiterated its view that it would not be appropriate for the power at section 3(2) to be made subject to any form of parliamentary procedure other than an order being laid before Parliament. The Government also pointed out that Parliament will be given an opportunity to express its views on a commencement order made under section 3 when it is laid.

We are not persuaded by that response. The committee’s view remains that, where a commencement order includes a transitional, transitory or saving provision that is of the potential significance of those for the bill, then such a power should be subject to parliamentary scrutiny.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Is it the committee’s view that that is not simply a matter in relation to this bill, but a principle that it wants to apply in similar circumstances in similar bills?

Nigel Don: Stewart Stevenson’s point is absolutely fair. As a member of the DPLR Committee, he will accept that that is our concern. We have tried to bring principled arguments to bear on this bill as we would with every other bill. The point that I am making is the same one that I would make about any other bill in similar circumstances.

Merely providing for an order to be laid does not, in the committee’s view, allow Parliament sufficient opportunity to scrutinise it, nor does it offer Parliament any sanction should it have any concern about the order. Therefore, I would welcome an assurance that the Scottish Government will reflect on the matter further, with a view to amending the bill at stage 2.

15:16

Roderick Campbell (North East Fife) (SNP): In historical terms, parole is quite recent, and the Parole Board for Scotland was set up only in 1968. Parole was subject to an important review by Lord Kincraig, in which he stated:

“the proper objective of parole is to ensure that the release of all long-term prisoners takes place under such conditions and at such a time (within the overall sentence of the court) that the risk to the public may be minimised; and that decisions on the conditions and timing of release take into account, amongst other things, any changes in the offender or his circumstances and any increased knowledge of the offender since the passing of the original sentence.”

That was the position then. In my view, it remains true today.

Of course, the Conservative Government of the day put in legislation the changes that were proposed by Lord Kincraig. It is interesting to read Ian Lang’s comments from the time on what became known as the Prisoners and Criminal Proceedings (Scotland) Act 1993. He argued in support of the then new early-release provisions and in opposition to those who argued that the sentence of the court should be precisely that.

Times have moved on. The modern Conservative Party appears to take a different view, although I must say that I find it rather difficult to accept that a party that is opposed to, and which believes in ending, automatic prisoner release across the board can dissent from the bill’s general principles.

On the Justice Committee’s report, it is fair to say that in the course of our evidence sessions there was disquiet that sex offenders serving four years or more, rather than all offenders serving four years or more, were highlighted in the bill. It is certainly more appropriate to concentrate on the length of sentence and the type of offender. Therefore, I warmly welcome the proposed stage 2 amendments in that regard.

We also need to bear it in mind that the bill is in addition to existing powers that are available to the courts in relation to extended sentences in which, at the time of sentencing, offenders are thought to be likely to pose a continuing risk. Even under the likely stage 2 amendments, what we are talking about will apply only to a small cohort of prisoners—about 3 per cent of offenders receive a determinate sentence in any one year.

The full impact of the bill will be measured over several years. As has been pointed out on numerous occasions since the McLeish commission reported, until overall prison numbers are significantly reduced it will not be possible to extend provisions more widely in relation to the ending of automatic early release. However, it is a start, especially when—as the cabinet secretary has said—we know that someone who is released automatically at present is about seven times more likely to breach their licence conditions than someone who is released after a Parole Board decision.

As the cabinet secretary said in evidence, in 2012-13

“The rate at which non-parole-released prisoners breached their licence conditions was 37 per cent, compared with 5.5 per cent for parole-released prisoners.”—[Official Report, Justice Committee, 3 March 2015, c 35.]

I hope that that will enable proper focus on rehabilitative programmes, which go hand in hand...
with the ending of automatic early release. As the policy memorandum makes clear, the absence of automatic early release may encourage greater interest in participation in the programmes. How great an incentive it will be remains to be seen, but I am encouraged that Professor Alan Miller of the Scottish Human Rights Commission accepted that it will provide an incentive to participate.

The important thing must surely be to ensure that we have the resources available for rehabilitation. As Colin McConnell of the Scottish Prison Service said in evidence, we need to “prioritise and sensitise the opportunities that best match the needs of the individual”,

while recognising that

“we do not always match their wants.”—[Official Report, Justice Committee, 20 January 2015; c 20.]

As the Government points out in its response, however, the Scottish Prison Service is shortly to put in hand a review of SPS programmes that is to be conducted by an external expert. Clearly, that should be a priority. Protection of the public must remain paramount. We heard in evidence concerns about what was described as “cold release”, and the Government has been wise to respond to those concerns.

In its written submission, Sacro suggested a period of compulsory supervision of three months before the end of a sentence. Colin McConnell said that, in his experience, the first six to 12 weeks after release can be extremely risky. The Government has indicated that it is minded to provide for a mandatory control period of three months as a minimum, in order to provide sufficient time to balance any necessary protective conditions with work by criminal justice social work departments in assisting the prisoner with their reintegration and rehabilitation in the community. I believe that that is a considered response to the concerns that we heard in evidence, and I warmly welcome it.

We also heard evidence about the need for clarity in sentencing, which was a particular concern of Victim Support Scotland. It is clear from the bill, however, that that is not the purpose of the legislation. Nonetheless, we should wish the new Scottish sentencing council well in its task, particularly in promoting greater awareness and understanding of sentencing policy and practice.

On section 2, which relates to the date of release, I simply echo what has already been said. Like the committee in general, I fully support the provision.

The bill will change significantly at stage 2. In my view, the Government has seized the initiative and has signalled its intentions in that respect already, which is to be welcomed. We ought to consider taking further evidence at stage 2, but I do not share the views of those who think that we should abandon the bill and that the matter is best left to others such as the new sentencing council. I believe that we need to continue to respond to public concerns and not to delay further a significant change in response to those concerns.

15:22

Jayne Baxter (Mid Scotland and Fife) (Lab):

There is little doubt that the criminal justice system in Scotland is in desperate need of reform. The aspect of that system that the bill seeks to address—sentencing—is a contentious issue, but I think that we will find near-unanimous support in the chamber for the ending of the automatic release of the sort of offenders who are covered by the bill’s provisions.

That does not mean that the legislation and the Scottish Government’s overall approach to sentencing have been a straightforward process. That the Scottish Government attempted to squeeze the content of this important bill into a previous bill is regrettable, but we should be grateful that it listened to the recommendations of the Justice Committee to place it in a free-standing piece of legislation.

We should first examine the recent past. Scottish Labour introduced an innovative form of judicial disposal in 2007. The introduction, in the Custodial Sentences and Weapons (Scotland) Act 2007, of sentences that would comprise a custodial part plus a community part was welcomed by many in the criminal justice community as a sound and well-thought-through measure. The Scottish Government chose not to put those proposals into practice, however. In fact, it chose to heavily amend the disposals in the Criminal Justice and Licensing (Scotland) Act 2010. The new proposals have never been implemented by the Scottish Government, but we are now where we are with the bill under consideration.

The bill fails to address what we might regard as the other end of the conversation: sentencing. Scottish Labour agrees entirely with victim support groups that there needs to be clarity in sentencing. Victims, the community and offenders need to understand what the sentence that has been passed by the judge or sheriff means in practice. It is not good enough for victims of crime and their families to hear that someone is sentenced to X number of years in prison but to have no idea what that means in reality. Victims and their families should be at the centre of the criminal justice system, but the current system of sentencing fails to put them there.
The bill may increase the confusion about sentencing, however. Victim Support Scotland noted in its submission that

"ending automatic early release for only some categories of prisoners would work to further complicate an already confusing system; the proposals would in fact create another rule that needs to be taken into account when calculating the release date of an offender."

The introduction of the Scottish sentencing council was an important development in this regard. After a recommendation by the Scottish sentencing committee, which used to advise the Scottish Government on its approach to punishment and sentencing, the 2010 act provided for the Scottish sentencing council to be set up. Its stated aim is to foster greater consistency and transparency in the decisions of the courts by the creation of an appropriate framework to promote fairness and justice in sentencing. Its statutory objectives are to

"promote consistency in sentencing practice ... assist the development of policy in relation to sentencing ... and promote greater awareness and understanding of sentencing policy and practice."

Those are all laudable and sensible objectives.

I welcome the position indicated by Lord Carloway, the chair of the council, that it will seek to take an evidence-based approach to sentencing. I am also pleased that it will reserve a position for victims’ representatives. It is important that the Scottish people have confidence in the court system and the punishments that it apportions to offenders. It is also important that we commit ourselves to doing what works. The sentencing council will provide an opportunity for a wider range of voices to be heard in the sentencing process and will make clearer to the general public the principles and policies that motivate our judges, sheriffs, stipendiary magistrates and justices of the peace when deciding on disposals.

Those are all important tasks. It is surprising and worrying, therefore, that the Scottish Government has dragged its feet for almost five years on setting up the sentencing council. The clarity and certainty on sentencing that the council will provide is desirable and necessary now.

The provision in section 2 that allows prisoners who are due to be released on Fridays to be released two days earlier in order to increase the provision of support for them is a good one. It may appear to some as a small change but, according to the Scottish Prison Service, around 4,000 prisoners are released every year on Fridays. They emerge at the weekends with limited support. We do too little to help offenders back into the community once they have served their time and that modest proposal will at least make some provision to increase the support and guidance that they receive.

At the heart of any structure surrounding the release of prisoners must be the calculation of risk to public safety. It is notoriously difficult to calculate, and it would be wholly unreasonable for us to expect the relevant authorities to calculate successfully the risk of reoffending every time they are called on to do so, but we must ensure that each offender’s risk profile is central to the debate on whether they are released early. For those who commit serious offences, it should not be an automatic process.

I agree with Victim Support Scotland and Police Scotland, which have indicated that they support the essence of the proposals because they will encourage relevant prisoners to engage with prison rehabilitation programmes and will ensure that prisoners who are assessed as still posing a high risk do not benefit from early release.

I also agree with the Howard League and other experts who have noted that an unintended consequence of the bill would be that prisoners are released cold into the community without a period of supervision from relevant authorities. As the Howard League put it in its submission, "The current proposal fails to recognise the strong evidence that support and supervision in the community is more effective in reducing re-offending rates than time spent in custody. ... An abrupt and unsupported transition of a prisoner from the structured environment of prison to non-parole release may, in many instances, result in a reversion to pre-sentence behaviour."

To mitigate the problem, some have suggested the extension of the MAPPA approach to violent offenders. That is an interesting proposal, but it is not good enough that we have no concrete plan on the issue. We are talking about some of the most serious offenders in Scotland’s prisons. We need more specificity when discussing their rehabilitation.

There is more that is vague than just the content of the supervision. How long will there need to be supervision, and will it be pre-release or post-release? Moreover, why has the Scottish Government produced a human rights impact statement accompanying the bill that the Scottish Human Rights Commission has described as “simply not adequate”? That, coupled with the aforementioned vagueness, means that offenders who have been refused release could make a human rights challenge if they have not been offered the necessary rehabilitation programmes.

I hope that the Scottish Government ensures that those comments are addressed as the bill is taken forward.
Christian Allard (North East Scotland) (SNP): First, I would like to thank all the Justice Committee members and the organisations and individuals who came to give evidence. It was a long session and our chair did great work. It was very interesting to see how much the committee influenced what happened right after and how it influenced the decision of the cabinet secretary. In fact, it was the organisations and individuals who gave evidence—more so than the members perhaps—who changed the report and made it what it is.

The committee supported the general principles of the bill at stage 1. As the cabinet secretary said in his letter to the Justice Committee convener on 3 February, the “bill provides a step towards achieving” the aim of “ending the current system of automatic early release of prisoners, brought in by the then UK Government in 1993.”

John Major’s Conservative Government brought in automatic early release to tackle concerns about prison overcrowding; it was under a Tory Government that criminals were let out of prison after serving only half of their sentence, no questions asked. It was an admission of many failures if ever there was one—of sending too many people to prison, of failing to accommodate them and then of failing to release them under supervision. That is the situation that the SNP Government wants to address, particularly the so-called cold release that the Conservative Government introduced in 1993. With this bill, the SNP Government is taking the first step to end automatic early release.

The bill is all about the right of prisoners to be supported when coming out of prison and the right of families of victims to know that offenders should be assessed before they are released. In other words, it is about public safety. That issue is not only at the core of section 1; section 2 will give the Scottish Prison Service the power to release prisoners up to two days early to facilitate community reintegration. How important is that? We heard in evidence that it is, in fact, very important. A couple of days can make a lot of difference. If a prisoner is released over a weekend, they will not be able to access services and might not have anywhere to stay. We must make release as easy as possible for various prisoners; in fact, we are talking about a huge number of prisoners, given that the provisions apply to all prisoners serving more than 15 days. This measure, which will certainly make a lot of difference, is only common sense, and I have to wonder why it was not introduced before.

Section 2 deals with the last few days before release, and section 1 deals with the last few weeks and months in the same spirit. It is all about supporting prisoners when released, recognising the right of families of victims and improving public safety. In his February letter, the cabinet secretary confirmed to our committee that the Scottish Government intended to lodge amendments at stage 2 to extend the provisions of section 1 and end automatic release for all long-term prisoners, regardless of category.

Let me make it clear: the quality of the evidence that we received has helped the cabinet secretary to be able to amend the bill at stage 2. I note that Elaine Murray has commended the cabinet secretary for his approach, and I think that his pragmatism is to be applauded. He recognised that this first step towards ending automatic early release of prisoners was too small, and he is acting on it by extending the remit of the bill to cover all long-term prisoners.

As paragraph 45 of the committee’s report points out, witnesses told us that prisoners might still be released into the community without mandatory supervision—what has been called “cold release”—and paragraph 46 quotes Professor Tata from the University of Strathclyde as saying:

“We need to explain to members of the public that eventually prisoners have to come out and that if someone is released cold they are more likely to reoffend.”

It is an important point, and I must thank Professor Tata for his contribution. His was one of the strong voices highlighting to committee members the danger that the bill would not eradicate all the problems of cold release. When describing the changes that could come about, he also said:

“Effective reintegration is a prerequisite for public safety.”

I certainly more than agree with that observation. Furthermore, with regard to the powers of the Parole Board and how much of a difference it can make, Peter Johnston of the Risk Management Authority said:

“The Parole Board … has huge expertise in looking at the risk that the released offender”—[Official Report, Justice Committee, 20 January 2015; c 3, 7, 6.]

presents.

I am delighted that stage 2 amendments will address all these important concerns, because the fact is that we have been here before. In welcoming the committee’s report, the Law Society of Scotland pointed out the shortcomings of previous legislation such as the Custodial Sentences and Weapons (Scotland) Act 2007. The Law Society is right: seven years after that act was passed, the parts of it that relate to sentencing have still not come into force. The reason is simple: the expectations of the act were
too high. Indeed, they were so high that it soon became apparent that it would not be possible to implement the provisions.

As Jayne Baxter has said, we are where we are. We have to move on. We have learned the lessons of the past, and the pragmatism demonstrated in the bill has to be commended.

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): I am sorry to interrupt the member, but my reading of what the Law Society said to members was not that the 2007 act was inadequate but that, if the bill was to go through unamended and the 2007 act was to be enacted, there would be a contradiction. That is not the same as what the member has just said.

Christian Allard: What I said was my interpretation of what the Law Society said. As I was saying, it all comes down to implementation. If the Government has a problem with implementing the 2007 act, it is not fit for purpose. However, as Jayne Baxter said, we are not there yet and we have to move on. We learn from the past.

The Prisoners (Control of Release) (Scotland) Bill deals with the back end of our judicial system—the last few days, weeks and months before a prisoner is released. That is where we should start; it is the first step towards working on ending automatic early release for all prisoners. Alternatively, we might decide that the second step should be to deal with the front end of the judicial system, which is sentencing. I know that we have heard different views on that this afternoon but, let me be clear, the bill is not about that. We should use future bills to make sentencing more transparent and improve it.

I was surprised when Margaret Mitchell decided to dissent from the general principles of the bill, although I welcome the fact that the Scottish Conservatives will abstain today.

Our stage 1 report reflects the point that prisoners should be supported when they come out of prison, and that families of victims have the right to know that offenders should be assessed before they are released. That is what Victim Support Scotland said that it wanted. The bill is about public safety and I am looking forward to stage 2.

15:36

Alison McInnes (North East Scotland) (LD): I apologise to members in advance, as I have a sore throat.

If automatic early release for long-term prisoners is to be abolished, the alternative must pass three key tests. The first is that the risk that is posed by an individual must determine the proportion of the sentence that they serve in prison. Secondly, it must prioritise public safety. Thirdly, it must guarantee supervision and support on release.

As it lies before us today, the bill fails the last two tests and it is fundamentally flawed. Once again, the justice secretary has had to pick up the pieces and promise to overhaul his predecessor’s ill-considered plans. As witnesses commented to the committee, making significant Government amendments at stage 2 is hardly best practice. In this instance, however, I agree with the proposals that the cabinet secretary outlined to the committee and they allow us to support the bill at stage 1 today.

Ending automatic early release for all those who are serving sentences in excess of four years is more coherent with the evidence on risk and reoffending rates. Widening the scope of the bill so that all long-term prisoners are subject to a period of compulsory supervision in the community is equally important.

There was genuine concern that the bill would fail those whom the Parole Board deemed should serve their full sentences. The Scottish Parliament information centre—the Parliament’s independent information service—concluded that “the period of supervision in the community under licence conditions could be reduced (potentially to zero”).

Victims organisations, the Scottish Human Rights Commission and more warned of risks to the public and increased reoffending, which would defeat the objective of the policy. Some of the analysis was scathing. Dr Monica Barry feared that the “most potentially high-risk people” would be leaving prison with no support. Howard League Scotland said that it would lead to prisoners being “spat out of prison”. It was even suggested that some prisoners would seek to max out their sentences so as to avoid restrictions on release. If they are used as fragmented workarounds, MAPPA and extended sentencing arrangements would not sufficiently ensure that someone cannot walk free completely unsupervised. That is why a minimum guarantee needs to be in the bill and I welcome the cabinet secretary’s assurance that it will be.

Some people will legitimately ask whether the introduction of post-sentence-end controls, or a mandatory control period, is automatic early release in all but name. It will be factored into sentencing decisions. Perhaps the cabinet secretary will address that concern in his closing speech. I am minded to agree that so-called end controls should last a minimum of six months, but I am also open to the possibility of their lasting nine months.

I can also confirm that Scottish Liberal Democrats whole-heartedly support section 2 of
the bill. It is entirely sensible for prisoners to be released just a day or two early if it means that they get the support that they desperately need to successfully return to the community. Public and third sector services such as housing, social work and employment are simply not available 24/7.

In 2011-12, 40 per cent of prisoners—some 4,000 people—were released on a Friday or just before a long public holiday weekend. The measure in the bill is a small change that could make a big difference during the transition. It is a small change that could dramatically reduce the likelihood of thousands of people reoffending and causing any further harm.

In the short time that I have remaining, I would like to highlight some other outstanding issues. The revised proposals will, of course, have resource implications for the Prison Service. Each year, 450 more people will receive sentences under whose terms they are not eligible for early release. Before the categories were extended, the number affected was expected to be about 140.

In addition to the general costs of accommodating more prisoners, there will be increased demand for purposeful activity and programmes that address the underlying causes of offending behaviour. However, I note that the cabinet secretary has not explicitly committed to bringing forward supplementary policy and financial memorandums as the committee requested. I urge him to do so. We need to carefully consider the additional costs and demands.

There is public appetite for greater clarity and transparency in the meaning of sentencing. I would not blame the public for thinking that we were talking in riddles when discussing the various release options: automatic and unsupervised, automatic and supervised, discretionary and supervised.

Victims and witnesses are often bemused or even angered by stories of serious offenders being automatically released part way through the sentence that was handed to them by the sheriff or the High Court, regardless of any assessment of whether they continue to pose a threat. That feeling is understandably intensified in high-profile cases or if the individual proceeds to reoffend.

The bill could help begin to enhance understanding and public confidence. However, it could have been informed by the Scottish sentencing council’s work. Improving policy, practice and understanding of sentencing is squarely within its remit but, five years after the Parliament legislated for it, it is still not up and running. The body could have played a role in considering how best to manage early release.

Indeed, there is a risk that the bill is being progressed in isolation. Other long-overdue reforms and apparently shared aspirations have stalled: the commencement of the early release provisions already backed by this Parliament through the Custodial Sentences and Weapons (Scotland) Act 2007; reducing the bloated prison population; ending senseless short-term sentences; and shifting the focus of sentencing from punishment to rehabilitation.

This short bill is therefore another example of a piecemeal approach to penal reform. Scottish Liberal Democrats are clear. Although the bill is set to be improved, and we will support it on that basis, justice policy should always be complementary and guided by the evidence of what works, not the quick pursuit of cheap headlines.

15:43

Gil Paterson (Clydebank and Milngavie) (SNP): I am pleased to take part in the debate as a member of the Justice Committee.

The ending of automatic early release for prisoners is seen by a large cross-section of the public as a very important issue to which they can relate with regard to their own safety in the community in which they live.

I acknowledge that, following evidence to the Justice Committee, Michael Matheson MSP, the Cabinet Secretary for Justice, said that he would extend the provisions in the bill to cover all long-term prisoners, which is to his and the Scottish Government’s credit. He has shown leadership by listening to reasoned argument and responding accordingly. In my book, it is a good thing when Governments and ministers listen and perhaps come to a conclusion that is different from their former conclusion.

During my speech, I will aim to focus on the prisoners who commit serious sex offences and how the bill will impact on them and offer some comfort to their victims. As a former board member of Rape Crisis Central Scotland, I am sadly familiar with that aspect of crime through my work on behalf of the victims of sexual assault.

Many people in Scotland have never understood why serious sex offenders were automatically released early, before they had served their full sentence. The victims of those offences are petrified at the thought of the early release of the person who attacked them in what they understandably believe is the ultimate crime. They live in fear of one day being confronted by their attacker.

On what many of the public think about early release, a large number of those who have been
victims disagree with the present system. Nonetheless, I fully support the Parole Board making the final decision on whether serious sex offenders should be released before completing their sentence. The Parole Board has the benefit of knowing how rehabilitation programmes have worked on the individual.

I particularly support the work carried out in Peterhead prison, which has introduced programmes designed to change the behaviour of serious sex offenders. The work carried out in that institution has had a tremendous record of success, and I wonder whether people tend not to reoffend as a result.

I acknowledge that prisoners volunteer for those programmes for a host of reasons. Some volunteer in order to influence the Parole Board. They want to show that they are putting some effort into changing their behaviour in the hope that they are rewarded by being granted early release. There are, however, many prisoners who volunteer because they sincerely believe that they need help, and that they need to change their behaviour, better themselves and ensure that they are never sent back to prison.

No matter the motivation, we can see the success of such a system in the fact that someone who is cold released or automatically released early is approximately seven times more likely to breach their licence conditions than someone who is released after a decision by the Parole Board.

To victims and to members of the public who are fearful of early release and the impact that it will have on them and their community, I offer this message. What is being proposed by the Scottish Government should give some comfort because the public and communities will know that tried, tested and effective rehabilitation courses will be available to offenders while they are serving their time in prison. Further, supervision in the community will also be in place, whether or not prisoners participate in rehabilitation within prison.

I would far rather that, after deliberating, considering detailed reports and assessing behaviour programmes, the Parole Board granted someone who may have, say, one year left of their sentence early release, knowing that they are unlikely to reoffend. I hope that that is some comfort to the public. That is where rehabilitation and the work of the Parole Board play such an important role. Roderick Campbell mentioned that.

Although I have focused primarily on those who have been imprisoned for serious sex offences, I would argue that the same balanced viewpoint will work across all crimes. The bill goes some way towards ensuring that the policy of ending automatic early release for all long-term prisoners will have at its heart public safety and the need for effective rehabilitation and supervision.

Section 2 is plain common sense and I welcome it. Knowing that the services were not available, it was wrong of us to send people out who really needed help not to reoffend. Section 2 will have a big effect on people when they are released and, in the long run, will help them and society to get a better understanding of how things work.

Although work is still to be done at stage 2 in committee, I feel that we are more than on the right track and I commend the bill to Parliament.

15:50

Margaret McDougall (West Scotland) (Lab): As we have heard, the bill before us—which proposes to end automatic early release for sex offenders serving four years or more and other offenders serving 10 years or more—likely to be substantially amended by the Scottish Government at stage 2.

If the bill were to be passed in its current form, it would affect only 1 per cent of prisoners in Scotland. The Scottish Government’s proposed amendments would end automatic early release for all long-term prisoners serving four years or more, which equates to only 3 per cent of the 7,851 people who made up Scotland’s prison population, on average, in 2013-14.

As we have heard today, there are greater concerns about the sentencing policy and process in Scotland. Scottish Labour agrees with victim support groups that there needs to be clarity in sentencing; victims, the community and offenders need to understand what the sentence that is passed by the judge or sheriff means in practice. The bill does not go far enough in achieving that aim.

The amendments will also introduce a mandatory period of supervision after release. At this stage, however, the period of supervision is undefined in the bill. Furthermore, we do not yet know whether that period will be part of the issued sentence or whether it will be added on at the end of the custodial sentence. It would be helpful if the Scottish Government could clarify that point as a matter of urgency.

Section 2 of the bill, which—like others in the chamber—I welcome, would ensure that offenders who were due to be released on a Friday could be released up to two days early to ensure that proper care and support were in place before the weekend. That should improve the transition from prison back into the community. Currently, if someone is due to be released on a Friday, the proper care and support are not in place in relation...
to social services and housing, which can—and does—lead to issues.

Given those substantial amendments, both the financial memorandum and the policy memorandum will need to be rewritten. The SPICe briefing on the bill originally estimated that “the eventual long-term impact would be to increase the average daily prison population by approximately 140.”

I would expect that figure to increase. The number of those affected, using 2012-13 figures, stood at 131 offenders, but the amendments would affect 473 offenders—again, based on 2012-13 figures. An increase in demand for prisoner programmes is also expected, reflecting the fact that any early release for relevant prisoners would be based on an assessment of risk to the public. With that in mind, we must ensure that adequate rehabilitation services are in place. The Howard League for Penal Reform in Scotland states that “it is necessary for the Scottish Prison Service to provide sufficient rehabilitation services to allow prisoners to reduce their risk of reoffending and harm. Where such services are not available, continued detention may become arbitrary and in breach of Article 5 of the European Convention on Human Rights”.

Offenders who have been refused release could have a human rights challenge if they have not been offered the necessary rehabilitation programmes, and members across the chamber certainly agree that we should avoid that.

Some of the changes will put additional strain on the prison system if proper resources are not made available. Indeed, during his evidence to the Justice Committee, Professor Alan Miller of the Scottish Human Rights Commission stated:

“You have heard from witnesses that the resources within and outwith prisons are not seen as being adequate. The legislation will increase the spotlight on whether resources are adequate.”—[Official Report, Justice Committee, 13 January 2015, c 13.]

The bill is due to go through substantial amendment, and it is difficult to discuss its full impact when we do not know the full projected costs and effects of the amendments. However, Scottish Labour will support the bill at stage 1. Despite the fact that it fails to address sentencing policy and reconviction, it is a start.

I hope that the Scottish Government will ensure that prisons and the Parole Board are properly resourced, that adequate rehabilitation services are in place and that those services can meet future demand.

15:55

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I very much welcome the opportunity to speak on this important subject. We all know that control over the release of prisoners is a subject that has needed to be addressed for some time. In session 2, I had the privilege to serve as shadow deputy justice minister, with special responsibility for prisons. I ended up visiting a lot of prisons, including Saughton, Inverness and, of course, Peterhead, which is in my constituency. I was in there more often than I would have wished to be. I also visited a prison in Wales and a prison in France. When I was in Georgia, I met the Georgian Minister of Justice and talked to him about prison policies. It is clear that different jurisdictions take a wide range of approaches.

It is also clear that we need to be careful about some of the broad-brush assumptions that we may have been making. The first obvious thing to say is that each prisoner is an individual, and we need to be careful to consider each prisoner as an individual. It is therefore important that the Parole Board is particularly well resourced on the back of the reforms that we are considering. The figures that are provided in the financial memorandum accompanying the bill say that the number of cases that the Parole Board deals with will rise by 230 by 2029, which is a fair distance out. We need to have the resources in place for that.

We have been talking quite a lot about sex offenders. It is important to remind ourselves that there are two kinds of sex offender. There are those who are essentially violent criminals, who express their violence through sexual offences—rape or violence in a sexual relationship. The more insidious cases involve paedophiles and those who groom the people they are going to subject to sexual abuse. We say that reconviction among sex offenders is lower. That is factually correct. However, we must not confuse that—reconviction is lower, but reoffending may or may not be lower. It is substantially more difficult to detect many sexual offences.

Where sex offenders are concerned, we have to be particularly careful. We must ensure that the Parole Board and the other relevant bodies are well resourced to deal with that particular category of offender. The average IQ of a paedo is a bit higher than that of somebody who is in prison for other offences. They are more cunning, they are more dangerous and they carry greater risk. We need to be careful to address that. I have confidence that we in the Parliament wish to do that, and I have confidence in the Prison Service.

In the end, our objectives in dealing with people who are serious offenders are threefold. First, there is the element of retribution—giving to the person who has offended a real sense of the opprobrium that comes from their having committed an offence against another member of society. The person who has been subject to the
offence would certainly wish to see that, and that is right and proper.

Secondly, there is rehabilitation. We have talked quite a lot about rehabilitation, which is the moral thing for us to do, and it is also an economic thing for us to do. It is very expensive to put people in prison, as we know. Every time that we effectively turn someone's life round and stop them coming back to prison, there is a huge economic benefit.

The third objective is restitution, which I have not heard mentioned in the debate, although it has been mentioned in justice debates in the past. The use of restitution is relatively limited. However, after my mother-in-law had her purse stolen, the court ordered the two individuals who were responsible to repay her the money. That is a proper part of sentencing policy. We have to be very flexible, and we must allow our judges to look at the circumstances and apply flexibility.

Not all prisoners get it. One of the visits that I made as shadow deputy justice minister was to Saughton prison. I found myself in a cell with six lifers, who were in for murder. The prison chaplain stood at the open door so that he could summon the staff if things got too heated. One of the offenders had been released on licence and had been recalled—in his view, entirely unjustifiably so. He said that he had been recalled just because he happened to be with a group of people when another murder took place—he had nothing to do with the murder; he just happened to be there. When we deal with prisoners whose attitude is thus, we realise that it is in the nature of things that it is impossible to get it right all the time. I did not feel uncomfortable about that recall, and I do not think that many other people would.

The bill could restore public confidence in how sentencing works, which is an important point. It takes the first steps, but we will have to go down the whole road in due course. We have to make sure that we have the resources when people come out and that the new arrangements for access to health, housing and other services are in place for prisoners.

I was very impressed by Saughton prison when I visited a few years ago. Peterhead, with a very different category of prisoners, did its own thing. HMP Grampian has a very good approach to working with prisoners. We now have young offenders, women prisoners and a more general prison population all on one prison campus for the first time; it is expensive to do, but it is expensive not to do it properly.

I look forward to working with HMP Grampian. It will be more challenging for the community to have to interact with prisoners as they adjust to going back out than it used to be when we had all Scotland's serious sex offenders locked behind the walls, entirely disconnected and discharged back to communities elsewhere. That is a price worth paying and I am sure that the staff in the Prison Service will do well with that facility. What happens in HMP Grampian will inform what should happen elsewhere. It will lead to improvements in our programmes and in outcomes.

This is a good, useful one-page bill, which takes us forward on the road that we need to be travelling. I congratulate the cabinet secretary and the Government on the progress that they have made, but I, along with others, will continue to challenge the Government to do substantially more when it is able to do so.

16:02

Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP): I am not, and never have been, a member of the Justice Committee, but looking back over the eight years that I have spent in the Parliament and the debates on justice that I have taken part in, I notice that usually I have a personal or professional interest in the work that the Justice Committee is doing. It is important work, which we expect to be done, because we want to live in a safer society.

My background in social work took me to many households, local area teams, support groups and support centres, where I saw some amazing work going on. When we see people who have been, in a sense, victims of the justice system, in as much as how they ended up there, and how they are rehabilitated out the other end, we cannot fail to realise the fantastic work that is being done by professionals in that field. They need every tool in the toolbox to help them to do that work.

I have said it before, but I will say it again: the safety of the public is our absolute priority. However, rehabilitation and support for people who have been through the justice system are just as important in building the safe society that we all want.

The question is, how best do we achieve that result? I know that it is not going to be done in one great leap, but these debates—the number that I have taken part in is probably a drop in the ocean compared with the number for some others in the chamber—are a way to highlight some of that, and I believe that this particular bill takes us a small but important step forward.

One of my interests as co-convener of the cross-party group on men's violence against women and children is obviously what happens to people who are victims of domestic violence or sexual abuse. We might see a convicted criminal sentenced for 10 years, and his victim might heave a sigh of relief, but she—and in most cases it is a she—will be well aware that the likelihood of
that perpetrator being released early and of her not knowing about it is very high indeed.

I supported the Clare’s law pilot, and I am happy that the Scottish Government has taken that forward. It allows someone who has suspicions about their partner to get the information that they need. That is an important way of providing people with relevant information where appropriate.

There are questions about transparency, and I see that transparency and clarity are a key theme in the stage 1 report. People’s rights, and some prisoners’ rights, have to be clear and transparent too. They are two sides of the same coin, in my opinion. Knowing what the real, rather than theoretical, outcome is going to be is just as important to prisoners as it is to victims, and transparency is a hallmark of this Government. We live and operate in a real world, rather than behind the gated entrance of Downing Street.

The bill is a move towards greater transparency. Rather than vague assumptions about early release, it will introduce proper controls that will improve the system by allowing decisions about when and how people are released to be the most important element. Those decisions will be taken and informed by individual consideration of a prisoner, taking into account public safety and the need for effective supervision. In that way, it addresses both sides of the coin: it ensures that dangerous prisoners do not get released automatically, while bringing in a mandatory period of control through supervision for all long-term prisoners leaving custody. Long-term support and control are something that I absolutely agree with.

I suppose that doing that successfully will always be something of a balancing act. I spent some time working with criminal justice social workers, so I know that it is sometimes difficult to make that judgment call. That is why they need the best tools to hand.

We are thinking about not petty criminals—people on three or four-month sentences—but people who are serving much longer jail terms and who should remain in jail for the sentence that they have been given. No prisoner serving time for serious offences would be automatically released on licence after two thirds of their sentence, for instance. We already know that a prisoner on automatic release is seven times more likely to breach their licence conditions than someone released after a decision by the Parole Board. The reason is obvious: when individual consideration is applied, people are likely to respond more positively.

When the Government decided to close down Cornton Vale women’s prison, that was one of the realities that the cabinet secretary recognised. Prison of itself is not curative. What works is small units such as the 218 centre, where women prisoners are managed in a far more constructive way. Although by far the majority of women in prison are there for minor offences, women can and do commit violent crime, and society should be protected from them.

Dame Elish Angiolini’s report pointed out that women commit different types of crimes for distinctly different reasons. Drug abuse, a dysfunctional or deprived family background, being victims of violence themselves, or confused desperation can all colour their motives. She pointed out:

“While the proportions of the male and female populations in prison for violent offences are similar (about 35 per cent as at 30 June 2010), proportionally more women are in prison for ‘other’ crimes”.

The current system is—much like Westminster, in my view—not working for Scotland, but we have the foresight and intelligence here to find ways to manage criminals better. The elements that I have highlighted indicate how right Dame Elish Angiolini’s recommendations are.

I am talking about the women’s prison because I believe that the recommendations from that report could apply across the board. One-stop shops such as the 218 centre and the Willow project can be used to deal with all prisoners. There is scope to develop that idea across the entire prison regime, and I hope that the cabinet secretary will think about that.

Support services such as those that have been described, and the greater clarity on release arrangements for which the stage 1 report calls, can only help to ensure that we reduce reoffending and give the professionals the teams and tools to do the job properly. Victim Support Scotland has called for more clarity, and I am sure that the cabinet secretary will step up in that regard.

It is clear that the Government and members want to move forward with innovative responses in order to find a more effective and meaningful direction than the current system can offer. That can only be good for us all.

16:11

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): As an MSP who is not a member of the Justice Committee and is therefore not as familiar with the systems and processes that are involved in our application of criminal justice, it has always seemed to me that the sentencing of those who are convicted of crimes is an area in which greater clarity and more work to explain the system are needed.

Nowhere has that been more the case over the years than in the debates that have taken place on
ending automatic early release. I had hoped that the reforms that we had been promised by the Scottish Government would help to provide clarity to do that, but my reading of the bill and the report by the Justice Committee suggest that that is not the case. In my view, the proposals in the bill do not go far enough in providing protection for our communities.

I am speaking about the bill as it is currently drafted, but we are in a rather strange position today, given that we are debating at stage 1 a bill that will be fundamentally different by the time it emerges from stage 2 consideration. Having said that, I applaud the cabinet secretary’s willingness to lodge the amendments that he has outlined today because I think that they will help to make the situation better and clearer. I am sorry that he has found himself in a position in which that has been necessary; I am sure that the problem is not of his making, but he certainly seems to be stepping up to the plate and trying to resolve it.

It seems that we are looking at only one part of the system in the bill, certainly as it is currently drafted: the end point when a prisoner is released. However, we also need to consider the point at which a prisoner is sentenced to ensure that our sentencing policy itself is correct and transparent.

The fact that the sentencing council, which was legislated for in 2010, will not begin its work until the last quarter of this year seems to me to be wrong. It would surely have been better to allow the policy proposals that are contained in the bill to be part of a comprehensive package of measures that could have been influenced by the sentencing council. I am not suggesting that there should necessarily be a delay in putting forward the provisions, but I believe that they would have benefited from consideration by a sentencing council had it been introduced prior to this point.

The Law Society of Scotland, in its briefing to members, makes the valid point that the most significant—indeed, as Margaret Mitchell highlighted, I believe that the society used the word “radical”—change to custodial sentencing policy in more than 20 years will be introduced by way of a stage 2 amendment to a bill that is already before Parliament.

The Law Society contrasts that with the situation in 1993, when significant changes were last made. At that time, as we know, the changes were made only after the careful consideration of two reports on the matter, one of which had benefited from 14 months of consideration and much discussion within the legal profession and elsewhere.

Christine Grahame: Does the member accept that the Justice Committee will have the opportunity to take evidence on what might be substantial amendments at stage 2 if it wishes to do so and that the Law Society of Scotland among others will have the opportunity to challenge those amendments?

Patricia Ferguson: I absolutely accept that, but it is still quite a strange way to legislate. The committee and Parliament should really have had those materials at stage 1 if the committee was to do the job that we all expect it to do. I have no hesitation in saying that I know that the Justice Committee, under the convenership of Christine Grahame, will do a fantastic job, but it should not have to do it in that way.

Victims and communities need to know that, if a sentence of four years is handed down, the prisoner will be in prison and communities will be protected from that individual for that length of time. I do not disagree at all with the Scottish Government on that point, but victims and communities also need to know that when that person has been released from prison, everything possible has been done and will continue to be done to prevent them from reoffending.

The bill must put in place systems to help to manage the transition that every prisoner has to make back into their community at the end of a sentence that they will have served in full. The offender has to leave prison equipped with enough skill and self-awareness to be able, with support, to find a productive role in society once again. I acknowledge entirely that that is the difficult part. Rehabilitation is not easy, but it must not be seen as an add-on; it must be seen as an essential part of a successful justice system. If rehabilitation is to work, it must surely continue as tailored support when a prisoner is released.

I congratulate the Justice Committee on its work on the bill and its carefully considered report. It was right to ask for clarification of the Scottish Government’s intentions. It is also right to want to know what the minimum period of supervision upon release will be and that any guaranteed minimum period will be sufficient to allow effective post-release work with the offender to take place. That must be accompanied by continuous risk assessment.

In his opening comments, the cabinet secretary quite understandably asked for views on the length of the mandatory period. It is clear that he is still considering that, and that is to be welcomed. My view is that the period must surely depend on the nature of the crime and that it must be proportionate to the sentence. I am not sure that we can say that six months or nine months is right. I think—perhaps the Justice Committee’s evidence will prove me wrong; I am happy to be proved wrong on this one—that it should be tailored to the individual, the pattern of their offending and the sentence that they have served. However, time will tell what the outcome of those deliberations is.
As we have heard, continuous monitoring will, of course, bring additional pressure to bear on the parole service and other community-based services. The question of how they are to be resourced must be properly addressed. The committee is right to press for a supplementary financial memorandum and an updated policy memorandum.

The prospect of allowing release to take place up to two days earlier to avoid a clash with the weekend makes absolutely perfect sense to me. Like many members, I am sure, I have had phone calls not just on Fridays but earlier in the week—I have had letters in advance, too—from people who were being or had been released from prison and were looking for support because they were worried about what would happen to them when they were released and about the effect on their behaviour. I very much welcome that aspect of the bill.

16:19

Clare Adamson (Central Scotland) (SNP):

The decisions that we make as the bill goes through Parliament will affect our prison communities. A prison community is much more than the prisoners; the staff, wardens and support and counselling services all form part of that community, and any changes that we make with the bill must ensure that no damage is done to community cohesion in our prisons. The long-term safety of the public and public service workers must be paramount.

I am not a member of the Justice Committee, but I have listened to the debate with interest. I do not have a professional background in this area, although I served as a substitute member on Lanarkshire community justice authority and, as such, am familiar with MAPPA. I am convinced that the safety of the public is the Government’s absolute priority. Although progress has been made in recent years, the reform that the bill will bring about will ensure that, in the future, no long-term prisoner will be eligible for automatic early release after serving just two thirds of their sentence.

I believe that the bill will improve the system of early release by allowing the decisions that are taken about when and how people are released from prison to be informed by individual consideration of the prisoner, of public safety and the need for effective supervision of that prisoner. As well as ensuring that dangerous prisoners will not be released automatically, the bill provides for a mandatory period of control that will mean that all long-term prisoners who leave custody will be supervised.

As I said, the bill will improve the system of early release by allowing decisions about when and how people are released from prison to be taken in an informed manner. It has already been mentioned that section 2 should ensure that no one comes out of prison on what has been termed “cold release”.

We cannot consider the bill in isolation from previous bills and previous reports on what has been happening. I believe that, as was stated in 2008 in the report of Henry McLeish’s independent Scottish Prisons Commission, fundamental changes to the operation of the current system of early release can be taken only once prison numbers are established at a longer-term lower-trend level, so that capacity is available in the prison estate to deal with the short to medium-term impact of the changes.

We need to remember the context of the bill, which is that recorded crime has fallen for the seventh year in a row and is now at a 40-year low. The Government continues to maintain its commitment to providing 1,000 extra police officers to tackle crime in our communities.

Many members have mentioned the need to ensure that rehabilitation programmes are available and properly funded. The eventual impact on prisoner courses of the policy of ending automatic early release will be felt some years in the future, but I am sure that the cabinet secretary will work with the SPS to ensure that prisoners will have appropriate access to the support that they need in order to be rehabilitated.

My colleague Stewart Stevenson talked about sex offenders. This week, there was a programme on Radio 4 that was both informative and, at times, challenging to listen to. It was a documentary called “Inside the Sex Offenders’ Prison” that was made by the documentary film maker Rex Bloomstein. He had unprecedented access to HMP Whatton in Nottinghamshire, which is the largest sex offender prison in Europe. He sought to investigate how its inmates are rehabilitated for release. In the programme, it was noted that in Whatton no distinction is made between prisoners according to the type of sex offence that they have committed. There is an absolute focus on recognising that all the crimes have victims and on getting prisoners to take responsibility for their actions.

