

Justice Committee

Proposals to end the automatic early release of certain categories of prisoner

Written submission from the Howard League for Penal Reform in Scotland

The Howard League for Penal Reform in Scotland (HLS) are grateful for the opportunity to present a submission to the Justice Committee in respect of the proposal by the Scottish Government to end automatic early release for certain categories of prisoners.

HLS believe that criminal justice evidence clearly demonstrates community responses to crime are more effective in reducing reoffending rates than imprisonment.

The benefit of release on licence

The present system of release on licence for long-term prisoners under the Prisoners and Criminal Proceedings (Scotland) Act 1993 has the advantage of allowing prisoners to be monitored when in the community and, if necessary, recalled to custody¹. The proposed end to early release would mean that no supervision of serious offenders in the community is possible once they are released from custody². In the view of HLS, the proposal is likely to be to the detriment of public safety³.

If a prisoner, convicted of a serious violent offence, is serving a sentence of 10 years' imprisonment, he would presently be released automatically at 6 years and 7 months and serve the following 3 years and 3 months on licence. The period on licence would effectively be a period of rehabilitation because any breach of licence conditions would result in a return to custody. The likely result is that the risk to the public in the long-term is reduced. Conversely, if the prisoner remains in custody for the whole 10 years, he will have no rehabilitation in the community. There will be no opportunity to supervise the prisoner's rehabilitation.

An absence of community-based rehabilitation is likely to prove particularly risky for those with drug or alcohol addictions. There will be no supervision on release and the only basis for intervention will be the commission of further offences.

The McLeish report explicitly acknowledged the risk posed by releasing prisoners without effective supervision and support in the community: "... *there is clear*

¹ "Longer term prisoners ... are always likely to need support and supervision on release, because of the difficulty of adapting to life outside after a lengthy period in custody and because by definition they have committed grave crimes and may be more likely to re-offend if their conduct is not monitored. We think it is a serious flaw of the existing system that it places the Parole Board in a dilemma with regard to the release of the most difficult long term prisoners: its choice may lie between paroling a prisoner who is really unsuitable for parole, or allowing him to be released 'cold' into the community, with no supervision requirement." Report of the Review Committee, *Parole and Related Issues in Scotland*, March 1989 ('the Kincaig Report'), para 6.12.

² This was the "major objection" to increasing the time spent in custody during a sentence in the Maclean report (*Report of the Committee on Serious Violent and Sexual Offenders*, June 2000), para 4.29.

³ The Scottish Prisons Commission, *Scotland's Choice*, 1 June 2008 ('the McLeish Report'), para 2.52

evidence that release without support and, where need be, supervision leads to many offenders returning to chaotic lifestyles with no family support, home or services. It is therefore no surprise that reoffending rates are high and that many offenders end up serving a life sentence by instalments. We strongly support end-to-end sentencing and support for all offenders on release from prison.” (at 4.6, original emphasis)

The current proposal fails to recognise the strong evidence that support and supervision in the community is more effective in reducing re-offending rates than time spent in custody. As the McLeish report noted: *“The monitoring and supervision of all offenders in the community is crucial to reducing reoffending. It is important to re-integrate an offender back into the community and to continue the rehabilitation process after a period in custody.”* (at 4.6)

An abrupt and unsupported transition of a prisoner from the structured environment of prison to non-parole release may, in many instances, result in a reversion to pre-sentence behaviour.

The Custodial Sentences and Weapons (Scotland) Act 2007

The Custodial Sentences and Weapons (Scotland) Act 2007 was intended to alter the present system of release of prisoners, but has not been brought into force. Most of the evidence taken by the McLeish Commission supported the principles of the 2007 Act, but identified significant problems with the measures it contained.

HLS do not support bringing the 2007 Act into force.

The impact on resources

On any view, the proposal is likely to substantially increase prison numbers in (at least) the short and medium term. Substantial funding will be required for those additional prison places. A reduction in prison populations through a reduction in offending will only be possible if there are effective rehabilitation measures in place. Under the proposal, those measures could only be provided to prisoners whilst in custody. It is submitted that those measures will not be as effective as community-based measures.

The proposal will result in a substantial increase in the number of hearings before the Parole Board for Scotland and its administrative burden. The Parole Board is already under funding pressure (cf. Thomson, D., *Prisons, Prisoners and Parole*, (2nd Ed, Edinburgh, p. 180). In order to discharge the proposed functions, the Parole Board will require a substantial increase in funding.

Where release of prisoners is dependent on their risk assessment, it is necessary for the Scottish Prison Service to provide sufficient rehabilitation services to allow prisoners to reduce their risk of reoffending and harm. Where such services are not available, continued detention may become arbitrary and in breach of Article 5 of the European Convention on Human Rights (Wells v. Secretary of State for Justice [2010] 1 AC 553; James v. United Kingdom (2013) 56 EHRR 12). That is particularly likely in relation to sex offenders who are unable to receive the SOTP course. Unless

the proposed legislation is accompanied by substantially increased investment in prison-based rehabilitation, it is likely there will be an increase in applications for judicial review of decisions by the Parole Board for Scotland.

Submission

The proposal is presented in broad terms, with no indication of the financial cost to central government. HLS suspect that cost will heavily outweigh any potential savings to local government services. On the information provided, it is not possible to give a detailed view on the impact of the proposed legislation.

In general, a reduction in offending requires effective rehabilitation through supervision and treatment in the community. Prison-based programmes lack the same efficacy. The Scottish Government proposes that a category of prisoners who pose “an unacceptable risk of harm to the public” are released without any supervision in the community.

HLS respectfully adopt the conclusion of the three expert committees which have reported on this issue in recent years, namely that community-based supervision of prisoners is necessary to reduce the risk of harm to the public.

In the view of HLS, the proposal is flawed because it will cause greater risk of harm to the public.

Howard League for Penal Reform in Scotland
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