

PRISONERS (CONTROL OF RELEASE) (SCOTLAND) BILL

[AS AMENDED AT STAGE 2]

REVISED FINANCIAL MEMORANDUM

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.

CUMULATIVE IMPACT OF ENDING CURRENT SYSTEM OF AUTOMATIC EARLY RELEASE FOR LONG-TERM PRISONERS – ADDITIONAL PRISON NUMBERS*

Year	Sex offenders sentenced to 4 years or more	Non-sex offenders sentenced to 4 years or more	Total
2016/17	0	0	0
2017/18	0	0	0
2018/19	0	0	0
2019/20	20	80	100
2020/21	30	130	160
2021/22	50	190	240
2022/23	70	210	280
2023/24	70	230	300
2024/25	80	250	330
2025/26	90	260	350
2026/27	90	260	350
2027/28	90	270	360
2028/29	90	270	360
2029/30	90	270	360
2030/31 and beyond	90	280	370

*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.

NUMBER OF SENTENCES PER YEAR OF 4 YEARS OR MORE FOR SPECIFIC TYPES OF OFFENCES¹									
Crime type	2005 -06	2006 -07	2007 -08	2008 -09	2009 -10	2010 -11	2011 -12	Average per year	% of total crimes
Rape and attempted rape	40	43	40	36	44	27	37	38.1	8%
Sexual assault	18	24	20	29	35	29	22	25.3	5%
Other indecency	14	13	7	22	24	11	15	15.1	3%
Homicide	34	38	66	40	44	37	30	41.3	9%
Serious assault and attempted murder	145	149	137	168	139	141	180	151.3	31%
Robbery	54	52	52	58	55	50	67	55.4	11%
Other violence	16	7	13	4	8	2	7	8.1	2%
Fraud	1	6	4	2	-	4	1	3.0	1%
Other dishonesty	-	5	7	-	1	-	1	3.5	1%
Vandalism etc.	-	2	3	-	2	-	-	2.3	0%
Handling an offensive weapon	1	-	-	3	-	1	1	1.5	0%
Drugs	118	114	131	113	118	114	99	115.3	24%
Other crime	-	1	1	-	9	-	2	3.3	1%
Common assault	3	10	8	9	9	12	12	9.0	2%
Other offence	7	9	20	29	14	7	16	14.6	3%
Unlawful use of vehicle	1	-	2	-	-	1	-	1.3	0%
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 £42,619². Table A below provides an estimate for the costs on prisoner places over time.

TABLE A – COST IMPACT ON PRISON PLACES OF ENDING CURRENT SYSTEM OF AUTOMATIC EARLY RELEASE FOR LONG-TERM PRISONERS					
	Year				
	2016/17, 2017/18, 2018/19	2019/20	2020/21		2030/31
Increase in prison places	0	100	160		370
Additional recurring costs	0	£4.26m	£6.82m		£15.77m

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>

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

	Year					
	2015/16	2016/17, 2017/18	2018/19	2019/20	2020/21	2030/31
Additional prison-based social work costs	Nil	Nil	Nil	£212,000	£297,000	£670,000
Increased demand for prisoner programmes	Nil	Nil	Nil	£43,000	£86,000	£171,000
Non-recurring costs	£117,000	Nil	Nil	Nil	Nil	Nil
Recurring costs	Nil	Nil	Nil	£255,000	£383,000	£841,000
Total	£117,000	Nil	Nil	£255,000	£383,000	£841,000

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.

CUMULATIVE IMPACT OF ENDING AUTOMATIC EARLY RELEASE FOR LONG-TERM PRISONERS – ADDITIONAL PAROLE BOARD CASELOAD NUMBERS*			
Year	Sex offenders sentenced to 4 years or more	Non-sex offenders sentenced to 4 years or more	Total
2016/17	0	0	0
2017/18	0	0	0
2018/19	0	0	0
2019/20	20	80	100
2020/21	30	130	160
2021/22	50	190	240
2022/23	70	210	280
2023/24	70	230	300
2024/25	80	250	330
2025/26	90	260	350
2026/27	90	260	350
2027/28	90	270	360
2028/29	90	270	360
2029/30	90	270	360
2030/31 and beyond	90	280	370

*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			
	2016/17, 2017/18, 2018/19	2019/20	2020/21	2030/31
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						
	Year					
	2015/16	2016/17 2017/18	2018/19	2019/20	2020/21	2030/31
Non-recurring costs	£0.117m - B					
Recurring costs				£4.260m – A £0.212m – B £0.043m – B £0.030m - C	£6.820m – A £0.297m – B £0.086m – B £0.050m - C	£15.770m – A £0.670m – B £0.171m – B £0.113m - C
Total	£0.117m	£0	£0	£4.545m	£7.253m	£16.724m
*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 period³. 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

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 reconviction⁵. 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 Greenock⁶ 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

⁵ See page 94 of <http://www.nobars.org.au/downloads/Reducing-Reoffending-Report.pdf>

⁶ 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.

This document relates to the Prisoners (Control of Release) (Scotland) Bill as amended at Stage 2 (SP Bill 54A)

**PRISONERS (CONTROL OF RELEASE) (SCOTLAND)
BILL**
[AS AMENDED AT STAGE 2]

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