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

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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\(^1\) [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. 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 and assessed for management under the system of multi-agency public protection arrangements (commonly known as MAPPA).

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.

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.

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4 http://www.scottishparoleboard.gov.uk/faq.asp?q=1#1
5 http://www.legislation.gov.uk/ukpga/2003/42/contents
7 http://www.dailyrecord.co.uk/news/scottish-news/da-vinci-rapist-robert-greens-1115102
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
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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 2005. 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.

http://www.legislation.gov.uk/asp/2005/14/section/15
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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**NUMBER OF SENTENCES PER YEAR OF 10 YEARS OR MORE FOR SPECIFIC TYPES OF 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 crimes</th>
</tr>
</thead>
<tbody>
<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>
<td>21%</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>
<td>32%</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>
<td>7%</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>
<td>3%</td>
</tr>
<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>
<td>15%</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>
<td>3%</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>
<td>5%</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>
<td>0%</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>
<td>0%</td>
</tr>
<tr>
<td>Vandalism etc.</td>
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<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0.3</td>
<td>1%</td>
</tr>
<tr>
<td>Handling an offensive weapon</td>
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<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.1</td>
<td>0%</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>
<td>9%</td>
</tr>
<tr>
<td>Other crime</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>0.6</td>
<td>1%</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>
<td>1%</td>
</tr>
<tr>
<td>Other offences</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>0.4</td>
<td>1%</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>
<td>0%</td>
</tr>
</tbody>
</table>

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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 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. The equivalent figure in 2011/12 was 206 extended sentences.

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 sentence. 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.

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.
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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\(^\text{16}\) 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>
<thead>
<tr>
<th>YEAR</th>
<th>INFRASTRUCTURE EXPENDITURE</th>
<th>OTHER EXPENDITURE</th>
<th>TOTAL</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>Total -2007/08 to 2013/14</td>
<td>528.453</td>
<td>36.588</td>
<td>565.041</td>
</tr>
</tbody>
</table>

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\(^\text{17}\). 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\(^\text{18}\). 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

\(^{18}\) 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%\(^\text{19}\).

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\(^\text{20}\) 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](http://www.scotland.gov.uk/Publications/2014/06/1650)

76. In 2011-12, there were approximately 10,500 liberations of convicted prisoners, of which a large proportion (about 4,000 or 40%\(^{21}\)) 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.

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. 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

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\(^{21}\) 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.

22 http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=8974&mode=html#job_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 assess 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.
This document relates to the Prisoners (Control of Release) (Scotland) Bill (SP Bill 54) as introduced in the Scottish Parliament on 14 August 2014

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

PRISONERS (CONTROL OF RELEASE) (SCOTLAND) BILL

POLICY MEMORANDUM

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