Lynn Saunders, who is the prison’s governor, said:

“Whaddon’s a great leveller … We’ve got everybody here you could imagine”.

She mentioned that

“vicars, teachers, airline pilots, police officers, prison officers, doctors … people with learning disabilities, who have low IQ and complex mental health problems”
are all represented in the prison community.

Approximately half the prisoners are on determinate sentences and know their release date; the rest do not. Whatton has become known as a specialist treatment centre for rehabilitation. It offers a wide range of sex offender treatment programmes—indeed, it offers more such programmes than any other prison in the United Kingdom. The overwhelming majority of the prison’s inmates have accepted their crimes and are working to address them.

The offences that the prisoners at Whatton have been convicted of vary considerably. Dave Potter, who is one of Whatton’s most experienced facilitators, said:

“What we do at Whatton is to try and get them to understand the harm done to others, the harm done to themselves, and ways of identifying that warning sign when they get out, that they are on the path to offending again.”

As I said, it was a challenging documentary at times and not an easy listen. It addressed issues such as how the prisoners’ negative emotions of shame and guilt are a huge barrier to the treatment process and how staff must work through them to build prisoners’ self-esteem.

The documentary maker frequently addressed the paradox that Elaine Murray mentioned, which concerns the societal pressures and the pressures on us as politicians regarding how we view offenders and how they should be dealt with. We want sex offenders to be profoundly remorseful about their crimes, but rehabilitation demands that they go far beyond that in order for reoffending to be addressed and prevented.

Many members have talked about the low rate of reoffending by sex offenders. Governor Saunders of HMP Whatton noted that the rate among them is only 6 per cent compared to more than 50 per cent for the general prison population.

HMP Whatton seems to have had great success. I highlight that because rehabilitation programmes and their resourcing are a big challenge to the Government. I look forward to the cabinet secretary’s discussion of how he might approach the matter. It is vital that rehabilitation be at the core of what we do in prisons so that society as a whole can be satisfied that the bill represents progress.

I commend the bold approach that the cabinet secretary has taken. He has listened to the evidence and reacted to the stage 1 deliberations. His decision not to build a women’s prison at Greenock is testament to his absolute commitment to prison reform.

16:26

John Finnie (Highlands and Islands) (Ind): I, too, thank the many people who gave the evidence that formed the basis of the Justice Committee’s report. I will quote straight away from one of them, Professor Fergus McNeill of the University of Glasgow, who said:

“To put it crudely, simply ‘storing the risky’ for a little bit longer doesn’t in fact serve to reduce it—the key issue for public safety is the condition in and conditions under which people are detained and then released, not how long they serve. How long they serve is principally a matter of ‘just deserts’ or proportionality of punishment to the offence.”

Professor McNeill also encouraged us to raise the level of debate. For that reason, I welcome the change to the initial restriction of the bill to sex offenders and prisoners serving more than 10 years. That restriction might have been popular, but it was certainly not evidenced by the reoffending rates that we heard about.

Although some people still want to talk tough, I would sooner talk just and effective. The debate has been wide-ranging and has stretched beyond the stage 1 report. As other members have done, rather than be critical of the approach that the Scottish Government has taken, I say that it is commendable that the Government has listened and responded accordingly.

I will quote another contribution that the committee received:

“Recalibration of sentencing—so that when a sentence is announced or laid down in court it relates to a real time, rather than its being something that has been chopped and changed around—would be very helpful indeed for everybody involved, from the perpetrator who has been convicted, to the victim. A huge amount of clarity is required, but we have the potential to join things together and to come up with something coherent, which we do not have at the moment.” —[Official Report, Justice Committee, 24 February 2015; c 37.]

That was said not by a Conservative politician but by Pete White of Positive Prison? Positive Futures. It is important that we have clarity. The policy memorandum talks about reducing offending and improving public safety. Surely everyone can go along with that. It also talks about the minimum period of compulsory supervision in the community.

We must understand again what the purpose of prison is. It is not only to punish, but to improve public safety—on more than one occasion, we heard the cabinet secretary talk about dangerous prisoners. However, crucially, the purpose of prison is also long-term re-integration—or, I suggest, integration because many of the people who find themselves to be the subject of custodial sentences have never really been integrated into society in the first place.
It will be years before the effects of the bill kick in and there is an opportunity to see reintegration. That will be the gauge of the proposals' effectiveness and will determine how they are judged, but it will be some time in the future.

We must look outwith the prison walls, too. I commend the outward-looking approach of Colin McConnell, the SPS chief executive, and his staff. They have welcomed the proposed guaranteed minimum release period. As has been said on more than one occasion, it is important that we continually assess the risks and put in place measures to address those risks, which includes the two-day early release. The Scottish Prison Service also has outreach workers who can facilitate the integration that we all want to see happening.

Integration will partly be about the effectiveness of management programmes in the prisons. There are challenges around that. We have heard from the Scottish Prison Service that the programmes are resource intensive and require specialist delivery skills. We have also heard that the SPS delivers them at the most appropriate time in a prisoner's sentence, taking into account their willingness and readiness to engage and, crucially, the availability of programmes, which has been a concern for us all.

It is important to say that prisoners are not a uniform group. Therefore, individual assessment must be made of individuals' needs.

The purposeful activity review that was undertaken by the Scottish Prison Service has been mentioned. The Scottish Government's response talked about developing learning and employability skills in order to build life skills and resilience and to motivate personal engagement with the prison and community-based services. That was welcomed by Positive Prison? Positive Futures.

The Parole Board for Scotland's role has been mentioned. I absolutely agree with the cabinet secretary; I trust its judgment. We know that it welcomes the proposed post-release period.

The cabinet secretary sought views on the minimum period. The figure of six months has been mentioned. My suggestion is that the issue is not about the quantity or the length of the period; rather, it is about its quality. It will also be important to have in place robust mechanisms to support people when they have been released.

The Scottish Human Rights Commission has been mentioned. I hope that the Government will respond positively to its comments.

Early release has been frequently talked about. That is beyond the gift of this chamber. Housing is a challenge, but so, too, are benefits. Therefore, having the Department for Work and Pensions on board for anything that is done would be helpful.

I want to see a move to end short sentences and I want robust community disposals. Social Work Scotland has talked about a review of sentencing guidelines. I also want to see the Scottish Government do more than simply note the suggestion of extending MAPPA. If we want to enhance public safety, that would, ideally, take in violent offenders and not just sexual offenders.

An issue that is frequently mentioned is co-ordination across the criminal justice system. It is key. The Scottish Government's initial approach was challenging, but I welcome the reforms that are being suggested. However, rather than talk tough, let us talk just and effective.

16:32

Annabel Goldie (West Scotland) (Con): The debate has revealed a conundrum. People either support or oppose automatic early release. Those who support it want it; those who oppose it do not want it at all.

My party alone has a distinguished record in this Parliament of consistently opposing automatic early release. As members have said, more than 20 years ago, a Conservative Government introduced automatic early release. It was also a Conservative Government that, recognising that automatic early release failed victims, judges and the public, passed legislation to abolish it. That legislation was never implemented by the incoming Labour Government of 18 years ago.

Since 1999, it has been this Parliament's responsibility to deal with the issue. My party has been unequivocal in its criticism of automatic early release. Since 1999, I have spoken in various debates condemning it; my party has frequently lodged amendments to end automatic early release, only to be defeated by all the other parties.

Christian Allard: Will the member give way?

Annabel Goldie: Let me just expand my argument.

As a political principle, my party's credentials could not be clearer on the issue. In 2007, it was heartening to find that we had acquired a political ally. In both its 2007 and 2011 Scottish election manifestos, the SNP committed to abolishing automatic early release of offenders.

In 2007, the SNP said:

"The SNP believes there should be an end to the automatic release of offenders. We support the recent legislation in this area and in government will drive forward this important area of reform."

It echoed that in 2011, when it said:
“We will build on the work already done and involve the sentencing council in further action to address unconditional early automatic release.”

It seemed that our arguments had won over a new adherent to the principle of ending automatic early release. However, in politics principle is not enough; it needs to be married with policy to deliver what is pledged. It is disappointing that, eight years on, we have from an SNP Government a proposal not to abolish automatic early release but to introduce a partial and heavily qualified abolition.

According to SPICe, the bill as introduced would have applied in 2012-13 to 107 people convicted of sexual crimes and 24 people convicted of other crimes and offences. That total figure of 131 offenders would have represented less than 1 per cent of all people receiving a determinate custodial sentence. So, we have an abandonment of the principle and a divergence from those earlier manifesto commitments.

I make it clear that I do not disagree with the statement that introducing the abolition of automatic early release is not straightforward—it is not. As many members have said eloquently, there is a need to address prison capacity, whatever issues confront the prisoner—be they drug addiction, alcohol dependency, illiteracy or innumeracy—and to prepare the prisoner for release. However, those are issues of management that should neither intrude on nor detract from the kernel principle that we either have automatic early release or we do not.

Stewart Stevenson: Will the member take an intervention?

Annabel Goldie: I ask the member to bear with me.

What we currently have from the Scottish Government is a proposal to scrap automatic early release for a tiny percentage of prisoners. It would not affect short-term prisoners and it would affect only some long-term prisoners. In my opinion, that is not good enough.

Sensitive to perceived shortcomings in the bill, the Scottish Government proposes to lodge significant amendments at stage 2. However, in my opinion, those proposals do not address the fundamental shortcomings of a partial end to automatic early release although they certainly raise issues of process for the Parliament. The new proposals would apply to approximately 450—just 3 per cent—of all people who received a custodial sentence in 2013-14. Furthermore, the Justice Committee is now being asked to form a view on those proposals as part of its stage 1 report without sight of a revised policy memorandum, a financial memorandum or explanatory notes on the bill. That is not conducive to scrutiny.

Stewart Stevenson: Is the member ready to take an intervention now?

Annabel Goldie: I give way to Mr Stevenson.

Stewart Stevenson: Although I accept that the member is correct to point to the small percentage of prisoners who would be affected, I wonder whether she accepts that it is a very much larger proportion of the increased prisoner nights that will be derived, because it is the longest sentences that are being lengthened—therefore, it is appropriate to proceed in a way that ensures that we do not lose the principle through difficulties in implementation.

Annabel Goldie: I expected an intervention, not a dissertation. What Mr Stevenson does not address is the fundamental intellectual conundrum. In my opinion, we either believe in ending automatic early release or we do not.

Christine Grahame: We do.

Annabel Goldie: Then why not deliver it? It is not being delivered.

Stewart Stevenson: Numbers.

The Presiding Officer (Tricia Marwick): Can members stop shouting across the chamber, please, and allow Ms Goldie to continue?

Annabel Goldie: Thank you for your protection, Presiding Officer.

That is a fundamental conundrum, and it is why the bill, even with the Government’s proposed flourish, does not end automatic early release. Nobody can pretend that it can—Labour members have been honest about that. They have been quite frank in revealing their sense of a paradox, feeling that the bill does not go far enough but still wanting to support it.

In the opinion of my party, the bill as structured and proposed does not provide victims, their families or judges with the simplicity and clarity that they need and to which they are entitled when a sentence is imposed. For that reason, my party will abstain in the vote tonight.

16:39

Hugh Henry (Renfrewshire South) (Lab): I start by echoing some of the comments that have been made about the role of the cabinet secretary. I congratulate him on trying to do the best he can to make something sensible out of what is, frankly, an incoherent and unacceptable bill. I think that he is showing good will to the Parliament in trying to sort out a mess that he has inherited.
This is a bad way to make legislation. It actually undermines the credibility of this Parliament. When the Parliament was set up, we prided ourselves on how we would be different—how we would make good legislation, how we would listen and how we would then reflect the advice that we had heard in our strong and powerful committees. That has not happened and is not happening in this case. It is ridiculous, Presiding Officer. We are having a debate about a bill at stage 1 in the full knowledge that what will be considered at stage 2 will be completely different.

John Finnie: Does what the member says not precisely prove the point that there has been robust scrutiny?

Hugh Henry: The member fails to understand what I am saying. I am not criticising the committee. It is because we have one of the best committees in the Parliament looking at the bill that we will be able to make substantial changes. My criticism is of a Scottish Government bringing to the Parliament a bill that in many senses is not fit for purpose.

Scottish Labour will support the general principles of the bill at stage 1 tonight, but we do so with severe and significant reservations, because we are having to have a debate in the abstract. We support the principles, but we do not have a clue about what will come before us at stage 2.

Presiding Officer, I share your aspirations about the way in which the Parliament and its committees need to change. However, maybe one of the things that we should all collectively do is reflect on the process that this bill demonstrates. We are being asked to make significant decisions with an absence of detail and of clarity. It does not do anyone any good trying to make a decision on that basis. It does not help the public, and it does not help the victims.

We know what the principle is, and we can sign up to it. In a sense, it is a shame that, because of a lack of substance in the bill, some of the debate this afternoon has veered into a wider debate about sentencing, prison policy and rehabilitation. That is a debate that the Parliament needs to have at some point, and I hope that we will get that opportunity, but this is a specific bill about early release and not about wider prison policy. It is a specific bill about a very specific thing, yet we are not seeing any detail. The cabinet secretary is not able to tell us today what is in the detail.

Christine Grahame: We are voting today simply on the general principle of ending automatic early release for long-term sentences. As Hugh Henry is well aware, there is every opportunity at stage 2 for a substantive amendment to fall, as indeed there is at stage 3. That is not the best way forward, but the Justice Committee has followed procedure at stage 1 and will do its utmost at stage 2 to make good legislation.

Hugh Henry: I have every confidence in Christine Grahame and her committee, and I am thankful that it is the Justice Committee that will consider the bill, but that does not excuse the failure of the Scottish Government to bring something coherent to us today to consider. It is not good practice to say that we will press our buttons today to vote for a principle without knowing the detail of what we are voting on.

By all means, let us change, amend and improve bills, but we are taking evidence from people and then saying to them, “Actually, do you know something? What we are going to do once we get to the detail might be different from what we debated and discussed at stage 1.”

Christian Allard: Will the member give way?

Hugh Henry: No.

Michael Matheson, Christine Grahame and others have commented on the Parole Board, but it was Stewart Stevenson who hit the nail on the head. We cannot make these changes unless we are prepared to invest resources in making the Parole Board work effectively. Jayne Baxter, Margaret McDougall and others talked about the need for clarity for victims. At the bottom of any argument on this issue must be the fundamental principle that, when it comes to sentencing, victims should be given the clarity that they deserve, and we should be ensuring that our judges have the wherewithal to do that properly.

However, as Elaine Murray has pointed out, we now have a policy document that is not fit for purpose and a financial memorandum that is based on something completely different. We will vote for that memorandum today, but the fact is that we do not know whether the one that will come later will be anything like the financial memorandum that we have just now, because the bill itself will be completely different.

This is not the way to make good legislation. That comment has nothing to do with party politics; it is an observation about the way in which the Parliament is working. The bill is a poor example. I am not being critical of the cabinet secretary, because he is doing his best to sort out this mess but, as many members including Elaine Murray, Margaret Mitchell and even Roderick Campbell have pointed out, the bill will be totally different at stage 2 from what is under consideration this afternoon.

Nigel Don is absolutely right: there is a need for parliamentary scrutiny. However, we cannot scrutinise if we do not have the information. In that
sense, stage 2 is going to be critical because, as Christine Grahame rightly pointed out with regard to inviting evidence, we are going to have to do the job that should have been done before stage 1 and go back into all the detail. We are going to have to look at evidence not just on the amendments but on some of the fundamental principles.

A number of members have talked about the sentencing council, but the fact is that we have got that whole process back to front. The sentencing council, which was promised long ago, should already have been set up and have been able to make recommendations to ensure that the bill fitted into the council’s own deliberations. Instead, we will be setting up the council after the bill goes through.

I want to finish by referring to Christina McKelvie’s comments about the broader policy, which is an issue that I touched on earlier. I think that the issue of women’s reoffending and Dame Elish Angiolini’s recommendations are pertinent to the wider debate, but we need to fit this bill into that wider debate. We need to get out of the party politics of this. We hear that the SNP does not want to spend money on prisons, because it is not seen as the right thing to do; we hear that Labour will not come forward with proposals to spend more money on the criminal justice system, because they might not play well; and we hear that the Conservatives, the Liberal Democrats and the Greens want to do their bit. We are all hesitant about doing something that might well be the right thing, so we need to have a debate on whether we are willing to spend more money on prisons—by which I mean more but smaller prisons—or on the rehabilitation that has been mentioned time after time. If we do not, we will be investing in failure and in the surety of having to spend more money in the future. We need to have a debate about our prison system, about our justice system and about the way in which prisoners are prepared for release, but in the end, we need to remember that it must come down to having safer communities and justice and clarity for victims. As long as we keep dancing around each other, playing party politics—[Interuption.] I am not going to engage in that—I do not have the time.

The Presiding Officer: You must come to a close, Mr Henry.

Hugh Henry: If the Parliament does not address some of the fundamental improvements that are needed and if we keep introducing bills in this cack-handed way, we are never going to advance the arguments at all.

The Presiding Officer: I now call the cabinet secretary to wind up. Mr Matheson, you have until about 5 o’clock.
recognise that we are bringing in amendments at stage 2 and, as I experienced in different committees of the Parliament, it is not unusual to take further evidence at stage 2 based on the amendments that the Government lodges. I also experienced that during the previous Administration. It is an important element of the process. I have set out the approach that we will take and I fully expect the committee to take further evidence at stage 2 to consider the issues.

As I said, the debate has gone wider than the remit of the bill itself. It has gone into penal policy, sentencing policy and a range of other matters. When it comes to penal policy, I hope that every member in the chamber agrees with the McLeish commission's view. It said:

“The evidence that we have reviewed leads us to the conclusion that to use imprisonment wisely is to target it where it can be most effective—in punishing serious crime and protecting the public.”

The approach that the Government will take is intended to achieve that in a range of different ways.

Members have raised a range of issues relating to penal policy. The first one that I want to address is the delivery of programmes in the prison estate. Elaine Murray legitimately raised the point about access to such programmes. She will be aware of the purposeful activity review that was undertaken of how activities are delivered in the prison estate. Work is now being done to implement the recommendations that came out of the review.

We will now go into an independent review of programmes, including psychological programmes, that are delivered within the Scottish Prison Service estate. Once we have that report, the SPS will be able to look at how it can build on the programmes that it has at present. Broadly, there are seven strands of programmes that the SPS takes forward, along with a range of other activity mechanisms. The review, which will be conducted by an independent person from the SPS, will consider all those issues.

When I attended the committee, I also said that while there is an anxiety about access to these types of programmes within the prison estate, a significant amount of resource within our prison estate is drawn into dealing with short-term offenders and the churn of short-term offenders within our prison system. If members are serious about dealing with the whole issue of more effective resourcing of rehabilitation programmes within our prison system, they must also be serious about dealing with the churn of short-term offenders. To do otherwise is to completely miss the point and to be entirely unrealistic about dealing with the issue effectively.

I am more than happy to have that debate. The approach that I intend to take will be to ensure that we use our resources in a way that is much more evidence based. Hugh Henry raised the point about whether we should invest in prisons and the political perceptions of that. As a Government, we have spent more than £0.5 billion since we came into office in investing in our prison estate to improve it and the quality of what it can provide.

Christina McKelvie mentioned dealing with women offenders. The cheap option was to build Inverclyde prison, but we as a Government have set out an approach that is much more evidence based. The design of that approach will be more costly to us, but we are mindful that the outcomes will be better and that safer communities will be delivered as a result.

Elaine Murray: I do not in any way disagree with what the cabinet secretary is saying, but surely he is demonstrating the point that my colleague Hugh Henry was making. These discussions have to be removed from the party-political battle. We have to discuss this in a sensible way, not by having a go at each other. We will not resolve many of these issues if they become a political football.

Michael Matheson: I am not entirely sure about the political football stuff, because the group that we have established is made up of a range of different stakeholders who will advise on how we move forward with the female prison estate and how we manage it; and we had the Elish Angiolini commission and the McLeish commission, which were independent of Government and set out clearly the measures that we should take in a non-party-political way. That is how we will continue to approach the matter.

I turn to the Conservatives' position on automatic early release. I have tried in the course of the debate, as I tried when I read the stage 1 report, to deal with the "intellectual conundrum" that Annabel Goldie highlighted: the logic of the Conservative Party not supporting the ending of automatic early release for our most serious criminals. As Annabel Goldie stated in her contribution, the Conservative Party has a distinguished history on this issue—a very distinguished one, as it introduced automatic early release for all prisoners. The logic that it is not supporting a bill to end automatic early release for our most serious prisoners because it does not also do it for short-term prisoners is, I am afraid, beyond me.

When Annabel Goldie made the point that this change in policy affects only 3 per cent of prisoners, I was mindful of what the UK Government has said on the issue. Chris Grayling, the Conservative member who is responsible for this area of policy in England, said:
"I've got limitations in the number of prison places I've got, so I have to start with the most serious offenders."

That is exactly what we are doing here in Scotland. He went on to state:

"It's not something I can change overnight, but it's something I'm going to change step-by-step and I'm starting with the most dangerous and unpleasant people."

That is exactly what the Scottish Government is doing. If it is good enough for the Conservatives in Westminster, why is it not good enough for the Conservatives here in Scotland?

Margaret Mitchell: Will the cabinet secretary give way?

The Presiding Officer: You will have to be brief, Ms Mitchell.

Margaret Mitchell: I will be very brief.

Given that this is a devolved issue, I am puzzled about why the cabinet secretary should be looking at what is happening in England. Our position is quite clear: we are in favour of the ending of automatic early release for all prisoners. The bill does not do that. We will abstain at decision time in the hope that the radical changes that the cabinet secretary has been forced to make to the bill can be looked at again, so that we have some common sense here and so that, at stage 2, the bill is amended effectively to abolish automatic early release, not for 3 per cent of the prison population but for 100 per cent.

The Presiding Officer: Cabinet secretary, you need to be brief.

Michael Matheson: I will be brief.

The position of the Conservative Party is that it wants to maintain automatic early release for long-term prisoners. By voting against the bill or abstaining in the vote, that is the message that the Conservatives will send out. They introduced early release and, tonight, it looks as if they are seeking to preserve it.

The bill is an important step forward in ending automatic early release. We set that out in our manifesto at the last election and we are taking it forward in legislation. I would call on all members to support the general principles of the bill tonight.

Prisoners (Control of Release) (Scotland) Bill: Financial Resolution

17:01

The Presiding Officer (Tricia Marwick): The next item of business is consideration of motion S4M-11827, in the name of John Swinney, on the financial resolution on the Prisoners (Control of Release) (Scotland) Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Prisoners (Control of Release) (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament's Standing Orders arising in consequence of the Act.—[John Swinney.]

The Presiding Officer: The question on the motion will be put at decision time.
Decision Time

17:01

The Presiding Officer (Tricia Marwick): There are two questions to be put as a result of today's business.

The first question is, that motion S4M-12878, in the name of Michael Matheson, on the Prisoners (Control of Release) (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Southern) (SNP)
Constance, Angela (Almond Valley) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Dorrell, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Gibson, Kenneth (Cunninghame North) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
McDougal, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)

McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Murray, Elaine (Dumfries and Galloway) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Deve (Skye, Lochaber and Badenoch) (SNP)
Urguhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)

Abstentions
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

The Presiding Officer: The result of the division is: For 70, Against 0, Abstentions 10.

Motion agreed to,
That the Parliament agrees to the general principles of the Prisoners (Control of Release) (Scotland) Bill.

The Presiding Officer: The next question is, that motion S4M-11827, in the name of John Swinney, on the financial resolution on the Prisoners (Control of Release) (Scotland) Bill, be agreed to.

Motion agreed to,
That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Prisoners (Control of Release) (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act.

2 APRIL 2015
DELEGATED POWERS AND LAW REFORM COMMITTEE

18th Meeting, 2015 (Session 4)
Tuesday 26 May 2015

Prisoners (Control of Release) (Scotland) Bill

Correspondence from the Scottish Government

Introduction

1. The Committee reported on the delegated powers in the Prisoners (Control of Release) (Scotland) Bill on 2 December 2014, in its 71st report of 2014.

2. In so doing, the Committee raised concerns about the commencement provisions at section 3.

3. Attached as an annex to this paper is a letter from the Cabinet Secretary for Justice responding to those concerns.

Background

Section 3 – Commencement

Provisions

4. Section 3(2) provides that the Scottish Ministers may by order bring section 1 and 2 of the Bill into force on an appointed day. (Section 8 of the Interpretation and Legislative Reform (Scotland) Act 2010 allows different days to be appointed for different purposes).

5. Section 3(3) provides that a commencement order may include transitional, transitory or saving provision.

Committee report

6. The Committee noted that a commencement order made under section 3 will not be subject to any form of parliamentary procedure (it will be ‘laid-only’). The Committee also noted that, as provided for in section 3(3), the order may contain transitional, transitory or saving provisions.

7. The Committee accepted in principle that transitional, transitory and saving provisions may be required in a commencement order under this Bill. However, the Committee considered that the use of such provisions could have a potentially

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1 Prisoners (Control of Release) (Scotland) Bill [as introduced] available here: http://www.scottish.parliament.uk/S4_Bills/Prisoners%20(Scotland)%20Bill/b54s4-introd.pdf
significant effect on certain persons affected by the Bill. The Committee noted, for example, that a commencement order made under section 3 could contain transitional provisions relating to the adjustment of prisoner release dates. Further to this, the Committee considered that it may be possible for the powers to be exercised in such a way as to have a different effect on different prisoners. This possibility of differential effects on prisoners could, depending upon the provisions, raise consideration of rights which are protected by the European Convention on Human Rights.

8. The Committee therefore recommended that the Scottish Government bring forward an appropriate amendment at stage 2, to make a commencement order made under section 3(2) subject to the negative procedure, where it contains transitional, transitory or saving provisions.

Scottish Government response

9. The Government’s response to the report argued that it would not be appropriate for the power at section 3(2) to be made subject to any form of Parliamentary procedure (other than being laid before Parliament).

10. The Government also pointed out that the Parliament will be given an opportunity to express its views on the commencement order made under section 3 when it is laid before Parliament.

11. The Committee considered this response at its meeting on 24 February and in light of this response, agreed to pursue the issue in the course of the stage 1 debate.

12. Following the stage 1 debate the Convener wrote to the Cabinet Secretary for Justice to reiterate these concerns.

Correspondence from the Cabinet Secretary for Justice

13. On 19 May the Cabinet Secretary wrote to the Convener agreeing to amend the Bill to respond to the Committee’s concerns.

14. Specifically, he has lodged amendments putting the transitional and saving provision for the coming into force of section 1 of the Bill on the face of the Bill thereby allowing Parliament an opportunity scrutinise the provisions.

Recommendation

15. The Committee is invited to consider the response from the Cabinet Secretary for Justice.
Correspondence from the Cabinet Secretary for Justice, dated 15 May 2015.

PRISONERS (CONTROL OF RELEASE) (SCOTLAND) BILL

Thank you for your letter of 29 April relating to the delegated power contained within the Prisoners (Control of Release) (Scotland) Bill ("the Bill").

Having reflected on the concerns of the Delegated Powers and Law Reform Committee in relation to that power, I can advise that I have lodged Stage 2 amendments to the Bill and I hope these amendments will, if approved, assuage the Committee's concerns.

My amendments will put on the face of the Bill transitional and saving provision for the coming into force of section 1 of the Bill. This will ensure there is ample opportunity for effective Parliamentary scrutiny of the transitional and saving provision approach for the provisions in the Bill that will affect the fundamental rights of a significant number of persons i.e. long-term prisoners already serving a sentence when the current system of automatic early release is ended by section 1 of the Bill. Indeed, putting the transitional and saving provision on the face of the Bill means there will be a greater opportunity for Parliament to scrutinise the provision than if it were contained in subordinate legislation subject to either affirmative or negative procedure as MSPs will, if they wish, be able to lodge their own amendments to the provision proposed by the Government.

Thank you for your Committee's consideration of the Bill. A copy of this letter goes to the Justice Committee.
Prisoners (Control of Release) (Scotland) Bill: The Committee noted the reply from the Scottish Government which responded to the points raised by the Committee on this Bill. The Committee welcomed that the Cabinet Secretary had lodged amendments responding to the Committee's concerns.
The Convener: The Cabinet Secretary for Justice has written to me as convener to respond to the committee’s concerns on the delegated powers in the Prisoners (Control of Release) (Scotland) Bill.

As members will recall, section 3(2) of the bill provides that the Scottish ministers may by order bring section 1 and 2 of the bill into force on an appointed day, and section 3(3) provides that a commencement order may include transitional, transitory or saving provisions.

The committee raised concerns about the commencement provisions, given that transitional, transitory or saving provisions may be required, which could have a potentially significant effect on certain persons affected by the bill. The committee therefore recommended that the Scottish Government bring forward an appropriate amendment at stage 2 to make a commencement order made under section 3(2) subject to the negative procedure when it contains transitional, transitory or saving provisions.

The cabinet secretary has since written, agreeing to amend the bill to respond to the committee’s concerns. Specifically, he has lodged amendments to put the transitional and saving provision for the coming into force of section 1 on the face of the bill, thereby allowing Parliament an opportunity to scrutinise the provisions.

Do members have any comments or observations to make?

John Scott (Ayr) (Con): I welcome the cabinet secretary’s change of heart, which is all to the good. I am pleased that we stuck to our guns. I think that it was you, convener, who raised the issue in debate, and I thank you for doing so on behalf of the committee.

The Convener: If members have no other comments, do members agree to note the response and welcome the fact that, in light of the committee’s report, the Cabinet Secretary for Justice has lodged amendments that put the transitional provisions on the face of the bill?

Members indicated agreement.
Purpose

1. This paper provides some background information in advance of the Committee’s latest evidence session with the Cabinet Secretary for Justice on the Prisoners (Control of Release) (Scotland) Bill, including written submissions received on the Scottish Government’s amendments to the Bill at Stage 2.

Background

2. The Bill contains provisions relating to the release of offenders serving custodial sentences. It would in particular end automatic early release for: (a) sex offenders receiving determinate custodial sentences of four years or more, and (b) other offenders receiving determinate custodial sentences of ten years or more.\(^1\)

3. Following the final evidence session on the Bill at Stage 1, the Cabinet Secretary wrote to the Committee advising that the Scottish Government would bring forward proposals at Stage 2 to:

- extend the provisions ending automatic early release to all long-term prisoners (i.e. all offenders given a determinate sentence of four years or more), and
- ensure that all long-term prisoners are, on release from prison, subject to a minimum period of compulsory supervision in the community.\(^2\)

4. The Committee took further evidence on these proposals from a range of witnesses on 24 February\(^3\) and from the Cabinet Secretary on 3 March, before reporting\(^4\) at Stage 1 on 19 March. At that time, the Committee expressed an interest in taking further evidence on the amendments intended to give effect to the proposals once lodged and before being formally considered at Stage 2.

Scottish Government amendments

Amendment 1 (and consequential amendment 4)

5. The Scottish Government lodged amendments to the Bill at Stage 2 on 14 May. These are attached at Annex A. Amendment 1 is intended to give effect to the Scottish Government’s proposals on extending provisions ending automatic release and on

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\(^1\) The Bill would also allow the Scottish Prison Service to release sentenced prisoners up to two days early where this would assist with community integration. As there was broad support for these provisions amongst witnesses and Committee members at Stage 1, they are not being revisited at this evidence session.

\(^2\) http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/20150203_CSfJ_to_CG_AER_announcement.pdf

\(^3\) On 24 February, the Committee took evidence from Howard League Scotland; Positive Prison? Positive Futures; Risk Management Authority; Scottish Prison Service; Social Work Scotland; Victim Support Scotland, Professor Fergus McNeill, University of Glasgow, and Professor Cyrus Tata, University of Strathclyde.

\(^4\) Justice Committee’s Stage 1 report on the Prisoners (Control of Release) (Scotland) Bill.
compulsory supervision (although amendment 4 would make consequential changes to the Long Title of the Bill if amendment 1 was agreed to). The Cabinet Secretary wrote to the Committee on 19 May with details of the financial implications and policy explanation if amendment 1 were to be agreed to. This letter is attached at Annexe B.

Amendments 2 and 3
6. The Scottish Government has lodged amendments 2 and 3 in response to concerns raised by the Delegated Powers and Law Reform Committee (DPLR) at Stage 1 regarding the delegated power in the Bill. The Cabinet Secretary wrote to the DPLR Committee on 14 May with further explanation of these amendments. This letter is attached at Annexe C.

Future Committee consideration
7. The Committee has agreed to take evidence from the Cabinet Secretary on amendment 1 on 26 May and then from Professor Fergus McNeill from the University of Glasgow and Professor Cyrus Tata from the University of Strathclyde on 27 May.

8. To inform these evidence sessions, the Committee sought written comments on amendment 1 from previous witnesses on the Bill at Stage 1. Responses have been received from Positive Prison? Positive Futures, Dr Monica Barry of the University of Strathclyde, Professor Dr Cyrus Tata, the Risk Management Authority and Howard League Scotland, and are attached at Annexe D.

9. The Committee will consider these and any other amendments to the Bill lodged as part of the formal Stage 2 process on 2 June.

Next steps
10. The Committee is invited to refer to the amendments at Annexe A and written comments received at Annexe D, before taking evidence from the Cabinet Secretary on 26 May.
ANNEXE A

Prisoners (Control of Release) (Scotland) Bill – Stage 2

Section 1

Michael Matheson

1 In section 1, page 1, line 8, leave out subsection (2) and insert—

<(2) In section 1—

(a) after subsection (1) there is inserted—

“(1A) Subsections (2) and (2A) apply as follows—

(a) subsection (2) applies in relation to a long-term prisoner who is serving a sentence imposed before the day on which section 1 of the Prisoners (Control of Release) Scotland Act 2015 comes into force,

(b) subsection (2A) applies in relation to a long-term prisoner who is—

(i) serving a sentence imposed on or after the day on which section 1 of the Prisoners (Control of Release) Scotland Act 2015 comes into force, and

(ii) not subject to an extended sentence within the meaning of section 210A of the 1995 Act.

(1B) For the purpose of subsection (1A), a sentence specified on appeal in substitution for a sentence imposed earlier is to be regarded as imposed when the earlier sentence was imposed.”,

(b) after subsection (2) there is inserted—

“(2A) As soon as a long-term prisoner has only 6 months of the prisoner’s sentence left to serve, the Scottish Ministers must release the prisoner on licence unless the prisoner has previously been so released in relation to that sentence under any provision of this Act.”.>

Section 3

Michael Matheson

2 In section 3, page 2, line 17, leave out subsection (3)

Michael Matheson

3 In section 3, page 2, line 17, at end insert—

<( ) An order under subsection (2) bringing section 1 into force may amend section 1(1A) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 Act so that, instead of referring to the day on which section 1 comes into force, it specifies the date on which section 1 actually comes into force.>

Long Title

Michael Matheson

4 In the long title, page 1, line 1, leave out from <end> to <sentences> in line 2 and insert <amend the rules as to automatic early release of long-term prisoners from prison on licence>
Correspondence from the Cabinet Secretary for Justice to the Convener of the Justice Committee on amendments to the Prisoners (Control of Release) (Scotland) Bill

You will be aware that I have lodged Stage 2 amendments to the Prisoners (Control of Release) (Scotland) Bill. These amendments follow on from the Scottish Government announcement of 3 February about expanding the coverage of the Bill to end the current system of automatic early release for all long-term prisoners. This announcement also included a commitment to respond to concerns raised during Stage 1 scrutiny about the issue of cold release into the community of long-term prisoners.

Specifically, the amendments provide:

- for the ending of the current system of automatic early release for all long-term prisoners;
- ensure a mandatory period of licence condition supervision of 6 months for all long-term prisoners leaving custody;
- place on the face of the Bill suitable transitional provision for the coming into force of the provisions; and
- make a minor adjustment to the long title of the Bill.

In your Stage 1 report, you asked that the Scottish Government provide information ahead of Stage 2 on the financial implications and a policy explanation for our amendments. Appendix A (financial implications) and Appendix B (policy explanation) to this letter contains the information requested.

Further to my evidence to the Committee in March, Appendix C provides an update on progress towards the recommendations contained in the McLeish Prisons Commission report.

I hope this is helpful and look forward to appearing before the Committee on Tuesday 26 May to give evidence ahead of the formal Stage 2 consideration of the amendments on Tuesday 2 June.

Michael Matheson
Cabinet Secretary for Justice
19 May 2015
Appendix A – financial implications of SG Stage 2 amendments

INTRODUCTION

1. Scottish Government amendments at Stage 2 will, if approved, end the current system of automatic early release at two-thirds point of sentence for all long-term prisoners and they will also introduce a mandatory minimum period of 6 months supervision as part of a prisoner’s sentence for all long-term prisoners leaving custody where an extended sentence has not been imposed.

ENDING CURRENT SYSTEM OF AUTOMATIC EARLY RELEASE FOR ALL LONG-TERM PRISONERS

Costs on the Scottish Administration

*The Scottish Prison Service*

2. In order to estimate the financial impact the policy will have on the SPS, assumptions are required to be made relating to calculating how much longer prisoners will spend in custody as, although the prisoners affected by the policy will no longer receive automatic early release at the two-thirds point of sentence, such prisoners can still be considered for discretionary early release by the Parole Board. While it is likely that some prisoners affected by the reforms will now spend almost all of their sentences in custody due to the risks they pose to public safety (subject to release into the community through the mandatory period of six months supervision for those without an extended sentence), some prisoners will, though no longer receiving automatic early release, likely still be authorised for release through discretionary early release by the Parole Board. The estimates provided should be considered within this context and within the assumptions detailed below.

3. It is estimated that, once the Bill’s provisions are in force, the eventual long-term impact will be to increase the average daily prison population by about 370.

4. The modelling used in arriving at an estimate of an increase in the average daily prison population of 370 assumes that sex offenders affected by the ending of automatic early release will generally likely serve almost all of their sentence in custody following the reforms being implemented. The Scottish Government considers that this is a reasonable assumption to make as it is based on considering the data for discretionary release at the halfway point of sentence for sex offenders receiving sentences of four years or more which shows that 88% of sex offenders do not receive discretionary early release and 12% do receive discretionary early release.

5. The modelling also assumes that the other offenders affected by the ending of automatic early release will generally serve an increased proportion of their sentences in custody following the reforms being implemented, but some will still receive discretionary early release during their sentence. The Scottish Government considers that this is a reasonable assumption to make as it is based on considering the data for discretionary release at the halfway point of sentence for non-sexual offenders receiving sentences of four years or more which shows that 59% of these offenders do not receive discretionary early release at the halfway point of sentence and 41% do receive discretionary early release.

6. In order to test the potential impact of varying these assumptions, the Scottish Government considered two other scenarios. Firstly, an assumption could be made that non-sexual offenders receiving four years or more not being released at the halfway point of sentence would serve almost all their full sentence in custody following the reforms. This would mean the estimated impact on the average daily prison population would rise to around 450. Alternatively, if an assumption was made that a proportion of sex offenders receiving four years or more not released at the halfway
point of sentence will be released before the expiry of their sentence, this would mean the estimated impact on the average daily prison population would fall to around 340. These could be considered as possible high/low scenarios, though as explained above the Scottish Government considers that the central estimate of 370 is more plausible.

7. The impact on the prison population will build up over time as more prisoners receive sentences affected by the policy, with no impact in years one and two of implementation before numbers begin to rise and an eventual steady state of an increase of 370 in the average daily prison population is reached by year 13 after implementation.

8. The Bill’s provisions will not affect prisoners who have already been sentenced and are already in custody when the provisions come into force. Therefore, the first impact of the policy on prisoner numbers will fall on an offender who receives a sentence of 48 months and who is still in custody at the 32 months point of sentence (i.e. the two-thirds point of sentence where they previously would have received automatic early release). If it is assumed for the purposes of this document that the provisions are in force in April 2016 and such an offender happens to be sentenced in April 2016, the first prisoner directly affected by the reforms would be in about December 2018.

9. The table below gives a breakdown of the estimated impact on prison numbers over time.
The CUMULATIVE IMPACT OF ENDING CURRENT SYSTEM OF AUTOMATIC EARLY RELEASE FOR LONG-TERM PRISONERS – ADDITIONAL PRISON NUMBERS* is shown below:

<table>
<thead>
<tr>
<th>Year</th>
<th>Sex offenders sentenced to 4 years or more</th>
<th>Non-sex offenders sentenced to 4 years or more</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016/17</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2017/18</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2018/19</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2019/20</td>
<td>20</td>
<td>80</td>
<td>100</td>
</tr>
<tr>
<td>2020/21</td>
<td>30</td>
<td>130</td>
<td>160</td>
</tr>
<tr>
<td>2021/22</td>
<td>50</td>
<td>190</td>
<td>240</td>
</tr>
<tr>
<td>2022/23</td>
<td>70</td>
<td>210</td>
<td>280</td>
</tr>
<tr>
<td>2023/24</td>
<td>70</td>
<td>230</td>
<td>300</td>
</tr>
<tr>
<td>2024/25</td>
<td>80</td>
<td>250</td>
<td>330</td>
</tr>
<tr>
<td>2025/26</td>
<td>90</td>
<td>260</td>
<td>350</td>
</tr>
<tr>
<td>2026/27</td>
<td>90</td>
<td>260</td>
<td>350</td>
</tr>
<tr>
<td>2027/28</td>
<td>90</td>
<td>270</td>
<td>360</td>
</tr>
<tr>
<td>2028/29</td>
<td>90</td>
<td>270</td>
<td>360</td>
</tr>
<tr>
<td>2029/30</td>
<td>90</td>
<td>270</td>
<td>360</td>
</tr>
<tr>
<td>2030/31 and beyond</td>
<td>90</td>
<td>280</td>
<td>370</td>
</tr>
</tbody>
</table>

*Figures have been rounded to the nearest 10.

Currently about 12% of sex offenders serving sentences of 4 years or more receive discretionary early release at the halfway point of sentence. For the purposes of these estimates, it is assumed that the remainder will now serve their sentence in custody subject to the mandatory period of 6 months supervision on licence prior to the end of sentence for those offenders without an extended sentence. Currently about 41% of non-sex offenders receiving sentences of 4 years or more receive discretionary early release at the halfway point of sentence. For the purposes of these estimates, it is assumed that one-third of the remainder will now receive discretionary early release at the ¾ point of sentence and the remaining two-thirds will serve their sentence in custody subject to the mandatory period of 6 months supervision on licence prior to the end of sentence.

Due to difficulties in quantifying this from the available data, the estimated figures do not take into account the impact of recalls to custody as a result of breach of licence conditions. The effect of levels of recall would be likely to reduce the overall increase in prison numbers shown in the estimates as some prisoners who are currently released at the two-thirds point are assumed to spend longer in custody following the reforms, even though some will under the current arrangements breach their licence conditions upon release at the two-thirds point and spend longer in custody in any event.

Due to difficulties in quantifying this from the available data, the estimated figures may not take into account all...
CUMULATIVE IMPACT OF ENDING CURRENT SYSTEM OF AUTOMATIC EARLY RELEASE FOR LONG-TERM PRISONERS – ADDITIONAL PRISON NUMBERS*

prisoners who receive two or more sentences which are to run consecutively and which become ‘single-termed’ under section 27(5) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 where the single termed sentence is four years or more.

