



The Scottish Parliament  
Pàrlamaid na h-Alba

## JUSTICE COMMITTEE

### AGENDA

2nd Meeting, 2015 (Session 4)

Tuesday 13 January 2015

The Committee will meet at 10.15 am in the James Clerk Maxwell Room (CR4).

1. **Declaration of interests:** Jayne Baxter will be invited to declare any relevant interests.
2. **Decision on taking business in private:** The Committee will decide whether to take item 4 in private.
3. **Prisoners (Control of Release) (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Dr Monica Barry, Principal Research Fellow, University of Strathclyde;

and then from—

Lisa Mackenzie, Policy and Public Affairs Manager, Howard League Scotland;

Pete White, National Co-ordinator, Positive Prison? Positive Futures;

Professor Alan Miller, Chair, Scottish Human Rights Commission;

Sarah Crombie, Acting Director of Corporate Services, Victim Support Scotland.

4. **Human Trafficking and Exploitation (Scotland) Bill:** The Committee will consider its approach to the scrutiny of the Bill at Stage 1.

**J/S4/15/2/A**

Joanne Clinton  
Clerk to the Justice Committee  
Room T2.60  
The Scottish Parliament  
Edinburgh  
Tel: 01313485220  
Email: Joanne.Clinton@scottish.parliament.uk

The papers for this meeting are as follows—

**Agenda item 3**

Paper by the clerk

J/S4/15/2/1

Private paper

J/S4/15/2/2 (P)

[Prisoners \(Control of Release\) \(Scotland\) Bill, accompanying documents and SPICe Briefing](#)

[Written submissions received on the Bill](#)

**Agenda item 4**

Private paper

J/S4/15/2/3 (P)

[Human Trafficking and Exploitation \(Scotland\) Bill and accompanying documents](#)

## Justice Committee

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

### Prisoners (Control of Release) (Scotland) Bill

#### Note by the clerk

#### Introduction

1. The Justice Committee will take evidence on the general principles of the Prisoners (Control of Release) (Scotland) Bill at its meetings on 13, 20 and 27 January 2015. The Committee will hear from two panels of witnesses on 13 January.

#### Provisions of the Bill

2. The Bill was introduced in the Parliament on 14 August 2014 and contains the following provisions relating to the release of offenders serving custodial sentences:

- **restriction of automatic early release** – seeking to end automatic early release for sex offenders receiving determinate custodial sentences of four years or more and other offenders receiving determinate custodial sentences of ten years or more; and
- **early release for community reintegration** – allowing the Scottish Prison Service to release sentenced prisoners up to two days early where this would help facilitate community reintegration (eg by allowing for early access to key public services).<sup>1</sup>

3. Further information on the Bill's provisions are available in SPICe briefing 14/60, *Prisoners (Control of Release) (Scotland) Bill*, published on 24 September 2014.<sup>2</sup>

#### Written submissions

4. The Committee has received a number of responses to its call for evidence<sup>3</sup> on the Bill. These are available on the Committee's webpage<sup>4</sup>. Prior to the introduction of the Bill, the Committee issued a call for evidence on automatic early release<sup>5</sup>. Submissions to that call for evidence are also available on the Committee's webpage<sup>6</sup>.

---

<sup>1</sup> Copies of the Bill and accompanying documents are available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/80130.aspx>.

<sup>2</sup> SPICe briefing 14/60, Prisoners (Control of Release) (Scotland) Bill. Available at:

[http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB\\_14-60.pdf](http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_14-60.pdf).

<sup>3</sup> Justice Committee, Call for evidence on the Prisoners (Control of Release) (Scotland) Bill. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/83915.aspx>.

<sup>4</sup> Responses to the Justice Committee's call for evidence on the Prisoners (Control of Release) (Scotland) Bill. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/85283.aspx>.

<sup>5</sup> The Bill's provisions on automatic early release were originally due to be taken forward by means of an amendment to the Criminal Justice (Scotland) Bill at Stage 2. The Committee will not commence Stage 2 consideration of that Bill until after a review headed by Lord Bonomy reports on potential further reforms in light of the proposed abolition of the requirement for corroboration.

<sup>6</sup> Responses to the Justice Committee's call for evidence on automatic early release. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/75273.aspx>.

