

Justice Committee

Letter from the Cabinet Secretary for Justice to the Convener

Automatic early release of prisoners

This letter provides further background to the Scottish Government's intention to end the system of automatic early release for certain categories of prisoners.

During his announcement today on the Scottish Government's Programme for Government for 2013-14, the First Minister confirmed our intention to bring forward legislation to end the automatic early release of serious offenders. The proposals will affect serious offenders sentenced to serve prison sentences of 10 years or more, such as violent offenders, and sexual offenders sentenced to 4 years or more. These legislative changes, if approved by Parliament, will affect prisoners being sentenced after the legislative changes have been commenced.

We have stated clearly our aim to end the system of automatic early release once the conditions set by the McLeish Commission are met. The changes announced by the First Minister show we are committed to fulfilling that pledge.

The legislative basis for the current statutory system of early release has been in force since the Prisoners and Criminal Proceedings (Scotland) Act 1993 was enacted. The automatic element of the system applies to all offenders who receive a fixed (i.e. non-life) length of custodial sentence. Individuals sentenced to life imprisonment or who receive an Order for Lifelong Restriction are not released automatically, but on a discretionary basis after they have served the punishment part of their sentence set by the court and only as directed by the Parole Board taking account of public safety. Today's announcement does not affect life or Order for Lifelong Restriction sentence prisoners.

The automatic element of the system of early release for fixed length sentenced prisoners operates in different ways depending on the length of fixed sentence imposed:

- Prisoners who receive a sentence of less than 4 years are called short-term prisoners and are released automatically and unconditionally at the half-way point of their sentence with the Parole Board having no role in the process.
- Sex offenders who receive a sentence of between 6 months and 4 years are subject to the above automatic early release rules at the half-way point, but are released on licence and liable to recall to custody for the remainder of their sentence if they breach their licence conditions.
- Prisoners who receive a sentence of 4 years or more are called long-term prisoners. 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 a long-term prisoner reaches the two-thirds point of their sentence and the Parole Board has not directed release by that point, they are released automatically. Long-term prisoners are always released on a licence.

Relevant provisions exist for the recall to custody of long-term prisoners who breach their licence conditions and the return to custody (by the courts) for both long-term and short-term prisoners who commit a further offence whilst released early as a punishment for abusing the trust placed in them after being released early.

Proposals – overview

Our announcement today is designed to help bring the focus back firmly on consideration of risks to public safety and public harm when our most serious fixed length sentence prisoners are being considered for early release.

For the first time since the current regime was brought in back in 1993, we will be empowering the independent Parole Board to take decisions about whether potentially dangerous prisoners should be released early with there being no longer automatic early release for the most dangerous fixed length sentenced prisoners. By empowering the Parole Board in this area, where a prisoner in this category is deemed (by the Parole Board) to pose an unacceptable risk to public safety, they will serve their entire sentence in prison.

Automatic early release will be ended for long term prisoners who are dangerous, such as violent offenders, who have received sentences of 10 years or more. The type of offences which would be covered includes culpable homicide, serious assault, attempted murder and robbery. In addition, automatic early release will be ended for sex offenders who have received sentences of 4 years or more. Full details will be included with the legislative provisions which are planned to be introduced, subject to its progress through Parliament, by way of amendments to the current Criminal Justice (Scotland) Bill.

Proposals – detail

By definition, automatic early release happens at present regardless of the risk to the public safety, i.e. even where a prisoner might be deemed an unacceptable risk to public safety, they are still released automatically. As a result of our proposed change to these arrangements, serious offenders, such as violent offenders, sentenced to 10 years or more will no longer be released automatically at the two-thirds point of their sentence. Instead, the Parole Board's current role from the half-way point to the two-thirds point of sentence in assessing risks to public safety in terms of deciding early release will be expanded so that the Parole Board will be empowered from the half-way point of sentence all the way through to the end of sentence to decide whether a prisoner poses an unacceptable risk to public safety and, therefore, should not be granted early release.

Applying the policy to serious offenders receiving a sentence of 10 years or more will ensure a focus on those offenders who pose the highest risk to public safety. The vast majority of (non-life) offenders sentenced to prison for 10 years or more are convicted of serious crimes of violence such as serious assault.

There will be no change to the current system whereby if a long term prisoner is granted early release, the Parole Board will impose licence conditions on them. A breach of licence conditions can result in a prisoner being recalled to prison.

Subject to new provisions relating specifically to sex offenders (which are detailed below), long-term prisoners receiving sentences of between 4 and 10 years will continue to be treated under the present arrangements i.e. consideration for parole at half-way point of sentence, automatic early release at the two-thirds point.

Proposals – sex offenders

Sex offenders pose a particular risk to the public. This is already reflected in the special arrangements that apply for sexual offenders sentenced to 6 months to 4 years in prison who, when released early, are released on licence (in contrast with other short-term prisoners who, when released, are not released with licence conditions).

Given the special risks posed by sex offenders and in addition to the general policy of ending automatic early release for serious offenders sentenced to 10 years or more, we propose also to end the automatic early release of sexual offenders sentenced to prison for 4 years or more. As with serious offenders sentenced to 10 years or more, the Parole Board will have a new expanded role from the half-way point of sentence all the way through to the end of a sentence in assessing whether a sexual offender should be released with appropriate licence conditions. If the Board considers that a sexual offender poses an unacceptable risk throughout their sentence, the prisoner will serve his or her full sentence in prison.

As at present, the Parole Board, SPS and community justice services will ensure effective pre-release planning for those long term prisoners either being released early or reaching the end of their sentence.

Timing

We do not consider it possible to introduce these changes to the system of automatic early release retrospectively for those individuals already sentenced and serving their sentences under the existing system. The new system will apply, therefore, for offenders sentenced after the necessary legislative changes have been commenced.

Changes to the 1993 Act require primary legislation and the earliest opportunity to introduce such legislation will be through Scottish Government amendments to the current Criminal Justice (Scotland) Bill, subject to the Bill's progress through Parliament. The Criminal Justice (Scotland) Bill already includes provisions to clarify the law on the powers of courts to impose additional sentences on offenders who commit offences while on early release from prison.

Impact of Proposal

The financial and other implications for justice bodies of the proposed changes to the system of automatic early release will be set out fully for Parliament when legislative amendments are introduced. The primary impact will be on the Scottish Prison Service, in terms of increased prisoner numbers, and the Parole Board for Scotland, through increased parole casework. As the changes will be applied to sentences only once necessary legislation is in place, the impact will take a number of years to feed through. The changes should be considered within the wider context of the overall reduction in crime and set of measures the Scottish Government is taking to reduce re-offending and ensure robust community-based alternatives to prison.

There will also be offsetting savings for community justice services in having to manage fewer high risk individuals in the community.

Summary

We consider that these proposals represent a practical and proportionate step towards our aim of completely ending the system of automatic early release, when the conditions set by the McLeish Commission are met. The change will ensure that for long-term serious offenders capable of causing serious harm to the public, such as violent offenders and sexual offenders, the risks to the public will be assessed by the Parole Board and such offenders will only ever be released early if the Parole Board is satisfied that the risk to public safety of an early release is acceptable.

These changes will help ensure public safety is at the forefront of our system of early release for those who generally pose the biggest risks to the public, helping reassure victims, witnesses and communities.

Officials will engage with relevant stakeholders over the coming months to further clarify how these changes will operate in practice before, as noted above, it is our intention to bring forward Stage 2 amendments to the Criminal Justice (Scotland) Bill for the Committee to consider in due course.

I hope this is helpful.

Kenny MacAskill MSP
Cabinet Secretary for Justice
3 September 2013