10. In arriving at the estimates given above, the historical trends for the number of sentences given for different offences have been used in order to assess the flow of prisoners entering custody who will be affected by the reforms. This information is contained in the following table.

NUMBER OF SENTENCES PER YEAR OF 4 YEARS OR MORE FOR SPECIFIC TYPES OF OFFENCES5

<table>
<thead>
<tr>
<th>Crime type</th>
<th>2005-06</th>
<th>2006-07</th>
<th>2007-08</th>
<th>2008-09</th>
<th>2009-10</th>
<th>2010-11</th>
<th>2011-12</th>
<th>Average per year</th>
<th>% of total crimes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rape and attempted rape</td>
<td>40</td>
<td>43</td>
<td>40</td>
<td>36</td>
<td>44</td>
<td>27</td>
<td>37</td>
<td>38.1</td>
<td>8%</td>
</tr>
<tr>
<td>Sexual assault</td>
<td>18</td>
<td>24</td>
<td>20</td>
<td>29</td>
<td>35</td>
<td>29</td>
<td>22</td>
<td>25.3</td>
<td>5%</td>
</tr>
<tr>
<td>Other indecency</td>
<td>14</td>
<td>13</td>
<td>7</td>
<td>22</td>
<td>24</td>
<td>20</td>
<td>15</td>
<td>15.1</td>
<td>3%</td>
</tr>
<tr>
<td>Homicide</td>
<td>34</td>
<td>38</td>
<td>66</td>
<td>40</td>
<td>44</td>
<td>37</td>
<td>30</td>
<td>41.3</td>
<td>9%</td>
</tr>
<tr>
<td>Serious assault and attempted murder</td>
<td>145</td>
<td>149</td>
<td>137</td>
<td>168</td>
<td>139</td>
<td>141</td>
<td>180</td>
<td>151.3</td>
<td>31%</td>
</tr>
<tr>
<td>Robbery</td>
<td>54</td>
<td>52</td>
<td>52</td>
<td>58</td>
<td>55</td>
<td>50</td>
<td>67</td>
<td>55.4</td>
<td>11%</td>
</tr>
<tr>
<td>Other violence</td>
<td>16</td>
<td>7</td>
<td>13</td>
<td>4</td>
<td>8</td>
<td>2</td>
<td>7</td>
<td>8.1</td>
<td>2%</td>
</tr>
<tr>
<td>Fraud</td>
<td>1</td>
<td>6</td>
<td>4</td>
<td>2</td>
<td>-</td>
<td>4</td>
<td>1</td>
<td>3.0</td>
<td>1%</td>
</tr>
<tr>
<td>Other dishonesty</td>
<td>-</td>
<td>5</td>
<td>7</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>1</td>
<td>3.5</td>
<td>1%</td>
</tr>
<tr>
<td>Vandalism etc.</td>
<td>-</td>
<td>2</td>
<td>3</td>
<td>-</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>2.3</td>
<td>0%</td>
</tr>
<tr>
<td>Handling an offensive weapon</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>3</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>1.5</td>
<td>0%</td>
</tr>
<tr>
<td>Drugs</td>
<td>118</td>
<td>114</td>
<td>131</td>
<td>113</td>
<td>118</td>
<td>114</td>
<td>99</td>
<td>115.3</td>
<td>24%</td>
</tr>
<tr>
<td>Other crime</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>-</td>
<td>9</td>
<td>-</td>
<td>2</td>
<td>3.3</td>
<td>1%</td>
</tr>
<tr>
<td>Common assault</td>
<td>3</td>
<td>10</td>
<td>8</td>
<td>9</td>
<td>9</td>
<td>12</td>
<td>12</td>
<td>9.0</td>
<td>2%</td>
</tr>
<tr>
<td>Other offences</td>
<td>7</td>
<td>9</td>
<td>20</td>
<td>29</td>
<td>14</td>
<td>7</td>
<td>16</td>
<td>14.6</td>
<td>3%</td>
</tr>
</tbody>
</table>

5 Justice Analytical Services criminal proceedings
NUMBER OF SENTENCES PER YEAR OF 4 YEARS OR MORE FOR SPECIFIC TYPES OF OFFENCES

<table>
<thead>
<tr>
<th>Unlawful use of vehicle</th>
<th>1</th>
<th>-</th>
<th>2</th>
<th>-</th>
<th>-</th>
<th>1</th>
<th>-</th>
<th>1.3</th>
<th>0%</th>
</tr>
</thead>
</table>

Due to rounding, the % column does not add up to 100%.

11. The SPS annual report 2012/13 indicates that the average annual cost of a prison place is £42,619⁶. Table A below provides an estimate for the costs on prisoner places over time.

<table>
<thead>
<tr>
<th>TABLE A – COST IMPACT ON PRISON PLACES OF ENDING CURRENT SYSTEM OF AUTOMATIC EARLY RELEASE FOR LONG-TERM PRISONERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Increase in prison places</td>
</tr>
<tr>
<td>Additional recurring costs</td>
</tr>
</tbody>
</table>

12. The SPS has indicated that there can be limited flexibility to respond to changes in legislation within the use of the prison estate. However, the flexibilities available to the SPS have limits and each change in legislation must always be considered within the constraints existing at the time legislative change takes effect. The impact on prisoner numbers of ending the current system of automatic early release for long-term prisoners will build up over time, with the initial impact relatively limited in the very early years following implementation. However, the SPS will require the Scottish Government to ensure that the overall pressures on the prison estate arising from these reforms, and other legislative reforms, are met through future justice spending review settlements.

13. There will be other costs associated with the policy falling on the SPS. It will be required to update its IT systems to reflect that the release dates for prisoners falling into the two categories will no longer mean automatic early release takes place at the two-thirds point of sentence. It is estimated that one-off costs of £50,000 would arise in updating SPS IT systems in the period ahead of commencement of the reforms (i.e. if commencement took place in April 2016, these costs would fall in 2015/16).

14. There will also be a need for SPS staff to receive guidance and training for the changes to the system of automatic early release. This training and guidance will allow SPS staff to understand the effect of the changes and respond to any queries that may arise from prisoners and their families. Staff costs relating to training and guidance would cover staff at band B (£10.00 per hour), band C (£12.90 per hour), band D (£16.88) and band E (£20.09 per hour) and would fall in the year ahead of commencement of the reforms (i.e. 2015/16 based on an April 2016 commencement). The total one-off costs would amount to £67,000 in 2015/16. Future training for new staff would be adjusted to include coverage of these reforms and no new costs would arise after 2015/16.

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⁶ See page 63 of [http://www.sps.gov.uk/Publications/Publication-4809.aspx](http://www.sps.gov.uk/Publications/Publication-4809.aspx) [Link no longer available]
15. The SPS will need to respond to a likely increased demand for prisoner programmes. This would be in relation to prisoners who may change their behaviour as a result of no longer receiving automatic early release at the two-thirds point of sentence and, therefore, decide to engage with prisoner programmes in order to improve their prospects of discretionary early release when currently such prisoners may not engage with such programmes.

16. The estimated annual expenditure by the SPS on prisoner programmes for offenders serving sentences of four years or more is approximately £1.5 million.

17. Assuming implementation in April 2016, there would be no additional costs until 2019/20. Costs increase by £43,000 in 2019/20, £86,000 in 2020/21 and £129,000 in 2020/21. By 2022/23, the increased costs will reach a steady state of £171,000 which will be the annual long-term recurring costs incurred for the provision of prisoner programmes for offenders serving sentences of four years or more. These projected costs do not take account of any inflationary increases or pay awards.

18. As overall prison numbers increase over time, there will be additional costs associated with the provision of prison-based social work services. These costs will fall into areas such as providing risk assessment reports, Parole Board hearing reports, attendance at integrated case management case conferences and risk management meetings and engaging on a direct one-to-one basis with prisoners.

19. It is estimated that there is an annual cost of approximately £5.6 million to provide prison-based social work services for prisoners. This takes into account both staff costs and the wider costs associated with the provision of social work services. On this basis, there will be no new prison-based social work costs until 2019/20, when additional costs of £212,000 are expected to arise. In 2020/21, the additional costs are expected to be £297,000 before a long-term recurring cost of £670,000 is expected to be reached in 2030/31 and each year beyond. These projected costs do not take account of any inflationary increases or pay awards.
### TABLE B - COST IMPACT ON SPS OF ENDING CURRENT SYSTEM OF AUTOMATIC EARLY RELEASE FOR LONG-TERM PRISONERS

<table>
<thead>
<tr>
<th></th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional prison-based social work costs</td>
<td>Nil</td>
</tr>
<tr>
<td>Increased demand for prisoner programmes</td>
<td>Nil</td>
</tr>
<tr>
<td>Non-recurring costs</td>
<td>£117,000</td>
</tr>
<tr>
<td>Recurring costs</td>
<td>Nil</td>
</tr>
<tr>
<td>Total</td>
<td>£117,000</td>
</tr>
</tbody>
</table>

*The Parole Board for Scotland*

20. There will be an additional burden on the Parole Board. This will relate to the need to schedule additional casework meetings for prisoners who previously would have been released automatically at the two-thirds point of sentence. As discussed previously, while some prisoners will remain in prison for almost all of their sentence following the reforms subject to the mandatory period of 6 months supervision for those without an extended sentence, other prisoners no longer receiving automatic early release at the two-thirds point will likely still receive discretionary early release by the Parole Board and this is factored into the estimates of additional consideration of cases by the Parole Board. These figures also assume that a small proportion of cases will require an oral hearing of evidence to allow the prisoner the opportunity to state their case where the prisoner challenges questions of fact.

21. The following table provides details of the expected impact on the Parole Board’s caseload.
### CUMULATIVE IMPACT OF ENDING AUTOMATIC EARLY RELEASE FOR LONG-TERM PRISONERS – ADDITIONAL PAROLE BOARD CASELOAD NUMBERS*

<table>
<thead>
<tr>
<th>Year</th>
<th>Sex offenders sentenced to 4 years or more</th>
<th>Non-sex offenders sentenced to 4 years or more</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016/17</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2017/18</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2018/19</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2019/20</td>
<td>20</td>
<td>80</td>
<td>100</td>
</tr>
<tr>
<td>2020/21</td>
<td>30</td>
<td>130</td>
<td>160</td>
</tr>
<tr>
<td>2021/22</td>
<td>50</td>
<td>190</td>
<td>240</td>
</tr>
<tr>
<td>2022/23</td>
<td>70</td>
<td>210</td>
<td>280</td>
</tr>
<tr>
<td>2023/24</td>
<td>70</td>
<td>230</td>
<td>300</td>
</tr>
<tr>
<td>2024/25</td>
<td>80</td>
<td>250</td>
<td>330</td>
</tr>
<tr>
<td>2025/26</td>
<td>90</td>
<td>260</td>
<td>350</td>
</tr>
<tr>
<td>2026/27</td>
<td>90</td>
<td>270</td>
<td>350</td>
</tr>
<tr>
<td>2027/28</td>
<td>90</td>
<td>270</td>
<td>360</td>
</tr>
<tr>
<td>2028/29</td>
<td>90</td>
<td>270</td>
<td>360</td>
</tr>
<tr>
<td>2029/30</td>
<td>90</td>
<td>270</td>
<td>360</td>
</tr>
<tr>
<td>2030/31 and beyond</td>
<td>90</td>
<td>270</td>
<td>370</td>
</tr>
</tbody>
</table>

*Currently about 12% of sex offenders serving sentences of 4 years or more receive discretionary early release at the halfway point of sentence. For the purposes of these estimates, it is assumed that the remainder will now serve their sentence in custody subject to the mandatory period of 6 months supervision on licence prior to the end of sentence for those offenders without an extended sentence. Currently about 41% of non-sex offenders receiving sentences of 4 years or more receive discretionary early release at the halfway point of sentence. For the purposes of these estimates, it is assumed that one-third of the remainder will now receive discretionary early release at the ¾ point of sentence and the remaining two-thirds will serve their sentence in custody subject to the mandatory period of 6 months supervision on licence prior to the end of sentence.

Each additional prisoner would be entitled to an annual review so the number of additional hearings would equate to the number of additional prisoners. There may be occasions where a prisoner has two hearings in a year, for example the case was deferred for additional information or an oral hearing is fixed, but it would be difficult to quantify them.

22. The costs for the Parole Board are as detailed below with the expectation that, in the main, some additional casework meetings will be necessary plus a small number of oral hearings.

<table>
<thead>
<tr>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>290</td>
</tr>
<tr>
<td>--------------------------------</td>
</tr>
<tr>
<td>Increase in Parole Board Casework Meetings</td>
</tr>
<tr>
<td>Increase in Oral Hearings</td>
</tr>
<tr>
<td>Additional recurring costs</td>
</tr>
</tbody>
</table>

**Costs on local authorities**

23. The estimated impact of the reforms will be that some prisoners will spend longer in custody. The period of time such prisoners will spend on licence in the community is likely, on average, to be reduced notwithstanding the mandatory period of 6 months supervision applying to long-term prisoners without an extended sentence. This is because currently all long-term prisoners have a minimum period of one-third of their sentence on licence under supervision, but in the future, this will be a minimum period of 6 months on licence under supervision.

24. It is difficult to estimate the exact impact on local authority criminal justice social work, though it is considered that there will no new costs falling on local authorities with any impact arising likely to be a reduction in the demand for criminal justice social work in relation to long-term prisoners.

**Costs on other bodies, individuals and businesses**

25. There will be no new costs falling on other bodies, individuals and businesses.

**Summary**

26. Using the costings given in tables A, B and C, table D below provides a summary of the overall estimated cost of ending the current system of automatic early release for long-term prisoners and bringing in a mandatory period of 6 months supervision as part of the sentence for all long-term prisoners still in custody with 6 months to go on their sentence and where there is no extended sentence.

27. The figures in table D are based on the Scottish Government’s estimate as to the potential impact being an increase of 370 in the average daily prison population. If the impact in terms of additional prison places is toward the upper scenario (450 prison places) or the lower scenario (340 prison places) as discussed previously, the overall estimated costs would accordingly be either approximately 20% higher or approximately 10% lower than indicated in table D.
### TABLE D – ESTIMATED COST OF ENDING CURRENT SYSTEM OF AUTOMATIC EARLY RELEASE FOR LONG-TERM PRISONERS

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Non-recurring costs</strong></td>
<td>£0.117m - B</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Recurring costs</strong></td>
<td>£4.260m – A</td>
<td>£6.820m – A</td>
<td>£15.770m – A</td>
<td>£0.212m – B</td>
<td>£0.297m – B</td>
<td>£0.670m – B</td>
<td>£0.043m – B</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>£0.117m</td>
<td>£0</td>
<td>£0</td>
<td>£4.545m</td>
<td>£7.253m</td>
<td>£16.724m</td>
<td>£16.724m</td>
</tr>
</tbody>
</table>

*Letter following figures refers to the table within this document where information has been taken

### Appendix B – policy explanation of SG Stage 2 amendments

#### INTRODUCTION

28. Stage 2 amendments proposed by the Scottish Government will, if approved by Parliament, provide for:

- the current system of automatic early release at the two-third point of sentence being ended for all long-term prisoners;
- transitional and saving provision for commencement of the provisions in the Bill relating to automatic early release;
- all long-term prisoners leaving custody having a minimum period of 6 months licence condition supervision as part of their sentence; and
- a minor change to the long title of the Bill.

#### Ending current system of automatic early release for all long-term prisoners

29. The amendments to the Bill will mean that no long-term prisoner (i.e. sentences of 4 years or more) will receive automatic early release at the two-thirds point of sentence. This expands on the policy contained in the Bill on introduction where it was sex offenders receiving sentences of 4 years or more and other offenders receiving sentences of ten years or more where automatic early release at the two-third point of sentence was being ended.

30. This expansion of the policy follows views being expressed during the stage 1 scrutiny process querying why policy had focused on certain categories of long-term offenders rather than all long-term offenders.

31. As a result of the expanded policy, there will no longer be a distinction made between different categories of offenders in respect of the rules governing automatic early release for long-
term prisoners. The Scottish Government considers this is an appropriate response to the issues raised.

32. More generally, the Scottish Government considers that this expanded policy of ending the current system of automatic early release for all long-term prisoners is the best way to protect the public from those who pose unacceptable risks to public safety. Discretionary early release for individual prisoners can still take place to help such prisoners be reintegrated into the community, but only where an acceptable level of risk exists with any given individual prisoner that can be managed in the community with appropriate licence conditions.

33. Following the reforms being implemented, long-term prisoners affected by the reforms will continue to be able to be considered for discretionary early release from the halfway point of their sentence by the Parole Board. However, these prisoners will no longer be eligible for automatic early release if they are still in custody at the two-thirds point of sentence. Instead, the Parole Board will be empowered to continue to consider the risks an individual prisoner poses from the two-thirds point of sentence onwards when deciding whether discretionary early release is appropriate.

34. Data shows that the rate at which prisoners breach their licence conditions when granted automatic early release is 7 times higher than the breach rate for prisoners granted Parole Board discretionary early release. Data also shows that the rate at which prisoners are recalled to custody when granted automatic early release is 5 times higher than the recall rate for prisoners granted Parole Board discretionary early release.

35. By empowering the Parole Board to consider early release beyond the two-third point of sentence, this will allow an informed decision to be made about whether it is appropriate to authorise early release and this is an area where the evidence shows the record of the Parole Board to be good.

36. The effect of these reforms is that the risk to public safety of an individual prisoner will be the determining factor in decisions made about whether to release the most serious offenders early from prison. It should be noted that the Bill will not in any way affect the discretion of the independent judiciary to decide appropriate sentences in individual cases, with this reform being about how sentences are enforced rather than how sentences are determined.

37. If the reforms in the Bill had been in place since the current automatic early release regime was implemented in 1995, it is estimated that nearly 10,000 long-term prisoners would have entered prison knowing they would not be receiving automatic early release at the two-third point in their sentence.

Transitional and saving provision

38. The amendments provide that prisoners serving sentences at the time the relevant provisions are brought into force will not be subject to the effect of the ending of the current system of automatic early release. This will mean that any prisoner who has already been sentenced prior to the relevant provisions coming into force will have their sentence enforced in line with the current legislative framework with automatic early release taking place at the two-thirds point of sentence.

Mandatory minimum period of 6 months supervision

39. During Stage 1 scrutiny, there were views expressed that an unintended consequence of ending the entitlement to automatic early release for certain prisoners was that some prisoners would leave custody with no licence conditions in place to help supervise them in the community. This issue was commonly referred to as ‘cold release’. In response to this, the Scottish Government
amendments will ensure that all long-term prisoners leaving custody will have a mandatory period of at least 6 months supervision through licence conditions as part of their sentence.

40. It is important to stress that the need for the operation of a mandatory period of licence condition supervision will apply to only a proportion of long-term prisoners. This is because many long-term prisoners will continue to receive Parole Board early release and/or will have an extended sentence in place. For these prisoners, a period of supervision will always operate upon release from custody through the imposition of licence conditions.

41. However, where a prisoner does not receive Parole Board early release and does not have an extended sentence, a mandatory period of supervision on release needs to be put in place with the licence conditions set by the Parole Board and this is what the Scottish Government amendment does.

42. The Scottish Government considers that the mandatory period of supervision should be part of a long-term prisoner’s sentence. This will ensure there is effective enforcement of the conditions of the mandatory supervision period which will include the ability to recall a prisoner to custody. It is the view of the Scottish Government that providing for mandatory supervision after a prisoner’s sentence had ended would not permit suitably effective enforcement of the mandatory supervision conditions.

43. The Scottish Government considers that the length of the mandatory supervision should be 6 months.

44. This view is guided by considering that any prisoner requiring mandatory supervision will have, as a minimum, spent close to 4 years in custody. The Scottish Government considers the specific minimum necessary period of supervision for a prisoner having served close to 4 years as compared to a prisoner leaving after, say, 10 years in custody is likely to be similar given both are long periods of time to be incarcerated.

45. Evidence heard during Stage 1 highlighted that it is the initial weeks and months following release that are generally most critical for individual prisoners. The Scottish Government agrees that it is during this period with prisoners leaving custody having to re-establish themselves into their communities when challenges such as accessing housing, work opportunities can be at their most acute where a mandatory supervision period would be most appropriate.

46. The Scottish Government considers that a period of 6 months strikes a good balance so that mandatory supervision is in place in the crucial first few weeks and months following a long period of incarceration, but such licence condition supervision does not extend too far into the future hanging over a prisoner as they leave custody and seek to re-integrate into the community. Where a court considers at the time of sentencing that a long guaranteed period of supervision for an individual prisoner in the community is necessary, it is open for the court to impose an extended sentence.

47. Two examples help illustrate the operation of the amendments.

48. A prisoner receives a 6 year custodial sentence and 2 year extended sentence. They will serve their entire 6 year custodial sentence in custody unless the Parole Board authorises early release. If not authorised for Parole Board early release, they will be released after 6 years with 2 years of licence condition supervision through the extended sentence.

49. A prisoner receives a 6 year custodial sentence with no extended sentence. They will remain in custody for 5 years 6 months unless the Parole Board authorises early release. If not authorised
for Parole Board early release, they will be released with 6 months left on their sentence to ensure mandatory minimum supervision of 6 months in the community.

Change to the long title of the Bill

50. A minor change to the long title of the Bill is made to reflect the effect of the Stage 2 amendments.

EFFECTS ON HUMAN RIGHTS

Human rights

51. In response to the Justice Committee’s Stage 1 report and following on from the Justice Committee 2013 Report Inquiry into purposeful activity in prisons, SPS advised that they recently concluded a Purposeful Activity review considering the full range of programmes and constructive interactions which promotes citizenship, develops learning and employability skills, builds life skills and resilience and addresses wellbeing and motivates personal engagement with both prison and community based services.

52. One of the recommendations of this review was that SPS carry out a full assessment of programme and psychology provision to ensure SPS continues to meet prisoners’ needs into the future. SPS are currently putting in place arrangements for this review to be carried out by an external subject expert.

53. SPS has further advised that there are prisoners waiting to access prisoner programmes and in particular the key national programmes ‘Moving Forward Making Changes’ (sex offender programme) and ‘Self Change’ (violent offenders). These programmes are resource intensive and require specialised delivery skills. In order to make the best use of these specific resources, SPS prioritises access to the programmes. Through Integrated Case Management, programmes are, where possible, delivered at the most appropriate time in their sentence, taking into account their willingness and readiness to engage and the availability of programme places.

54. SPS currently delivers 7 core Offender Behaviour Programmes to address prisoner key criminogenic needs and also a range of Approved Activities which are short, less intensive programmes. SPS has advised that in 2013-14 there were 751 Core Offender Behaviour Programmes completed and 490 Approved Activities.

55. In addition, the Scottish Government would note that current UK case law has not found the rights of prisoners serving determinate sentences in terms of ECHR to have been impacted by any failures to provide timeous access to offence focussed programmes while in custody.

56. Within this overall context, the Scottish Government does not consider that the Stage 2 amendment provisions adversely impact on the human rights of prisoners.
Appendix C – update on progress in achieving the McLeish Prisons Commission Report recommendation

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Imprisonment should be reserved for people whose offences are so serious that no other form of punishment will do and for those who pose a threat of serious harm to the public.</td>
<td>Agreed with CoSLA that prison should be for serious offenders who present the greatest threat to public safety.</td>
<td>We are committed to developing a prison service fit for the 21st century and one that meets the needs of the country. Scottish Ministers have restated their commitment that prison should be reserved for those offenders who represent a risk to the public.</td>
</tr>
<tr>
<td>2. Paying back in the community should become the default position in dealing with less serious offenders</td>
<td>We will introduce a new community sentence which allows courts to punish low-tariff offenders in a way that also addresses those areas of their lives that need to change but also underlines the fact that a community sentence is predominantly a punishment not merely a supportive intervention.</td>
<td>Community Payback Orders have been in force since 1 February 2011, replacing community service orders, probation orders and supervised attendance orders. CPOs are designed to ensure that offenders pay back to society, and in particular to communities, in two ways. First, by requiring an offender to make reparation, often in the form of unpaid work; and secondly by requiring them to address and change their offending behaviours thereby improving the safety of local communities and providing opportunities for their reintegration as law abiding citizens. Each order must carry with it an unpaid work requirement, an offender supervision requirement, or both of the above. Unpaid work should where possible be carried out in the community, and the legislation provides that local authorities have a duty to consult local communities on the work or projects to be carried out. Additionally, the courts can impose a range of further requirements such as a drug treatment requirement or a residence requirement, designed to address the offending behaviour of the individual subject to the order. In 2012/13 15,857 CPOs were commenced, of which 12,630 included an &quot;unpaid work or other activity&quot; requirement (amounting to over 1.5 million hours in total being imposed). During 2013/14 substantially more individuals were given community</td>
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<td></td>
<td></td>
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<td>---</td>
</tr>
<tr>
<td><strong>3. The Scottish Government to extend the types and availability of effective alternatives to prosecution coordinated by enhanced court-based social work units.</strong></td>
<td>We have already made more direct measures available through summary justice reform - fiscal fine increased to £300; fiscal compensation order to £5,000; and four Fiscal Work Order pilots.</td>
<td>Fiscal Work Order pilots have been running in a total of seven local authority areas since 2011. An evaluation of the first two years of the initial four pilot sites found FWOs to be fair, efficient and effective. For offences committed on or after 1 April 2015, FWOs will be available in every local authority across the country providing Procurators Fiscal with the power to offer alleged offenders a period of between 10 and 50 hours unpaid work in the community as an alternative to prosecution.</td>
</tr>
<tr>
<td><strong>4. The Scottish Government to legislate to place an onus on the Crown to seek to roll-up outstanding matters.</strong></td>
<td>Section 152A of the 1995 Act allows Procurators Fiscal to ask the court to have multiple complaints conjoined, heard and determined on the same day.</td>
<td>Procurators Fiscal have received training in relation to conjoining charges in separate police reports.</td>
</tr>
<tr>
<td><strong>5. The Scottish Government to extend the types of and availability of bail-related information and supervision services across Scotland, including electronically monitored bail conditions, operated through enhanced court-based social work.</strong></td>
<td>Evaluation of a pilot of electronic monitoring on bail showed that uptake and hence impact on custodial remands was very low. No justification in continuing. But we will make electronic monitoring of a curfew available to judges who are considering a breach of bail. Where public safety is not the key issue, remand may not be necessary, but it is important to be able to impose significant restrictions on those who have failed to respect the authority of the court.</td>
<td>A Scottish Government consultation on electronic monitoring ran from 23 September 2013 until 31 December 2013 and included questions on use in relation to bail. The response to the consultation on the use of electronic monitoring for bail was mixed, with respondents highlighting both opportunities but also potential drawbacks depending upon the implementation of such a disposal. The Scottish Government are of the opinion that there would need to be further consideration as to the effectiveness of this option and detailed work with sentencers would be required to understand the impact of having such a disposal available if there were any intention to pursue it. As an alternative we intend to engage with the Judicial Institute for Scotland to better understand the opportunities and potential barriers for imposing restriction of liberty orders as a sanction for those who are convicted of bail non-compliance (rather than a custodial sentence) where the risk of re-offending is sufficiently low.</td>
</tr>
<tr>
<td><strong>6. The Scottish Government to explore options for detaining 16/17 year olds in secure youth facilities separate from older offenders and those under the age</strong></td>
<td>We will legislate in the forthcoming Criminal Justice &amp; Licensing (Scotland) Bill to end the practice of sending under 16s to prison and look carefully at how to</td>
<td>The Criminal Justice and Licensing (Scotland) Act 2010 introduced provisions that abolished ‘Unruly Certificates’ ending the practice of remanding</td>
</tr>
</tbody>
</table>

sentences (18,231) than custodial sentences (14,101).
<table>
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<th>7. The Scottish Government re-examine the case for diverting 16/17 year olds to Specialist Youth Hearings with a wider range of options than are presently available in the Children’s Hearing System.</th>
<th>We will examine the evaluation of the youth court pilots to learn lessons about how to increase the effectiveness of the justice system in dealing with young people.</th>
<th>The WSA, which is being implemented in 28 Local Authorities across Scotland, promotes early and effective intervention (diversion from formal measures by the Children’s Reporter and the Procurator Fiscal), formal diversion from prosecution, and where a case does proceed to court, Remittal back to the Children’s Hearing System. This approach has resulted in significant decreases in offence referrals to the Children’s Reporter and the number of cases proceeding to court for under 18s. Funding for the bespoke youth courts was deemed incompatible with the wider WSA approach of diverting young offenders away from court and is currently being wound up (to be completed by 31 March 2015).</th>
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<td>8. The Scottish Government establish an independent National Sentencing Council (NSC) to develop clear sentencing guidelines that can be applied nationwide.</td>
<td>We will legislate in the forthcoming Criminal Justice &amp; Licensing (Scotland) Bill to create a judicially led Scottish Sentencing Council (SSC), that will develop and oversee a national system of sentencing guidelines, and bring greater consistency and transparency to the sentencing</td>
<td>The Scottish Government announced in February 2015 that the Scottish Sentencing Council would be established by October 2015 with a view to having a first meeting in November 2015. The SSC will be responsible for producing draft sentencing</td>
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process.

guidelines for the judiciary, with the aims of promoting consistency and transparency in sentencing practice, and assisting in developing sentencing policy and encourage better understanding of sentences across Scotland.

It will be for the Scottish Sentencing Council to decide how best to meet its objectives. However legislation put in place by the Scottish Parliament sets out the functions of the SSC, including to:

• Produce draft guidelines covering areas of sentencing;
• Support research and academic work relevant to its remit;
• Collate and publish information on sentencing decisions (this may include how sentencing guidelines have been applied by the courts);
• Publish information about sentencing.

| 9. The establishment of a National Community Justice Council (NCJC) | We do not plan to create another Community Justice Body. Instead we will develop the existing structure for offender management- the National Advisory Body (NAB) on Offender Management to meet the aims envisaged by the Prisons Commission. | Following extensive consultation, the Scottish Government has worked with key stakeholders and partners to develop a future model for community justice which meets the needs of service users, victims, their families and the communities of Scotland.
As part of this a National Body, Community Justice Scotland, staffed by individuals with relevant professional experience in community justice in Scotland in areas such as health and housing, as well as those with academic and third sector experience, will be created and tasked with a range of functions including, the provision of national, professional and strategic leadership for community justice in Scotland.

The Throughcare and Services Project in Phase 2 of the Reducing Reoffending Programme is focusing on improving the quality and accessibility of services that are needed to support individuals during custody and on transition from custody to the community. This has included the piloting of a structured needs-screening process for short term offenders in custody, the launch of a national directory of services for offenders and the launch of 6 mentoring |
| 10. The National Sentencing Council and the National Community Justice Council should be jointly charged with enhancing public understanding of, and confidence in, the credibility of both sentencing and the management of community sentences. The NCJC should work with SPS and the Parole Board for Scotland to enhance public understanding of and confidence in the credibility of release and resettlement arrangements | The Scottish Sentencing Council will provide clear information to the public on the sentencing process and how it operates. We have also funded three Community Justice Authorities to evaluate new approaches to improving the visibility of community sentences. | The Scottish Government announced in February 2015 that the Scottish Sentencing Council would be established by October 2015 with a view to having a first meeting in November 2015. The Community Justice Authority pilots highlighted a number of good practices and conclusions, some of which have been taken forward, including branding to help to raise the profile of Community Payback Orders. |
| 11. Where sentences involving supervision are imposed, there should be one single Community Supervision Sentence (CSS) with a wide range of possible conditions and measures | We will replace Community Service, Probation Orders and Supervised Attendance Orders with a new Community Payback Sentence. | Community Payback Orders have been in force since 1 February 2011. In 2012/13 8,696 CPOs (or 54%) carried with them a supervision requirement. |
| 12. The development of a 3-stage approach to sentencing and managing community sentences. Stage 1: How much payback? Stage 2: What kind of payback? Stage 3: Checking progress and payback | The new Community Payback Sentence will provide for this 3 stage approach | Community Payback Orders have been in force since 1 February 2011. With the CPO sentencers can chose from a range of 9 requirements and can impose a restricted movement requirement only after breach. |
| 13. Establishment of progress courts that enable sift and regular review of progress and compliance with community sentences- and deal robustly with offenders who do not pay back | We will legislate to ensure that review hearings can be set at a judge’s discretion whenever a Community Payback Sentence is given. | Community Payback Orders have been in force since 1 February 2011. The CPO has the option for the court to schedule a progress review at the time of sentencing. During the first 14 months of operation, approximately 20% of all CPOs imposed carried with them a provision to conduct such a review. |
| 14. The Government to bring forward legislation to require a sentencing judge, who would otherwise have imposed a sentence of 6 months imprisonment or less, to impose a Community Supervision Sentence instead, except in particular circumstances. | We will legislate to make it clear that judges should not impose a custodial sentence of less than 6 months and must explain why if they do so. | A presumption against sentences of three months or less came into force on 1 February 2011 (the Criminal Justice and Licensing (Scotland) Act 2010). As introduced into Parliament, the legislation carried with it a presumption against sentences of less than 6 months, but this was amended during the passage of the Bill. Provision exists within the Act to alter the length of sentences affected by the presumption. |
| 15. The Government bring forward legislation to enable a sentencing judge who has formed the view that a custodial sentence is appropriate, to consider whether it should be served as a conditional | We intend to ask the Scottish Sentencing Council to consider issuing guidance on appropriate use of deferred sentences and examine issues around suspended sentences | The Scottish Government announced in February 2015 that the Scottish Sentencing Council would be established by October 2015 with a view to having a first meeting in November 2015. |
sentence. A conditional sentence means that the period of custody is imposed but suspended subject to the offender keeping to a strict set of conditions.

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<th>16. Subject to the full implementation of other recommendations, the current Home Detention Curfew scheme should be terminated.</th>
<th>Already committed to a review of the Home Detention Curfew scheme.</th>
<th>An Independent evaluation of HDC (and the use of the Open Estate) was published in July 2011. There are no current plans to terminate the HDC scheme.</th>
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<td>17. The National Community Justice Council to provide leadership for Criminal Justice Social Work nationwide</td>
<td>No plans to create another Community Justice Body.</td>
<td>A National Hub for Innovation, Learning and Development will be created within Community Justice Scotland. The Hub will be practitioner-led and its remit will be to inform practice through research and provide opportunities for innovation, learning and development for those working within and across the community justice landscape. It is anticipated that the National Directory of Interventions and Services for Offenders, a database containing information on the interventions and services available for offenders in Scotland, will sit within the National Hub. This will help service users across the country to find out what services are available.</td>
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<td>18. The Government promote recognition across all Government departments, all public services, all sectors and all communities of a duty to reintegrate both those who have paid back in the community and those who have served their time in prison.</td>
<td>We are committed to ensuring our strategies reflect consistent messages about the benefits of investing in the welfare of offenders- not just for the offenders themselves, but for their families and the communities from which they come and to which (in almost all cases) they will return.</td>
<td>The Cabinet Secretary for Justice established a Ministerial Group for Offender in October 2013 with representation from Ministers for housing, public health, employment, welfare, local government and drugs/community safety. The group’s remit is to promote awareness and enhance understanding amongst wider public sector and non-justice partners of their collective responsibility of offender reintegration and the reducing reoffending agenda. The group is taking forward a series of actions for recommendations and improvements in collaboration with community justice and non-Justice SG portfolios will take forward. Under the new community justice model, local partners, including local authorities and other public sector bodies will assume responsibility for local strategic and operational planning, design and delivery of services for community justice to reflect local need and in accordance with the national strategy for reducing reoffending. Working together in</td>
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19. A more restricted and rational use of imprisonment to enable SPS to better regulate prisons and prisoners, using accommodation, resources intelligently to incentivise prisoners to come off and stay off drugs (for example by providing drug free wings) and at providing and prioritising rehabilitation.

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<th>We have increased our focus on risk assessment and management and active participation in the use of the Multi Agency Public Protection Arrangements (MAPPA). We have created specific offences around the introduction of communication devices and investment in new technologies to detect and deter the introduction of drugs and paraphernalia.</th>
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Scottish Ministers (in practice a member of SPS) attend all level 3 MAPPA meetings and level 2 meetings on a case by case basis. Also provide notification and referrals prior to release as per MAPPA guidance.

Introduced BOSS chairs to all prisons to detect weapons/phones.

Increased the number of search dogs available for deployment in prisons.

Introduced a Prison Watch scheme in all public prisons where members of the public can report suspicious activity around the perimeter of prisons (for example if they see contraband being thrown over the fence) to a dedicated telephone number.

Section 34 of the Criminal Justice and Licensing (Scotland) Act 2010 (articles banned in prison) in force since 13 December 2010 - this includes any personal communication device.

SPS have two mobile phone signal blocking pilot sites (at HMPs Shotts and Glenochil) which have been running since early 2014.

Responsibility and accountability for the delivery of prisoner health care services transferred to NHS on 1 November 2011. A range of addiction services are now provided by local Health Boards which are broadly comparable to that available in the community.
SPS published its Substance Misuse Strategy in July 2010 which focuses on robust security systems to divert, disrupt, detect and deter the supply of illicit substances and to support the provision of treatment services to encourage prisoners to reject the illegal drug culture.

Recovery is the explicit aim of all services providing treatment and rehabilitation for prisoners with drug problems. A range of substance misuse treatment including the provision of and support services are provided, by adopting a multi-disciplinary approach, since individual prisoners require different routes to recovery.

| 20. The Parole Board should be provided with additional options to better manage release and compliance with licence conditions, including drug treatment and testing services and extending electronically-monitored home detention. | We will work with the Parole Board, SPS & CoSLA to look at the options for joined-up working to ensure offenders can be safely released, and supported in the community. Together with key stakeholders we will look at every stage of breach handling and if necessary we will make changes to the Parole Board rules. | A number of process improvements to the efficiency of decision-making have been put in place, for example simplification of dossiers and electronic referral of recall information to the Parole Board. The Parole Board has the ability to specify conditions relating to drug counselling and testing and electronic tagging. |
| 21. If the Custodial Sentence and Weapons (Scotland) Act 2007 is to be implemented, it must follow the implementation of this Commission’s other recommendations and the achievement of reductions in the short sentence prison population. Thereafter, the provisions around risk assessment, conditional release and compulsory post-release supervision arrangements should be reserved for those serving 2 years or more. Those serving shorter sentences should be released under licence conditions and directed to support services. | We will legislate to make the changes to the 2007 Act. | We legislated through the Criminal Justice and Licensing (Scotland) Act 2010 to provide greater flexibility to define the level of sentence above which the more robust early release arrangements could be triggered. We are introducing legislation through the current Prisoners (Control of Release) (Scotland) Bill to end the current system of automatic early release for the most serious and dangerous offenders. On 3 February 2015 we announced that we would strengthen the provisions of the Bill as introduced such that no offender sentenced to 4 years or more will receive automatic early release at the two-third point of sentence, and all long term prisoners will receive a guaranteed period of supervision on release. We remain committed to completely ending automatic early release once the conditions set by the McLeish Commission are met. |

22. Preparing for release and We are already implementing the The Open Estate is currently...
| Training for freedom should be retained and reinforced as the proper purposes of the Open Estate - not to ease overcrowding. | Recommendations from the review of the Foye case and looking at how to maximise the appropriate use of the open estate. | Being used for the purpose as recommended by the McLeish Commission which is to prepare and test prisoners for freedom. An Independent evaluation of HDC (and the use of the Open Estate) was published in July 2011. |

| 23. The Scottish Government should pursue a target of reducing the prison population to an average daily population of 5,000, guiding and supporting the efforts of relevant statutory bodies in achieving it. | Agreed key delivery objectives of reserving prison for serious offenders who present the greatest risk; a widely used and effective system of community sentences; enhanced public confidence; and a robust framework for offender reintegration. | Measures already taken to reduce the prison population include: |

| - Introduction of the Community Payback Order in February 2011 and now working to maximise its use; |
| - Introduction of the presumption against sentences of 3 months or less in February 2011; |
| - Developed the 'Whole System Approach' for young people who offend, which has reduced the number of young people entering the criminal justice system; |
| - Leading the way in reforming how Scotland’s criminal justice system deals with women offenders, following the recommendations from the Commission on Women Offenders. This includes the immediate improvements to HMP YOI Cornton Vale; and the pilot of community justice centres to provide women offenders with access to services to reduce reoffending; |
| - Phase 2 of our Reducing Reoffending Programme is focused on making sure people serving sentences in the community or in short-term custody build in support, use services and make the most of opportunities to move away from offending. |
| - The Reducing Reoffending Change Fund, worth £18 million over a period of five years, will provide more offenders leaving prison with a mentor to support their release and reintegration. |
| - Continued investment in the prison estate, over £528 million since 2007. |
Correspondence from the Cabinet Secretary for Justice to the Convener of the Delegated Powers and Law Reform Committee on amendments to the Prisoners (Control of Release) (Scotland) Bill

Thank you for your letter of 29 April relating to the delegated power contained within the Prisoners (Control of Release) (Scotland) Bill ("the Bill").

Having reflected on the concerns of the Delegated Powers and Law Reform Committee in relation to that power, I can advise that I have lodged Stage 2 amendments to the Bill and I hope these amendments will, if approved, assuage the Committee’s concerns.

My amendments will put on the face of the Bill transitional and saving provision for the coming into force of section 1 of the Bill. This will ensure there is ample opportunity for effective Parliamentary scrutiny of the transitional and saving provision approach for the provisions in the Bill that will affect the fundamental rights of a significant number of persons i.e. long-term prisoners already serving a sentence when the current system of automatic early release is ended by section 1 of the Bill. Indeed, putting the transitional and saving provision on the face of the Bill means there will be a greater opportunity for Parliament to scrutinise the provision than if it were contained in subordinate legislation subject to either affirmative or negative procedure as MSPs will, if they wish, be able to lodge their own amendments to the provision proposed by the Government.

Thank you for your Committee’s consideration of the Bill. A copy of this letter goes to the Justice Committee.

Michael Matheson MSP
Cabinet Secretary for Justice
14 May 2015
ANNEXE D

Responses received on Scottish Government amendments to the Prisoners (Control of Release) (Scotland) Bill at Stage 2

RESPONSE FROM POSITIVE PRISON? POSITIVE FUTURE

Thanks inviting a response to the proposed Stage 2 amendments to the above bill.

I am concerned that the proposed minimum of 6 months community supervision is too short given that a prisoner reaching that late stage in their full sentence may have failed to engage effectively with programmes etc in custody and may not have recognised their capacity to change for the better. However, it is better than nothing!

I have no other comments to make on the amendments.

Pete White, National Co-ordinator
19 May 2015

RESPONSE FROM DR MONICA BARRY, UNIVERSITY OF STRATHCLYDE

I would be grateful if you could forward my comments below to the Committee:

- by having a 6 month mandatory supervision period only for those who do not receive an extended sentence, might the Government be putting undue pressure on the Judiciary to include an extended sentence for anyone deemed in need of more than 6 months supervision, thus elongating the whole process at great cost not only to the SPS but also to Criminal Justice Social Work? I hope not, because in my current research on breach of supervision arrangements, within a sample of 9,000 people in 3 case study areas in Scotland, extended sentences were the most likely post-release sentences to be breached (15% were indeed breached in a 6 month period between July and December 2012). We found, more generally, that the longer one is on supervision (which is deemed unhelpful – and I’ll come back to that), the more likely one is to breach the conditions. Contrary to Scottish Government statistics, we found that parole licences (deemed less risky by the Parole Board for Scotland) were more likely to be breached than non-parole licences, and that extended sentences were more likely to be breached than parole licences (despite having much more engagement with social workers).