5. Of the witnesses giving oral evidence to the Committee on 13 January, only the Scottish Human Rights Commission and Victim Support Scotland provided written responses to the call for evidence on the Bill. These are available at **Annexe A**. However, all the other witnesses provided written submissions in response to the earlier call on automatic early release (as did Victim Support Scotland), and these are available at **Annexe B**.

## **ANNEXE A - WRITTEN SUBMISSIONS RESPONDING TO CALL FOR EVIDENCE ON THE BILL**

### **Written submission from the Scottish Human Rights Commission**

Please see below some general views on the Bill, which we hope they help the Committee to consider the human rights perspective:

We would like to note that there clearly are a level of human rights impacts for offenders in relation to Articles 5 and 8 of the Convention and for the public in Articles 2, 3 and 8 of the Convention.

We are concerned as to whether the Bill really achieves the aim of greater public protection because it effectively ends compulsory non-parole supervision in the community, which is an important aspect of re-integration and non-recidivism (others have made similar comments).

There are real issues being raised with the Parole Board and in JRs at the moment about whether resources are available for programmes in custody to give people a proper opportunity to reduce their level of risk.

We also have a concern about extending the use of civil orders to control risk as these are extremely restrictive and are a significant interference with private life. This measure, as the Committee is aware, has to pass the test of legality, proportionality and necessity (Convention).

Scottish Human Rights Commission  
7 January 2015

### **Written submission from Victim Support Scotland**

Victim Support Scotland is the largest organisation in Scotland supporting people affected by crime. We provide practical help, emotional support and essential information to victims, witnesses and others affected by crime, both in the community and in every Sheriff and High Court in Scotland. The service is free, confidential and is provided by volunteers. Victim Support Scotland supports the Scottish Government in its attempts to tackle the matter of the 'automatic early release' of prisoners. In providing further written evidence to the Committee on this subject, we would like to take this opportunity to explain our concerns and suggest improvements. We will also provide our views on section 2 of the Bill which looks at improving offenders' reintegration with the community on release from prison.

#### **The current proposals**

Victim Support Scotland supports the Scottish Government in their aim to change the current system of automatic early release. However, we have highlighted that the proposals as they stand would "further complicate an already confusing system"<sup>7</sup>. VSS wants to see a system that is clear from the stage of sentencing as to what effect the sentence will have in reality, especially in relation to the offender's release.

---

<sup>7</sup> Victim Support Scotland (2014), 'Proposals to end the automatic early release of certain categories of prisoner - Written submission from Victim Support Scotland to the Justice Committee', AER2 p.2  
[http://www.scottish.parliament.uk/S4\\_JusticeCommittee/Inquiries/AER2.\\_Victim\\_Support\\_Scotland.pdf](http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/AER2._Victim_Support_Scotland.pdf)

We are also conscious that the proposals may unintentionally be removing statutory support and supervision on release from prison for those who are at the highest risk of reoffending, resulting in a possible increase in reoffending rather than a decrease. We note the point made by Professor Fergus McNeill that under the current proposals, an offender could spend their full term in prison if assessed by the Parole Board to be a risk of harm to the public; this would create “an exceptionally abrupt transition, and would leave them highly vulnerable (and in some cases perhaps potentially dangerous) in the period immediately after release.”<sup>8</sup> Victim Support Scotland is therefore alive to the fact that a period of parole (or an alternative arrangement to prepare for release) is required to facilitate enhanced reintegration into the community and support of desistance from further offending, in effect, protecting the public from harm.

### **The issues with automatic early release**

The underlying issue for Victim Support Scotland with the current system of sentencing and release of prisoners is the lack of clarity and transparency, which results in confusion, frustration, and an inaccurate understanding of the criminal justice system for victims and the general public. Firstly, many individuals do not have knowledge on early release provisions, with research showing that a third of the public think that short-term offenders will serve more than half of their sentence<sup>9</sup>, when in fact this category of offenders are released automatically halfway through their sentence. Furthermore, research tells us that “there is a sense...that the public is being ‘conned’ or ‘cheated’ - that it is being told something at the time of sentence that is very different from what actually happens”<sup>10</sup>; it is our experience that victims and their families are especially confused and upset to learn that their offender has been released ‘early’ from prison with no explanation as to why the judge ‘did not mean what they said’ at sentencing.