- mandatory social work supervision is regrettably not all it’s cracked up to be, reintegration-wise. This is not the fault of the social workers supervising these cases, but the fault of the Government funding them to do so. And also possibly the fault of a system which is primarily risk-averse rather than reintegrative. Sex offenders are NOT going to be reintegrated, and they know it; some life licennees are held back as well because of conditions that preclude them from leading a normal life in the community. The vast majority of people we spoke to (250 in total) said that being on licence had no positive aspects: it was like walking on ice all the time, and prevented people from sharing problems with social workers, telling social workers about potential risk factors, and being up front and honest about their circumstances. This is not a good basis for supervision which is meaningful rather than merely ‘mandatory’. Thus, I would question whether 6 months of mandatory supervision is adequate if social work supervision is not given adequate funding and
influence to make differences to offenders' lives in the communities to which they are allocated; currently people on two years or more of supervision find the process unhelpful in terms of law-abiding reintegration; I cannot see how 6 months will make any difference to people unless they are given more proactive support and encouragement, which requires additional resources for criminal justice social work.

- I think the Scottish Government in its financial calculations has ignored the issue of availability of the open estate for people seeking parole; this was not mentioned at all in the attached document but should surely feature as an increased demand if parole was sought on a more rigorous basis by prisoners; currently recalled prisoners say that the open estate is not available to them as and when they seek further parole applications, and that this holds them back. This issue will be exacerbated in the event of people having to seek parole or languish in prison for the duration of their original sentence.

- the table in paragraph 9 of Appendix A in the attached document is unclear in its 2nd paragraph of notes about recall. I cannot see the logic in assuming that the longer they stay in custody, the less likely they are to breach on release (and subsequently be recalled). If they are on extended sentences (as per above), the chances of recall are higher; therefore the length of time in prison prior to release is immaterial.

- Could the Government give greater clarity and evidence on the statistics stated in para. 34 of Appendix B. This is totally contrary to our findings – those on parole licence are more likely to breach than those on non-parole licence. Indeed, in 2012-13, the Parole Board for Scotland issued figures which suggested that 69% on parole licence and 63% on non-parole licence were recalled, suggesting little difference in the potential risks involved for the two categories. In our study of breach across Scotland, we found that of the 9,000+ sample in the aggregate database, 33% of extended sentences, 26% of parole licences and 13% of non-parole licences were breached – again suggesting that the longer the period on supervision (and the greater the perception that such supervision is merely monitoring risk rather than proactive support), the more likelihood of breach.

I look forward to hearing that the Government will consider these comments in full and make appropriate amendments to the legislation.

Dr Monica Barry
Principal Research Fellow, School of Law, University of Strathclyde
20 May 2015

RESPONSE FROM DR CYRUS TATA, UNIVERSITY OF STRATHCLYDE

I welcome the invitation to give written and oral evidence about the Scottish Government’s Stage 2 amendments.

1. What is the overarching aim of the Bill now?

Originally, the stated aim was to abolish automatic early release. This was announced in September 2013 concerning some long-term prisoners and initially included in the Criminal Justice (S) Bill. This overall aim was again announced, amidst considerable publicity, on 3rd February 2015.7

However, it is now apparent that in fact the Stage 2 amendments mean that this Bill would not end Automatic Early Release (AER) – nor does this appear to be the first stage in an end goal. The full title of the Bill, as introduced in August 2014 is:

“…to end the right of certain long-term prisoners to automatic early release from prison…”

The amendment at Stage 2 seeks to change this so as now to be:

“…to amend the rules as to automatic early release of long-term prisoners from prison on licence…”

The language being used is no longer about ‘ending’ or ‘abolishing’ AER. It now about ‘ending the current system’.

In itself, this is not necessarily a backward step, in my view. However it is important that, in an area which is already widely criticised for a lack of transparency, we are clear as to what is, and is not, being done now.

2. Is this re-affirmation of AER (rather than its abolition) a good thing?

Sensibly, the Scottish Government chose to listen to concerns that the simple abolition of AER for long-term prisoners would not in fact serve public safety and would result in ‘cold release’ of the very individuals who had already been deemed by the Parole Board to be an unacceptable risk.

A regime of conditional supervision and support of prisoners upon release has long been shown to be necessary. 8 Once it was recognised that there needs to be a compulsory (i.e. automatic) period of conditional release, it was inevitable that this would have to be part of the overall determinate sentence. This was discussed in the previous round-table oral evidence session and it would not be possible, (even if it were thought desirable), to ‘add on’ an additional element of compulsory conditional supervision to determinate sentences. A period of release on licence, (including and especially in relation to those deemed to pose the greatest risk), is necessary. It is, therefore, a positive step that the principle of conditional supervised release seems now to have been reaffirmed. However, this principle can be retained without the need for AER.

3. How can clarity in sentencing be combined with the public safety?

On the face of it, it can seem like there are two competing virtues in determinate sentence cases: clarity in sentencing, (i.e. sentences mean what they say), and public safety (prisoners are supervised on licence to rebuild their lives and so minimise risk to public safety).

There is, though, a way through this apparent dilemma. The justifiable complaint that sentences do not mean what they say is a consequence of describing determinate long-term custodial sentences only as custodial when in fact they are always a combination of a custodial element and an element of conditional supervised release. My view is that such sentences should be described as such. All determinate long term custodial sentences

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should be described as sentences of ‘custody and conditional community supervision’ (or similar). This has the benefit of both being transparent (sentences are what they say) and public safety. It also means that prisoners will no longer be released ‘early’ - they will be released timeously, conditionally and under supervision.

4. Given the foreseeable impact of the Bill, there is a need for sentencing practices to be adjusted (‘recalibrated’)

The Scottish Government has produced estimates of the cost of the consequent increase in the prison population. As soon as the legislation becomes operational (i.e. by 2020) the additional cost (aside from Parole Board and other increased costs) is estimated to be £7-8.5m – a figure which will rise steadily every year. How else, especially in constrained financial times, might this money be deployed to improve community-based justice?

Given the Government’s stated commitment to a reduction in the prison population, what is the reason for deliberately increasing the prison population in this way? The short-life Sentencing Commission’s 2005 Report had proposed that, given the net effect of its AER proposals on custodial sentencing levels, sentences will need to be “recalibrated”.

5. Is Six Months a Sufficient Period of Conditional Supervision for the most High Risk Determinate Sentence Prisoners?

The Scottish Government is seeking to ensure that all long-term prisoners will have a mandatory period of at least six months supervision subject to licence. Here we are only thinking about prisoners who have either not applied for release or where the Parole Board has considered them to be too risky to be released.9 Indeed, in its Policy Explanation at paragraph 34, the Scottish Government observes that automatically released prisoners have as much as a seven times higher breach rate than those who are released on a discretionary basis at an earlier point in their sentence. This should not be surprising: prisoners considered to have the highest risk of reoffending are not released until they have to be and are more likely to breach.

This begs the question as to whether six months is really a sufficient period of support and supervision on licence for those individuals deemed a risk to public safety. Currently, someone sentenced to say six years in prison and deemed ‘too risky’ to be released until the mandatory point will be on licence for two, and someone sentenced to nine years who is not is on licence for three. Is six months sufficient to enhance public safety for those individuals who have been refused discretionary release because they are deemed to be an unacceptable risk?

6. The Need for Proportionality: the effect of a uniform (rather than proportional) six month mandatory licence period

Currently, the period of licence is set in a proportional way (one third being the point of AER for long-term prisoners). The amendments seek to change this to a uniform six month period. This would have a distorting effect on effective sentences.

Dr Cyrus Tata
Professor of Law and Criminal Justice, University of Strathclyde
20 May 2015

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9 For instance, the Scottish Government notes that only 12% of long-term prisoners convicted for sex offences receive discretionary release. Annex A to the Stage 2 amendments para 4.
RESPONSE FROM THE RISK MANAGEMENT AUTHORITY

Thank you for seeking the views of the Risk Management Authority on the proposed amendments to the Bill. We are pleased to have the opportunity to again comment on this Bill from the perspective of advising on and promoting effective risk management of serious violent and sexual offenders.

Consistent with our previous submissions we welcome the developments which ensure that all long-term prisoners will continue to be subject to a period of statutory supervision on release.

We want to advise of challenges associated with managing the release of long term prisoners within the proposed timescale of 6 months. Such risk management will necessarily focus on immediate resettlement issues, restrictions, monitoring and contingency measures: resettlement efforts that focus on accommodation, associates and activities will predominate as time constraints will preclude more thorough reintegration efforts to address matters such as building prosocial relationships and employment prospects, and the delivery of interventions; the risk profile associated with this group of prisoners would also indicate that restrictive measures will be applied and compliance closely monitored; agreed and well co-ordinated contingency actions will be required to ensure appropriate and timely response to deterioration in circumstances or failure to comply. As such, the risk management will be intensive but its impact may be limited by the brief period available for monitoring individuals’ circumstances and behaviour, and the preclusion of meaningful rehabilitative efforts.

A period of 12 months statutory supervision would provide more opportunity for engagement in reintegration activities, and a more valuable period of monitoring.

Yvonne Gailey
Risk Management Authority
20 May 2015

RESPONSE FROM HOWARD LEAGUE SCOTLAND

Given the significant changes to the Bill as introduced, we are grateful to the Justice Committee for the opportunity to comment on the Scottish Government’s proposed amendments to the Prisoners (Control of Release) (Scotland) Bill. There are a number of points we wish to make:

These proposals are at odds with the Scottish Government’s aspiration to reduce the size of the prison population in Scotland. It is clear that ending the current arrangements for automatic early release for all long term prisoners will, over time, increase the size of Scotland’s prison population.

We remain concerned that this legislation is being brought forward without there having been any preceding evidence-gathering exercise, as there was prior to the 1993 Act that introduced automatic early release. In its submission of 13 February 2015 to the Justice Committee, the Law Society of Scotland noted: “It is…difficult to see a solid empirical basis for the current proposals”.

We welcome the fact that the Scottish Government has accepted that the interests of public safety are not served by releasing prisoners back into the community without supervision. Currently prisoners released as part of automatic early release arrangements
are subject to a compulsory period of supervision in the community that is in proportion to the length of their custodial sentence. The Scottish Government is now proposing a mandatory period of supervision of six months. Speaking during the Stage 1 debate, the Cabinet Secretary for Justice said,

“our view is that the necessary period of control over a prisoner who has served close to four years is likely to be similar to that of a prisoner leaving after, say, 10 years in custody”

We question whether a period of six months will be adequate to reintegrate all long term prisoners back into the community, regardless of how long a sentence they have served. This concern is particularly pertinent to those long term prisoners who the Parole Board has deemed too risky for earlier release or those who have not sought parole. **We would therefore welcome further detail on the empirical basis for the proposed six month period of supervision.**

As we stated in one of our previous submissions, the Scottish Prison Service must be adequately resourced to provide sufficient rehabilitation services to allow prisoners to reduce their risk of reoffending and harm. Where such services are not available (or are insufficient to meet the demand), continued detention may become arbitrary and in breach of Article 5 of the European Convention on Human Rights. Witnesses giving evidence during Stage 1 of the Bill raised concerns that there is currently insufficient provision of such courses to meet demand.

We note that the estimated costs of ending the current system of automatic early release for long term prisoners will rise from £4.545m in 2019/2020 to £7.253m in 2020/21 and £16.724m in 2030/31. **In an era of financial austerity and constrained public finances, it is not clear how the Scottish Government will fund these extra costs. For instance, will other areas of the criminal justice portfolio be cut?**

By way of comparison, the Scottish Government’s budget for community justice in 2015/16 is £31.8m and the budget for the Scottish Prison Service £390m. In continuing to prioritise resources for custody over community-based responses to offending, it is not clear how the Scottish Government will realise its aim of reducing Scotland’s prison population.

Howard League Scotland’s previous submissions on these proposals are available here:
[http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/AER7._Howard_League_for_Penal_Reform_in_Scotland.pdf](http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/AER7._Howard_League_for_Penal_Reform_in_Scotland.pdf)
[http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/P15._Howard_League_Scotland.pdf](http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/P15._Howard_League_Scotland.pdf)

Howard League Scotland
20 May 2015
Present:

Christian Allard                Jayne Baxter
Roderick Campbell              John Finnie
Christine Grahame (Convener)   Alison McInnes
Elaine Murray (Deputy Convener) Gil Paterson

Apologies were received from Margaret Mitchell.

Prisoners (Control of Release) (Scotland) Bill: The Committee took evidence on the Bill at Stage 2 from—

Michael Matheson, Cabinet Secretary for Justice, Scottish Government.
Scottish Parliament
Justice Committee

Tuesday 26 May 2015

[The Convener opened the meeting at 10:00]

Prisoners (Control of Release) (Scotland) Bill: Stage 2

10:00

**The Convener:** Item 2 is an evidence session on the Scottish Government’s amendments to the Prisoners (Control of Release) (Scotland) Bill. Those with an interest in the bill will recall that the committee agreed to take evidence on the amendments as they will, if agreed to, make significant changes to the bill.

I stress that this is an evidence session. We have another such session tomorrow, which will be followed by stage 2 proper, with amendments moved and so on. That is not happening today.

I welcome Michael Matheson, Cabinet Secretary for Justice, and Scottish Government officials Philip Lamont, head of the criminal law and sentencing unit, and Fraser Gough from the parliamentary counsel office. I understand that the cabinet secretary wants to make an opening statement.

**The Cabinet Secretary for Justice (Michael Matheson):** No, convener. I am happy to go straight to questions.

**The Convener:** That is excellent—you are winning friends. We will go straight to members’ questions.

**Alison McInnes (North East Scotland) (LD):** Good morning, minister. I am grateful for how you have responded to the committee’s report, but will you give us the thinking behind and more evidence on the six-month period for supervision that you have settled on?

**Michael Matheson:** The committee outlined in its report that it wants a period of community-based supervision to be provided at the end of someone’s sentence. That view was based largely on the evidence that the committee heard about the impact of cold release. I gave an undertaking to the committee that I would consider the matter.

We have lodged amendments that will create a period of compulsory supervision in a prisoner’s sentence when they are released back into the community. The suggestions on what the period should be in the evidence that the committee received varied from three months to a year. Clearly, there is a broad spectrum of views on how long the period should be.

I am conscious that I have received evidence that the six to 12 weeks after a prisoner is released are the period of risk in relation to ensuring that the prisoner is reintegrated into the community with the right services and support in place and the right connections made with
agencies and organisations. I have considered how we can achieve that in a three-month period and how to allow greater scope for prisoners who require a slightly longer period of support in the community and in which any additional issues can be picked up.

After considering the committee’s evidence and the issues that the period is meant to address, we saw six months as a reasonable period in which to address those matters. However, the issue is about not just time but the quality of the work.

It is important to recognise that, even though someone will have a six-month period of compulsory supervision when they are released from prison, a significant body of work must be done for long-term prisoners before they are released. That work takes place in the prison estate and includes the reintegration plan. The right connections need to be made so that they are established prior to an individual’s release.

Six months is a reasonable time to address any issues that arise when a prisoner is back in the community, alongside the reintegration plan, which the prison will have started in the build-up to their release.

Alison McInnes: Given that some of these people will be the most intransigent prisoners, who have not engaged at all, so the Parole Board for Scotland has felt that they could not be released, are you satisfied that your proposal is strong enough?

Do you envisage a softening from the compulsory period into further support in the community at the end of the six months? You might not see a clear break, but perhaps there could be a shading of the support that was available following the compulsory period of six months.

Michael Matheson: On your latter point, part of reintegrating a prisoner into the community—particularly a long-term prisoner—includes helping to re-establish them in the community. Some of that re-establishment does not involve the statutory services; it concerns other aspects, such as employment, and it might involve other support groups. There may be benefit from making local connections to support and sustain the individual.

The six months will be a statutory period in which that work can take place. That is a fixed period when such intensive work can be undertaken. It should be ensured that the approach and the connections that are made are sustainable and will live beyond the six-month period.

If the court has concerns about when an individual is to be released, for example, there is the option of an extended sentence. The six-month period should be used for creating connections so that, when someone goes back into the community, they make sustainable connections that are not just for the six months.

Could you remind me of your first point?

Alison McInnes: Some written evidence has suggested that prisoners who might be released in such a way might not have engaged with the Scottish Prison Service as they served their sentence. That would perhaps be why the Parole Board thought that it was not appropriate to release them under parole. That group of prisoners might be quite intransigent and not open to change. Are you sure that six months will be long enough for them?

Michael Matheson: Such prisoners would get automatic early release at two thirds of their sentence under the present arrangements, and the Parole Board has no control over the matter whatever. They will now be in the prison estate for an extended period beyond the two-thirds stage, and it will be clear that, if they wish to receive parole release, they will have to engage with the appropriate programmes to address any issues as the Parole Board considers appropriate. There will be an incentive.

I am conscious of some of the evidence that the committee heard at stage 1. If a prisoner knows that they will automatically be released at two thirds, why should they engage? Why bother participating in programmes? That factor will be removed. The Scottish Prison Service expects and believes that demand for programmes will increase as a result of ending automatic early release. It is working on that principle, given that prisoners will no longer have that automatic release. I understand the point that you make, but we also get a benefit from reducing the scope for individuals to be released automatically, irrespective of whether they have engaged.

It is open to a prisoner with an extended sentence—who, under the proposed provisions, will have to serve their whole sentence in custody, and who might then have another year, two years or three years of an extended sentence—to choose whether to engage with services while they are in prison. They cannot be compelled to do so.

I am conscious of the need, which the committee has raised with me, to ensure that programmes are readily available and that prisoners who want to engage with them, which they are encouraged to do, can participate in them. I know that the Scottish Prison Service is pursuing that work now, on the back of the inquiry that the committee undertook on aspects of the issue in 2013. We are removing the automatic element at two thirds of the sentence, which
means that, if the prisoners concerned want parole release earlier, they will have to participate in programmes to address their offending behaviour.

Alison McInnes: If I could ask finally—

The Convener: Is your question on the same issue?

Alison McInnes: No—I am going to talk about resources.

The Convener: Before you move on, I point out that, on one occasion when we had SPS witnesses in front of us, Colin McConnell made the point that the interaction with prison officers should not stop when the prisoner leaves prison. His view was that prison officers could have a role outside, just as social work could have a role inside, so that there is more of a melding, rather than a sudden break. Are discussions taking place with the SPS about prison officers’ role in following somebody who has been on a programme in the prison when they continue with it outside, and vice versa—social work following people in the prison?

Michael Matheson: That is not only being discussed; some of it is already happening. For example, at the tomorrow’s women centre in Glasgow, we have prison officer staff in the team in the community. They deal with women who have been in prison and who are back in the community—those staff work alongside housing, health and social work officials and the police to develop sustainable approaches to support those women back into the community.

Such work is going on, but we can certainly do more in that area. There is no doubt that prison officers recognise that their role is changing. As part of the work that we are doing in remodelling and taking a different approach to the female prison estate, we are looking at prison officers working in an entirely different environment from the one that they work in at the moment with female offenders. It will be a much more community-based environment, in which prison officers will be much more part of a multidisciplinary team.

Elements of that work are under way. Will more of it happen in the future? I certainly believe that things have to move in that direction.

The Convener: Thank you—sorry, Alison.

Alison McInnes: I will move on to resourcing. For the measure to be effective, criminal justice social work services need to be adequately resourced. What consideration have you given to that in the context of the proposed changes to the bill?

Michael Matheson: In response to the committee’s recommendation, we have set out a range of figures that indicate the additional costs of the amendments for the prison estate, social work, the Parole Board and the other agencies that will be involved from the bill coming into force in 2016-17, say, right up to its being fully implemented in 2030-31. We have made it clear that we will meet any additional costs that are associated with the amendments.

However, as I have mentioned to the committee at least once, far too much of our resource in the criminal justice system is caught up in dealing with short-term offenders who go into and out of prison constantly. If we want to free up the resource in our prisons to allow them to deal much more effectively with long-term offenders—those who pose the greatest risk to our communities—we need to be much more intelligent about how we use our prison estate.

As Henry McLeish’s Scottish Prisons Commission set out, the estate must be used much more effectively to deal with those who pose the greatest risk to our community. Therefore, I want to consider measures that will reduce the demand on the front end of our prisons, not just so that we release resource that can be better utilised in the prison estate but so that we can utilise resources in the community setting much more effectively.

It will take time to reset the balance. I mentioned the work on the prison estate that we are doing in relation to female prisoners. We are also doing work in relation to the prison estate for male prisoners, with a view to using prison much more effectively for those who pose the greatest risk.

We want to use alternative disposals much more effectively for short-term offenders who could be diverted from prison or who could serve their sentence in a much better and more appropriate way that is less resource intensive than their doing so in the prison estate.

The Convener: Does Rod Campbell’s question follow on from that? John Finnie and Gil Paterson want to ask supplementaries.

Roderick Campbell (North East Fife) (SNP): I am happy to wait.

John Finnie (Highlands and Islands) (Ind): Good morning, cabinet secretary. I understand that we are talking about a manifesto commitment and that you are prepared to put up the money to meet it. We have been told that the cost will be £16.724 million by 2030-31. That is more than half the present budget for community justice, which is £31.8 million. You talk about only the people who pose a risk being in prison, but you must have a projection for offsetting the cost of keeping those offenders in prison longer, if the bill goes through. Can you give us that projection?
Michael Matheson: The figures are based on the assumptions about what the bill provides for and they are purely to do with the bill. They do not take account of other changes that are to be introduced in the system, such as a presumption against short sentences, greater use of alternatives to custody, changes in sentencing practice, which the Scottish sentencing council will help us to address, and alternatives to the traditional custodial estate. The figures do not take into account a variety of things because they are purely to do with the bill.

I have a practical example of where we are. Polmont young offenders institution is sitting at half capacity because we are now much more effective at dealing with young offenders through diversions and alternatives to custody. That effectiveness will start to feed into the adult prison population and lead to progressive change in our estate. We could do other things to accelerate that and we are prepared to do them.

It would be overly simplistic to think that the figures that we have set out mean an additional cost that we will have to cover with additional money. With the other changes that we propose to make in the system, we will free up resource to be used better in delivering programmes for long-term offenders and more effective community disposals.

I cannot just switch off resource to the prison estate, because it requires that resource. I want the number of community disposals and alternatives used to increase, but we are in a period of financial restriction, so I have to find a balance. Some of the work that we are doing around the prison estate will release resource so that it can be used more imaginatively.

John Finnie: I certainly support that. I probably did not express my question properly. Is there any way for you to make a projection? For example, will we end up not requiring Polmont? Are there any implications that would ultimately reduce the top-line figure? We have had representations from organisations such as the Howard League, which says that we have been told that the direction of travel is to reduce the prison population. However, we are looking at a sum that is more than half the current sum for community disposals.

Michael Matheson: I was a wee bit surprised at the Howard League’s comments; it appears to be looking at the issues in isolation.

John Finnie: With respect, is that what you are doing when you say that we are looking only at what the bill provides for?

Michael Matheson: I am saying that the Howard League’s comments are based on the bill, but other aspects to our penal policy are about reducing the number of prisoners in the system. For example, our work on women offenders is about reducing the number of women in our prison estate.

We have to look at the whole issue rather than aspects in isolation. The figures that you have asked about were produced purely to illustrate what could happen if we introduced the bill and did nothing else, but we are not doing nothing else.

John Finnie: Are there figures on the horizon that would offset the cost? What sort of timeframe are we talking about?

Michael Matheson: It is difficult to say, because the figures are assumptions based on existing sentencing practice and current rates of offending behaviour. If those things change, the figures will alter. The prison estate has to work on assumptions and a range of variables around potential demand in the system, which it does not control. It is difficult to say that prisoner numbers will be at a certain level by a certain date, because there are many variables to take account of.

We can take forward the policy areas in a much more integrated way. We need to make sure that the provisions on community alternatives and diversions, for example, are much more closely linked to the way in which we pursue policy in the prison estate to utilise resource and apportion it to meet the different demands.

I am hesitant about getting into arbitrary figures because there are so many variables that it is challenging to come up with a specific figure that would be accurate in the long term.

Gil Paterson (Clydebank and Milngavie) (SNP): My question is along similar lines. In early release at present, housing, social work services, welfare and benefits are in place and budgeted for. It is not your budget but somebody else’s—it is taxpayers’ money. There is no reference to that in your tables to allow us to get a picture of the real costs. We can see additional costs for the Prison Service, but if people are not in the community, which is what the bill will mean, they will be in prison and the money will not be spent in the community. Do you have any figures for the cost of all the services that will not be provided in the community but will be provided in prison?

Michael Matheson: There is a challenge for us in being able to provide those figures. We can provide figures for the Prison Service and criminal justice social work, because those are pretty much fixed costs that we can identify. The cost for individuals who are in the community depends on their status at a given point and what services they are engaged with, so we do not have the same general fixed costs. If you are asking me about the costs of alternative disposals against those of a
custodial disposal, we all know that the cost of community provision is significantly lower than that of delivering services in the prison estate. However, because there are so many variables for an individual's circumstances before they end up in prison, it is difficult to estimate what those costs would be.

**Gil Paterson:** Some of the figures are quite significant when we add them up, such as provision for housing, which local authorities need to make. There is also social work, which is also the responsibility of local authorities, and benefits, which are reserved. When we want to make a change, people just see costs going in, but they are not the real costs. We know the costs for the Prison Service, but there are also savings—I hate to use that word; "offsettings" is the right one. It would be worth setting those out to sell the reform programme to the wider public, because we are not being given the real costs.

**Michael Matheson:** It starts to become a bit artificial when we try to determine the actual costs, but there is an element of offset cost associated with someone who is in the community, who might not be in touch with criminal justice social work if they get housing benefit and other support. However, because individual circumstances are so variable, it is extremely difficult to come up with clear figures whereas, in the prison estate, we have fixed costs that we can clearly identify for an individual.

It would be overly simplistic to think that the £17 million is what the additional costs will be. Those are the additional costs if we do not take into account the offset that you mentioned and if we did nothing else in the system. It is simply not the case that we are doing nothing else and that is why I was a wee bit surprised at the view of the Howard League for Penal Reform on the matter.

**Gil Paterson:** Thanks.

**Roderick Campbell:** Before I ask my main question, I have a small question on the six-month mandatory period of supervision. Some critics have suggested that, at the moment, we deal with automatic early release in a proportionate way and that moving to a six-month period would mean that we lose that proportionality and therefore distort sentencing. What are your comments on that?

**Michael Matheson:** I am not entirely sure that automatic release at two thirds of the sentence is proportionate because the Parole Board for Scotland does not have any control over it. However, parole release is proportionate. In considering an application for release, the Parole Board can determine whether it thinks that the person is suitable for release at that point, given their circumstances and, for instance, what programmes they are going through.

The six-month period is to ensure that we reduce the risk associated with someone reintegrating into the community and that we support them, because we know that there are particular risks when long-term prisoners move back into the community, particularly during the six-to-12-week period that was mentioned. The six-month period will allow them to re-establish themselves and allow for any individual measures that are necessary to support them in getting back into a community setting. I therefore do not view automatic early release at two thirds as being proportionate.

**Roderick Campbell:** On 20 January, we heard some figures from John Watt of the Parole Board, who said:

“It is clear that those who are released on non-parole licence—at two thirds of the way through their sentence and without an assessment of risk—tend to be recidivist in significantly greater numbers than those who are released on parole licence, where there is an assessment of risk.”— [Official Report, Justice Committee, 20 January 2015; c 24.]

You subsequently gave evidence on 3 March, and that evidence is incorporated in the amended financial memorandum, at paragraph 34. More recently, we have also received evidence from Dr Monica Barry indicating that those released automatically pose fewer risks than those released by the Parole Board. What would you say to that?

**Michael Matheson:** I have not seen Monica Barry’s research, so I cannot comment in great detail, although it appears to suggest that parole release is less effective than automatic early release, which I am somewhat surprised at. It seems to suggest that the Parole Board is in some way making things worse, and I would be surprised if that were the case. However, as I said, I have not seen the research in detail, so I cannot comment on it in depth. Once we have had an opportunity to look at it, we can consider those issues in greater depth.

The last time I gave evidence, we mentioned the figures for 2012-13, when 476 prisoners were subject to supervision in the community after parole release and 403 were subject to supervision in the community after non-parole release. The rate at which non-parole release prisoners breached their licence conditions was 37 per cent, compared with 5.5 per cent for parole release prisoners. That means that someone is in effect seven times more likely to breach their licence conditions if they receive non-parole release. Prisoners were five times more likely to be recalled to prison for breach of their licence conditions in that year if they had been automatically released rather than parole released. The figures for that year give a clear illustration of the difference, and you have also heard other witnesses refer to those differences.
Roderick Campbell: At the very least, Mr Watt’s evidence suggests that, as far as recall to custody is concerned, both you and the Parole Board seem to be taking a different view from that of Dr Barry.

Michael Matheson: We are. As I say, I have seen only the headline figures, so I am a wee bit surprised, because Dr Barry’s evidence seems to suggest that the Parole Board makes the matter worse. I think that most people would be surprised at that, given the level of detail and consideration that the Parole Board gives to prisoners prior to release. However, the figures for 2012-13 give a good illustration of the difference over the course of a year.

The Convener: I am getting a bit muddled here. The six months is compulsory, and people do the six months on licence as part of their sentence. Conditions will be attached to that licence, so if someone breaches them, they will be back in prison, I take it.

Michael Matheson: They would be recalled.

The Convener: I just wanted to make it plain.

Michael Matheson: The conditions will be set by the Parole Board as well.

The Convener: So what is the difference between that and parole?

Michael Matheson: It is similar to what happens when a person receives parole release. The board would consider what measures have to be put in place. For example, a prisoner can apply for parole after serving half of their sentence, and the reality is that the vast majority of long-term prisoners will receive parole release. In order to achieve that, there are certain things that prisoners have to go through before the Parole Board will come to a determination on whether they are fit for parole. When parole is allowed, the board sets conditions.

The difference with the six-month period is that it is to support prisoners’ reintegration into the community. The Parole Board can also set conditions to support their reintegration into the community.

Elaine Murray (Dumfriesshire) (Lab): The financial memorandum puts the cost of increased demand for prisoner programmes at only £171,000 by 2030-31, and the cost kicks in in 2019-20 at £43,000. Is it possible that there will be greater demand for prisoner programmes under the new regime, particularly if prisoners think that taking programmes will make them more likely to get parole? Are those sums really sufficient?

Michael Matheson: Those figures are assumptions that are based on a snapshot here and now of the implications. I think that the SPS
indicated in its evidence to the committee that it expected increasing demand for prisoners’ participation in programmes as a result of the ending of automatic early release. The SPS has had its purposeful activity review, which identified issues with access to certain types of courses and psychological service provision, and it is about to commission work to look at taking those matters forward.

As I mentioned earlier, our biggest challenge in the prison estate is that so much of the resource is tied up in dealing with the churn of short-term offenders. Like any other public service, the Scottish Prison Service has to live within its budget, and that budget has grown ever tighter during this period of austerity. The SPS must deliver as many effective programmes as it can within its current budget. If we can release some of the significant amount of resource that is tied up in dealing with a lot of shorter-term offenders, that will release resources that will allow us to expand and develop programmes in the prison estate. There is a balance to be struck in trying to achieve that.

The figures are based on assumptions, and they could vary in-year and across several years. They are based on the present figures.

Elaine Murray: I hear what you are saying about short-term prisoners, but only around 10 per cent of the prison population consists of short-term prisoners at any one time. They go in and out, and the longer-term prisoners are there for longer periods of time. Even if we could deal with that situation, people will probably not participate in the prisoner programmes so much if they are there for only short periods of time. Would it address the balance if we could deal with that?

Michael Matheson: The proportion is smaller on a given day, but thousands of prisoners are in and out of the system over the course of a year. There is a big turnover. We should not underestimate the amount of resource that the SPS has to dedicate just to managing that. It has to be much more effective in dealing with it. As Henry McLeish said in the report of the Scottish Prisons Commission, that resource must be used much more effectively and be targeted at those who pose the greatest risk to our community. At the moment, a lot of the resource is tied up in dealing with those who pose the lowest risk, which means that we do not have the level of resource that we wish to have to help those who pose the greatest risk. That is not to say that a lot is not being done in that area, but of course we could do more. The resource could be used much more intelligently and effectively if we had less of that churn of short-term prisoners.

Elaine Murray: If the SPS review, which you refer to in the revised memorandum, identifies an increase in the need for provision of programmes—including psychology programmes, which are pretty important—that is considerably greater than we can provide for at the moment, will the resources be there for them?

Michael Matheson: If there are additional resource demands at some point, we will have to look at those and try to address them as effectively as we can, to ensure that the SPS can deliver the necessary programmes. That could be years from now, so I could be making a commitment that someone else may have to live with, but I am certainly committed to ensuring that we try to provide the necessary resources for the SPS to do its job as effectively as possible.

Christian Allard (North East Scotland) (SNP): When the bill was brought before us, we talked about its aim of public safety and ensuring that long-term offenders do not go through cold release. We learned that people are very often cold released in the present system and that there is a case for changing the system for the public’s protection.

Sacro—formerly the Scottish Association for the Care and Resettlement of Offenders—talked about the balancing act and ensuring that we talk about public protection. It said that the mandatory supervision period could be only three months. It may make more sense to have a shorter mandatory period; it could make it easier to engage long-term offenders who do not want to engage if they are focused on a three-month period. I agree with Sacro that a shorter period may focus those people’s minds.

Michael Matheson: The evidence that you received from Sacro would have been largely on the six-to-12-week period that is often considered to be key for a prisoner going back to a community, when there are significant risks to manage.

We have tried to strike a balance. You have also heard evidence from people who think that the period should be a year, and some people say that the period should be proportionate to the length of sentence served, although I do not agree with that. The reason why six months strikes the appropriate balance is that, although there might be prisoners for whom the three-month period is sufficient, there will be prisoners for whom it will not be sufficient. The six-month period will give a level of latitude that will, I hope, address the issue of those for whom three months is not sufficient to deal with matters when they move into the community.

Having listened to the evidence that the committee received and the views that have been expressed, I have considered what is a reasonable timescale to deal with these matters. Six months is our preferred option, which I believe
will be a sufficient period for reintegration into the community for the vast majority of prisoners.

**Christian Allard:** I understand that it is a judgment call. However, the bill will not be implemented before 2019, so there will be plenty of time to prepare for this. We would have thought that you could concentrate the minds of service providers to ensure that a three-month period, instead of six months, is effective.

**Michael Matheson:** In time, people might say that the six-month period could be shortened. It is important to note that the release of a prisoner is not dependent on just that six-month period; the preparatory planning work in prison is important as well. For example, we know that housing issues can prove to be a deal-breaker for how effectively a prisoner can move back into the community and sustain themselves there. The work that we are doing in Perth just now on managing that more effectively involves a partnership between the housing service and the Prison Service. The ministerial task force on offender reintegration, which I head, is about ensuring that health, housing and a range of services work in a much more joined-up and co-ordinated fashion.

Section 2 of the bill is informed partly by our wanting to have flexibility on days of release in order to support the reintegration of a prisoner into the community. It is in all our interests to do everything possible for a prisoner who has served their punishment in prison to reduce the risk of that individual committing other offences, and the reintegration element is a key part of that. The reintegration plan will start prior to a prisoner being liberated from prison in order to get things planned and in place before they move back into the community.

The six-month mandatory supervision period will give us the added security of being able to recall an offender if we feel that their behaviour is unacceptable, but it will also enable a clear focus on the type of support that is necessary during that period.

**Christian Allard:** This is my last question. Given the six-month mandatory period that will be delivered through the involvement of the Parole Board, can you say that you will have removed the word “automatic” from “automatic early release”?

**Michael Matheson:** The principal reason for the bill is to end the automatic right to early release after two thirds of a sentence has been served, and that is what the bill will achieve. However, we are also creating provision for a mandatory period of supervision in the community to support a prisoner’s reintegration into the community. As the convener correctly pointed out, it is not an optional but a mandatory period that a prisoner will have to complete. The long title of the bill needs to reflect that there is no automatic element to that, though.

**The Convener:** Gil?

**Gil Paterson:** My question has been covered.

**The Convener:** John?

**John Finnie:** Similarly, my point has been covered.

**Elaine Murray:** Finally, cabinet secretary—

**The Convener:** Not finally, because I might have something to ask.

**Elaine Murray:** Sorry, convener.

What sort of discussions have there been with the Convention of Scottish Local Authorities on the implications of the proposed changes for local government, cabinet secretary?

**Michael Matheson:** The discussions that we are having with COSLA just now are around the Community Justice (Scotland) Bill, the reshaping of community justice and the creation of community justice Scotland. Part of that will see significant reform of the way in which we deliver community justice provision in the future. Discussing the impact of the Prisoners (Control of Release) (Scotland) Bill will be part of that overall approach.

**The Convener:** Is that us? I did not have another question.

**Elaine Murray:** It was you being awkward.

**The Convener:** I am not known for being wicked.

I thank you very much for your evidence, cabinet secretary. I inform members that we will take further evidence on the amendments from Professor Fergus McNeill and Professor Cyrus Tata tomorrow morning from 10.30 and we will consider the formal amendments on 2 June. Thank you very much.
Present:

Christian Allard    Jayne Baxter
Roderick Campbell   John Finnie
Christine Grahame (Convener)  Alison McInnes
Elaine Murray (Deputy Convener)

Apologies were received from Margaret Mitchell and Gil Paterson.

Prisoners (Control of Release) (Scotland) Bill: The Committee took evidence on the Bill at Stage 2 from—

Professor Fergus McNeill, Professor of Criminology and Social Work, University of Glasgow;

Professor Cyrus Tata, Professor of Law and Criminal Justice, University of Strathclyde.
Scottish Parliament
Justice Committee
Wednesday 27 May 2015

[The Convener opened the meeting at 10:30]

Prisoners (Control of Release) (Scotland) Bill: Stage 2

The Convener (Christine Grahame): I welcome everyone to the Justice Committee’s 18th meeting in 2015. I ask everyone to switch off mobile phones and other electronic devices as they interfere with broadcasting even when switched to silent. Apologies have been received from Margaret Mitchell and Gil Paterson.

We have just one item today, which is a further evidence session on the Prisoners (Control of Release) (Scotland) Bill and, in particular, the amendments that we heard about from the cabinet secretary yesterday. Members should have copies of the Official Report of that session in front of them. I thank the official report for getting that to us so swiftly—there is no pay rise for that; just thanks. I also put on record the committee’s thanks to those who have provided written submissions on the amendments, in a tight timescale. They have been really useful in assisting our scrutiny.

I welcome to the meeting Professor Fergus McNeill, professor of criminology and social work at the University of Glasgow, and Professor Cyrus Tata, professor of law and criminal justice at the University of Strathclyde. I thank you both for coming at relatively short notice. I hope you have had an opportunity to consider yesterday’s evidence from the cabinet secretary.

I will go straight to questions from members.

Elaine Murray (Dumfriesshire) (Lab): As you will be aware, the amendments concern a period that is served in custody, and then a period of six months to be served in the community. That applies to anyone who has been sentenced to more than four years, irrespective of the length of the sentence. Do you agree that, if automatic early release is got rid of altogether, that is the best way of addressing the issue of cold release, or do you think that a more proportionate response to the type of crime and length of sentence would have been more appropriate?

Professor Cyrus Tata (University of Strathclyde): I think the simple answer to the first part of your question is, unfortunately, no. You will be aware that we argued for, and the committee rightly saw the merit in having, a period of mandatory supervised release to get away from the problem of so-called cold release—that would be sensible, given what was initially a rather foolish proposal. Is the proposed approach the best way forward? No. Should the response be proportionate? Yes. It should be proportionate for a number of reasons, because it changes the dynamic in terms of sentencing decisions and how long someone serves.

The Convener: Will you elaborate on that point about changing the dynamic? I think that it was touched on yesterday by Roderick Campbell, but not really followed through. Can you explain for the public what you mean by changing the dynamic?

Professor Tata: I mean that someone serving a period of four years, for example, will have to be released after three years and six months, whereas someone serving a period of 12 years will end up serving 11 and a half years, so the percentages—I have not quite managed to work them out—are clearly hugely different.

The Convener: That is all right—it is early in the morning.

Professor Tata: A Government paper that came out just last week basically said, "Well, we don’t see any problem with human rights in terms of the provision of programmes."

We have talked about the issue before. A clear principle that has been evolving in case law derived from the European convention on human rights states that someone must have a fair opportunity to show that they are not a risk to the public. When we change the proportions and squeeze the length of conditional release—so far, just to six months—that means that someone serving 12 years, who might previously have been released after, say, eight years, may be held for up to 11 years and six months. They may argue—indeed, some will argue—that they have not been given a fair opportunity to demonstrate that they are not a risk. The case law admittedly initially relates to indeterminate sentence cases, but it has been suggested that we can expect that principle to be extrapolated to determinate sentence cases, too.

I think that the approach should be proportionate. I am not sure that I understand why the Government has said that it should not be proportionate or why one would go for a blanket six-month approach. I have not heard a reason for that. I know that the Justice Committee said that it wanted to know why that period has been proposed. All I am aware of in response to that is the Government saying that it just feels about right.

As I say, the approach should be proportionate; indeed, it makes sense for it to be proportionate.
The Convener: In fairness to the Cabinet Secretary for Justice, he said:

“I am conscious that I have received evidence that the six to 12 weeks after a prisoner is released are the period of risk.” —[Official Report, Justice Committee, 26 May 2015; c 2.]

Therefore, I think that he was basing the period on a risk assessment. By making the period six months, the prisoner would be given the opportunity to move from rehabilitation in the prison to rehab in the community for a period that covers the risk period, which would, I hope, prevent reoffending or risk to the public. I am reading what you say in your submission, and that is what the cabinet secretary said.

Professor Tata: In a sense, it is logical that of course the level of risk is highest in the first few days and weeks—generally speaking, given that every individual is different. However, that does not mean that one should not also be looking at the risks months down the line.

We need evidence from criminal justice social work on the issue. My colleague Professor McNeill has immense knowledge about the level of risk. Can social workers do the work that is needed in a six-month period? I am sceptical about that.

Professor Fergus McNeill (University of Glasgow): There are two problems with having a fixed period, and those problems would apply to varying degrees no matter how long the fixed period was. Just to do the maths and to make clear the proportionality point, the proposal means that if a person is sentenced to five years, 90 per cent of their custodial sentence would be in prison. However, if a person is sentenced to 10 years, that increases to 95 per cent—and so on. Therefore, the disproportionate shrinkage of the supervisory part becomes more aggravated as the sentence length grows. That makes sentencing less transparent. It changes the meaning of a custodial sentence, depending on its length, if you follow my logic. How much of it is custodial and how much of it is supervisory would change with sentence length rather than being fixed proportionately. That is a problem for proportionality in relation to justice.

I will confine myself to the issues that I know better, which are to do with the practicalities of safely supervising people after release. The cabinet secretary is absolutely right that the first six weeks to three months are the critical period for establishing the basics for successful resettlement, when reintegration must be achieved. The basics are housing; making benefits claims or finding employment; the immediate renegotiation of entry into the family and how that affects family dynamics; and the re-engagement—or not—with friends, neighbours and informal social networks. It is critical to manage all that carefully in the first three months or so.

However, imagine that you were coming out of prison having served 10 years. You can think your way into that scenario without having been a prisoner by thinking about working overseas or moving house. How long does it take you to belong to and feel safe in the community that you have come into? How long does it take before you feel that you are a part of its everyday life, so that you are relaxed and confident in how you navigate your routines? It seems obvious that if you have spent 10 years in prison, six months is a very short period, not least because of the accumulated effects of the institutionalisation that a long sentence brings.

Now flip your perspective and put yourself in the seat of the social worker who is supervising that person. Let us say that the prisoner has done nine and half years out of a 10-year sentence, because they were not deemed eligible for parole.

There are two basic reasons why a prisoner may not have been released early. One reason could be to do with the prisoner—their engagement with programmes, their participation in rehabilitation, their attitude and whether they have been able to address so-called risk factors. However, the other reason is to do with their social environment. The Parole Board for Scotland also receives reports from a social worker—who is based in the community—about the prisoner's proposed address and the suitability of their social context and whether that is going to conducive towards offending or conducive towards desistance from offending.

If the legislation means that, as a social worker, you have just six months to work with that individual so that they address the issues that were not successfully addressed in prison and engage with their social network in such a way as to facilitate their successful re-entry to society and reduce risks, to be honest, I think that you would throw your hands in the air and say, “There is no way that I can deal with all those issues in six months. I need longer.” You would need longer to incentivise the person to engage with you in the community and because the issues are complicated. I think that six months is too short, particularly for prisoners with longer sentences.

Professor Tata: These are people who have been denied discretionary release. For whatever reason, it was deemed to be too risky—rightly or wrongly—to release them earlier. Therefore, we are dealing with those who are assumed to be of greatest risk to the public. Why would we want to squeeze that compulsory supervision period right down to six months?
Elaine Murray: Given that the bill does not end automatic early release any more—it just changes when early release happens—would it have been preferable, in your view, to have had the period defined as a percentage of the sentence? For example, 10 per cent of the sentence or whatever could be served in the community, rather than setting the period at six months.

Professor Tata: Without doubt, it would be sensible to define the period as a percentage of the sentence—definitely.

As you rightly say, the bill does not end automatic early release. I am genuinely puzzled. What is the bill trying to achieve? What problem is it trying to solve? Is it an electoral, political, manifesto problem? The Scottish National Party's 2011 manifesto states:

"We remain committed to ending automatic early release".

As you say, the bill is not now ending automatic early release, so the SNP is left with the same problem. However, the manifesto adds the caveat "once the criteria set by the McLeish Commission are met."

Those criteria are about lowering prison numbers, so it was not a manifesto commitment.

I am therefore genuinely puzzled as to what problem the bill is seeking to solve. The bill seems to be attacking the very bit of the release system that works the best. As you have heard from the Risk Management Authority and others, the long-term end works pretty well. It is the short-term end where there is much more to criticise—where people are released nominally on supervision but do not get supervision or the kind of support that they need. I am puzzled as to why the bill is going for the long-term end—the part that works the best. Why would we tackle that?

Presumably, the bill does not solve any political problem to do with a manifesto commitment because it does not achieve the first part of that statement in the manifesto and, in any case, the manifesto allows latitude around that commitment, so what problem is the bill trying to address? Is it public safety?

We have been here before; we know that conditional, supervised mandatory release is necessary. You have rightly said as a committee that we have to have that in the bill, and the Government has relented on that. However, we are talking about the long-term prisoners who are deemed too risky to release at the discretionary point. Why would we want to squeeze the mandatory period of supervision and support right down to six months? I do not get it.

Professor McNeill: A proportional system makes more sense. I think that we could have that system and abolish automatic early release, but to do so we would need to change what the sentence is—what the sentence means.

The device that would be required is something like a custodial and supervisory sentence, which has two elements. We could have a sliding-scale part in the middle, where the Parole Board would still exercise a measure of discretion in light of judgments about risk and progress. However, then—this is somewhat arbitrary—no later than three quarters of the way through the sentence, the prisoner would have to be released under mandatory supervision so that they continue to address risks and needs, and continue to be supported on their reintegration journey, post-release.

Professor Tata: It is the tariff part, which relates to indeterminate sentences and lifers.

The Convener: Have we not already been here with the Custodial Sentences and Weapons (Scotland) Act 2007 and its amendment?

10:45

Professor McNeill: Without getting into the technicalities, the 2007 act has many other flaws and cannot be implemented in the form in which it was passed. It is not a case of going back to that act. The principle that a custodial sentence must have two parts, which need to be made explicit when the sentence is passed, can deal with the problem of automatic release and the underlying problem of transparency in sentencing.

The Convener: Have we not done that already under other legislation? Was that to do with life sentences? There was an odd formula where the offender was detained for the safety of the public but part of the sentence had to be for rehabilitation. What was that?

Professor Tata: It is the tariff part, which relates to indeterminate sentences and lifers.

The Convener: We have already been there.

Professor Tata: But with lifers.

The Convener: That is right. Part of the reason for that to was meet ECHR requirements. The bill is sort of along the same lines.

Professor McNeill: Yes.

Professor Tata: Yes. I suggest that part of the motivation for the bill is the concern that people feel that sentences do not mean what they say. They are right: sentences do not mean what they say, they are not clear and the system is not transparent. We need to be clear that, if that is the problem that we are trying to tackle, the bill will not address it. The way to address it is to describe up front and explicitly what the sentence is.

All custodial sentences are rightly a combination of custody and a mandatory—it might be part
discretionary—period of supervision. As the committee said in its stage 1 report, they should be that combination, which we could call a custodial and supervised sentence or whatever. If we just say what the thing is, we could get out of the bind that we are in. In that way, we could combine the virtue of public safety—namely, ensuring that, on release, people, particularly those whom we deem to be the greatest risk, get the supervision and support that they need and which the public needs them to have—and being able to say what the sentence is.

It is about time that we were up-front with the public about that. In the 1960s and 1970s, when parole came in, people did not really know that prisoners were getting out early, but now everybody knows. In fact, the public is very cynical, and the research suggests that, sometimes, they imagine that prisoners are let out earlier than they are. We need to be clear, and it is a matter of describing more clearly what sentences are.

The Convener: Of course, they are not getting out as such; it is a change of sentence.

Professor Tata: Absolutely.

The Convener: It is a continuing sentence.

Professor Tata: They are getting out of prison. I do not mean that they are getting off.

The Convener: No, but people think that getting out means that they are getting off with part of their sentence.

Professor Tata: Absolutely. That is why we need to say exactly what the sentence is.

Roderick Campbell (North East Fife) (SNP): We have established that the bill is not about clarity in sentencing. It does not purport to be about clarity. I take on board your point about proportionality, but on 13 January we heard evidence from Victim Support Scotland that it agreed with Sacro that a three-month period at the end of the sentence would be required. I think that that was also accepted by Pete White of Positive Prisons? Positive Futures. They were happy with taking a non-proportionate view. You obviously take a different view, but there are other ways of looking at the matter.

Professor Tata: If I am not mistaken, in his evidence, Pete White briefly says that it is better than nothing, and not as bad as before. I am not sure that he says that—

Roderick Campbell: I have it in front of me.

Professor Tata: You go ahead. I might be wrong.

Roderick Campbell: Sarah Crombie from Victim Support said: “Sacro’s submission comments that it would be good to see a reduction of automatic early release to the last three months of the sentence. I know that Dr Barry talked about the average three-month planning time within the prison. Victim Support thinks that putting in place that three-month period, to allow compulsory supervision to take place, is something to look at.”

Then the convener asked:

“Does anyone else wish to comment?”,

and Pete White replied:

“\[Official Report, Justice Committee, 13 January 2015; c 20.\]

Professor Tata: I think that Pete White has written evidence—

John Finnie (Highlands and Islands) (Ind): On a point of order, convener.

The Convener: Slow down a minute, please. There are no points of order in committee.

John Finnie: Thank you for that clarification.

Professor Tata was alluding to Mr White’s more recent evidence, which is in our papers. In it, he says what Professor Tata said.

The Convener: That is a point of information.

John Finnie: I beg your pardon.

The Convener: I love the fact that there are no points of order here. It gives me some control.

The two main points that are being made relate to why the period should be six months and proportionality. It is not fit for purpose, because people doing four years would serve three and a half and people doing 10 years would serve nine and a half.

If we are trying to fix the bill and not just throw it out completely, what do we look at? How do we do it? We cannot deal with sentencing policy here.

Professor Tata: We first need to decide what problem we are trying to solve.

The Convener: We have solved one for you: we agreed that there should be no cold release. That was a move forward at least. We would all support that: cold release was not a good idea.

It was also not good that the provision applied only to sex offenders, and it has now been extended to all offenders. We have made some progress with the Government.

Professor Tata: I understand that the main complaint of victims’ groups is that sentences are not transparent or clear. There is a way to deal with that, which is to describe the sentence as it really is. In that way, there can be a sufficient period of mandatory supervision without people being told that someone is getting one sentence when they are getting another. It is telling it as it is.
The Convener: Right. Okay. I do not know whether we can do that in the bill.

We will now have questions from other members.

Christian Allard (North East Scotland) (SNP):
Good morning, professors. I have very much enjoyed the conversation that we have had so far, but one point may be missing. We have talked about cold release and have dealt with that, but there may be another point. We have heard a lot about prisoners opting for max out. I thought that the changes that the Government had made were to deal with that. I do not know whether you remember, but I talked about the idea of a mandatory pre-release supervision period. Sacro suggested that the period should be three months, which is fine. We did not talk about proportionality, but Sacro seems to understand that better than others.

On prisoners opting for max out, we did not realise that some offenders will not want to engage. We need that short period of time for the ones who will not work with the Parole Board on a discretionary basis beforehand, to force them to engage. It is not about everybody; it is just about that small number who are more difficult to engage.

That point is made in your written submission, Professor McNeill. You make several points, all of which now appear to have been addressed—even those on costs, because the provisions will not kick in before 2019. You said that the bill should be abandoned because of the points that you listed. Where do you stand on that now?

Professor McNeill: I still think that the bill is not fit for purpose in its current form. Whether I understand the bill as being principally concerned with public safety, which is what it says that it is concerned with, or whether I consider it important for the bill to deal with the issue of transparency, even if that is not its formal purpose, it is not achieving either aim.

For the reasons that I gave earlier, when I worked through the example of someone serving a long sentence, I do not think that holding someone longer and then releasing them six months before the end of their sentence is the best way of securing public safety in the long term. That is the dilemma that the Parole Board continually faces. If the offender is released earlier, there is a longer period of supervision and therefore a longer period of support to navigate the re-entry challenges and reduce risk. When the criminal justice system then lets the person go, they are being let go in a safer condition. That is better for them because they are better reintegrated, and it is better for the public because they are less likely to reoffend.

Christian Allard: Are you of the view that automatic early release at the two-thirds point was a good thing?

Professor McNeill: I am.

Christian Allard: The aim of that was to make sure that nobody maxed out. That brings us back to the issue of cold release. How can we balance the two things—someone spending longer in prison and their not having cold release?

Professor McNeill: This is where reading extracts of the earlier evidence on the supervisory period, at stage 1, could potentially be misleading. If you had said to me, “It’s either cold release or three months’ supervision,” I would have chosen the three months’ supervision. If you had said, “It’s either cold release or six months’ supervision,” I would have chosen the six months’ supervision. If you had said, “It’s either cold release or 12 months’ supervision,” I would have wanted the 12 months’ supervision. In the framework of the total custodial sentence, I want the longest possible period of supervision and support in the community, to mitigate the effects of imprisonment and to secure public safety.

The Parole Board’s dilemma is that, the longer it waits to make the release decision, the more likely it is that desistance from crime is going to be frustrated. The earlier that you can release a prisoner, the better you can support their re-entry into the community. Of course, if you are not confident that you can safely release a prisoner, you must hold them.

I would set the discretionary period at between 50 per cent and 75 per cent of the sentence. That is, potentially, a long period in which to incentivise a long-term prisoner to engage with the Parole Board. If the prisoner does not do enough and still has to be released at the 75 per cent point, there will still be a long period of supervision during which the social worker can work to secure engagement and reduce risks as well as to support reintegration.

My honest feeling about the current proposal is that it is better than the first draft. It improves the situation, as it deals with cold release up to a point. To a certain extent, six months’ supervision will help a significant proportion of those whom the bill will affect. However, will it secure their reintegration? I doubt it, and as long as their reintegration is not secured, public safety is, ultimately, not served.

We do not live in a perfect world. There are some people for whom no amount of supervision will secure reintegration, and there will always be risk after the criminal justice system steps back and says that it no longer has the authority to interfere in a prisoner’s life. My belief is that a longer period of supervision, particularly for long-
term prisoners, is more likely, rather than less likely, to support their desistance from crime.

Professor Tata: We come back to the question, if I may—

Christian Allard: If I can—

The Convener: Mr Allard, let Professor Tata speak and then you can come back in.

Professor Tata: It is important that we focus on the question of what problem the bill is trying to solve.

Christian Allard: Professor McNeill answered that part—the bill is about public safety. That is exactly what it is about.

Professor McNeill: That is what it is strives to ensure.

Christian Allard: That is what it says.

Professor McNeill: I am not at all convinced that, in comparison with the current system, the proposal would make the public any more safe. I can only hypothesise on the basis of my understanding of people’s progression towards desistance from crime, but my hypothesis is that being released after a longer period of imprisonment—with all the disruption and problems that that causes—to a short period of support during which the prisoner knows that the social worker will disappear after six months will not heavily incentivise the prisoner to engage seriously with the social worker. Prisoners might formally comply, showing up for the appointments and getting through the process in order to get the social worker off their backs and out of their lives, but they may then carry on as before. I do not think that that is the best way to secure public safety.

Christian Allard: There could be an explanation as to why so many people suggested a three-month period, perhaps regarding the cost or the better quality of a shorter programme. We have said that things are going to change and that there is going to be progress in prisons, first and foremost. Could we have a very good, year-long programme? Would that be sustainable? Would a six-month supervision period in prison provide a good balance?

Professor McNeill: We know from the evidence base that programmes to reduce reoffending generally work better in the community than in prison. There is an obvious reason for that. When someone is trying to learn skills that they are going to use in the community, it easier for them to learn them in the community because they can be practised between sessions. In a prison-based programme, prisoners can learn skills for tackling the problems that they will face outside but they cannot really rehearse and embed the learning. It is a bit like the challenges that students on vocational courses face when they try to take classroom learning out to placements—it is the same sort of transfer.

In my assessment, a longer period of supervision during which more programme and individual work can be undertaken to support rehabilitation in the context and the environment in which the learning needs to be applied stands a better prospect of securing reductions in risk than a prison-based programme. From a scientific point of view, I can support that because it is based on evidence as opposed to hypothesising.

That is not to say that we should not do lots of work in prisons to prepare people for release and to address the issues that we can address while they are inside. Nevertheless, the key thing is to get the money out of the jail and into the community so that the support programmes—not just in the narrow classroom sense—can be properly resourced and delivered by trained professionals who are supported by third sector and community organisations doing advocacy, building bridges, making connections and securing a sense of belonging to a community, which is what ultimately sustains people’s desistance from crime.

Christian Allard: I put it to you that it will be easier for people to build bridges if they are released earlier in the discretionary period, when there is no issue for the Parole Board, and that some prisoners will be quite happy to engage. The problem is that the prisoners that we really want to deal with are the ones who want to max out.

11:00

Professor McNeill: I accept that the ones who want to max out are the ones who will be difficult to engage in any context. However, that does not mean that it makes sense to hold them longer.

The Convener: People keep calling it “release”, but, as we know, it is a continuing sentence. I understand from the cabinet secretary that different conditions would be attached to the period in the community—we did not go into details on that, but perhaps we should have gone further into what conditions we are talking about.

Professor McNeill: It would be much more helpful if we thought of “release” as being release from the order or sentence. We think of someone walking out of a prison gate as the end of the sentence, but it is clearly not and nor should it be.

The Convener: There is also recall. We did not go into whether someone would be tagged or what things would be required, but some of those things could be quite onerous.
Professor McNeill: That point is being driven home to me by research that I am currently conducting on people who are subject to supervision in several European countries. We grossly underestimate the pain of being subject to that suspension of punishment. The prospect of being recalled at the discretion of another person leaves the released person exceptionally vulnerable and insecure.

From a justice point of view, one could say that that is fair enough and is part of the sentence—that a person has conducted himself or herself in such a way that the state has the right to exercise that power over them and does so to protect others. However, we should not underestimate what it feels like to be not quite at liberty. Having the sword of Damocles dangling over your head continuously is no small suffering.

Professor Tata: It would be helpful to describe it as such, publicly. The system is very poor at explaining itself.

The Convener: Shall we call it the sword of Damocles? I know that that is not what you mean.

Christian Allard: Wording is very important. If the bill is passed, will we have removed automatic early release as we know it? Do you think that the word “automatic” will, slowly and surely, be removed from the language of the discussion?

Professor McNeill: I doubt that the Government’s political opponents will let it get away with that. With the bill, we are changing the regime of automatic early release but we are not abolishing automatic early release—it will continue, but it will be fixed at six months.

Christian Allard: That will be the case only for a small number of people, and especially the max-out ones.

Professor McNeill: The number of people who will be affected by the proposal will depend on the judgments that the Parole Board makes and how conservatively it applies the risk criteria. We do not really know the numbers because we do not know how the board will weigh the two risks. There is the risk of releasing someone now and the risk of not releasing them now, which is that we are storing up a bigger problem later. It is not a case of risk versus no risk; rather, it is about risk now or risk later. We cannot predict exactly how the Parole Board’s decision making will be influenced by the change in the timing of early release.

John Finnie: Professor McNeill, I do not know whether you have had the opportunity to read Dr Monica Barry’s evidence to the committee, but she touches on many of the points that you have alluded to, including the pressures on people who are under supervision. There seem to be a number of issues in play. We are told that the Government wants to reduce the prison population, so more resources would require to be transferred to the community. On parole licences, she concludes by saying:

“the longer the period on supervision (and the greater the perception that such supervision is merely monitoring risk rather than proactive support), the more likelihood of breach.”

However, you are arguing for a longer supervision period. Can you explain that?

Professor McNeill: If I am reading Dr Barry’s submission correctly, she is not arguing against supervision; she is talking about the character of supervision. I had the benefit of hearing about her current research last week at a conference at the University of Strathclyde. She is expressing concern, based on her findings, about the fact that released prisoners experience supervision as nothing more than monitoring and control when, in fact, they have significant needs for support with reintegration that, in their view, are not being met. They are being asked to comply with a regime of control, but they are not being incentivised by being offered support that they find meaningful.

John Finnie: Dr Barry talks about proactive support. Do you understand what that might involve?

Professor McNeill: This is where Pete White’s voice would be useful. In essence, proactive support would involve going to the person before they were released and having a thorough discussion about their post-release plans, who was important to them, what resources and support they had in the community and what personal resources and assets they had in terms of their skills, abilities, ambitions and education. It would also involve trying to work creatively and constructively with the person to develop a shared release plan that was based on navigating what was going to be a difficult transition. That is not the same thing as going to the person and saying, “My tool tells me that you have five risk factors that must be addressed in order for you to be released. After release, we will seek to manage your risk factors by controlling your access to certain things, by putting a tag on you or by making you submit to restrictions.”

One approach is educative, facilitative and proactive and involves an attempt to identify resources and needs and to work with the person to provide the best possible resettlement package—which I think is a human right, as I have explained to you previously. The other approach is a system of control that is designed purely to protect the public and not to address the prisoner’s needs. However, unwittingly, it fails to protect the public, because the two things are symbiotically related.
**John Finnie:** You seem to be describing what might be an individual risk assessment. Does that not suggest the need for an individual disposal rather than one that looks just at the length of time for which someone has been in prison?

**Professor McNeill:** The current system involves individualised assessment of risk and need, although it might not look as closely as it should at the strengths, resources and other positive assets of a person. The organisational review of the Scottish Prison Service is trying to move in that direction, partly informed by the sort of research that I have been involved in.

The issue involves more than risk assessment. Risk assessment identifies problems and needs, and it gives some guidance on where the social worker, the prison psychologist or whoever is involved might best target their efforts. However, the problem with the way in which risk assessment is used is that the professional is often under the pressure of public scrutiny with regard to the management of risk, and they complete the assessment to identify what the risks are and then develop a plan to manage the risks, which is not the same as reducing them.

**John Finnie:** I am talking about individual risk assessments—with a small "r" and a small "a"—that would consider all the positive factors.

**Professor McNeill:** They clearly should.

**John Finnie:** The Parole Board might come to the conclusion that five months’ supervision was suitable for one person and seven months’ supervision was suitable for another. I wonder whether the tariff scheme ignores the individual.

**Professor McNeill:** Any threshold that is set, whether it is set proportionally or uses a fixed time period, runs that risk. It is a question of balance. The danger with a system that is entirely discretionary is that it leaves a lot of power in the hands of professionals who make subjective judgments that, under the pressure of public scrutiny, can become more precautionary and defensive, with the result that release can be subject to delay after delay. That leads us back to the maxing-out problem.

I would still support proportional thresholds that let us say, “We’ve held this risk as long as we can hold it; now our job is to get out in the community and reduce it.”

**John Finnie:** Could you or Professor Tata comment further on the view that professionals in the field are risk averse for the reasons that have just been outlined?

**Professor McNeill:** I will answer that question briefly and then my colleague can give his opinion.

The impression that I gained from the evidence that was presented at the conference at the University of Strathclyde last week tends to suggest that there is a need to take risks in order to reduce risk, through a kind of proactive attempt to engage in strategies that give us confidence that skills are being acquired and used. It is just like child rearing. People get to a stage with their kids when they have to let the rope out a bit to see whether they have learned. Similarly, in this context, if we hold on too tight and overprotect, we run the risk of diminishing a person’s capacity to manage himself or herself effectively.

Evidence from the study by Dr Barry and Dr Weaver at the University of Strathclyde suggests that the system has begun to move a little too far in the precautionary direction. That is my impression, but as a social scientist I should be careful to separate that from what I can evidence empirically, and I am not sure that I can evidence that empirically. Certainly, recall rates have gone through the roof—the McLeish report is very clear on that. There was a massive increase in the number of people being recalled to custody even before 2008, and I think the numbers have continued to rise. It seems as though something has changed, but it is not obvious that the conduct of the people who are subject to supervision has changed—let me put it that way.

**The Convener:** There has been no respite from the press, and that is the real court of law, is it not? If, as you rightly say, it is a question of a minor risk being taken by those who manage the system and those within it who are under supervision—one little slip and there is no escape—then I understand why people such as social workers have to cover their backs so much.

**Professor McNeill:** When I was a practising social worker, I was in the position of having to make those calls. It is extremely demanding work that deserves to be much better respected and supported. We all—including me, in my current job, elected members and all aspects of civil society—have a collective responsibility to contribute to that debate rather than hide from it. To a certain extent, the social work profession needs to advocate for itself and be more confident and assertive in its engagement with public debate. Some of the Government’s other reforms—the new community justice measures, for example—will help to provide national leadership that can enhance the quality of the debate.

**The Convener:** That is coming to us as well.

**Professor McNeill:** In due course, yes.

**The Convener:** We volunteered to take it, even though it will be our sixth bill.
Professor McNeill: You are clearly gluttons for punishment.

Professor Tata: I do not have a lot to add—Professor McNeill has explained the situation eloquently. To put it bluntly, having a system of mandatory release saves parole boards from the dilemma that he outlined. It allows them to say, “Okay, we’re not going to get the blame for that.” Someone has to be released, and there is a good reason why they have to be released at a certain point: because it serves public safety.

The Convener: I thought that Professor McNeill was saying something different. I thought that he was talking about the fact that, if we proceeded with a mandatory community part of a sentence, there would have to be a different way of managing the individual who was released.

Professor McNeill: Both things are true.

The Convener: This is not just to do with “Risk Assessment” with capital letters—John Finnie rightly made that point. That is part of it, but the issue is also the need for more engagement with what would cure or help the individual along the way, and that sometimes involves social workers. I do not want to use the word “risk”, but social workers must feel free to make a judgment call in those circumstances—perhaps I can put it like that. Is that correct?

Professor McNeill: That is a summary of what I said. That is correct, but I also agree with what my colleague has said.

The Convener: I did not want to cause division—you are doing so well together.

John Finnie: Professor Tata, may I take you back briefly to your comment about the human rights aspects? The Government seems relaxed about that, as you suggested, but that relaxed position is not shared by the Scottish Human Rights Commission or the Howard League. Will you comment a bit more on that? Just because something has not yet been subject to challenge does not necessarily mean that it ticks all the boxes.

11:15

Professor Tata: John Finnie makes an excellent point. At the end of the Scottish Government’s note from last week, there is a brief paragraph that says something about there being no case law about determinate sentence prisoners—the Government chose the word “determinate”—that would cause a problem in terms of prisoners having fair opportunity to access programmes in prison to show that they are not a risk. Of course, the case law that exists is about indeterminate sentences, but I think it is unlikely that, and I can see no reason of principle why, if the courts have said that there has to be fair opportunity for those who are serving indeterminate sentences—I am thinking of the case of James, and others—that principle could not be extrapolated to determinate sentence cases.

There will, understandably, be the desire and the will to challenge what is proposed among people sentenced to lengthy periods. If they were sentenced to a period of 12 years, they would have been getting automatic release after about eight years. Now, if they cannot access programmes and they feel that they have not been given fair opportunity to show that they are not a risk, they will not get out until they have served 11 and a half years. That is three and a half years extra, and for those three and a half years they will say that it is unfair and have a burning sense of injustice. Who would not? I would, too, if it was the case that prisoners did not have fair opportunity to access programmes and show that they are not a risk.

The note from the Government is a little too relaxed on that point, and I think that lawyers who work in the area would confirm that to you. We have sometimes been here before with human rights legislation. Governments have said, “Oh, it’s not a problem” and have stuck their heads in the sand only for the problem to come up later. The note is not quite enough; we need to think more carefully about it.

The principle is a really simple one. People need a fair opportunity to make their case. If they are not given fair opportunity, there will be a sense of injustice. That will come.

Professor McNeill: I would like to make an obvious arithmetical point. At present, one of the reasons why a determinate sentence prisoner might not seek to litigate is that we are talking only about the difference between 50 per cent and 66 per cent. Under the new measures, we would be talking about the difference between 50 per cent and something approaching 100 per cent as sentences become very long. If I was a prisoner serving a very long sentence who was unhappy about access to rehabilitative support—and not just programmes in the custodial context—and I had got past my halfway point and did not feel that I was being supported to make progress, I would be consulting my lawyer, and so I should.

Professor Tata: It is bound to have some effect on the ability to manage prisoners who feel upset and angry and feel that they have been treated unjustly.

The Convener: Mr Campbell has a supplementary question or a response to make to that.
**Roderick Campbell:** I would have thought that the Scottish Prison Service would be acutely aware of those issues and anxious to avoid a position in which it ends up on the wrong end of litigation in the courts.

**Professor Tata:** I am sure that it will be, but it is not really the Scottish Prison Service’s responsibility. It is the Government’s responsibility.

**Alison McInnes (North East Scotland) (LD):** Professor McNeill, do you think that it would be feasible to put into the bill a description of what licence conditions there would be for time served under supervision in the community?

**Professor McNeill:** I do not know the answer to that because I am not an expert on the parliamentary process. I am not sure how far amendments to a bill can go towards altering its focus or purpose, but it is probably not very far. That is why, in earlier evidence, I said that my instinct is to start again. I am afraid that I cannot really be clearer than that.

**The Convener:** I do not know either. That is something that we are looking at. There is an amendment to the long title, to

"leave out from <end> to <sentences> in line 2 and insert <amend the rules as to automatic early release of long-term prisoners from prison on licence>",

but I do not know whether that would change the purposes of the bill. That is an issue for the committee to raise with the Government.

**Professor McNeill:** I presume that anybody could lodge an amendment proposing that, as well as having the current system, where 50 per cent is the point at which prisoners become eligible for consideration for parole, we should also have mandatory release at 75 per cent. An amendment to that effect could be drafted, but it would not address the problem of transparency.

**The Convener:** We understand that. The period could be changed from six months to something else, but I do not know whether such an amendment would be competent.

**Professor McNeill:** Perhaps we could insert something saying that a custodial sentence is now to be called a custodial and supervision sentence, for example. I am not sure.

**The Convener:** We have exhausted our questions. Is there anything else that the witnesses would like to raise? I see Professor Tata taking a deep breath as if something is coming.

**Professor Tata:** I suppose that I have to ask why we are doing this.

**The Convener:** We have had that message loud and clear.

**Professor Tata:** The very bit of the system that works best is going to be squeezed back and the cost will take the majority of the current community justice budget. The Government says that it wants to work towards penal reduction and there seems to be a degree of cross-party consensus on that, yet the concrete measure that we are considering is to do quite the opposite.

The cabinet secretary might have mentioned the tomorrow’s women project in Glasgow, which is a great project that came out of the Angiolini commission’s report. Its budget, as far as I know, remains incredibly precarious. We are praising the work that is done there, but it has no long-term funding, and the one bit of the system for which we are going to guarantee greatly increased funding is the Scottish Prison Service. That is not a criticism of the work that is being done in prisons.

**The Convener:** It might be even worse after we hear what is announced in the budget for the Scottish Parliament. Bear with me on that.

**Professor Tata:** Why spend so much more—£30 million—on a bill that the evidence suggests will reduce public safety and that will not abolish automatic early release?

**Elaine Murray:** If we were going to remove the six-month period and substitute a percentage of the sentence, what would be your advice on what that percentage should be?

**Professor Tata:** I think it should be a minimum of 25 per cent.

**The Convener:** I think that 25 per cent is reasonable as a minimum; 50 per cent sounded a bit big.

I thank our witnesses. As usual, their evidence has been stimulating and interesting. It was almost like a legal seminar. Mr Campbell was about to jump into the debate rather than asking questions, but that is fine.

Our next meeting will take place on 2 June, when we will have an informal briefing on the Community Justice (Scotland) Bill and consider witnesses for that bill. Stage 2 of the Prisoners (Control of Release) (Scotland) Bill will also take place that day, and John Finnie will give us an update on the latest developments with the Scottish national action plan on human rights.

**Meeting closed at 11:22.**
Justice Committee

Prisoners (Control of Release) (Scotland) Bill

Supplementary written submission from Professor Fergus McNeill, Dr Monica Barry and Professor Cyrus Tata

Proposed release arrangements for long-term prisoners

Further to our recent written and oral evidence in relation to the Prisoners (Control of Release) Bill, we wish to try to offer constructive proposals about a possible way forward.

We should reiterate that we think that it would be better to abandon the current Bill and start again with a re-examination of the whole system of ‘front-door’ sentencing and ‘back-door’ release, since we see significant dangers in seeking to reform one without the other.

However, if the Parliamentary process proceeds, what follows is our best attempt at constructive suggestions for a set of principles that suggest how the Bill might best be amended.

1. Clarity in Sentencing

Alter the name of all determinate custodial sentences of 4 years or more to ‘Custodial and Supervisory Sentence (CSS)’ (or similar), including a ‘custodial part’ and a ‘supervisory part’. Both parts would have to be considered punishment and both would have to address rehabilitation and reintegration. This enables ‘Automatic Early Release’ to be ended and replaced by a clearer and more transparent explanation of the sentence as it will be served.

This might also allow for the replacement of all forms of extended sentences short of Orders for Lifelong Restriction, simplifying the current system.

2. Public Safety

In all cases, in order to promote successful ex-prisoner resettlement and thus public safety, no less than 25% of the total CSS should comprise the ‘supervisory part’. We make this suggestion not only because of the concern about the loss of proportionality we discussed last week, but also because six months (or even a year) is unlikely to be a long enough period of support and supervision following a longer sentence where greater institutionalization may have occurred and the resettlement challenges are likely to be considerable.

3. Parole Board Powers

The Parole Board for Scotland (PBS) should, as now, be empowered to consider discretionary early release as soon as the minimum custodial part has been served, that is, at 50% and until 75% of the whole CSS, when the supervisory part must begin.
4. **Use of Electronic Monitoring Together with Social Work Support**

The Scottish Government should enable/encourage PBS use of electronic monitoring (perhaps including GPS) so as to support earlier release with a higher degree of surveillance/control but only in cases where this is a proportionate and necessary response to assessed risk. But this must be as a *supplement to social work support, not as a replacement for it.*

5. **Recall**

Whenever the prisoner is released, s/he is under *compulsory supervision for the remainder of the CSS and remains subject to recall to custody.* However, we suggest there is a need to research and review recall procedures and practices and (subject to the outcomes of that review) to tighten the conditions under which recall decisions can be made, and the duration of time spent in custody on recall before re-release must be considered. For example, it might be sensible to remove the formal licence condition of good behaviour in release licenses so that alleged new offences are not an automatic breach of licence. Criminal justice social work (CJSW) and the PBS would then be required to assess whether the offence indicated risk sufficient to justify recall. The sentencing judge in the new case would still have the power to consider the new offence aggravated in light of the licence.

6. **Support Reintegration and Public Safety**

In determining both the timing and the conditions of release, the PBS should be required to attend to *dual duties to support reintegration and to promote public safety.* CJSW services should have the same dual duties in relation to supervision of CSS ex/prisoners. It is important to stress the first duty as much as the second, since there are inter-dependent. Indeed, being risk averse may, paradoxically, increase risk, for example, by releasing prisoners who have become more frustrated and have less incentive to comply (due to shorter supervisory periods).

7. **Implement McLeish Recommendation - Statutory Duty**

The Bill should be amended to take the opportunity to implement the McLeish recommendation to create a *statutory duty on all public bodies to support ex-prisoner reintegration* (e.g. health services, housing, benefits (when devolved), etc.). This would facilitate pre-release planning and post-release resettlement (e.g. allocating accommodation and establishing benefits claims in advance of release). In our assessment, this sort of change is likely to do more to support reintegration and reduce reoffending than any other aspect of these potential reforms.

8. **The Need for Recalibration in Sentencing**

The new Sentencing Council should be invited to urgently explore means of seeking *sentence re/calibration* if the legislation is passed and a mandatory period of conditional community supervision (currently unhelpfully called automatic early release) is either abolished or significantly reduced.
Implications:

- Abolishes all ‘early’ release (since release is not early, it is timely)
- Avoids ‘cold release’ (or ‘near-cold release’) since all release is supported for a period of time (25%) which is realistic to enable genuine reintegration and thus supporting public safety
- Incentivizes cooperation by prisoners with rehabilitation in prison and supervisory regimes (and retains constraints on those not cooperating)
- Introduces potentially deflationary aspects which might mitigate potentially inflationary aspects, for example by requiring PBS and CJSW to recalibrate risk tolerance levels (given the need to balance the duties to support reintegration and to promote public safety)
- Provides means to mitigate risks by supporting reintegration in both parts of the sentence, and by enhancing potential constraints/controls in the supervisory part (where such constraints and controls can be justified as proportionate to risks).

We anticipate that effective implementation of such changes might require:

- Greater availability of access to rehabilitation in prisons (including but not limited to programmes), greater use of home leave and the open estate options for suitable prisoners
- A change in approach to release and recall decision making, more explicitly balancing the dual duties discussed above
- Allocated community-based social workers to engage in pre-release preparation from the 50% point and continuously thereafter
- A greater emphasis in practice on reintegration support rather than mere monitoring, since this is key to risk reduction as opposed to risk management.
- Supervision in the community by a qualified CJSW, irrespective of whether only on level 1 MAPPA/sex offender register.

Prof Fergus McNeill
Dr Monica Barry
Prof Cyrus Tata
1 June 2015
Prisoners (Control of Release) (Scotland) Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 4 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Michael Matheson

1 In section 1, page 1, line 8, leave out subsection (2) and insert—

<(2) In section 1—

(a) after subsection (1) there is inserted—

“(1A) Subsections (2) and (2A) apply as follows—

(a) subsection (2) applies in relation to a long-term prisoner who is serving a sentence imposed before the day on which section 1 of the Prisoners (Control of Release) Scotland Act 2015 comes into force,

(b) subsection (2A) applies in relation to a long-term prisoner who is—

(i) serving a sentence imposed on or after the day on which section 1 of the Prisoners (Control of Release) Scotland Act 2015 comes into force, and

(ii) not subject to an extended sentence within the meaning of section 210A of the 1995 Act.

(1B) For the purpose of subsection (1A), a sentence specified on appeal in substitution for a sentence imposed earlier is to be regarded as imposed when the earlier sentence was imposed.”,

(b) after subsection (2) there is inserted—

“(2A) As soon as a long-term prisoner has only 6 months of the prisoner’s sentence left to serve, the Scottish Ministers must release the prisoner on licence unless the prisoner has previously been so released in relation to that sentence under any provision of this Act.”.>

Elaine Murray

1A As an amendment to amendment 1, line 18, leave out <6 months> and insert <12.5%>
Section 3

Margaret Mitchell

5* In section 3, page 2, line 16, at end insert—

<( ) The day appointed for section 1 to come into force must be a day after the day on which the Criminal Justice (Scotland) Act 2015 received Royal Assent.>

Michael Matheson

2 In section 3, page 2, line 17, leave out subsection (3)

Michael Matheson

3 In section 3, page 2, line 17, at end insert—

<( ) An order under subsection (2) bringing section 1 into force may amend section 1(1A) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 Act so that, instead of referring to the day on which section 1 comes into force, it specifies the date on which section 1 actually comes into force.>

Long Title

Michael Matheson

4 In the long title, page 1, line 1, leave out from <end> to <sentences> in line 2 and insert <amend the rules as to automatic early release of long-term prisoners from prison on licence>
Correction Slip to the Marshalled List of Amendments for Stage 2

The text of amendment 3 is incorrect in the Marshalled List of Amendments for Stage 2. The wording of the amendment should be as below. The amendment appears on page 2 of the Marshalled List of Amendments for Stage 2. When amendment 3 is called, reference should be made to the version of amendment 3 below.

Michael Matheson

3 In section 3, page 2, line 17, at end insert—

<( ) An order under subsection (2) bringing section 1 into force may amend section 1(1A) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 so that, instead of referring to the day on which section 1 comes into force, it specifies the date on which section 1 actually comes into force.>
Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated during Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

**Automatic early release**
1, 1A, 2, 3, 4

**No commencement of section 1 until after Royal Assent of Criminal Justice (Scotland) Act 2015 received**
5
Present:

Christian Allard
Roderick Campbell
Christine Grahame (Convener)
Margaret Mitchell
Gil Paterson

Jayne Baxter
John Finnie
Alison McInnes
Elaine Murray (Deputy Convener)

Also present: Michael Matheson, Cabinet Secretary for Justice.

**Prisoners (Control of Release) (Scotland) Bill:** The Committee considered the Bill at Stage 2.

The following amendments were agreed to (by division)—

1 (For 8, Against 0, Abstentions 1)
2 (For 8, Against 0, Abstentions 1)
3 (For 8, Against 0, Abstentions 1)
4 (For 8, Against 0, Abstentions 1).

The following amendments were moved and, no member having objected, withdrawn: 1A and 5.

The following provisions were agreed to without amendment: sections 2 and 4.

The following provisions were agreed to as amended: sections 1 and 3 and the Long Title.

The Committee completed Stage 2 consideration of the Bill.
The Convener: Agenda item 2 is stage 2 proceedings of the Prisoners (Control of Release) (Scotland) Bill. I welcome to the meeting Michael Matheson, Cabinet Secretary for Justice, and his officials: Philip Lamont, head of criminal law and sentencing unit; and Fraser Gough, from the parliamentary counsel office.

Members should have their copies of the bill, the marshalled list and the groupings of amendments for today's consideration. They should also have a correction slip for the marshalled list, which refers to amendment 3. The correction is nothing enormous; it is needed simply because amendment 3 refers to “section 1(1A) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 Act”.

All that is corrected is the repetition of the word “act”—no dynamite there.

Section 1—Restriction on automatic early release

The Convener: Amendment 1, in the name of the cabinet secretary, is grouped with amendments 1A and 2 to 4.

The Cabinet Secretary for Justice (Michael Matheson): Good morning.

Amendment 1, which provides for the expansion of the policy to end for all future long-term prisoners the current entitlement to automatic early release at the two-thirds point of their sentence, has been lodged in response to comments at stage 1 that it was not clear why the bill as introduced made a differentiation between sex offenders and non-sex offenders. We consider our amendment to be an appropriate response to the issues that were raised at that time.

Amendment 1 also provides for a minimum six-month period of licence conditions supervision for all long-term prisoners leaving custody. During stage 1, it was suggested that an unintended consequence of ending certain prisoners' entitlement to automatic early release was that some prisoners would serve their entire sentence in prison and then leave custody with no licence conditions in place to help supervise them in the community. Such a situation is commonly referred to as “cold release”.

We discussed the issue at some length last week and it is important to stress that the need for the operation of a mandatory period of licence conditions supervision will apply only to a limited
proportion of long-term prisoners. That is because many long-term prisoners will continue to receive Parole Board for Scotland early release or will have an extended sentence in place. For example, we know that nearly half of sex offender long-term prisoners and approximately one fifth of other long-term prisoners have an extended sentence. We also know that a significant proportion of long-term prisoners, especially non-sex offenders, receive discretionary release. For such prisoners, a period of supervision will always operate on release from custody through the imposition of licence conditions. However, long-term prisoners not in that position will be subject to this six-month period of licence conditions supervision.

It is important to explain what that means for sentences. A sentence contains a period of time that must be served in custody at the start of it, which is half of it; a period of time that must be served under supervision in the community at the end of it, which will be the last six months; and the period from the halfway point to the last six months, which will be served either in custody or under supervision in the community if the prisoner is given parole or early release. In essence, the sentence is a custodial and supervisory one.

We are clear that the mandatory period of supervision should be part of a long-term prisoner's sentence to ensure effective enforcement of the conditions of the mandatory supervision period, which will include the ability to recall a prisoner to custody. As with the current system, it will be for the Parole Board to determine the licence conditions.

Various views have been expressed about the length of the minimum supervision period. As I have explained, the minimum supervision period will affect only a limited proportion of long-term prisoners; supervision will last much longer for many long-term prisoners with an extended sentence and those who receive discretionary early release. With that in mind, we consider that the length of mandatory supervision should be six months.

As members will be aware, a considerable amount of work goes on inside prisons to plan for the release of prisoners. For long-term prisoners, that includes the direct involvement of criminal justice social work services inside prison to consider those prisoners’ needs as they become eligible to be considered for release. That work seeks to ensure that the prisoner is as ready as they can be for release and includes consideration of matters that are key to successful reintegration into the community such as housing, welfare and work needs. All of that work focuses on the individual prisoner’s needs at that particular point and is done in prison ahead of release. We think, therefore, that the minimum period of supervision that is necessary for a prisoner who is serving close to four years and for a prisoner who leaves after eight years in custody, for example, are likely to be similar, given that both are long periods of time in which to be incarcerated and given the additional preparatory work that is done in prison with all long-term prisoners before release.