It is also difficult for victims to understand why no restrictions or supervision arrangements are placed on short-term offenders when released. Victims are often looking for an element of reassurance that the remainder of the offender’s prison term ‘matters’, for example, that their behaviour will at least be monitored in some way. It is very common for victims to be fearful at the time of the release of their offender from prison, and such individuals would benefit from the knowledge that the offender has conditions in place so as not to approach them, their home or place of work. They should also know the consequences of a breach of these conditions, and how to report such breaches.

We agree that “lack of clarity about the true effect of sentences...may produce mistrust”<sup>11</sup> and it is our view that in order for victims and the public to have faith and confidence in the criminal justice system, there is a need for clearer and more

<sup>8</sup> Professor Fergus McNeill (2014), ‘Proposals to end the automatic early release of certain categories of prisoners – Written submission from Professor Fergus McNeill, University of Glasgow’, AER9 p.2 [http://www.scottish.parliament.uk/S4\\_JusticeCommittee/Inquiries/AER9.\\_Professor\\_Fergus\\_McNeill.pdf](http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/AER9._Professor_Fergus_McNeill.pdf)

<sup>9</sup> Section 4.4.6 of Justice 1 Committee report (2002), ‘Public attitudes towards sentencing and alternatives to imprisonment’. SP Paper 537 <http://archive.scottish.parliament.uk/business/committees/historic/justice1/reports-02/j1r02-pats-02.htm>

<sup>10</sup> Ibid

<sup>11</sup> Esmee Fairburn Foundation (2004), ‘Crimes, Courts and Confidence – Report of an Independent Inquiry Into Alternatives to Prison’, The Stationery Office, p.55 <http://issuu.com/esmeefairbairn/docs/crimecourtsconfidence-report/3?e=0>

transparent sentencing. This would assist all parties, especially victims, in their understanding of how the sentence has been decided on, the minimum period that an offender will spend in prison, and what the remainder of the sentence will consist of. When releasing an offender from prison, consideration should be given to the victim and the impact that this will have on them; victims should be consulted regarding what conditions should be in place to address their personal safety concerns; and they should be kept up-to-date on the release date and other relevant information to ensure that they can prepare themselves for this.

### **Suggestions for change**

Victim Support Scotland notes the previous attempts to resolve some of these issues through legislation, namely the Custodial Sentences and Weapons (Scotland) Act 2007 as amended by the Criminal Justice and Licensing (Scotland) Act 2010. We strongly support the principle behind this currently un-enacted legislation, as we believe the relevant provisions would go a long way to addressing the problematic elements of the current system, as we have raised. Through the creation of 'short-term custody and community' and 'custody and community' sentences, this legislation would not only ensure that the punishment part of the sentence was clearly stated (for which the offender would spend a minimum period in custody), but would reassure victims and the public that **all** prisoners would be released on community licence. This would be easily understandable to victims, who would have clear knowledge of when the offender would be eligible for release, and be reassured by the fact that the rest of the sentence would be served, albeit in the community, with conditions in place.

Creating a clear and transparent criminal justice system for victims of crime and the general public in Scotland will not be achieved solely through changes to the release of prisoners; a more holistic approach is required to look at improvements in victim notification and representation, and sentencing practices more generally. Regardless of the changes made to the current system of automatic early release, it **is of paramount importance that victims are kept informed of the release arrangements of their offender**, including any conditions that are in place for the community part of their sentence. The views of the victim(s) should also be taken into account in relation to the release of the offender, especially regarding what conditions should be in place to address their personal safety concerns. VSS calls for a review of the current Victim Notification Scheme, as we believe that changes are required to ensure that **all** victims are kept informed and able to provide representations to the relevant authority on the release of the offender.

We also look forward to the establishment of a Scottish Sentencing Council through implementation of the Criminal Justice and Licensing (Scotland) Act 2010. We believe this will lessen local disparities in sentencing and enable courts to deliver similar outcomes for the same crime type across Scotland. To demonstrate the delivery of more consistent sentencing across the country and increase public confidence in the criminal justice system, VSS recommends the establishment of a public domain of sentencing where victims may look for sentencing trends to compare with circumstances in their own case, allowing more informed and reasonable expectations.

## Section 2 – Community reintegration

Victim Support Scotland is aware that, “Moving from prison back into the community is the time when people are most at risk of returning to their offending behaviour”<sup>12</sup> and recognise that early access to key public services is important in facilitation of prisoners’ reintegration into the community. We therefore support the Bill’s proposals to allow the Scottish Prison Service to release prisoners up to two days early in circumstances in which retaining the original release date would present challenges to the offender’s reintegration into the community. If the decision is made to bring the release date forward however, the victim must be informed as quickly as possible, ensuring that this happens **before** the offender is released. In keeping with the creation of a clear and transparent criminal justice system, the reasons for this should be explained to the victim at the time this information is given.