We do not support Elaine Murray’s amendment 1A, which seeks to set the supervision period at 12.5 per cent of the sentence. We do not consider that for someone who is serving an eight-year sentence, for example, supervision should last twice as long as that for someone with a four-year sentence. That would be the effect of Elaine Murray’s amendment.

We have considered the evidence that was presented during stage 1, which highlighted that the initial six to 12 weeks following release are generally the most crucial for individual prisoners. During those first weeks and months after leaving custody, prisoners have to re-establish themselves in communities, and that is when challenges with regard to housing and getting a job will often be most acute. A mandatory supervision period would therefore be most appropriate at that point.

The Scottish Government considers that a period of six months strikes an appropriate balance to ensure that, on the one hand, mandatory supervision is in place for the crucial first few weeks and months following a long period of incarceration and that, on the other, licence conditions are not left hanging over a prisoner too long as they leave custody and seek to reintegrate into the community. We consider that, by the end of the six-month period, prisoners will have had a sufficient opportunity to lay down roots in the community and will have established their housing, welfare and work under close statutory supervision. It is important to stress that non-statutory support will continue once the six months have elapsed, with community reintegration links laid down. We also consider that a prisoner assessed as dangerous should remain in custody as far as possible into their sentence before a period of supervision in the community operates.

On that basis, we do not support Elaine Murray’s amendment 1A, and we ask the committee to support amendment 1 instead. If amendment 1 is agreed to, it will end automatic early release for all future long-term prisoners with an extended sentence and restrict it to the last six months of the sentence for those without an extended sentence.

Amendment 2 operates in tandem with amendment 1. The bill as introduced would have left it to subordinate legislation to make provision for how reforms to the early release system would affect existing prisoners. The Delegated Powers and Law Reform Committee expressed concern
about whether that would give members an adequate opportunity to scrutinise the important question of how the reforms would affect prisoners serving sentences at the time of commencement. Amendment 1 therefore makes it clear that the reforms do not affect prisoners who are already serving sentences when the new regime comes into force, and amendment 2 removes the power for ministers to include savings and transitional provisions in subordinate legislation, as that job will be done if amendment 1 is approved. I am pleased that, at its meeting last week, the Delegated Powers and Law Reform Committee welcomed what the Government has done in that respect.

Amendment 3 is a minor amendment that allows for the commencement order to add in the specific date when provisions are brought into force so that they appear in the relevant section of the Prisoners and Criminal Proceedings (Scotland) Act 1993, thereby aiding users’ understanding of that act. Finally, amendment 4 seeks to make a minor change to the bill’s long title.

I move amendment 1.

Elaine Murray (Dumfriesshire) (Lab): I lodged amendment 1A following last week’s evidence session on the bill with Professor Tata and Professor McNeill, both of whom felt that six months was insufficient for a supervisory sentence for people who had served long-term sentences. We should bear in mind that a prisoner serving those six months might already have been in prison for eight years, for example, by the end of their sentence and that the Parole Board for Scotland would previously have assessed that it was too risky to release them earlier. It seems to me that it would be disproportionate for that person to be supervised under licence in the community for a period of only six months, particularly when a prisoner who had served a longer sentence might be more institutionalised and might or might not have gone through programmes, depending on whether they had accepted or rejected the support that they were offered in prison.

The professors at last week’s evidence session argued that the supervisory part of the sentence should be at least 25 per cent. As you will see, I have not gone as far as suggesting that figure in amendment 1A; the 12.5 per cent that I suggest is not particularly evidence based, but it has been suggested because, cabinet secretary, I believed that you must have had some evidence for thinking that six months was appropriate for somebody who had served a four-year sentence. A supervisory period of 12.5 per cent of their sentence would allow someone serving a four-year sentence to serve the final six months under supervision in the community, but the period would increase proportionately for longer sentences. Such an approach would reflect the institutionalisation of prisoners and the fact that somebody serving a long sentence had probably committed a more serious crime and required more effort in rehabilitation. It would also take into account that the very fact that the person had not been released on parole meant that they were probably a particularly risky prisoner who required a longer period of supervision in the community.

As I have said, I have introduced the proposal for discussion. I am pleased that the cabinet secretary used the phrase “custodial and supervisory” with regard to the six-month period, because I think that we need to change the terminology on sentencing to ensure that we are talking not about automatic early release but about sentences that have two parts. I think that in amendments 1 and 1A, the cabinet secretary and I are recognising that we need to take a more sophisticated attitude to sentencing. However, I think that, in its recommendation in the stage 1 report on the bill, the Justice Committee thought that there would be a proportional element to the community supervision to reflect the length of time that somebody had served and the severity of the offence that they had committed. I think that a blanket six-month period will not do that.

I move amendment 1A.

John Finnie (Highlands and Islands) (Ind): I agree with Elaine Murray’s view that a blanket six months will not fit all sentences. If I have noted it correctly, cabinet secretary, you talked about criminal justice social work activity in prisons and individual prisoners’ needs, and you have also said that the initial six-week period will be the most testing. You will be familiar with the discussions that we had at last week’s meeting; perhaps you will also be familiar with my use of the term “risk assessment” and how such assessment relates to an individual prisoner. It has long been established that treating people equally does not mean needing to treat them the same, and that six-week period will be far more compelling for someone who does not have housing than for someone who has served a long period in prison and who has housing and a more stable background to go back to.

I am reassured when you say that non-statutory support will continue after the six months, but can you give me any more reassurance on this matter? The trouble that I have with the six-month period that you propose, or with any version of it, is that it does not appear to take account of individual needs, which will vary. What reassurance can you give me that the assessed needs of someone who has been released from prison will be met if we agree that the period should be six months?
10:45

Roderick Campbell (North East Fife) (SNP):
The important point to remember is that there are prisoners other than the prisoners who will be affected by the bill: prisoners who will be sentenced to a period of extended supervision in accordance with their original imprisonment as set by the court; and all those prisoners who will have the opportunity of trying to obtain discretionary release from the Parole Board.

One thing that has been slightly overlooked is the possibility that the new legislation will provide people with an incentive to co-operate and to try to obtain discretionary release. I accept, however, that there will still be people who will fall through the net and who will not qualify for discretionary release.

I listened carefully to what Elaine Murray said, and I respect the intellectual argument that she is making—and, indeed, that made by the distinguished academics who spoke on the matter. However, I simply do not accept the argument that the longer someone has been in prison, the longer they need to be supervised in the outside world.

I agree that, in the period following release, people ought to be provided with the sort of proactive support in relation to accommodation, employment, education and benefits that Dr Barry talked about when she gave evidence on 13 January. However, I do not think that a proportionate timetable is needed for that.

Colin McConnell, the chief executive of the Scottish Prison Service, said in evidence:

“The first six to 12 weeks after release can be extremely risky, as people try to establish links and support in the community space.”—[Official Report, Justice Committee, 20 January 2015; c 19.]

That was accepted by the cabinet secretary. Even Fergus McNeill said last week:

“The cabinet secretary is absolutely right that the first six weeks to three months are the critical period for establishing the basics for successful resettlement, when reintegration must be achieved.”—[Official Report, Justice Committee, 27 May 2015; c 3.]

It is fair also to mention that, in February, Professor McNeill said:

“for public safety reasons, and for reasons to do with the right of reintegration, it is critical that the system combines custodial sentences with post-release support.”—[Official Report, Justice Committee, 24 February 2015; c 40.]

I accept what the cabinet secretary has said regarding the terminology in the bill. I also accept that there is an argument that individuals might become more institutionalised the longer that they are incarcerated in prison. However, I do not think that that should somehow lead to a proportionate timetable.

Let us bear in mind the Scottish Prison Service’s plans to increase the mentoring of prisoners approaching release. As we heard in evidence from Eric Murch, it also plans to increase the number of throughcare officers to 42, and those officers will be targeted in particular at offenders serving sentences of four years or more.

All those factors, together with the cabinet secretary’s comments on the continuation of non-statutory support after six months, incline me to the view that the cabinet secretary has got the balance about right.

Margaret Mitchell (Central Scotland) (Con):
Cabinet secretary, you emphasised the point that the proposed measures will affect only a small number of prisoners. Given that they are some of the most difficult prisoners, what does the proposed provision in amendment 1 do that the original provisions on release at the two-thirds point did not do, aside from create the hope that the measures will be an incentive for them to engage all of a sudden? Your proposal does not abolish automatic early release. Arguably, it leads to more risk in the community, as difficult and potentially dangerous prisoners will be supervised less, over a shorter length of time. There is also the question of a possible human rights challenge in cases where prisoners are not given the opportunity or sufficient time to prove that they are not a risk to the community.

Although a period of six months covers the initial period when, we are told, breaches take place most frequently—and when people deal with housing and perhaps employment—it does not mitigate risk, which can still exist and which it would be dangerous to underestimate. I am genuinely puzzled as to what the bill will actually achieve.

The Convener: I will give the cabinet secretary the opportunity to come back on all those points when he winds up. Is that what you wish, cabinet secretary? I think that that is probably the best way to do it.

Michael Matheson: I will try my best to cover as many of the issues as I can.

The Convener: We know that you will try your best.

Christian Allard (North East Scotland) (SNP):
I know that the cabinet secretary talked about cold release, but there may be a point that has not been talked about yet: why the mandatory period should come into force. Evidence that we received showed an increase in the numbers of prisoners opting to max out their sentences. That is a very important point. We have to address not only the six-month period to stop cold release, but this new thing that we did not know about—the maxing out of sentences by prisoners. The amendments that
the cabinet secretary has brought in front of us address those points.

Regarding the length of the supervision period, I was pleased to hear Elaine Murray say that her proposal is not evidence based; it would be difficult to find an evidence base for 12.5 per cent or 25 per cent. From my perspective, I was happy to hear Sacro talk about three months, because three months is what we talked about, with the first weeks and the first month of supervision on licence being the most important. I was happy with three months, but I am also happy to go with the cabinet secretary extending the period to six months.

I agreed with John Finnie when he talked about proportionality. Proportionality is not so much about the length of sentence that someone is given but about the approach being more individually based. I was quite happy with three months, but I am happy with six months for long-term prisoners. Let us not forget that it is not all long-term prisoners who will be under supervision, but only those who have not been given discretionary early release or who do not have extended sentences.

Maybe the cabinet secretary can reflect on what John Finnie proposes. I do not think that it should be on the face of the bill, but maybe there should be an individual approach and an understanding that it is not proportionality or the length of sentence but the quality of the work done in the six months that should be regarded as important. It is about the individual more than anything else.

Gil Paterson (Clydebank and Milngavie) (SNP): I would like to speak on Elaine Murray’s amendment 1A. I see it as another form of automatic early release. It simply changes the parameters.

The proposal can be measured in relation to the time served. If my calculation is right, a five-year sentence would equate to 142 days early release, and a 14-year sentence would be 398 days early release. It seems to me that, in effect, the most dangerous people would get the most benefit in terms of serving a shorter sentence. That seems wrong.

To be honest, either we want to end automatic early release or we do not. I think that the amendment’s approach would be just another form of automatic early release. For that reason I will not support amendment 1A.

Alison McInnes (North East Scotland) (LD): I too want to speak to amendment 1A. In our stage 1 report, we spoke about the need for a mandatory period of supervision, and I was grateful that the minister listened and came back with a suggestion of six months.

All that we spoke about in the stage 1 report was whether the supervision period should be three months, six months or a year. The issue of proportionality, as Elaine Murray addresses it, arose only last week when we took some evidence—granted, it was vociferous evidence.

The figure of 12.5 per cent seems to have been plucked from the air. Elaine Murray said that the figure is not particularly evidence based, and therefore it is hard to support. She has not addressed the additional cost of a longer period of supervision, so I am not sure about the impact of that.

I am aware that the Scottish Human Rights Commission has expressed concerns about unduly long periods of supervision on licence and has talked about the restrictive nature of supervision, its interference with daily life and the need for it to be proportionate. We have heard from other people that the time on licence is a very stressful time and that we should be proportionate.

On the basis that it has not been particularly well evidenced, I cannot support amendment 1A.

The Convener: I very much support what Alison McInnes has just said. I appreciate that the key figure of 12.5 per cent is not evidence based. Our evidence suggests that a period of six to 12 weeks is required, since that is the danger time for people who are being released. This is to do with rehabilitation and supervision, and the period that is required for that; it is not a proportion of the sentence. If our evidence shows that six to 12 weeks is the danger zone, six months satisfies that. My problem is that, as Alison McInnes said, the figure has been plucked from the air. We had no evidence on 12.5 per cent, and therefore I cannot support the measure.

I now ask the cabinet secretary to wind up.

Michael Matheson: Thank you, convener. I am grateful to members for their comments on this matter, which we have discussed at previous committee meetings.

During Elaine Murray’s contribution, I was conscious that the witnesses who spoke last week will not be satisfied with either my proposal or her proposal, given the position that they have taken on automatic early release. I recognise their view, but I am conscious of other evidence that the committee has received, namely that the six to 12 weeks after a prisoner is released are critical in helping to reintegrate them back into the community and to re-establish them. In earlier evidence, the committee heard from Sacro, which thought that three months was a reasonable period in which to undertake that work; others thought that it should be six or nine months, or possibly as long as a year. There are a variety of views about the most appropriate length of time,
and we have tried to strike a balance, based on the evidence that the committee heard during stage 1.

Some specific issues have been raised. John Finnie made the important point that this is much more about the quality of the supervision period rather than the quantity of supervision. That will be key in securing the reintegration of prisoners back into the community. The ministerial group on offender reintegration, which I chair, is looking at how we can improve the joined-up nature of what goes on in prison and in our communities, in order to build bridges more effectively. That involves housing, welfare and employment. As committee members will be aware, a range of measures can be taken in relation to long-term prisoners before they move into the community. For example, some may be granted release in order to start an employment opportunity, while others could move to the open estate if that is viewed as the most appropriate way to manage their move towards release from the prison estate and their reintegration back into the community.

In considering the timeframe at the end of a sentence, it is important to realise that the approach is part of the work that has been taking place within prison. Prisoners’ particular needs may have been assessed at that time. That is why the individual approach is extremely important and why the Scottish Prison Service now places so much emphasis on its throughcare officers, who have responsibility for building up a picture of what is needed for each individual prisoner and for putting building blocks in place to manage their offending behaviour and their move back into the community more effectively. There is more that we can do, and the ministerial group that I chair is very focused on how we can achieve that more effectively in future. Some of the pilot work that I have mentioned previously to the committee on housing and creating those links is about exactly that type of approach.

Margaret Mitchell was not entirely sure what my amendment 1 does that the bill does not. The committee has heard evidence about those crucial six to 12 weeks, and amendment 1 creates a mandatory period of community supervision to manage those prisoners back into the community.

The concern that the committee heard from a range of stakeholders was about the risks associated with cold release—prisoners being released back into the community with no period of mandatory supervision. The bill seeks to ensure that there is that period of mandatory community supervision so that, if there are concerns and if the person finds themselves struggling, there is a structure in place to address the situation. In my view, that is about trying to manage a risk much more effectively. If there is a risk to the community, it is that there is no support for that individual and that they may end up committing another offence.

I would prefer to provide the right type of support in order to minimise that potential risk in the community. That is why it is extremely important to have that minimum period, based on the evidence that the committee has heard from a range of stakeholders, at the end of a prisoner’s sentence, to support them and to reintegrate them back into the community. As I have said, we believe that a six-month period is a reasonable period of time to get that right and provide the right quality of support.

11:00

The Convener: Thank you, cabinet secretary. I invite Elaine Murray to wind up and to indicate whether she intends to press or withdraw amendment 1A.

Elaine Murray: First, I will address the point that Gil Paterson made. He said that amendment 1A would not end automatic early release. If he wants to look at it from that angle, neither my amendment nor the cabinet secretary’s amendment 1 would actually end automatic early release. Either someone is automatically released six months before the end of their sentence or they are released when they have 12.5 per cent of their sentence left to serve. If we look at it that way, neither amendment ends automatic early release. I am suggesting that we move away from that sort of interpretation and look at the balance between the custodial part of the sentence and the community part of the sentence to see what produces the best results.

I heard what John Finnie said about assessment of individual need. The only problem with that is that the assessment may be rejected. A prisoner may get out only six months before the end of a long sentence, and if they reject the requirement for additional support thereafter, at the end of the six-month period, there is nothing to compel them. During those six months, they are compelled to accept assessments, but they are not compelled after that, so if somebody needs a longer period of support there is no guarantee that they will get it.

I used the figure of 12.5 per cent to stimulate debate. I selected it because it equated to six months of a four-year sentence, and I presumed that the cabinet secretary had some evidence to support his view that six months was the appropriate period of time for a four-year sentence. The figure was chosen on that basis but, as the cabinet secretary said, the professors who came to speak to us last week would be satisfied with neither amendment 1 nor amendment 1A, because they were arguing for a
The cabinet secretary's amendments merely replace automatic early release at the two-thirds point of a sentence with automatic early release six months before completion of that sentence. That has proportionality implications which, in turn, may well lead to a potential human rights challenge. The Government has not adequately made the case for why it rejected the proportionate approach. Six to eight weeks is the key period for reoffending. A period of up to six months allows a prisoner to be resettled and to look at housing and benefits, but it does not address the potential risk to the public from the release of what could be a very difficult prisoner, and nor does the bill, even after being amended, provide the public with clarity on sentencing or improve public safety.

Given all that, it is hard to work out what the Government is attempting to achieve with the introduction of the bill. The inevitable conclusion is that this was bad legislation to begin with and that the Scottish Government's attempt to address stakeholders' extensive and legitimate criticisms at stage 2 have muddied the waters further and made things worse.

Furthermore, given the extremely narrow scope of the bill, it is not possible to alter it to ensure that it becomes fit for purpose. I contend that that poses an insurmountable problem for us as a scrutiny committee, which is why I have lodged this probing amendment—it is probing at this stage—which seeks to delay commencement of the bill. [Interruption.] I notice that people are laughing at that, so perhaps I should not have a probing amendment. Maybe I will consider it once I have heard the response. This is far too serious to be dealt with flippantly, Mr Campbell.

The Convener: I think that that is unfair. Just proceed, Margaret. You are doing a grand job for it.

Margaret Mitchell: Amendment 5 seeks to delay the commencement of section 1 until the day after the Criminal Justice (Scotland) Bill receives royal assent. It would provide the committee and the cabinet secretary with breathing space to look at the criminal justice system in the round, including short-term sentencing, early release and associated recidivism rates. Crucially, it would also provide the opportunity for the thoughtful, helpful and constructive suggestions from Professor Tata, Professor McNeill and Dr Barry, which were sent to the committee following the professors' pertinent and forensic criticisms of the bill when they gave evidence last Wednesday, to be taken into account and properly considered.

The issue of automatic early release, which is confusing for the public and vexing for victims of crimes and their families, is far too important to
tinker with. It should be given the consideration that it deserves to get it absolutely right. I look forward to the cabinet secretary’s response.

I move amendment 5.

Elaine Murray: I appreciate Margaret Mitchell’s concerns, which are reflected in some of the evidence that we have received. However, there are two things that I am not really sure about. I know that the proposals were originally supposed to be amendments to the Criminal Justice (Scotland) Bill, but I am not sure that the rest of the Criminal Justice (Scotland) Bill interacts in any particular way with this bill. Amendment 5 would mean that this bill could not come into effect until the Criminal Justice (Scotland) Bill receives royal assent. To a certain extent, this bill was an add-on to that bill. I am not sure why, in terms of the Criminal Justice (Scotland) Bill, we would require to delay this bill.

The other thing is that if there are issues in this bill that we are still concerned about, I do not see how they can be addressed in the Criminal Justice (Scotland) Bill or that there is much that we can do about them during the passage of that bill. The issues that were raised by the professors and so on are probably for reflection on in future legislation rather than in the Criminal Justice (Scotland) Bill when it comes back to us in the autumn. I am grateful to Margaret Mitchell for lodging amendment 5 so that we can reflect on the issues, but I am not convinced that a delay in the commencement of this bill is required.

Roderick Campbell: I do not have anything to add to the points that Elaine Murray has made about delay.

The Convener: I am supportive of the bill because we have tackled the huge issue of cold release. The key for me is that we have management of rehab and supervision in the context of the prison and, more important, that that transition continues out in the community. For me, that will deal with the issues that were legitimately raised about the risk in the case of very long-term prisoners. At least now there will be a six-month period in which it will be mandatory for them to have supervision and rehabilitation. I do not want to see that delayed.

John Finnie: I do not support amendment 5, but I support the scrutiny role that the committee has. For the reasons that the convener has given, we have seen movement. In life, none of us gets what we want all the time, but given that, in a consensual way, we have got to the point where there has been movement by the Scottish Government, I think that we should commend the Government for that movement and commend the committee for its work—if, indeed, we can commend ourselves.

The Convener: You go and commend yourself, John, especially as you do not get everything that you want in life. We are already feeling sorry for you, so you get an extra muffin.

Gil Paterson: The committee has not mentioned the provisions in section 2, which I would not like to see delayed. The idea that someone can get released on a day when they cannot access any services is just madness.

The Convener: Yes, that is a good point.

Gil Paterson: That is an excellent section. A tidying-up exercise should have been done long ago and a lot of people—

The Convener: Well said. We had forgotten about that bit.

Margaret Mitchell: Convener, can I—

The Convener: We will come back to you when you sum up, Margaret. Sorry, Gil.

Gil Paterson: Thanks, convener. I do not interrupt anyone else. I do not blame you for that, convener.

A lot of people in really poor circumstances who need help will benefit from that simple, straightforward section of the bill.

The Convener: Margaret Mitchell will get the chance to sum up the debate. We will now hear from the cabinet secretary and I will come back to you, Margaret.

Michael Matheson: I have listened carefully to what Margaret Mitchell has said about amendment 5, which seeks to delay the commencement of these important reforms pending parliamentary approval of the Criminal Justice (Scotland) Bill and that bill receiving royal assent.

At present, there are no provisions in the Criminal Justice (Scotland) Bill relating to early release, and we do not see any reason for delaying commencement of the Prisoners (Control of Release) Scotland Bill, which is what would result from amendment 5 being agreed to. It is appropriate that any stage 2 amendments to the Criminal Justice (Scotland) Bill should be considered by the committee at stage 2. To amend the Prisoners (Control of Release) (Scotland) Bill to tie it in with that future legislation would be to pre-empt Parliament’s consideration of the Criminal Justice (Scotland) Bill, and I do not believe that that would be appropriate.

It is worth noting that Margaret Mitchell’s amendments to the Criminal Justice (Scotland) Bill would provide for a system of cold release for long-term prisoners, which is precisely what members of the committee have just voted against. In any event, Parliament will have the chance to consider Margaret Mitchell’s
amendments when stage 2 of the Criminal Justice (Scotland) Bill takes place.

I have listened to what Margaret Mitchell has had to say on the matter, but we do not consider that there is any good justification for delaying this important piece of legislation and the contents of the bill until after the Criminal Justice (Scotland) Bill has received royal assent. On that basis, I ask the committee to reject amendment 5.

Margaret Mitchell: The point of information that I wanted to make in relation to Gil Paterson’s comments is that section 2 would still be implemented if amendment 5 was agreed to.

The Convener: I understand that, but I thought that you could say that in your summing up.

Margaret Mitchell: Well, I thought that it was worth explaining exactly what the amendment would do.

There is some confusion about what amendment 5 proposes. It proposes a breathing space in what has been a very tight scrutiny period in which we have had to turn the bill upside down. The bill was bad to begin with and, although it has been improved slightly, it is still not fit for purpose.

As a scrutiny committee, we are dealing with one of the most important issues in the criminal justice system, and it is sensible and reasonable that we take advantage of a period of time, not least to look at the significant evidence that has been presented by the academics and by the two professors last week, who raised some very relevant points.

11:15

As for the Criminal Justice (Scotland) Bill, that will be tested. This amendment is a probing amendment, and I think that it is quite wrong to fixate on that. What is important is that this amendment would allow us the time until and during the consideration of that bill to look at where we are going with this bill. I firmly believe that the best way forward is to delay commencement of section 1 to ensure that there is the best possible outcome from scrutiny of the Criminal Justice (Scotland) Bill.

Not least, we must ensure that the period of mandatory supervision in the community is sufficient and that the practicalities are addressed and properly thought through, including housing, benefits and employment. Those things have not been addressed and, given past experience, I do not have a great amount of confidence that they will be addressed in throughcare in the future. There must also be adequate resources to ensure that essential criminal justice social work is in place, and it must be supported by a level of surveillance using all the modern technology that is available in accordance with the assessment of risk. Those are important bits of the jigsaw that we should have time to consider in order to get the bill right.

I will not press amendment 5 today. I lodged it to air the issues. I hope that the cabinet secretary, who genuinely has a good track record on listening to concerns about legislation and proposals that were championed by his predecessor, will reflect on the advantage of delaying the commencement of section 1 and will support the proposal at a later stage.

Amendment 5, by agreement, withdrawn.

Amendment 2 moved—[Michael Matheson].

The Convener: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Allard, Christian (North East Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (Ind)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
McInnes, Alison (North East Scotland) (LD)
Murray, Elaine (Dumfriesshire) (Lab)
Paterson, Gil (Clydebank and Milngavie) (SNP)

Abstentions
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 8, Against 0, Abstentions 1.

Amendment 2 agreed to.

Amendment 3 moved—[Michael Matheson].

The Convener: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Allard, Christian (North East Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (Ind)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
McInnes, Alison (North East Scotland) (LD)
Murray, Elaine (Dumfriesshire) (Lab)
Paterson, Gil (Clydebank and Milngavie) (SNP)

Abstentions
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 8, Against 0, Abstentions 1.

Amendment 3 agreed to.

Section 3, as amended, agreed to.
Section 4 agreed to.

Long Title

Amendment 4 moved—[Michael Matheson].

The Convener: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Allard, Christian (North East Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (Ind)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
McInnes, Alison (North East Scotland) (LD)
Murray, Elaine (Dumfriesshire) (Lab)
Paterson, Gil (Clydebank and Milngavie) (SNP)

Abstentions
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 8, Against 0, Abstentions 1.

Amendment 4 agreed to.

Long title, as amended, agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank the cabinet secretary and his officials for attending. I will suspend the meeting for a couple of minutes.
Amendments to the Bill since the previous version are indicated by sidelined in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Prisoners (Control of Release) (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to amend the rules as to automatic early release of long-term prisoners from prison on licence and to allow prisoners serving all but very short sentences to be released from prison on a particular day suitable for their re-integration into the community.

Amendment of relevant Act

1Restriction on automatic early release

(1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 is amended as follows.

(2) In section 1—

(a) after subsection (1) there is inserted—

“(1A) Subsections (2) and (2A) apply as follows—

(a) subsection (2) applies in relation to a long-term prisoner who is serving a sentence imposed before the day on which section 1 of the Prisoners (Control of Release) Scotland Act 2015 comes into force,

(b) subsection (2A) applies in relation to a long-term prisoner who is—

(i) serving a sentence imposed on or after the day on which section 1 of the Prisoners (Control of Release) Scotland Act 2015 comes into force,

(ii) not subject to an extended sentence within the meaning of section 210A of the 1995 Act.

(1B) For the purpose of subsection (1A), a sentence specified on appeal in substitution for a sentence imposed earlier is to be regarded as imposed when the earlier sentence was imposed.”,

(b) after subsection (2) there is inserted—

“(2A) As soon as a long-term prisoner has only 6 months of the prisoner’s sentence left to serve, the Scottish Ministers must release the prisoner on licence unless the prisoner has previously been so released in relation to that sentence under any provision of this Act.”.
2 Release timed to benefit re-integration

(1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 is amended as follows.

(2) After section 26B there is inserted—

“Timing of release

26C Release timed to benefit re-integration

(1) Where a prisoner is to be released by the Scottish Ministers, they may release the prisoner on a day that is earlier than the day on which the prisoner would otherwise fall to be released (but this is subject to subsections (2) and (3)).

(2) The release of a prisoner may be brought forward under subsection (1) only if, in the Scottish Ministers’ opinion, it would be better for the prisoner’s reintegration into the community for the prisoner to be released on the earlier day than on the day on which the prisoner would otherwise fall to be released.

(3) The release of a prisoner may not be brought forward under subsection (1) by more than 2 days.

(4) In a case in which section 27(7) applies, a reference in this section to the day on which a prisoner would fall to be released is to the day on which the prisoner would fall to be released by virtue of that section.

(5) This section does not apply in relation to a prisoner who is serving a sentence of imprisonment for a term of less than 15 days.”.

Commencement and short title

3 Commencement

(1) This section and section 4 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(4) An order under subsection (2) bringing section 1 into force may amend section 1(1A) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 so that, instead of referring to the day on which section 1 comes into force, it specifies the date on which section 1 actually comes into force.

4 Short title

The short title of this Act is the Prisoners (Control of Release) (Scotland) Act 2015.
Prisoners (Control of Release) (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to amend the rules as to automatic early release of long-term prisoners from prison on licence and to allow prisoners serving all but very short sentences to be released from prison on a particular day suitable for their re-integration into the community.

Introduced by: Kenny MacAskill
On: 14 August 2014
Bill type: Government Bill
INTRODUCTION

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these Revised Explanatory Notes are published to accompany the Prisoners (Control of Release) (Scotland) Bill (introduced in the Scottish Parliament on 14 August 2014) as amended at stage 2. Text has been added or deleted as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by sideling in the right margin.

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Prisoners (Control of Release) (Scotland) Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL – AN OVERVIEW

4. The Prisoners (Control of Release) (Scotland) Bill (“the Bill”) will reform the system of prisoner release in two areas.

5. The Bill will end the current system of automatic early release for long-term prisoners at the two-thirds point of sentence and replace it with a system of no automatic early for any long-term prisoner with an extended sentence and automatic early release restricted to the last six months of sentence for any other long-term prisoner.

6. The Bill will also introduce new limited flexibility for the Scottish Ministers to bring forward a prisoner’s release date by up to two days for the purpose of effective reintegration of the prisoner into the community.
COMMENTARY ON SECTIONS

Section 1 – Restriction on automatic early release

7. Section 27(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) provides that a long-term prisoner is someone who is serving a sentence of four years or more.

8. Section 27(5) of the 1993 Act provides for the ‘single-terming’ of more than one sentence. This can happen where a person has been sentenced to more than one sentence either at the same time or at a different time where the person receiving the second or subsequent sentence has not been released from the first sentence. For example, a person receiving a three-year sentence for an offence and a two-year sentence for a separate offence at the same time where the court orders that the two-year sentence should run consecutive to the three-year sentence will have received what becomes a single-termed sentence of five years. A person receiving a single-termed sentence of four years or more will be classed as a long-term prisoner under the 1993 Act even though each individual sentence may be less than four years.

9. Section 1(2) of the 1993 Act provides for the release arrangements for long-term prisoners. A long-term prisoner is, by virtue of section 1(2), to be released as soon as the person has served two-thirds of their sentence. This applies if the prisoner has not by that point been released through other release arrangements of the 1993 Act e.g. discretionary early release through the operation of the Parole Board. This system is known as automatic early release.

10. Section 1(2) of the Bill inserts new sections 1(1A), 1(1B) and 1(2A) into the 1993 Act.

11. Section 1(2)(a) of the Bill inserts new section 1(1A) into the 1993 Act. This sets out which long-term prisoners will remain subject to existing section 1(2) of the 1993 Act, and which long-term prisoners will be subject instead to new section 1(2A) of the 1993 Act. Paragraph (b) provides for the new arrangements set out in section 1(2A) to apply to long-term prisoners (other than those subject to extended sentences) whose sentences are imposed on or after the day that section 1 of the Bill comes into force. The date that a prisoner’s sentence is imposed will therefore determine what entitlement that prisoner has to automatic early release. Where the sentence is a single-termed one (see paragraph 8 above), the date of imposition of the sentence will be the date that the first sentence was imposed. Where the sentence is one that is imposed on appeal, new section (1B) of the 1993 Act provides for the date of imposition of the original sentence to be treated as the relevant date.

12. Paragraph (a) of new section 1(1A) of the 1993 Act provides for the existing automatic early release provisions in section 1(2) of the 1993 Act to continue to apply to those long-term prisoners who are serving sentences imposed before the day that section 1 of the Bill comes into force. Paragraph (b) provides for the new arrangements set out in section 1(2A) to apply to long-term prisoners (other than those subject to extended sentences) whose sentences are imposed on or after the day that section 1 of the Bill comes into force. Where the sentence is a single-termed one (see paragraph 8 above), the date of imposition of the sentence will be the date that the first sentence was imposed. Where the sentence is one that is imposed on appeal, new section (1B) of the 1993 Act provides for the date of imposition of the original sentence to be treated as the relevant date.

13. New section 1(2A) of the 1993 Act, as inserted by section 1(2)(b) of the Bill, provides that those prisoners to whom it applies must be released on licence six months before their sentence end date (unless they have previously been released on licence in relation to that sentence).
14. The overall effect of the provisions inserted into the 1993 Act by section 1(2) of the Bill, operating alongside existing provision in the 1993 Act, is that any long-term prisoner whose sentence was imposed before the day that section 1 of the Bill comes into force will continue to be treated under the existing automatic early release rules within the 1993 Act. For those long-term prisoners sentenced on or after the day of commencement of section 1 of the Bill, different rules will apply depending upon whether or not they have an extended sentence. For those with an extended sentence, no automatic early release will take place at any point in their sentence. For those without an extended sentence, automatic early release is restricted to the final six months of sentence for those who have not previously been released on licence in relation to that sentence.

Section 2 – Release timed to benefit re-integration

15. Section 2(2) inserts new section 26C into the 1993 Act. New section 26C provides limited discretion to the Scottish Ministers to adjust a prisoner’s release date from imprisonment.

16. New section 26C(1) provides that where a prisoner is to be released by the Scottish Ministers, such as under section 1(1) or section 1(2) of the 1993 Act, the Scottish Ministers may release the prisoner on a day that is earlier than the day the prisoner would otherwise be released.

17. New section 26C(2) provides that the release of a prisoner can only be brought forward if the Scottish Ministers consider that it would be better for the prisoner’s reintegration into the community for the prisoner to be released on the earlier day than the day the prisoner would have been released. The Bill does not define what is meant by reintegration into the community, but examples could include the prisoner obtaining access to drug or alcohol treatment services or the prisoner obtaining access to the provision of housing services.

18. It will be an operational matter for the Scottish Prison Service, on behalf of the Scottish Ministers, to consider the use of this discretion to bring forward a release date for individual prisoners.

19. New section 26C(3) provides that the date of release of the prisoner under new section 26C(1) can be brought forward by up to two days. There is no equivalent discretion to delay release by up to two days. For example, if a prisoner was due to be released under section 1(1) of the 1993 Act on a Thursday, new section 26C(1) would permit release up to two days before i.e. release on the Tuesday or Wednesday, but it would not permit release any later than the scheduled date of release of Thursday.

20. Existing section 27(7) of the 1993 Act provides that where a prisoner’s release under the 1993 Act or the Criminal Procedure (Scotland) Act 1995 Act is scheduled to fall on a Saturday, Sunday or a public holiday, the prisoner shall be released on the last working day preceding the weekend or public holiday. For example, if a prisoner was due to be released under section 1(2) of the 1993 Act on a Saturday, section 27(7) of the 1993 Act provides that the release of the prisoner shall take place on the Friday.

21. New section 26C(4) provides that references in new section 26C referring to a day when a prisoner would be released should be read as the day they fall to be released by virtue of
section 27(7) of the 1993 Act. For example, new section 26C would operate so that a prisoner initially due for release on Saturday, who would become due for release on the Friday as a result of existing section 27(7) of the 1993 Act, will be able to be released up to two days before the Friday i.e. release on the Wednesday or Thursday.

22. New section 26C(5) provides that discretion to adjust a prisoner’s release date does not apply where the prisoner is serving a sentence of imprisonment of less than 15 days. This would also not apply to any young offender serving a period of detention of less than 15 days. Due to the operation of section 5(1) of the 1993 Act, the discretion will also not be available to adjust release dates for those receiving a period in custody of less than 15 days for non-payment of a fine or for contempt of court. Similarly, the discretion will not be available to adjust the release date for any young offender receiving a period of less than 15 days detention in a young offender’s institution for non-payment of a fine or for contempt of court.

Section 3 – Commencement

23. Section 3(1) of the Bill provides that the provisions in this section and section 4 of the Bill will come into force on the day after Royal Assent. Section 3(2) provides for the rest of the Bill to come into force on a day appointed by order. Section 3(4) provides that a commencement order may amend section 1(1A) of the 1993 Act so that the actual date of commencement of section 1 of this Bill is specified in new section 1(1A) of the 1993 Act rather than referring there to the day when section 1 of this Bill comes into force. Section 8 of the Interpretation and Legislative Reform (Scotland) Act 2010 allows for different days to be appointed for different purposes.

Section 4 – Short title

24. Section 4 of the Bill gives the short title of the Bill.
INTRODUCTION

1. As required under Rule 9.7.8B of the Parliament’s Standing Orders, this Revised Financial Memorandum is published to accompany the Prisoners (Control of Release) (Scotland) (Scotland) Bill (introduced in the Scottish Parliament on 14 August 2014) as amended at Stage 2. Text has been added or deleted as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.

2. The Memorandum has been prepared by the Scottish Government. It does not form part of the Bill and has not been endorsed by the Parliament.

3. The Prisoners (Control of Release) (Scotland) Bill (“the Bill”) will reform the system of prisoner release in two areas. It will end the current system of automatic early release for long-term prisoners at the two-thirds point of sentence and replace it with a system of no automatic early release for any long-term prisoner with an extended sentence, and automatic early release restricted to the last six months of sentence for any other long-term prisoner. The Bill will also introduce new limited flexibility for the Scottish Ministers to bring forward a prisoner’s release date by up to two days for the purpose of effective reintegration of the prisoner into the community.

4. Currently, long term prisoners can be considered for parole at the halfway point of their sentence and, if still in custody at the two-thirds point of sentence, prisoners have to be released automatically at that point. The effect of the Bill’s provisions will be that long term prisoners sentenced on or after the date that section 1 of the Bill comes into force will continue, as at present, to be able to receive early release from the halfway point of the sentence through consideration by the Parole Board, but the receipt of automatic early release at the two-thirds point of sentence will no longer take place; instead, a continuing role for the Parole Board to consider discretionary early release will replace it from the two-thirds point of sentence until six months prior to the end of sentence. Long-term prisoners will, provided that they have not had an extended sentence imposed and have not previously been released on licence in relation to that sentence, be released on licence condition supervision six months before the end of their sentence. For those with an extended sentence, no automatic early release will take place at any point in their sentence.
5. The Bill also provides the Scottish Ministers with the discretion to release a prisoner on a day which will better meet a prisoner’s reintegration needs with a view to assisting the prisoner’s rehabilitation. Currently, when a prisoner falls to be released on a Saturday, Sunday or public holiday, a prisoner is to be released on the last preceding day which is not a Saturday, Sunday or public holiday. The effect of the Bill’s provisions will retain the current obligation to not release on weekends or public holidays and provide the Scottish Ministers with additional flexibility to bring forward the release of a prisoner by no more than two working days (i.e. not a Saturday, Sunday or public holiday) where there is evidence that this will support the successful reintegration back into the community of an individual prisoner leaving the prison system. This discretion will be limited to prisoners sentenced to 15 days or more in custody. Scottish Prison Service (“SPS”) will, on behalf of the Scottish Ministers, consider use of this discretion for each individual prisoner.

ENDING AUTOMATIC EARLY RELEASE FOR CERTAIN CATEGORIES OF PRISONER

Costs on the Scottish Administration

The Scottish Prison Service

6. In order to estimate the financial impact the policy will have on the SPS, assumptions are required to be made relating to calculating how much longer prisoners will spend in custody as, although the prisoners affected by the policy will no longer receive automatic early release at the two-thirds point of sentence, such prisoners can still be considered for discretionary early release by the Parole Board. While it is likely that some prisoners affected by the reforms will now spend almost all of their sentences in custody due to the risks they pose to public safety (subject to release into the community through the mandatory period of six months’ supervision for those without an extended sentence), some prisoners will, though no longer receiving automatic early release, likely still be authorised for release through discretionary early release by the Parole Board. The estimates provided should be considered within this context and within the assumptions detailed below.

7. It is estimated that, once the Bill’s provisions are in force, the eventual long-term impact will be to increase the average daily prison population by about 370.

8. The modelling used in arriving at an estimate of an increase in the average daily prison population of 370 assumes that sex offenders affected by the ending of automatic early release will generally likely serve almost all of their sentence in custody following the reforms being implemented. The Scottish Government considers that this is a reasonable assumption to make, as it is based on considering the data for discretionary release at the halfway point of sentence for sex offenders receiving sentences of four years or more, which shows that 88% of sex offenders do not receive discretionary early release and 12% do receive discretionary early release.

9. The modelling also assumes that the other offenders affected by the ending of automatic early release will generally serve an increased proportion of their sentences in custody following the reforms being implemented, but some will still receive discretionary early release during their sentence. The Scottish Government considers that this is a reasonable assumption to make, as it is based on considering the data for discretionary release at the halfway point of sentence for
non-sexual offenders receiving sentences of four years or more, which shows that 59% of these offenders do not receive discretionary early release at the halfway point of sentence and 41% do receive discretionary early release.

10. In order to test the potential impact of varying these assumptions, the Scottish Government considered two other scenarios. Firstly, an assumption could be made that non-sexual offenders receiving four years or more not being released at the halfway point of sentence would serve almost all their full sentence in custody following the reforms. This would mean the estimated impact on the average daily prison population would rise to around 450. Alternatively, if an assumption was made that a proportion of sex offenders receiving four years or more not released at the halfway point of sentence will be released before the expiry of their sentence, this would mean the estimated impact on the average daily prison population would fall to around 340. These could be considered as possible high and low scenarios, though as explained above the Scottish Government considers that the central estimate of 370 is more plausible and the costings given in this Financial Memorandum relate to this estimate.

11. The impact on the prison population will build up over time as more prisoners receive sentences affected by the policy, with no impact in years one and two of implementation before numbers begin to rise and an eventual steady state of an increase of 370 in the average daily prison population is reached by year 13 after implementation.

12. The Bill’s provisions on ending automatic early release for long-term prisoners with an extended sentence and restricting automatic early release to the last six months of a sentence for other long-term prisoners will not affect prisoners who have already been sentenced when the provisions come into force. Therefore, the first impact of the policy on prisoner numbers will fall on an offender who receives a sentence of 48 months and who is still in custody at the 32-months point of sentence (i.e. the two-thirds point of sentence where they previously would have received automatic early release). If it is assumed for the purposes of this document that the provisions are in force in April 2016 and such an offender happens to be sentenced in April 2016, the first prisoner directly affected by the reforms would be in about December 2018.

13. The table below gives a breakdown of the estimated impact on prison numbers over time.
<table>
<thead>
<tr>
<th>Year</th>
<th>Sex offenders sentenced to 4 years or more</th>
<th>Non-sex offenders sentenced to 4 years or more</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016/17</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2017/18</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2018/19</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2019/20</td>
<td>20</td>
<td>80</td>
<td>100</td>
</tr>
<tr>
<td>2020/21</td>
<td>30</td>
<td>130</td>
<td>160</td>
</tr>
<tr>
<td>2021/22</td>
<td>50</td>
<td>190</td>
<td>240</td>
</tr>
<tr>
<td>2022/23</td>
<td>70</td>
<td>210</td>
<td>280</td>
</tr>
<tr>
<td>2023/24</td>
<td>70</td>
<td>230</td>
<td>300</td>
</tr>
<tr>
<td>2024/25</td>
<td>80</td>
<td>250</td>
<td>330</td>
</tr>
<tr>
<td>2025/26</td>
<td>90</td>
<td>260</td>
<td>350</td>
</tr>
<tr>
<td>2026/27</td>
<td>90</td>
<td>260</td>
<td>350</td>
</tr>
<tr>
<td>2027/28</td>
<td>90</td>
<td>270</td>
<td>360</td>
</tr>
<tr>
<td>2028/29</td>
<td>90</td>
<td>270</td>
<td>360</td>
</tr>
<tr>
<td>2029/30</td>
<td>90</td>
<td>270</td>
<td>360</td>
</tr>
<tr>
<td>2030/31 and beyond</td>
<td>90</td>
<td>280</td>
<td>370</td>
</tr>
</tbody>
</table>

*Figures have been rounded to the nearest 10.

Currently about 12% of sex offenders serving sentences of four years or more receive discretionary early release at the halfway point of sentence. For the purposes of these estimates, it is assumed that the remainder will now serve their sentence in custody subject to the mandatory period of six months' supervision on licence prior to the end of sentence for those offenders without an extended sentence. Currently about 41% of non-sex offenders receiving sentences of four years or more receive discretionary early release at the halfway point of sentence. For the purposes of these estimates, it is assumed that one-third of the remainder will now receive discretionary early release at the three-quarter point of sentence and the remaining two-thirds will serve their sentence in custody subject to the mandatory period of six months' supervision on licence prior to the end of sentence.

Due to difficulties in quantifying this from the available data, the estimated figures do not take into account the impact of recalls to custody as a result of breach of licence conditions. The effect of levels of recall would be likely to reduce the overall increase in prison numbers shown in the estimates as some prisoners who are currently released at the two-thirds point are assumed to spend longer in custody following the reforms, even though some will, under the current arrangements, breach their licence conditions upon release at the two-thirds point and spend longer in custody in any event.

Due to difficulties in quantifying this from the available data, the estimated figures may not take into account all prisoners who receive two or more sentences which are to run consecutively and which become ‘single-termed’ under section 27(5) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 where the single termed sentence is four years or more.
14. In arriving at the estimates given above, the historical trends for the number of sentences given for different offences have been used in order to assess the flow of prisoners entering custody who will be affected by the reforms. This information is contained in the following table.

<table>
<thead>
<tr>
<th>Crime type</th>
<th>2005-06</th>
<th>2006-07</th>
<th>2007-08</th>
<th>2008-09</th>
<th>2009-10</th>
<th>2010-11</th>
<th>2011-12</th>
<th>Average per year</th>
<th>% of total crimes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rape and attempted rape</td>
<td>40</td>
<td>43</td>
<td>40</td>
<td>36</td>
<td>44</td>
<td>27</td>
<td>37</td>
<td>38.1</td>
<td>8%</td>
</tr>
<tr>
<td>Sexual assault</td>
<td>18</td>
<td>24</td>
<td>20</td>
<td>29</td>
<td>35</td>
<td>29</td>
<td>22</td>
<td>25.3</td>
<td>5%</td>
</tr>
<tr>
<td>Other indecency</td>
<td>14</td>
<td>13</td>
<td>7</td>
<td>22</td>
<td>24</td>
<td>11</td>
<td>15</td>
<td>15.1</td>
<td>3%</td>
</tr>
<tr>
<td>Homicide</td>
<td>34</td>
<td>38</td>
<td>66</td>
<td>40</td>
<td>44</td>
<td>37</td>
<td>30</td>
<td>41.3</td>
<td>9%</td>
</tr>
<tr>
<td>Serious assault and attempted murder</td>
<td>145</td>
<td>149</td>
<td>137</td>
<td>168</td>
<td>139</td>
<td>141</td>
<td>180</td>
<td>151.3</td>
<td>31%</td>
</tr>
<tr>
<td>Robbery</td>
<td>54</td>
<td>52</td>
<td>52</td>
<td>58</td>
<td>55</td>
<td>50</td>
<td>67</td>
<td>55.4</td>
<td>11%</td>
</tr>
<tr>
<td>Other violence</td>
<td>16</td>
<td>7</td>
<td>13</td>
<td>4</td>
<td>8</td>
<td>2</td>
<td>7</td>
<td>8.1</td>
<td>2%</td>
</tr>
<tr>
<td>Fraud</td>
<td>1</td>
<td>6</td>
<td>4</td>
<td>2</td>
<td>-</td>
<td>4</td>
<td>1</td>
<td>3.0</td>
<td>1%</td>
</tr>
<tr>
<td>Other dishonesty</td>
<td>-</td>
<td>5</td>
<td>7</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>1</td>
<td>3.5</td>
<td>1%</td>
</tr>
<tr>
<td>Vandalism etc.</td>
<td>-</td>
<td>2</td>
<td>3</td>
<td>-</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>2.3</td>
<td>0%</td>
</tr>
<tr>
<td>Handling an offensive weapon</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>3</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>1.5</td>
<td>0%</td>
</tr>
<tr>
<td>Drugs</td>
<td>118</td>
<td>114</td>
<td>131</td>
<td>113</td>
<td>118</td>
<td>114</td>
<td>99</td>
<td>115.3</td>
<td>24%</td>
</tr>
<tr>
<td>Other crime</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>-</td>
<td>9</td>
<td>-</td>
<td>2</td>
<td>3.3</td>
<td>1%</td>
</tr>
<tr>
<td>Common assault</td>
<td>3</td>
<td>10</td>
<td>8</td>
<td>9</td>
<td>9</td>
<td>12</td>
<td>12</td>
<td>9.0</td>
<td>2%</td>
</tr>
<tr>
<td>Other offence</td>
<td>7</td>
<td>9</td>
<td>20</td>
<td>29</td>
<td>14</td>
<td>7</td>
<td>16</td>
<td>14.6</td>
<td>3%</td>
</tr>
<tr>
<td>Unlawful use of vehicle</td>
<td>1</td>
<td>-</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>1.3</td>
<td>0%</td>
</tr>
</tbody>
</table>

Due to rounding, the % column does not add up to 100%.

1 Justice Analytical Services criminal proceedings
15. The SPS annual report 2012/13 indicates that the average annual cost of a prison place is £42,619\(^2\). Table A below provides an estimate for the costs on prisoner places over time.

<table>
<thead>
<tr>
<th>Year</th>
<th>Increase in prison places</th>
<th>Additional recurring costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016/17, 2017/18, 2018/19</td>
<td>0</td>
<td>£4.26m</td>
</tr>
<tr>
<td>2019/20</td>
<td>100</td>
<td>£6.82m</td>
</tr>
<tr>
<td>2020/21</td>
<td>160</td>
<td></td>
</tr>
<tr>
<td>2030/31</td>
<td>370</td>
<td>£15.77m</td>
</tr>
</tbody>
</table>

16. The SPS has indicated that there can be limited flexibility to respond to changes in legislation within the use of the prison estate. However, the flexibilities available to the SPS have limits and each change in legislation must always be considered within the constraints existing at the time legislative change takes effect. The impact on prisoner numbers of ending the current system of automatic early release for long-term prisoners will build up over time, with the initial impact relatively limited in the very early years following implementation. However, the SPS will require the Scottish Government to ensure that the overall pressures on the prison estate arising from these reforms, and other legislative reforms, are met through future justice spending review settlements.

17. There will be other costs associated with the policy falling on the SPS. It will be required to update its IT systems to reflect that long term prisoners falling into the new system will no longer be automatically released at the two-thirds point of sentence. It is estimated that one-off costs of £50,000 would arise in updating SPS IT systems in the period ahead of commencement of the reforms (i.e. if commencement took place in April 2016, these costs would fall in 2015/16).

18. There will also be a need for SPS staff to receive guidance and training for the changes to the system of automatic early release. This training and guidance will allow SPS staff to understand the effect of the changes and respond to any queries that may arise from prisoners and their families. Staff costs relating to training and guidance would cover staff at band B (£10.00 per hour), band C (£12.90 per hour), band D (£16.88 per hour) and band E (£20.09 per hour) and would fall in the year ahead of commencement of the reforms (i.e. 2015/16 based on an April 2016 commencement). The total one-off costs would amount to £67,000 in 2015/16. Future training for new staff would be adjusted to include coverage of these reforms and no new costs would arise after 2015/16.

\(^2\) See page 63 of [http://www.sps.gov.uk/Publications/Publication-4809.aspx](http://www.sps.gov.uk/Publications/Publication-4809.aspx) [Link no longer available]
19. The SPS will need to respond to a likely increased demand for prisoner programmes. This would be in relation to prisoners who may change their behaviour as a result of no longer receiving automatic early release at the two-thirds point of sentence and, therefore, decide to engage with prisoner programmes in order to improve their prospects of discretionary early release when currently such prisoners may not engage with such programmes.

20. The estimated annual expenditure by the SPS on prisoner programmes for offenders serving sentences of four years or more is approximately £1.5 million.

21. Assuming implementation in April 2016, there would be no additional costs until 2019/20. Costs increase by £43,000 in 2019/20, £86,000 in 2020/21 and £129,000 in 2020/21. By 2022/23, the increased costs will reach a steady state of £171,000 which will be the annual long-term recurring costs incurred for the provision of prisoner programmes for offenders serving sentences of four years or more. These projected costs do not take account of any inflationary increases or pay awards.

22. As overall prison numbers increase over time, there will be additional costs associated with the provision of prison-based social work services. These costs will fall into areas such as providing risk assessment reports, Parole Board hearing reports, attendance at integrated case management case conferences and risk management meetings and engaging on a direct one-to-one basis with prisoners.

23. It is estimated that there is an annual cost of approximately £5.6 million to provide prison-based social work services for prisoners. This takes into account both staff costs and the wider costs associated with the provision of social work services. On this basis, there will be no new prison-based social work costs until 2019/20, when additional costs of £212,000 are expected to arise. In 2020/21, the additional costs are expected to be £297,000 before a long-term recurring cost of £670,000 is expected to be reached in 2030/31 and each year beyond. These projected costs do not take account of any inflationary increases or pay awards.
### TABLE B - COST IMPACT ON SPS OF ENDING CURRENT SYSTEM OF AUTOMATIC EARLY RELEASE FOR LONG-TERM PRISONERS

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional prison-based social work costs</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>£212,000</td>
<td>£297,000</td>
<td>£670,000</td>
</tr>
<tr>
<td>Increased demand for prisoner programmes</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>£43,000</td>
<td>£86,000</td>
<td>£171,000</td>
</tr>
<tr>
<td>Non-recurring costs</td>
<td>£117,000</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Recurring costs</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>£255,000</td>
<td>£383,000</td>
<td>£841,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>£117,000</td>
<td>Nil</td>
<td>Nil</td>
<td>£255,000</td>
<td>£383,000</td>
<td>£841,000</td>
</tr>
</tbody>
</table>

**The Parole Board for Scotland**

24. There will be an additional burden on the Parole Board. This will relate to the need to schedule additional casework meetings for prisoners who previously would have been released automatically at the two-thirds point of sentence. As discussed previously, while some prisoners will remain in prison for almost all of their sentence following the reforms (subject to the mandatory period of six months’ supervision for those without an extended sentence), other prisoners no longer receiving automatic early release at the two-thirds point will likely still receive discretionary early release by the Parole Board and this is factored into the estimates of additional consideration of cases by the Parole Board. These figures also assume that a small proportion of cases will require an oral hearing of evidence to allow the prisoner the opportunity to state their case where the prisoner challenges questions of fact.
25. The following table provides details of the expected impact on the Parole Board’s caseload.

<table>
<thead>
<tr>
<th>Year</th>
<th>Sex offenders sentenced to 4 years or more</th>
<th>Non-sex offenders sentenced to 4 years or more</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016/17</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2017/18</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2018/19</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2019/20</td>
<td>20</td>
<td>80</td>
<td>100</td>
</tr>
<tr>
<td>2020/21</td>
<td>30</td>
<td>130</td>
<td>160</td>
</tr>
<tr>
<td>2021/22</td>
<td>50</td>
<td>190</td>
<td>240</td>
</tr>
<tr>
<td>2022/23</td>
<td>70</td>
<td>210</td>
<td>280</td>
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<tr>
<td>2023/24</td>
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<td>230</td>
<td>300</td>
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<tr>
<td>2024/25</td>
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<tr>
<td>2025/26</td>
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<td>2029/30</td>
<td>90</td>
<td>270</td>
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</tr>
<tr>
<td>2030/31 and beyond</td>
<td>90</td>
<td>280</td>
<td>370</td>
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*Currently about 12% of sex offenders serving sentences of four years or more receive discretionary early release at the halfway point of sentence. For the purposes of these estimates, it is assumed that the remainder will now serve their sentence in custody subject to the mandatory period of six months’ supervision on licence prior to the end of sentence for those offenders without an extended sentence. Currently about 41% of non-sex offenders receiving sentences of four years or more receive discretionary early release at the halfway point of sentence. For the purposes of these estimates, it is assumed that one-third of the remainder will now receive discretionary early release at the three-quarter point of sentence and the remaining two-thirds will serve their sentence in custody subject to the mandatory period of six months’ supervision on licence prior to the end of sentence.

Each additional prisoner would be entitled to an annual review so the number of additional hearings would equate to the number of additional prisoners. There may be occasions where a prisoner has two hearings in a year, for example if the case was deferred for additional information or an oral hearing is fixed, but it would be difficult to quantify them.
26. The costs for the Parole Board are as detailed below with the expectation that, in the main, some additional casework meetings will be necessary plus a small number of oral hearings. The table below outlines the estimated cost impact.

| TABLE C - IMPACT ON PAROLE BOARD CASELOAD OF ENDING CURRENT SYSTEM OF AUTOMATIC EARLY RELEASE FOR OF LONG-TERM PRISONERS |
|---------------------------------------------------------------|---------------------------------------------------------------|---------------------------------------------------------------|---------------------------------------------------------------|---------------------------------------------------------------|
|                                                                 | Year                                                          |                                                                 |                                                                 |                                                                 |
| Increase in Parole Board Casework Meetings                     | 0                                                             | 5                                                             | 8                                                             | 18                                                            |
| Increase in Oral Hearings                                      | 0                                                             | 20                                                            | 32                                                            | 72                                                            |
| Additional recurring costs                                     | 0                                                             | £25,000 - £30,000                                            | £40,000 - £50,000                                            | £90,000 - £113,000                                            |

Costs on local authorities

27. The estimated impact of the reforms will be that some prisoners will spend longer in custody. The period of time such prisoners will spend on licence in the community is likely, on average, to be reduced notwithstanding the mandatory period of six months’ supervision applying to long-term prisoners without an extended sentence. This is because currently all long-term prisoners have a minimum period of one-third of their sentence on licence under supervision, but in the future, this will be a minimum period of six months on licence under supervision.

28. It is difficult to estimate the exact impact on local authority criminal justice social work, though it is considered that there will no new costs falling on local authorities, with any impact arising likely to be a reduction in the demand for criminal justice social work in relation to long-term prisoners.

Costs on other bodies, individuals and businesses

29. There will be no new costs falling on other bodies, individuals and businesses.

Summary

30. Using the costings given in tables A, B and C, table D below provides a summary of the overall estimated cost of ending the current system of automatic early release for long-term prisoners and bringing in a mandatory period of six months’ supervision as part of the sentence
for all long-term prisoners still in custody with six months to go on their sentence and where there is no extended sentence.

31. The figures in table D are based on the Scottish Government’s estimate as to the potential impact being an increase of 370 in the average daily prison population. If the impact in terms of additional prison places is toward the upper scenario (450 prison places) or the lower scenario (340 prison places) as discussed previously, the overall estimated costs would accordingly be either approximately 20% higher or approximately 10% lower than indicated in table D.

### TABLE D – ESTIMATED COST OF ENDING CURRENT SYSTEM OF AUTOMATIC EARLY RELEASE FOR LONG-TERM PRISONERS

<table>
<thead>
<tr>
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<tr>
<td>Recurring costs</td>
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<td>£6.820m – A</td>
<td>£15.770m – A</td>
<td>£0.212m – B</td>
<td>£0.297m – B</td>
<td>£0.670m – B</td>
<td>£0.043m – B</td>
</tr>
<tr>
<td>Total</td>
<td>£0.117m</td>
<td>£0</td>
<td>£0</td>
<td>£4.545m</td>
<td>£7.253m</td>
<td>£16.724m</td>
<td></td>
</tr>
</tbody>
</table>

*Letter following figures refers to the table within this revised financial memorandum where information has been taken.

**RELEASE TIMED TO BENEFIT RE-INTEGRATION**

**Costs on the Scottish Administration**

32. The current level of reoffending has significant implications for Scottish society. The total economic and social cost of reoffending in Scotland is estimated at £3 billion a year and, on average, each prisoner released from a short sentence goes on to commit offences costing society over £390,000 over a 10-year period\(^3\). The Scottish Government considers that achieving a reduction in reoffending requires the successful reintegration of offenders into Scotland’s communities and a cross-sectoral approach with close links between the criminal justice system and wider public sector services.

\(^3\) [http://www.audit-scotland.gov.uk/docs/central/2012/nr_121107_reducing_reoffending.pdf](http://www.audit-scotland.gov.uk/docs/central/2012/nr_121107_reducing_reoffending.pdf)
33. In 2011-12, there were approximately 10,500 liberations of convicted prisoners, of which a large proportion (about 4,000 or 40%\(^4\)) were released either on a Friday or the Thursday preceding a long public holiday weekend. It is difficult to assess how often the additional discretion would be used by the SPS as it will be driven by need on a case-by-case basis. However, giving the SPS discretion to be able to avoid having to release an offender with reintegration needs on a given release date, such as a Friday when services may be unavailable, is likely to bring long term efficiency savings.

34. The Bill’s provisions in relation to additional flexible release will allow the SPS to release a prisoner up to two working days in advance of their release date where this will better meet their reintegration needs, e.g. a prisoner is due for release from a national establishment and is required to travel a long distance back to their community to secure settled accommodation in advance of a weekend. This discretion will provide for the better linking of prisoners in custody with the services they need to stabilise their lives outside of prison. The opportunity to have targeted release with some additional flexibility to release a prisoner based on awareness of prisoners’ circumstances pre-custody is likely to reduce the need for crisis-driven service delivery, which can often involve out of hours support services, and generally this new flexibility should positively impact on reoffending rates. The financial and societal benefit of this approach is consistent with the Scottish Government’s preventative spend agenda.

35. The SPS operationally will have the discretion to decide whether to release a prisoner up to two days earlier than their planned release date and the SPS has advised that the reforms will have minimal resource implications for it. This is because arrangements for the offender’s release already require to be made by the SPS and existing procedures will be utilised to link to the SPS’s multi-agency Integrated Case Management process to determine if use of the discretionary power is required for an individual prisoner on a case-by-case basis.

36. The costs and efficiencies associated with minimising the need for prisoners to have to access emergency support upon release are difficult to quantify. However, wider research suggests that improved levels of access to stable accommodation and other vital support services can make a difference of over 20% in terms of reduction in reconviction\(^5\). The Scottish Government considers that enhancing the SPS’s flexibility to support prisoners to resettle in communities is likely to bring long-term efficiency savings as services are able to be provided on a more proactive basis rather than reactive basis.

37. More generally, the Bill’s provisions in relation to flexible release complement wider developments in relation to reducing reoffending, such as the SPS’s Throughcare Support Officers working in HMP Greenock\(^6\) who assist offenders upon release by facilitating access to community-based services, and the provision of mentoring services through the Reducing Reoffending Change Fund.

---

\(^4\) Scottish Government Justice Analytical Services analysis


\(^6\) [http://www.sps.gov.uk/MediaCentre/HMP_Greenock_Throughcare_Service.aspx](http://www.sps.gov.uk/MediaCentre/HMP_Greenock_Throughcare_Service.aspx)
Costs on local authorities

38. There will be no new costs falling on local authorities and there may be some savings over time as there is less reactive expenditure, such as out of hours support services, needed to address the reintegration needs of prisoners leaving custody. It is not possible to quantify the extent of any savings given the uncertainty over how frequently the discretion will be used to adjust prisoner release dates.

Costs on other bodies, individuals and businesses

39. There will be no new costs falling on other bodies, individuals and businesses.
PRISONERS (CONTROL OF RELEASE) (SCOTLAND) BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

PURPOSE

1. This Memorandum has been prepared by the Scottish Government to assist the Delegated Powers and Law Reform Committee in its consideration of the Prisoners (Control of Release) (Scotland) Bill ("the Bill"). This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or substantially amended at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION INTRODUCED OR AMENDED AT STAGE 2

Section 3 – Power to commence provisions of the Bill

Power conferred on: Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Laid only

Provision

2. Section 3 of the Bill contains a power for the provisions in the Bill to be commenced by order made by the Scottish Ministers. Any order made under the section will be published as a Scottish statutory instrument.

Change made at Stage 2: section 3(3) removed

3. Section 3(3) of the Bill as introduced would have allowed a commencement order to include transitional, transitory and saving provision. Section 3(3) was removed from the Bill at Stage 2.

4. The only saving provision the Government considers to be necessary in connection with the Bill is in relation to section 1. Another amendment at Stage 2 put the required saving provision onto the face of the Bill in section 1. Thus in the Government’s view there is no longer a need for subordinate legislation to make transitional, transitory or saving provision in connection with the Bill.
5. The removal of section 3(3) from the Bill (and putting the only required saving provision onto the face of the Bill) follows from a concern expressed by the Delegated Powers and Law Reform Committee in its Stage 1 report about the potential inadequacy of the opportunity that the Parliament would have to scrutinise the backward reach of section 1 of the Bill (that is, its effect on prisoners serving sentences at the time of commencement) if the relevant transitional, transitory and saving provision were left to subordinate legislation subject only to a bare laying requirement.

Change made at stage 2: section 3(4) added

6. Section 3 has been further amended at Stage 2 by way of the addition of a new subsection (4). This will give the Scottish Ministers the power to use a commencement order under section 3(2) to amend in a very limited way section 1(1A) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”). New section 1(1A) of the 1993 Act (which is to be inserted into that Act by section 1 of the Bill) will govern which cases the new early-release rules being introduced by the Bill do and do not apply to. Specifically, it provides that the new rules only apply in the cases of prisoners serving sentences imposed on or after the day that section 1 of the Bill comes into force. New section 3(4) of the Bill will allow an order appointing the date that section 1 of the Bill comes into force to amend section 1(1A) of the 1993 Act by putting the actual commencement date in place of the reference to the day on which section 1 of the Bill comes into force.

New section 3(4): reason for taking power

7. Using new section 3(4) to put the actual date of commencement onto the face of section 1(1A) of the 1993 Act will make that section more readily intelligible to users of the statute. It means anyone looking at an amended version of section 1(1A) will be able to see immediately whether the new or old early-release rules apply to a prisoner sentenced on a particular day. If section 1(1A) were not so amended, anyone trying to understand its effect would have to find the relevant commencement order to decode the words “the day on which section 1 of the Prisoners (Control of Release) (Scotland) Act 2015 comes into force”.

New section 3(4): choice of procedure

8. As is usual, the power to appoint a day (or days) for the Bill’s provisions to come into force is subject only to a requirement that the order doing the appointing is laid before the Parliament. The fact that section 3(4) will allow a commencement order to make an extremely modest change to section 1(1A) of the 1993 Act does not, in the Government’s view, change the analysis that no parliamentary procedure beyond laying the order before the Parliament is required. Substituting an actual date in place of a description of that date is a purely mechanical exercise; section 3(4) gives no policy discretion to the Minister making an order by virtue of it, and there is no technical complexity to the exercise of the power. It would therefore appear to make for a poor use of Parliament’s time to have the exercise of the power section 3(4) will confer subject to a more rigorous parliamentary scrutiny procedure.
Delegated Powers and Law Reform Committee

Prisoners (Control of Release) (Scotland) Bill as amended at Stage 2
Members who would like a printed copy of this *Numbered Report* to be forwarded to them should give notice at the Document Supply Centre.
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<tr>
<td>Delegated Powers Provisions</td>
<td>2</td>
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</tbody>
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The remit of the Delegated Powers and Law Reform Committee is to consider and report on—

a. any—
   i. subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   ii. [deleted]
   iii. pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

b. proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

c. general questions relating to powers to make subordinate legislation;

d. whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

e. any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and

f. proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.

g. any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

h. any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

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John Scott
Scottish Conservative and Unionist Party

Stewart Stevenson
Scottish National Party
Introduction

1. At its meeting on 23 June the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Prisoners (Control of Release) (Scotland) Bill at Stage 2 (“the Bill”)¹. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. The Bill was introduced by the then Cabinet Secretary for Justice on 14 August 2014. It makes provision to end the right of certain long-term prisoners to automatic early release from prison at the two-thirds point of their sentences, and to allow prisoners serving all but very short sentences to be released from prison on a particular day suitable for their re-integration into the community.

3. The Scottish Government has provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill, in advance of Stage 3 of the Bill (“the SDPM”)².

4. The Committee reported on certain matters in relation to the delegated powers provisions in the Bill at Stage 1 in its 71st report of 2014.

¹ Prisoners (Control of Release) (Scotland) Bill as amended at Stage 2 available here: http://www.scottish.parliament.uk/S4_Bills/Prisoners%20(Scotland)%20Bill/b54s4-stage2-amend.pdf
² Prisoners (Control of Release) (Scotland) Bill (as amended at Stage 2) Supplementary Delegated Powers Memorandum available here: http://www.scottish.parliament.uk/S4_Bills/Prisoners%20(Scotland)%20Bill/Supplementary_Delegated_Powers_Memorandum_Prisoners.pdf
Delegated Powers and Law Reform Committee
Prisoners (Control of Release) (Scotland) Bill as amended at Stage 2, 42nd Report, 2015 (Session 4)

Delegated Powers Provisions

5. The Committee considered the new and substantially amended delegated powers provisions in the Bill after Stage 2.

6. After Stage 2, the Committee reports that it does not need to draw the attention of the Parliament to the new and substantially amended delegated powers provisions listed below, and that it is content with the Parliamentary procedure to which they are subject:

- Section 3 – Commencement

7. The Committee approves this power and welcomes the amendments made to sections 1 and 3 of the bill at Stage 2, which have taken account of the Committee’s recommendation at Stage 1, to enhance Parliament’s scrutiny of the provisions.
Prisoners (Control of Release) (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 4  Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Elaine Murray

1 In section 1, page 1, line 24, after <serve,> insert <or such longer period (being no longer than 12.5% of the prisoner’s sentence) as may be specified by the court when imposing the sentence,>

Section 3

Margaret Mitchell

2 In section 3, page 2, line 24, at end insert—

<( ) The day appointed for section 1 to come into force must be a day after the day on which the Criminal Justice (Scotland) Act 2015 received Royal Assent.>
Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. In this case, the information provided consists solely of the list of groupings (that is, the order in which the amendments will be debated). The text of the amendments set out in the order in which they will be debated is not attached on this occasion as the debating order is the same as the order in which the amendments appear in the Marshalled List.

Groupings of amendments

Note: The time limit indicated is that set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on all of the groups must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

Group 1: Restriction on automatic early release: period of release on licence

1

Group 2: Commencement of section 1

2

Debate to end no later than 40 minutes after proceedings begin
Business Motion: Joe FitzPatrick, on behalf of the Parliamentary Bureau, moved S4M-13601—That the Parliament agrees that, during stage 3 of the Prisoners (Control of Release) (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1 and 2: 40 minutes.

The motion was agreed to.

Prisoners (Control of Release) (Scotland) Bill - Stage 3: The Bill was considered at Stage 3.

The following amendments were disagreed to (by division)—

1 (For 30, Against 69, Abstentions 14)
2 (For 14, Against 97, Abstentions 0).

Prisoners (Control of Release) (Scotland) Bill - Stage 3: The Cabinet Secretary for Justice (Michael Matheson) moved S4M-13597—That the Parliament agrees that the Prisoners (Control of Release) (Scotland) Bill be passed. 3

After debate, the motion was agreed to ((DT) by division: For 67, Against 0, Abstentions 46).
Business Motions

The Presiding Officer: The next item of business is consideration of business motion S4M-13601, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a timetable for the stage 3 consideration of the Prisoners (Control of Release) (Scotland) Bill.

Motion moved,

That the Parliament agrees that, during stage 3 of the Prisoners (Control of Release) (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1 and 2: 40 minutes.—[Joe FitzPatrick.]

Motion agreed to.
Prisoners (Control of Release) (Scotland) Bill: Stage 3

14:52

The Deputy Presiding Officer (John Scott): The next item of business is stage 3 proceedings on the Prisoners (Control of Release) (Scotland) Bill. In dealing with the amendments, members should have the bill as amended at stage 2; the marshalled list; and the groupings.

The division bell will sound and proceedings will be suspended for five minutes for the first division of the afternoon. The period of voting for the first division will be 30 seconds. Members who wish to speak in the debate on any group of amendments should press their request-to-speak buttons as soon as possible after I call the group.

Section 1—Restriction on automatic early release

The Deputy Presiding Officer: We will start—unexpectedly—with group 1. Amendment 1, in the name of Elaine Murray, is the only amendment in the group.

Elaine Murray (Dumfriesshire) (Lab): This amendment differs from the one that I lodged at stage 2, which proposed that long-term offenders should be required to serve one eighth of their sentence under supervision in the community, rather than the six months that is proposed by the Government irrespective of the length of their sentence or the severity of the crime. The Government rejected that amendment, arguing that it did not believe that an offender who had spent twice as long as another in prison should also be supervised in the community for twice as long.

At the end of May, the Justice Committee heard evidence from two expert academics, Professor Fergus McNeill and Professor Cyrus Tata, who were critical of the Government’s blanket six-month period of supervision. Professor McNeill advised that

“if you have spent 10 years in prison, six months is a very short period, not least because of the accumulated effects of the institutionalisation that a long sentence brings”,

and he said that

“a proportional system makes more sense”.

Professor Tata stated:

“Without doubt, it would be sensible to define the period as a percentage of the sentence”—[Official Report, Justice Committee, 27 May 2015; c 4-5.]

A briefing signed by several organisations and individuals came out only on Saturday. It says:

“Proponents of the bill have failed to explain how moving from a compulsory supervision period that is proportionate to the length of the original sentence to a blanket six-month period for all long-term prisoners, regardless of sentence length, better serves the interests of public safety.”

To an extent, my stage 3 amendment is a compromise but it has some advantages. It would enable the court to decide at the time of sentencing whether the six months supervision in the community would be sufficient or whether a longer supervisory sentence would be more appropriate if, by the end of the custodial part of the sentence, the Parole Board for Scotland had deemed the offender not to be suitable for early release on parole. For example, the court could take into account the nature of the offence, the length of the custodial sentence and the offender’s previous offending history when determining whether the supervisory sentence should be longer than six months.

The maximum length of supervisory sentence would be one eighth of the total custodial sentence. For a sentence of four years, that would be six months but, for a longer sentence, the court would have the opportunity to impose a longer supervisory sentence. That would address the concerns that were expressed at stage 2, when I proposed a supervisory sentence of one eighth of the total sentence. It would allow a proportional approach when the court deemed it appropriate and would have the added advantage that the custodial and supervisory parts of the sentence would have to be defined at the time of sentencing, which would improve clarity for victims, the community and the offender.

Amendment 1 is intended to be a helpful and constructive amendment. It will improve the bill and I hope that the Cabinet Secretary for Justice is minded to accept it.

I move amendment 1.

Roderick Campbell (North East Fife) (SNP): I accept that Elaine Murray’s amendment is slightly different to her stage 2 amendment but, when she proposed 12.5 per cent at stage 2, she suggested that it was not really evidence based.

We are familiar with the evidence of Colin McConnell from the Scottish Prison Service on the importance of the first six to 12 weeks. That period of three months was also supported by Sacro. I accept that there is an absence of empirical evidence about some such matters, but I remind Elaine Murray about Professor McNeill’s comments on 24 February, when he said:

“I am not aware of any credible evidence that lengthening sentences in and of itself guarantees the more effective risk management that the bill seems to be trying to bring about. I am not able to put it more forcefully than that, because for obvious reasons of justice it is very difficult to do the kind of research that would experimentally test
That work seeks to ensure that the prisoner is as ready as they can be for release, through consideration of issues such as housing, welfare and work needs, given that those are key issues to address in order to achieve a successful reintegration into the community.

Keeping that in mind, we think that the minimum period of supervision that is necessary for a prisoner who has served close to four years, as compared with a prisoner leaving after, say, eight years in custody, is likely to be similar, given that both sentences are long periods of time to be incarcerated and that additional preparatory work is done while the individual is in prison.

The committee’s stage 1 evidence highlighted a number of different issues, in particular that the initial six to 12 weeks following release are generally the most critical for individual prisoners once released. It is during those first weeks and months after leaving custody that prisoners have to re-establish themselves into the community. That is when challenges around housing and getting a job are most acute. The Scottish Government considers that a period of six months strikes the appropriate balance.

In addition to considering it a matter of principle that six months is an appropriate period of mandatory supervision, we think that such a role being placed on the court as has been suggested would usurp the role of the Parole Board. It is important to stress that the Parole Board is there to assess risk during a prisoner’s sentence so as to decide whether early release is appropriate. The Parole Board can of course consider how the prisoner has been rehabilitated during their sentence, which is not something that the court can do at the point of sentencing.

The system will continue to operate so that the Parole Board will assess whether supervised early release is appropriate for any given long-term prisoner, from the halfway point of their sentence onward. In our view, amendment 1 would undermine the role of our Parole Board.

Therefore, we do not support amendment 1, and we ask members not to vote in favour of it.

Elaine Murray: I will answer some of the points that have been made. Roddy Campbell says that the approach is not evidence based. In fact, there is no empirical evidence for the blanket six-month period. Indeed, several witnesses who came to the committee at stage 1 stated that six months of supervision is inadequate and is likely to jeopardise public safety, that the reintegration of long-term high-risk offenders takes time, and that there is an increased potential with a blanket six-
month period for challenges under the European convention on human rights.

On the point of a prisoner being released after 10 years and six months, it would be for the court to decide at the time of sentencing on the total sentence that would be served. If the court considered that, if the person was not reintegrated or if they still presented a great deal of risk at the end of their sentence, the sentence should be 11 years and six months in prison, the court could still impose 11 years and six months in prison plus a supervisory sentence at the end of that. The total sentence means both parts of the sentence—the two of them add up.

The Parole Board would still have a role in deciding whether the offender was released at 50 per cent of the total sentence. I do not understand the argument that my proposal undermines the role of the Parole Board, which would still decide whether somebody was released early—it would have exactly the same role as it has at the moment, and it would have to assess the risk of the offender being released before the end of their custodial sentence.

I therefore wish to press my amendment.

The Deputy Presiding Officer: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. I suspend the meeting for five minutes.

15:04

Meeting suspended.

15:09

On resuming—

The Deputy Presiding Officer: We move to the division on amendment 1.

For
Baille, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springfield) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Gumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Penicuik) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neill, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeen West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scott, Tavish (Shetland Islands) (LD)
Stevenson, Stewart (Bannffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)
Yousaf, Humza (Glasgow) (SNP)

Abstentions
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
M line, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

The Deputy Presiding Officer: The result of the division is: For 30, Against 69, Abstentions 14.

Amendment 1 disagreed to.

Section 3—Commencement

The Deputy Presiding Officer: Amendment 2, in the name of Margaret Mitchell, is in a group on its own.

Margaret Mitchell (Central Scotland) (Con): Amendment 2 seeks to delay the commencement of section 1 until the day after the Criminal Justice (Scotland) Bill receives royal assent. I stress that agreeing to amendment 2 would not mean delaying the commencement of section 2 of the Prisoners (Control of Release) (Scotland) Bill.

I raised the issue at stage 2 when I lodged a probing amendment to highlight issues that were worthy of further debate and scrutiny. I had hoped that the cabinet secretary would take cognisance of and address stakeholder concerns about the proposals and acknowledge the advantages of postponing the commencement of section 1.

There is good reason for such a postponement. That was confirmed by the analysis published as recently as yesterday by key stakeholders, including those who work at the cutting edge of the criminal justice system such as Apex Scotland, Circle Scotland, Positive Prison? Positive Futures, criminal justice social workers and learned academics, not to mention equality groups such as women for independence.

The issues of concern include inadequate consultation and evidence gathering; the replacement of automatic release at the two-thirds point of the sentence by an arbitrary period of six months; and the fact that, as a consequence of the proposals, there is increased potential for European convention on human rights challenges. The influential stakeholders conclude that the bill “will not end automatic early release, it will not reduce reoffending and it will not improve public safety in the longer term; indeed it is likely to jeopardise both public safety and reintegration”.

In those circumstances, surely the only reasonable course of action would be to postpone the commencement of section 1 of the Prisoners (Control of Release) (Scotland) Bill to allow the full debate and detailed scrutiny that the crucially important issue of automatic early release merits. That would allow the criminal justice system to be looked at in the round, and discussion and debate to take place on short-term sentencing, early release and associated recidivism rates.

The Deputy Presiding Officer: Excuse me. Could members just calm down a little and allow Margaret Mitchell to be heard?

Margaret Mitchell: That is why I again propose delaying the commencement of section 1 until the Criminal Justice (Scotland) Bill receives royal assent.

At stage 2, the cabinet secretary indicated that “there are no provisions in the Criminal Justice (Scotland) Bill relating to early release”.—[Official Report, Justice Committee, 2 June 2015; c 16.]

However, I have received assurances from the head of the legislation and delegated powers team that there would indeed be scope to address the issue in the legislation later this year.

Automatic early release is confusing for the public and distressing for victims of crimes, and we can all agree that it is important to get ending it absolutely right. I urge members to vote to delay the commencement of section 1 to ensure the best possible outcome, following scrutiny of the Criminal Justice (Scotland) Bill.

I move amendment 2.

15:15

Elaine Murray: Margaret Mitchell lodged an amendment in the same terms at stage 2 and, as I said then, I am not quite certain what it is in the Criminal Justice (Scotland) Bill that has to receive royal assent before the Prisoners (Control of Release) (Scotland) Bill can proceed.

Although the provisions in the Prisoners (Control of Release) (Scotland) Bill were originally to be
introduced in the Criminal Justice (Scotland) Bill, the other provisions in the latter bill would not particularly affect those in the former. In addition, I do not see why the provisions in section 1 of the Prisoners (Control of Release) (Scotland) Bill should have to come into force the very next day after the Criminal Justice (Scotland) Bill receives royal assent.

I remind members that, in 2007, we passed the Custodial Sentences and Weapons (Scotland) Bill, which first introduced custodial and supervisory sentencing. The Law Society of Scotland and other stakeholders are wrong in saying that such an approach has never been taken before, because it was taken eight years ago. The provisions in that bill have never come into force because the McLeish commission said that we would have to get the prisoner population down before it would be possible to implement them.

I ask the cabinet secretary for an assurance that the Prisoners (Control of Release) (Scotland) Bill, if it is passed, will not be implemented until all the necessary community interventions and services are in place, including the extension of multi-agency public protection arrangements for violent offenders, which are currently under discussion.

We cannot support amendment 2. If Margaret Mitchell had specified the Community Justice (Scotland) Bill rather than the Criminal Justice (Scotland) Bill, I might have had a bit more sympathy with the intention behind her amendment.

**Michael Matheson:** I have listened carefully to Margaret Mitchell, as I did when she lodged an amendment in the same terms at stage 2, but I confess that I am still somewhat confused about her views on the matter and why she thinks that it is important to delay the commencement of the reforms in the bill—given that they have been considered by Parliament at stages 1 and 2 and now at stage 3—pending the Parliament passing the Criminal Justice (Scotland) Bill and the granting of royal assent to that piece of legislation. As Margaret Mitchell acknowledged and Elaine Murray emphasised, I indicated at stage 2 that

"there are no provisions in the Criminal Justice (Scotland) Bill relating to early release". —[Official Report, Justice Committee, 2 June 2015; c 16.]

I can see no good reason to delay the implementation of the provisions in the Prisoners (Control of Release) (Scotland) Bill, in the manner that would result if amendment 2 was agreed to.

It is entirely possible that amendments to the Criminal Justice (Scotland) Bill will be considered by the Justice Committee at stage 2. However, amending the Prisoners (Control of Release) (Scotland) Bill to tie its provisions to future legislation—we do not know whether the Criminal Justice (Scotland) Bill will even contain any such provisions, because the Government does not intend to lodge amendments to that bill in this area—would to a large extent pre-empt Parliament's consideration of the Criminal Justice (Scotland) Bill. That is not an appropriate way for us to take forward legislation.

I listened carefully to what Margaret Mitchell said in justifying her amendment at stage 2, and I have listened to her again today at stage 3. I do not believe that there is any good justification for delaying the important reforms in the Prisoners (Control of Release) Scotland Bill, which is concerned with public safety, once it receives royal assent. I do not see why we should tie the provisions in this bill to the Criminal Justice (Scotland) Bill.

On that basis, we oppose amendment 2, and I ask Parliament to reject it.

**Margaret Mitchell:** To answer Elaine Murray’s point, early release will be discussed in the context of the Criminal Justice (Scotland) Bill. My amendment would allow us time for proper scrutiny and debate, which we simply have not had.

As the cabinet secretary said, we have been through stage 1. However, the bill was not fit for purpose and had to be changed beyond recognition at stage 2, so we cannot take much comfort from that process.

As I say, at stage 2, we changed the bill from ending automatic early release to merely amending the rules. That does not fill me with confidence that we have gone through a process that suggests that the legislation before us is good legislation that has been properly scrutinised and debated.

Amendment 2 is reasonable. By delaying the commencement of section 1, it would ensure that the best possible outcome was achieved following scrutiny of the Criminal Justice (Scotland) Bill. At the very least, that would help to confirm that the period of mandatory supervised release in the community is sufficient—that it is properly thought through and able to address the practicalities of housing, benefits and employment; adequately resourced to ensure that the essential criminal justice social work is in place; and supported by a level of surveillance using all the modern technology that is available, in accordance with the assessment of risk.

It is for those reasons that I press amendment 2.

**The Deputy Presiding Officer:** The question is, that amendment 2 be agreed to. Are we agreed?

**Members:** No.
The Deputy Presiding Officer: There will be a division.

For
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamies (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Boyack, Sarah (Lothian) (Lab)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Rosean (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (Moray) (SNP)

Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDonald, Mark (Aberdeen Donside) (SNP)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Argyllshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 14, Against 97, Abstentions 0.

Amendment 2 disagreed to.

The Deputy Presiding Officer: That ends consideration of amendments.
Prisoners (Control of Release) (Scotland) Bill

The Deputy Presiding Officer (John Scott): The next item of business is a debate on motion S4M-13597, in the name of Michael Matheson, on the Prisoners (Control of Release) (Scotland) Bill.

15:22

The Cabinet Secretary for Justice (Michael Matheson): I welcome the opportunity to open the stage 3 debate on the Prisoners (Control of Release) (Scotland) Bill. First, I offer my thanks to the Justice Committee, the clerks to the committee and all those who gave evidence during Parliament’s scrutiny of the bill.

Before I move on to why the reforms in the bill are important, I think that it is appropriate to reflect on how Parliament has helped to shape and improve the bill. Through the diligent work of the Justice Committee, under the leadership of its convener Christine Grahame, stakeholders’ views were sought and committee members carefully reflected the evidence that they had heard in making recommendations to improve the bill. That is why, at stage 2, the Scottish Government lodged amendments to make the bill better legislation, which is to the credit of the scrutiny role that was undertaken by the Parliament—especially members of the Justice Committee.

As members will be aware, the bill is relatively small, but it contains important reforms in two key areas in respect of prisoner release. Policy on early release of prisoners is an emotive topic that often generates considerable debate, as has certainly been the case as Parliament has helped to shape and improve the bill. That is why, at stage 2, the Scottish Government lodged amendments to make the bill better legislation, which is to the credit of the scrutiny role that was undertaken by the Parliament—especially members of the Justice Committee.

Section 1 will end the current system of automatic early release for all long-term prisoners at the two-thirds point of their sentence. In its place will be a system in which many long-term prisoners will no longer be entitled to automatic early release at all, while the rest will have early release restricted to the last six months of their sentences.

It is important to explain clearly what the bill will do. Automatic early release will be ended for any long-term prisoner who has an extended sentence. That means that prisoners whom the court has assessed as having the highest need for supervision will never be released automatically from custody. Such prisoners will always be supervised when they leave custody through the operation of extended sentences. Figures show that about 50 per cent of long-term prisoners who receive sentences for sex offences have an extended sentence in place and about 20 per cent of other long-term prisoners also receive extended sentences, so a significant number of long-term prisoners will, in the future, never be entitled to automatic early release.

In response to the views of the Justice Committee, the bill was improved at stage 2 to ensure that supervision would be in place for each long-term prisoner leaving custody. That provision avoids the issue of a prisoner’s being subjected to cold release into the community. That will mean in practice that a long-term prisoner who does not have an extended sentence will be released with six months left on their sentence. That release will include licence conditions for supervision to help the prisoner to reintegrate into the community and to ensure that steps can be taken to recall the prisoner into custody if a breach of conditions occurs.

We consider that the reforms will provide greater public safety. Discretionary early release will still be possible following the reforms, but automatic early release will be either ended or severely curtailed for long-term prisoners. We think that it is right to trust the independent Parole Board for Scotland to continue to consider the cases of individual prisoners, and to make decisions about whether to authorise early release based on assessment of the risk that the individual poses to public safety.

There are data about how behaviour in the community following automatic early release compares with that following discretionary early release. The rate at which prisoners breach their licence conditions following automatic early release is seven times higher than the breach rate for prisoners who receive discretionary early release. The rate at which prisoners are recalled to custody following automatic early release is five times higher than the recall rate for prisoners who receive discretionary early release.

The independent Parole Board does a challenging and difficult job, and if the bill is approved, it will have increased powers to carry on its good work and to make more decisions about whether long-term prisoners should be released into the community before a sentence is at its end. That will help to keep our communities safe while still allowing early release for individual prisoners in order to aid their reintegration into the community, where the risks to public safety are manageable in the community.

I believe that it is worth discussing why the minimum length of supervision should be six months. MSPs will be aware that stakeholders suggested that the initial weeks and months following release are generally the most critical for prisoners re-integrating into the community. A mandatory control period would be most appropriate during that period, when prisoners
who have left custody seek to re-establish themselves in their communities, and when challenges including accessing housing and work opportunities can be at their most acute. A period of six months will ensure supervision during that important time. Of course, considerable work goes on in prison in the lead-up to a long-term prisoner’s release. Although the length of supervision is important, it is our view that the quality of support and supervision in the lead-up to release and following release are critical.

Reducing reoffending is a priority for the Scottish Government. Although reconviction rates are at a 16-year low and recorded crime is at a 40-year low, we can always do more to address offending and its underlying causes.

We are taking forward work to reduce reoffending. That will require the establishment of more effective and closer links between the criminal justice system and wider aspects of our public sector and the third sector. I chair a Scottish Government ministerial group on offender reintegration, which has sought to address the key demand for better integration between our criminal justice system and wider public services in order to facilitate a reduction in reoffending. The second section of the bill makes an important contribution in this area and is a key ministerial commitment from that group. The releasing of prisoners from custody when important support might not be available in the community is a key barrier to ensuring continuity of support in the transition from custody to the community.

The ability of prisoners to access public services including housing, welfare and addiction services and advice on the day on which they are released is crucial to successful reintegration. The availability of such support can be particularly problematic on Fridays and on the days preceding public holidays. When there is evidence that suitable arrangements are required to address a prisoner’s reintegration needs and those cannot be addressed immediately on release, the bill will allow the prisoner’s release to be brought forward by up to two days. I welcome Parliament’s strong support for that important provision, which will make a real difference in allowing a more flexible approach to be taken, in individual cases, to supporting prisoners on their release from custody.

The bill will improve the system of early release by allowing decisions about how and when long-term prisoners are released from custody to be informed by three key factors: individual consideration of a prisoner’s needs, consideration of the risk to public safety that the prisoner might pose, and the need to have effective supervision in place. I believe that that is the best way to protect our communities and to reassure the public.

I move,

That the Parliament agrees that the Prisoners (Control of Release) (Scotland) Bill be passed.

The Deputy Presiding Officer: I call Dr Elaine Murray. You have seven minutes. As we are now quite tight for time, please make it a pretty exact seven minutes.

15:32

Elaine Murray (Dumfriesshire) (Lab): The term “ending automatic early release” has been used so often over the years that its meaning has not been questioned. That was the case until the Justice Committee heard the evidence that was presented at stage 1, which certainly made me think again about an aspiration that, for years, most members have held to be desirable.

Currently, between half and two thirds of the total sentence imposed is served in custody and the remainder is served under licence in the community, during which time the offender is supervised and can be recalled to custody if the conditions of the licence are breached. Whether the point of release is halfway through the sentence or at the maximum two-thirds point is determined by the Parole Board on the basis of the risk that the offender might pose to the community.

The bill as introduced at stage 1 proposed that, for certain categories of long-term prisoners, those who had not been deemed safe to be released on parole should serve their entire sentence in custody, following which they would be released cold into the community without any mandatory supervision. An offender who had served a long-term sentence for a serious or violent crime and who had not been rehabilitated would have walked out of prison at the end of their custodial sentence and disappeared into the community. I was therefore pleased when the Government indicated its intention to amend the bill at stage 2. We supported the bill at stage 1, because the Government had recognised that it would be a mistake to allow such releases.

The bill that is before us does not end automatic early release, nor should it, for the reasons that I have just stated. The bill provides that long-term prisoners must serve the last six months of their sentence under licence in the community, during which time they must be supervised, as the cabinet secretary described.

Although my amendments at stages 2 and 3 that argued for greater flexibility and proportionality with regard to the period of time that should be served under supervision were not
accepted, we agree with the general approach that the Government is taking towards sentencing. It very much resembles the approach that was taken back in 2007 by the Labour-Liberal Scottish Executive when we introduced the Custodial Sentences and Weapons (Scotland) Act 2007, which was subsequently amended by the Criminal Justice and Licensing (Scotland) Act 2010—namely, that a sentence involving imprisonment should consist of two parts: a part to be served in custody and a part to be served under mandatory supervision in the community. As the cabinet secretary said at stage 2,

“In essence, the sentence is a custodial and supervisory one.”—[Official Report, Justice Committee, 2 June 2015; c 3.]

That was the intention of our legislation in 2007.

We, like the Government, believe that a sentence served under licence in the community is not a soft option. It is not a release from sentence. However, I and the academics whose evidence I quoted during the debate on my amendment have argued for a more flexible approach with regard to the length of sentence served under supervision. The supervisory part of a sentence has to be efficacious and it has to be right for the individual offender—it has to provide rehabilitation and strive towards the prevention of reoffending. I consider that my amendment could have provided an opportunity to ensure clarity at the time of sentencing, as the court would specify the minimum time to be served on licence when the offender had not been released on parole prior to that point in their sentence. However, unfortunately that was not accepted by the Government.

Is the bill as it is now drafted preferable to the current situation? Will victims, communities and offenders be given a more accurate picture of the maximum custodial sentence for the offender? Yes, I think they will. Will members of the judiciary alter the length of sentences imposed? Quite possibly they will. That is one of the reasons why I wished to see greater flexibility. The bill will not affect the majority of the prison population—still only about 3 per cent of prisoners will be affected.

Is six months an adequate period of time to serve in the community under licence? The Law Society of Scotland provided a briefing to MSPs last week in which it expressed its reservations, stating that

“the reduced licence period of 6 months may well be wholly inadequate to assist reintegration into the community and reduce risk of reoffending.”

**Christian Allard (North East Scotland) (SNP):** Will the member take an intervention?

**Elaine Murray:** No, sorry. I do not really have much time.

In the ministerial statement prior to this debate, Fergus Ewing reminded us that irrational decisions can result in judicial review. I refer to the briefing that we were all provided with on Sunday by not only four academics but Apex Scotland, Circle Scotland, Howard League Scotland, Positive Prison? Positive Futures, the Scottish Association of Social Work, Social Work Scotland and the women for independence justice for women group. They all said:

“the Bill ... seems to us to have been created without careful thought and without being informed by the extensive national and international evidence on custodial and community sentencing policy.

Furthermore, the Bill misses the opportunity to better clarify sentencing and release policy. It may well be possible to combine the virtues of public safety with clarity in sentencing, but unfortunately this Bill appears to achieve neither.”

During the passage of the bill we have taken a constructive approach to it. We supported the Government at stage 1 and at stage 2, very much in the hope that a proportionate supervisory sentencing regime could be achievable. The Government debated my stage 2 amendment, and my stage 3 amendment was lodged in time for the Government to lodge an improved alternative. If 12.5 per cent of the sentence was not thought appropriate, there was time for the Government to come forward with something that was more appropriate, but it did not do so; it has stuck with the blanket six-month supervisory sentence at the end of the sentence.

**John Finnie (Highlands and Islands) (Ind):** Will the member give way?

**Elaine Murray:** I am sorry, but I do not have much time.

The Government has not been able to provide evidence that a six-month supervisory sentence for all long-term prisoners is proportionate and sufficient. It has not provided evidence that public safety will not be compromised if somebody has not engaged appropriately within that six months. There is also the argument that, if someone did not conform to the conditions of the licence during that six months, they would be back inside only for a short period before they were back out again. It would not necessarily be effective for all prisoners.

It has also been argued that the bill as proposed could have increased European convention on human rights implications.

It is for those reasons, and with considerable regret, that I advise the chamber that Scottish Labour cannot support this bill tonight.
15:38

**Margaret Mitchell (Central Scotland) (Con):** I pay tribute to the Justice Committee clerks for their hard work and to the witnesses who provided such vital and insightful evidence at stage 1 and stage 2 of the bill.

The bill is in two halves. Section 2 provides the Scottish Prison Service with the power to release prisoners up to two days early to facilitate community reintegration. That is a sensible proposal that will create the flexibility required to help provide access to adequate support services at a critical juncture for the offender.

Unfortunately, the same cannot be said of section 1, which deals with the automatic early release of prisoners. In its 2007 and 2011 manifestos, the Scottish National Party made commitments to end automatic early release. Six years after 2007, it lodged an amendment to the Criminal Justice (Scotland) Bill that pledged to end automatic early release for less than 1 per cent of prisoners. It then presented the same proposals in separate legislation to end automatic early release for sex offenders who have received custodial sentences of four years or more and other serious offenders who have received sentences of 10 years or more.

As numerous witnesses pointed out, there was little logic to those proposals, given the low-level recidivism rates for those categories of prisoner. The new cabinet secretary therefore lodged amendments at stage 2 to extend the bill’s provisions to all long-term prisoners with determinate sentences of four years or more. However, even with those changes, the bill now covers just 3 per cent of prisoners.

Despite the cabinet secretary’s efforts at stage 2 to justify the bill, witnesses and stakeholders maintain that section 1 is not fit for purpose. There has been absolutely no attempt to carry out the necessary meaningful scrutiny of and debate on the provisions, which the Law Society of Scotland described as possibly

“the most radical change in custodial sentencing policy for twenty-two years”.

**Christian Allard: Will the member give way?**

**Margaret Mitchell:** If Mr Allard does not mind, I will make progress.

We are now in a situation in which the legitimate concerns and criticisms of stakeholders, which range from learned and respected academics to third sector and voluntary organisations at the cutting edge of the criminal justice system and include criminal justice social workers, the Law Society of Scotland, the Howard League, and gender and equality groups such as the women for independence justice for women group, are being swept aside by the new cabinet secretary.

Stakeholders’ deeply worrying comments highlight the many deficiencies in the bill, such as the flawed procedure and lack of evidence, the proposed blanket six-month compulsory supervision period, and the potential for article 5 European convention on human rights challenges.

The Government’s proposed changes at stage 2 simply replace automatic release at the two-thirds point of the sentence with automatic release at six months before the completion of a sentence.

**Christian Allard:** Will the member take an intervention?

**Margaret Mitchell:** No. If the member does not mind, I have some progress to make.

That in turn has proportionality implications that may lead to potential human rights challenges.

The Government has not made the case as to why it has rejected a proportionate approach. Professor Fergus McNeill highlighted the extent of that problem when he pointed out that, under the current fixed period proposals,

“if a person is sentenced to five years, 90 per cent of their custodial sentence would be in prison. However, if a person is sentenced to 10 years, that increases to 95 per cent”. — [Official Report, Justice Committee, 27 May 2015; c 3.]

Furthermore, at present the demand for rehabilitation programmes already outstrips supply, and that demand will almost certainly increase, which will lead to an inevitable challenge under ECHR.

To quote the somewhat damning indictment of key stakeholders, the bill

“will not end automatic early release, it will not reduce reoffending and it will not improve public safety in the longer term; indeed, it is likely to jeopardise both public safety and reintegration.”

In those circumstances, it would be foolhardy to support the bill.

15:44

**Roderick Campbell (North East Fife) (SNP):** We must acknowledge that the bill has moved since stage 1 and that it operates in the context of the 2007 and 2010 legislation in the area, as yet to be implemented, and, of course, the McLeish commission. It is not and does not purport to be a bill about clarity in sentencing. The sentencing council will no doubt help in that area in due course, and we should wish that new body well. The bill is not the last word on automatic early release, either. That is absolutely clear. However, it is clear that the bill represents a first step along the way of ending automatic release and reversing the Tory policy of 1993.
We ought to recognise the Government’s response to criticism of what was described as “cold release”. We should also recognise what Dr Barry described as the need for “proactive support in relation to accommodation, employment, education, benefits and so on.” —[Official Report, Justice Committee, 13 January 2015; c 7.]

We should bear in mind the need for throughcare for offenders returning to the community.

We should welcome the commitment by the Scottish Prison Service to providing 42 officers to support offenders to reintegrate back into the community, building on the work already begun in prison that the cabinet secretary referred to earlier.

There is a need to ensure that there are adequate numbers of programmes available to offenders within prison to enable them to change their behaviour. Yes, there are challenges and those programmes will need to be adequately resourced, but we have time to plan for this adequately. Indeed, as the cabinet secretary said during the stage 1 debate, an independent review of prison programmes, including psychological programmes, will be carried out. It is not helpful to highlight the possible ECHR challenges that might take place if programmes are not in place; rather, we need to allow the Scottish Prison Service to get its house in order.

The Government always recognised that any reduction to the period of automatic release might incentivise participation in programmes and any planning needs to take account of that. In that context, let us bear in mind that planning can be complex. Eric Murch of the Scottish Prison Service commented:

“Some prisoners will deny that they have a problem until very close to their critical date and then they will try to move up the list.” —[Official Report, Justice Committee, 24 February 2015; c 46.]

Is six months of guaranteed supervision adequate? We have heard a lot of debate about that and there is a variety of views. We know the position of Colin McConnell and Sacro, and we know that others take a different view. That was debated earlier, so I will not repeat the arguments, but I point out that the academics accept that the highest risk period is immediately after release even if they do not accept that that is the only period when support is required.

We reached a decision on that period earlier, and I have no doubt that courts will take account of the provisions and the alternatives, such as the increased use of extended sentences, at the appropriate time.

Some of the academic critics of the bill would, if their wishes were granted, simply succeed in kicking matters into the long grass. At stage 1 even Margaret Mitchell suggested that that was a real danger, and in February Sarah Crombie of Victim Support Scotland said that that would cause that organisation concern. Despite the academics, we need to grasp the nettle.

Public safety remains important. I am not sure what the frequently mentioned empirical evidence would show—if it were ever to be obtained—except that this group of prisoners will no longer be sent out to the community, come what may, at the two-thirds mark of their sentence.

The Parole Board will have a greater role than it does now. Public safety will not be reduced. Let us also not forget the availability of extended sentences to courts at the time of sentencing. That will provide additional protection for the public in appropriate cases.

Concerns have been expressed about the financial costs of the legislation by 2030-31. That is a long way off and much can happen in the interim. I hope that it will encourage further thought to be given as to the appropriateness of many short sentences, which, as we know, often do not act as a deterrent and certainly do not provide adequate time for rehabilitation.

Despite its critics, the bill has considerable value and I commend it to the Parliament.

The Deputy Presiding Officer (Elaine Smith):
I have a little bit of time in hand at this stage.

15:48

Graeme Pearson (South Scotland) (Lab): I am pleased to speak in this afternoon’s debate. However, I am disappointed because introducing the legislation in this way is a missed opportunity.

Rod Campbell says that the bill is a positive response from the Government to the issue of early release. He added that that was for “this group of prisoners”, but indeed that is a small and exclusive group.

Let us remember how we arrived at the position that we are in today. In 2013, Kenny MacAskill proposed the bill and said:

“We have stated clearly our aim to end the system of automatic early release ... we are committed to fulfilling that pledge”.

In 2014, he added:

“This Government is taking tough action to keep communities safe and reduce the likelihood of prisoners reoffending.”

I am sorry to say that I do not see the amended bill reflecting those commitments.

Professor Cyrus Tata, in evidence to the committee, observed that reconviction rates for those serving sentences of between three and six months is 53 per cent, yet, having served only half
of their sentences, those prisoners will not be the subject of supervision by criminal justice social work.

We should not be talking about early release; rather, as Professor Fergus McNeill indicated, it would be much better were we to identify a timely release period. I reiterate that the bill does not deliver on the notion of a timely release with appropriate supervision thereafter.

As Dr Monica Barry reflected, the current legislation is very much about the offence and the length of sentence, rather than about the risk and the perceived threat and what is being delivered in terms of community safety. There is a shortcoming in what the bill delivers in that respect. Indeed, from the viewpoint of the public—from the viewpoint of victims and witnesses—the bill does not provide clarity on sentencing so that they can be confident that they know precisely what will happen to an accused once that person leaves the court upon conviction. The bill does not deliver what, in my view, Victim Support Scotland suggested in saying that it is an important advance that will go a long way to improving public perception of justice.

The speeches in today's debate from the cabinet secretary and other members indicate how confusing the issue is. Indeed, Professors Tata and McNeill, along with Dr Barry, suggested that the bill should be scrapped and that we should go back to the start of the process. I have sympathy with that view.

The public cannot stand front-door sentencing and back-door releases. They are extremely frustrated by that prospect.

Christian Allard: It is important to understand what the academics told the committee. They said that cold release is the problem. A vast amount of cold release is happening. The cabinet secretary will ensure that there will be no more cold release, with a mandatory six-month period of support. Stopping cold release will ensure public safety.

Graeme Pearson: I am grateful for that intervention. I accept that the days of cold release should be history. Unfortunately, they will not be. Over the past few months, I have attended a number of third sector meetings at which the main concern is still about people being cold released from prison with no support.

I remind the chamber that those who will be affected by the legislation will number in their few hundreds. However, each year, more than 14,000 people are sentenced. The legislation does not provide an end to early release. It must be reassessed and reconsidered.

15:52

Alison McInnes (North East Scotland) (LD): It is important to remember that automatic early release is a management device. It was introduced as a safety valve to ease the pressure caused by escalating prison populations, not because of any compelling evidence that such a measure would improve public safety.

A number of questions face members today. Will the reform reduce reoffending? Will offenders receive sufficient supervision and support? Will it better protect our communities? Will it make sentencing more transparent and give victims more certainty?

The bill faltered because the initial draft was flawed in a number of those respects. I welcomed the cabinet secretary's willingness to listen and to respond to the Justice Committee's concerns as set out in its stage 1 report. I suppose the question in that regard is whether the cabinet secretary has gone far enough. Members have received a late joint submission, which some have mentioned, from witnesses including academics, the Howard League Scotland and Positive Prison? Positive Futures, that has cast doubt on that.

I have some sympathy for their argument that the case for the bill has not been entirely substantiated. For example, there is less than comprehensive evidence supporting the flat six-month release. Nevertheless, the cabinet secretary has set out in some detail why he considers that we should proceed with the amended bill. I am also mindful that the Risk Management Authority and the Parole Board for Scotland are broadly supportive of the legislation.

The legislation will mean that the Parole Board will be involved in decisions about the release of each individual long-term prisoner. The release of potentially dangerous offenders will be delayed, and the public will continue to be protected from those who have failed to progress through the prison regime or mediate their behaviour to the extent that they could be managed early in the community.

It would mean that the Parole Board decided when each long-term prisoner was fit for release, based on individual circumstances. That would delay the release of dangerous offenders: those who had not mediated their behaviour or engaged with rehabilitation programmes. The reforms could cause more prisoners to engage at an earlier stage of their sentences. We are talking about those prisoners whom the Parole Board described as “happy to wait”, in the knowledge that they will get out after two thirds of their sentence, irrespective. However, when it comes to providing programmes and courses, ministers and the SPS will of course need to ensure that supply meets
demand. There is no doubt that the Government must ensure that the quality of the proposed supervision of long-term prisoners on six-month release is adequately resourced and regularly reviewed.

I turn to section 2. It is eminently sensible to release some people a day or so early if it guarantees that they receive the assistance that they desperately need with accommodation, employment or addiction. Many public and third sector services do not operate 24/7 or are not easily accessible, particularly in rural and remote areas of Scotland.

The short bill is a reminder of the Scottish Government’s record of disjointed penal reform. It reforms early release for some prisoners in isolation and neglects many more pressing priorities. Why have successes in reducing youth offending not been rolled out more widely? Where is the concerted shift towards effective community-based sentences and diversion from prosecution? Where are the plans to further reduce senseless, destructive short-term sentences or to reduce the number of people on remand?

In 2013-14, just more than 4,000 people were handed sentences of less than three months, despite our having a presumption against three-month sentences in 2010. A further 5,000 were imprisoned for between three and six months. Those are the people whom the McLeish commission dubbed “more troubling than dangerous”, yet they take up the SPS’s time and effort and limit its ability to engage with the most serious long-term offenders. It is perverse that young short-term offenders, who are most at risk of reoffending, still do not benefit from statutory throughcare.

I therefore urge the cabinet secretary to develop a clear, overarching and generally progressive strategy that is bold and ambitious. We need to focus on how to bring an end to the primitive punitive approach that causes so many people to be sent to prison in the first place when it clearly is not the best place for them or the communities to which they return.

The Justice Committee discussed the populism of the bill. I do not think that it is weak in any way for the cabinet secretary to have changed his position on a number of issues. He actually showed strength by listening. After all, that is what the Parliament is here for; it is that scrutiny and change that are important.

Time will tell whether the bill will reduce offending. To my mind, it is poverty prevention and poverty alleviation that are important, but everything will play its part. We do know that there is a clear link between supervision and support, and reducing offending.

The critical early days have been talked about. Less talked about has been the provision that brings forward the release date to assist prisoners to reintegrate. I question whether some of them have been integrated in the first place. That is where the challenge lies. There are challenges around housing, health and, increasingly, the Department for Work and Pensions. We can deal with the first couple, but not the third. Clearly we would want some alignment with United Kingdom policy on that.

I discussed the proportionality of supervision with Dr Elaine Murray in advance of the committee’s discussion of that. As Dr Murray knows, I was minded initially to lend my support to her proposal. However, my mind was changed on that by my discussions with the cabinet secretary at stage 2, in which I sought confirmation on what the bill would mean for individuals. We know that community justice workers who work in prison do an admirable job. I asked about risk assessments for individuals and I said that treating everyone equally does not mean treating them the same: people have different needs. I was reassured by what I heard then, which is why I will lend my support to the bill tonight. I was reassured on the non-statutory support that continues after six months and the very important plans for release, which involve the SPS and the criminal justice social work service.

A key point in my persuasion was when the cabinet secretary said that quality rather than quantity was important—a point that one member has already raised. His link with the chairing of the ministerial group on offender reintegration is important.

On long-term prisoners, I commend the approach to release in order to help start employment. The provision of 27 throughcare officers is very important; I am keen to see progress on that. The Christie commission on the future delivery of public services talked about organisations working together for the integration of health and social care. There still are challenges, though, as members have said, for prisoners who have been released.
I do not think that the availability of rehabilitation programmes should be scattered. The Scottish Human Rights Commission said that there would be the possibility of prisoners raising appeals about that, as it would ultimately affect their right to liberty under article 5 of the European convention on human rights, so that is important.

I would also ask whether the balance—the cost—is correct in the scheme of things, as I have mentioned previously. This bill will cost over £16 million, compared with a community justice budget of £31.8 million.

There is also the issue of where the bill fits in the overall direction of travel. I would like to see a situation in which the only people who are being confined are those who pose a threat to our communities. Dr Murray talked about extending MAPPA to cover violent offenders. That is something for which there would be an evidence base or understanding of where individuals sit in the scheme of things.

For me it is about prevention, rehabilitation and never losing sight of it being about individuals. Positive prison? Positive futures says that it values the changes to automatic early release but “only as part of a comprehensive review and restructuring of the criminal justice system from arrest through to release”.

Rod Campbell talked about rejoining the community and the thought-provoking approaches that we may need to take in respect of that. The Howard League for Penal Reform talks about community-based supervision. That is the future, not more prison.

16:01

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): Much has already been said about this short bill, so I will try not to repeat too much. I think that we all agree that ending automatic early release is, in itself, a good thing. The Justice Committee, with the exception of Margaret Mitchell, agreed with the general principles of the bill.

Members will recall that at the committee stage the bill dealt with certain categories of long-term prisoner. As amended, it deals with all long-term prisoners—those who are serving four years or more. We are not talking about short-term prison sentences, so those are irrelevant in discussion of the bill. One might ask why we do not end automatic release for all, but that is not the purpose of the bill, and there are practical constraints. In order to deal with that issue, we know that we have to have more prisoner places and more post-custody support, and—as the cabinet secretary made plain in his evidence to the committee—we have to be looking at a change of culture to having alternatives to short-term custodial sentences. We know that those sentences simply do not work and that there is a revolving door with people going in and out of prison.

I hope that the announcement about how we are to deal with women offenders heralds how we will deal with young offenders and others, in terms of looking at the whole set of circumstances that lead some people—though not all—to find themselves in the penal system with a drug or alcohol habit.

For long-term prisoners, one thing that the committee was quite rightly concerned about was cold release. Therefore we welcome the stage 2 extension of the bill’s provisions to all prisoners serving four years or more. We also asked that the six-month period be made part of the custodial sentence: that is what has happened. The sentence continues, but there is a bridge, as it were, from rehabilitation programmes in prison to when the person is out of prison.

Although nothing is perfect in this world, in evidence we were told that it is during the early weeks of a prisoner’s release—in fact, the early hours and days—that the person is vulnerable to going back into old habits with old gangs that they knew.

Elaine Murray’s amendment is complicated. We did not take evidence on fractions of sentences, so I do not think that the amendment would have taken us forward. At least we know where we are with six months; six months is the mandatory period, but that does not mean that nothing will continue thereafter.

That will also link into the Community Justice (Scotland) Bill, and that is where we see the larger picture. There is £100 million going into community justice to look at how we handle community sentences and people once they are released from prison. We know that prison does not work for most people. Obviously there are people who should be kept in prison and away from others because they are a danger to society, but for many people prison simply does not work.

Section 2 contains a provision that will be lost if the bill is voted down, which concerns the timing of release to benefit reintegration. We all know—as others have said—that releasing a prisoner on a Friday is bad. Everything is closed, the person is left to meet their old cronies, they have no money, they have no social security and they have no home. They have nothing. Members who vote against the bill tonight are voting against the flexibility that will enable prisoners to be released earlier, up to two days before their release date.

The bill gives clarity to victims. Somebody who is sentenced to six years will do five years and six months and will then have six months supervision
in the community. Everyone will know where they are with the provisions in the bill. Of course, the bill is not perfect, but I do not know any piece of legislation that has been passed by this Parliament that is perfect. The Government’s endeavours are a start; it is trying to ensure that there is continuity of rehabilitation from within the prison to outwith the prison, we hope with the same people involved. I know that Colin McConnell, the chief executive of the SPS, has made it plain that that is his goal.

I want to ask about the commencement of the provisions. Section 3(2) says:

“The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.”

If the bill is passed tonight, we are talking about prisoners being released at different times, with six months’ supervision, so I would like to have some idea about when the provisions will come into force.

I am not sure whether Labour is abstaining or voting against the bill. Either would be a bad move. If Labour members were to be successful in stopping the bill, they would be stopping prisoners having supervision when they require it and they would also be stopping people being released at a time when they have some chance of making a better start.

16:06

Jayne Baxter (Mid Scotland and Fife) (Lab):
The core principle behind the bill is recognised across the chamber: automatic early release of prisoners does not engender confidence in our criminal justice system among the general public and must be reformed. However, that does not mean that the legislation and the Scottish Government’s overall approach to sentencing are appropriate or adequate.

It is important to note again that the Scottish Government attempted to squeeze the content of this important bill into a previous bill, but we should be grateful that it listened to the recommendation of the Justice Committee to place it in free-standing legislation.

Scottish Labour is in complete agreement with victim support groups that there needs to be clarity in sentencing. Victims, the community and offenders need to understand what the sentence that is passed by the judge or sheriff means in practice. It is not good enough that victims of crime and their families hear that someone is sentenced to X years in prison but have no idea what that means in reality. Victims and their families should be at the centre of the criminal justice system, but the current system of sentencing fails to put them there.

The bill might increase confusion about sentencing, however. As Victim Support Scotland noted in its submission,

“ending automatic early release for only some categories of prisoners would work to further complicate an already confusing system; the proposals would in fact create another rule that needs to be taken into account when calculating the release date of an offender”.

The amendment that was lodged by my colleague Elaine Murray is significant. It recognises that starting the new process with six months to go before the end of a prisoner’s sentence is a blunt instrument. Instead, as she has proposed, making it proportional is a much more reasonable approach. The amendment would have ensured that there was no uniform approach to offenders. It seems to be bizarre that an offender who is sentenced to four years’ imprisonment would be expected to be placed under supervision for the same length of time as an extremely violent or repeat offender, but that is what the bill proposes.

Scottish Labour’s amendment would have given the courts the power to set the period of supervision, rather than treating every offender the same way. A more nuanced approach would help to ensure that offenders were given a less generic rehabilitation programme, thus minimising the risk of recidivism. It would also allow a more joined-up and flexible approach to individual offenders to be introduced.

The provision in section 2 of the bill to allow prisoners who are due to be released on Fridays to be released two days earlier in order to increase the provision of support for them is a good one. It may appear to some people to be a relatively minor change, but according to the Scottish Prison Service around 4,000 prisoners are released every year on Fridays. They emerge into our communities with limited support and go straight into the weekend, a period in which many people run an increased risk of breaking the law. We currently do not do enough to help offenders back into the community once they have served their time, so that modest proposal will at least make some provision to increase the support and guidance that they receive.

However, we must look more closely at the proposals. At the heart of any structure surrounding the release of prisoners must be the calculation of risk to public safety. That is, of course, notoriously difficult to calculate, and it would be wholly unreasonable of us to expect the relevant authorities to successfully calculate the risk of reoffending every time they are called on to do so.

John Finnie: Will Jayne Baxter give way?
Jayne Baxter: No.
We must ensure that each offender’s risk profile is central to the debate about whether they are released early. For those who have committed serious offences, early release should not be automatic.

I agree with Victim Support Scotland and Police Scotland, who indicated that they support the essence of the proposals because they will encourage relevant prisoners to engage with prison rehabilitation programmes to improve their chances of early release, and will ensure that prisoners who are assessed as still posing a high risk do not benefit from early release. I also agree with the Howard League for Penal Reform and other experts who noted that an unintended consequence of the bill would be that prisoners are released cold into the community without a period of supervision from relevant authorities.

Elaine Murray’s amendment was eminently sensible. Parliament would have been wise to accept it and ensure that offenders would be dealt with in a way that was more specific to their offending profile. It would have allowed Scotland to adopt a more subtle approach to offending. It was a tremendous opportunity for positive change, so I regret that we have allowed it to pass us by.

The Deputy Presiding Officer: We come to the closing speeches. I call Margaret Mitchell.

16:10

Margaret Mitchell: Oh, it is me. I thought I heard “followed by”.

If the decision to pass the bill is taken at 4.30 pm, the Parliament will be able to take absolutely no pride in it. It follows on the heels of the corroboration debacle—a mess that the cabinet secretary has been credited with sorting out—but here we are again with the legitimate concerns and criticisms of key stakeholders, who have a wealth of knowledge and experience in the criminal justice system and the treatment of prisoners, being unceremoniously swept aside.

The bill does not end automatic early release. Its stated aims were to reduce reoffending and improve public safety, but it does neither. Its proposals are undermined by evidence and knowledge of practice that the Government has chosen to ignore. A bill that was deeply flawed to begin with has been made worse by the lack of scrutiny and the failure to allow sufficient time to consider the major amendments at stage 2.

To put the unacceptable lack of proper scrutiny in context, the Law Society of Scotland points out that the current law was enacted following two inquiries. The Scottish inquiry, under the chairmanship of Lord Kincraig, a senator of the College of Justice, conducted its deliberations over 14 months. During the same period, the Scottish Prison Service published two consultation documents, so prison reform was the subject of full debate. How ironic it is that devolution should lead to a weakening of the scrutiny, transparency and accountability of Government in Scotland.

The elephant in the room is the bill’s failure to consider short-term sentences, as prisoners who serve such sentences have the highest rates of reoffending. According to the Scottish Government’s 2013-14 figures, 602 individuals received custodial sentences for attempted murder and serious assault. A staggering 82 per cent of them were given sentences of less than four years. However, those offenders will be released automatically halfway through their sentence.

The bill does not provide the clarity and honesty in sentencing that victims and their families want and have the right to expect. The Scottish Conservatives have long called for automatic early release to be abolished for all prisoners, regardless of their crime or the length of their sentence. Based on the evidence that we heard at stage 1 and stage 2, it is impossible to allow the bill to continue its parliamentary progress in good faith.

My amendment would have provided the opportunity to examine the criminal justice system—including short-term sentencing, early release and the associated recidivism rates—in the round and to scrutinise further the other key issues that emerged in evidence to ensure that they were properly debated and scrutinised. The fact that it was rejected marks a low point in the Parliament’s scrutiny process, which is already attracting widespread and justified criticism.

For those reasons, the Scottish Conservatives will not support the bill.

16:14

Hugh Henry (Renfrewshire South) (Lab): I cannot find any fault in the idea that we should end automatic early release. Victims, and indeed the general public, deserve some clarity from our legal system. When they hear a sentence of a specific length of time handed down, they expect that the offender will actually serve that length of imprisonment. It causes real trauma, anxiety and anguish when victims find that those who were responsible for the crime are out wandering the streets, back in their community, after a relatively short period. The idea of stopping automatic early release is right. The problem is how we go about it.

In a sense, the cabinet secretary deserves our praise. As Margaret Mitchell suggested, he has tackled a number of things since taking office by changing direction completely from that set out by
his predecessor. Frankly, this is another mess that the cabinet secretary inherited from his predecessor, and he has worked hard to try and make improvements, but I do not think that he has sorted out the inconsistencies and inadequacies in the bill.

We have got things back to front. If we were going to consider such a fundamental change to the way in which our legal system operates, we should not have taken this particular manifesto commitment from the SNP and put it into effect; we should have taken the commitment to establish a sentencing council, which was also in its manifesto, and allowed that sentencing council to take an informed view and analysis and to come up with some recommendations that the Parliament could debate and consider. We have got this back to front—we have done it the wrong way about. That is a shame.

Christian Allard: Will the member give way?

Hugh Henry: No, thank you.

Roderick Campbell criticised Elaine Murray, saying that there was no evidence for her amendment. That was echoed by Christine Grahame, who said that the Justice Committee did not take evidence on Elaine Murray’s amendment at stage 2.

Let us consider the comments from the Law Society of Scotland. The Government’s stage 2 amendments brought in one of the most fundamental changes to sentencing that we have seen. The Law Society said:

“We are concerned that such a sweeping amendment was agreed without any collation of supporting evidence or research, and in our view full opportunity was not given for proper scrutiny of the amended section 1 in any significant detail.”

Others, too, expressed concerns about “the lack of evidence in support for the need to end automatic early release for all long term prisoners.”

That is a separate debate, however.

We cannot criticise Elaine Murray for not providing evidence for her amendment and yet say that we are happy to accept a fundamental change from the Scottish Government without evidence, without consultation and without adequate discussion. Again, we have got it wrong.

As I said earlier, it is imperative to have clarity. As Elaine Murray and others have said, we believe that a prison sentence should mean what it says and that a prisoner should be in prison for at least as long as a judge orders. That is the point that Elaine Murray has been trying to make. We believe that we should give our judges the ability to determine the sentence, and the ability to determine the required supervision that the prisoner will have to undergo at the end of their sentence.

We all accept that reintegration into society after a long period in prison is not straightforward. Indeed, the Law Society makes a valid point:

“In the absence of supervision, we are concerned that offenders may leave prison after many years in secure conditions with no, or at best minimal, opportunity to access properly funded support within the community.”

That is one problem with what the Government is putting forward, because there is no structure or indication of what supervision and support will be provided. Frankly, this is a missed opportunity, which is a shame because the public expect us to do something effective. The Government got it wrong; it went about this the wrong way and Parliament should have taken the opportunity to do things properly, because that is what victims and the public deserve.

16:21

Michael Matheson: I have listened with interest to the issues and points raised, although some of them were echoes of concerns that were raised at stage 1 of the bill. I said that I would consider a number of issues that were raised during that debate and during the evidence-taking sessions. During this afternoon’s debate I confess that I have become a wee bit more confused about the position of some of the parties.

Margaret Mitchell gave a list of organisations that oppose the bill as it currently stands, a number of which opposed the bill and the ending of automatic early release from the outset. Those organisations do not believe that we should end automatic early release, and some think that people should receive community supervision for 25 per cent of their sentence rather than six months—that point was made by Elaine Murray during consideration in committee at stage 2 of the bill.

It is interesting that a member would choose to use as their argument a list of organisations that includes those that, to some extent, oppose the idea behind the bill. I understand that the Conservative Party wants to end all automatic early release for long-term and short-term prisoners, and that it does not support any form of mandatory community supervision. It therefore accepts that cold release should take place. I find it bizarre when members in this chamber who oppose the bill quote from organisations that have ideas to which they are diametrically opposed. No doubt Margaret Mitchell will want to clarify that matter.

Margaret Mitchell: It is true that we want to end all automatic early release. The difference between the minister’s position and ours is that we
want to debate the issue properly and ensure that cold release is considered and rehabilitation carried out properly. We want to facilitate the widest debate and scrutiny to get this issue right, but the minister is not prepared to do that.

Michael Matheson: That might be the member’s view, but it is clear that the Conservative Party is in favour of cold release, irrespective of its implications. The committee heard evidence that cold release is an issue of public safety, and then the member comes to the chamber and says that the bill will undermine public safety. I know that the Conservative Party is in a confused position on this bill, but I cannot help but feel that what I have heard this afternoon has confused that position even further.

The member also made the point, as did Elaine Murray, that the bill does not end any form of automatic early release, but that is incorrect because it does for prisoners who get an extended sentence. There will be no six-month mandatory period for those prisoners. They will have to serve the whole custodial period, and their community supervision period will be through the extended sentence. It is factually wrong to make that point.

Having introduced automatic early release, the Conservative Party now intends to abstain on the vote to abolish it for prisoners who get an extended sentence. There will be no six-month mandatory period for those prisoners. They will have to serve the whole custodial period, and their community supervision provision will be through the extended sentence. It is factually wrong to make that point.

There also seems to be bizarre confusion among Labour Party members. If I have got this right, Graeme Pearson feels that the bill does not go far enough and that we have to deal with short-term as well as long-term prisoners. He also seeks clarity around what victims should expect.

The problem with the amendment that the Labour Party lodged today is that it would have created more confusion. Under it, at the point of sentencing, the court could say the supervision could be up to 12.5 per cent of the sentence but we do not know—we will have to wait to see what happens later on. The victim would therefore leave the court unaware of the position.

Graeme Pearson rose—

Michael Matheson: I will just finish my point before I let the member in. The bill will mean that the released prisoner will be supervised for six months. If they need any more than that, the Parole Board for Scotland will make that decision. As I have also outlined, the statistics say clearly that those who get parole are significantly less likely to breach their parole conditions and significantly less likely to be recalled to prison than those who get automatic early release.

Perhaps the Labour Party wants to end automatic early release for all prisoners, but it also wants to allow the period of supervision to be longer, which will create confusion for victims about what that means when the sentence is handed down.

Graeme Pearson: The cabinet secretary will remember that I quoted the academics who indicated that the approach that is suggested in the bill is confusing and does not improve the situation. By indicating that there is confusion among the Opposition, the cabinet secretary is distracting attention from the key issue at the heart of the bill, which is that it does not deliver for the general public on all prisoners who go through our courts.

Michael Matheson: The member does not think that the Labour Party is confused, so I will give an illustration. Hugh Henry said that the sentence that the judge hands down should be the sentence that the offender has to serve in prison, and that that will give victims clarity. Where does that leave parole? Is parole to be ended altogether? Is there to be no provision for parole?

If the sentence handed down by the court is the time that the offender has to spend in prison, does that mean that the Labour Party’s position is that there should be no community supervision period? There is real confusion at the heart of what the Labour Party thinks. I know that it has the same problem in a number of policy areas and it will have to face those problems in the coming weeks and months.

The bill will mean that the mandatory supervision period will be only six months, unless the person gets supervision under the Parole Board at an earlier stage after halfway through their sentence. That is clear, and it is certainly clearer than the position that the Labour Party proposes.

Elaine Murray: Will the cabinet secretary give way?

The Presiding Officer (Tricia Marwick): I am sorry, Ms Murray, but the minister is in the final 30 seconds of his speech.

Michael Matheson: I draw my remarks to a close by again thanking all those who have participated in the consideration of the bill, which will add to public safety and the clarity that people need about sentencing in bringing automatic early release to an end. The bill is a good bill that will improve the way in which sentences are handed down in Scotland. I call on all those members who believe that that is what we should achieve here tonight to support the bill when it comes to the vote.
Decision Time

16:30

The Presiding Officer (Tricia Marwick): There are two questions to be put as a result of today’s business.

The first question is, that motion S4M-13597, in the name of Michael Matheson, on the Prisoners (Control of Release) (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scott, Tavish (Shetland Islands) (LD)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (Ind)
Yousaf, Humza (Glasgow) (SNP)

Abstentions
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffith, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McMahon, Siobhan (Central Scotland) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)

The Presiding Officer: The result of the division is: For 67, Against 0, Abstentions 46.

Motion agreed to,