Victim Support Scotland  
5 January 2014

---

<sup>12</sup> Audit Scotland (2012), ‘Reducing Reoffending in Scotland’, [http://www.audit-scotland.gov.uk/docs/central/2012/nr\\_121107\\_reducing\\_reoffending.pdf](http://www.audit-scotland.gov.uk/docs/central/2012/nr_121107_reducing_reoffending.pdf) p.24

## ANNEXE B - WRITTEN SUBMISSIONS RESPONDING TO CALL FOR EVIDENCE ON AUTOMATIC EARLY RELEASE

### Written submission from Dr Monica Barry and Dr Beth Weaver, University of Strathclyde

The proposal to end automatic early release at the two-thirds point of a prison sentence for high risk offenders ('serious' sexual and violent offenders) is, in our view, undermining rather than strengthening the role of both deterrence and reintegration in promoting public protection.

If the Parole Board decides to keep someone in prison for the full term, the assessed 'high risk' individual will be released into the community without any statutory monitoring or support. There is an assumption in the proposals that, and we quote: '*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*' (emphases added). If a high risk offender (HRO) is *not* subject to post-release licence conditions, how can criminal justice social workers (CJSWs) have a role in reintegration, other than to offer support in a voluntary capacity (which offenders are unlikely to take up)? Even 'at present', despite licence conditions being in place and despite CJSWs being statutorily authorised and paid to support prisoners on release for a stipulated period, there are still problems for the reintegration (accommodation, employment, education, benefits, mental health services, pro-social networks, etc) of prisoners on release. Without that statutory involvement, the situation for these ex-prisoners will be aggravated, thus undermining any rehabilitative work undertaken in prison to encourage desistance on release. Indeed, the challenges for desistance start *at the point of release*, not whilst in prison. Such a proposal therefore fails to recognise the reality that risk can increase at the point of release. Just because an HRO has served the full term of imprisonment does *not* mean that they cease to be a potential risk on release; thus the logic of abolishing automatic early release *so as to protect the public*, is necessarily flawed. The only way one can determine the extent of risk of an HRO is actually *in* the community, not in prison.

Having a different approach for sex offenders is not justified, not least because it *further* excludes them from their local communities and of all offender groups, sex offenders probably have the greatest need for support towards reintegration.

How will the Government define 'serious offenders' in the new proposals? Serious offences often do not equate with *current or future* level of risk (not least after a lengthy prison sentence with in-house programme work to change attitudes and behaviour and of course maturation and altered social circumstances). Offences such as murder, for example, are associated with a low recidivism rate; while they may pose a potentially high risk of harm *at the time of the offence*, the likelihood of their re-offending is often very low. Conversely, if one consults published statistics (i.e. MAPPA annual reports), many serious further offences are perpetrated by those deemed to be low or medium risk.

Recall to custody is a strong deterrent for many offenders, but especially sex offenders, who are regarded by community-based practitioners as the most compliant offender group *because* they fear recall to custody. The threat of recall following a lengthy sentence is particularly pertinent as the likelihood of a lengthy term of re-

imprisonment is considered a very real possibility. Automatic early release is an incentive to desist and to keep out of trouble, since the threat of recall is very prominent in the minds of sex offenders and violent offenders (Barry and Weaver, 2013).

The proposal mentions that there will be 'savings for community justice services in having to manage fewer high risk individuals in the community'; but these savings will be made at the expense of increased socio-economic costs of inadequate supports towards reintegration and desistance, supports which are crucial to offenders in the transition from long-term prison sentences to community resettlement. Moreover, the costs of keeping a person in prison far outweigh the costs of managing offenders in the community. Releasing high risk offenders without any statutory monitoring or support might arguably *increase* human costs should they re-offend.

A couple of additional questions:

Has the Scottish Government got the assurance of sheriffs/judges that they will lower their prison terms accordingly to 'compensate' for the lack of automatic early release at the two-thirds point of a sentence, should this flawed change in legislation go ahead?

Does the Scottish Government know what the recidivism rate is for high risk offenders, both those on post-release licence conditions and those on community-based disposals? Is there a difference? Maybe the Government could/should do some research on this before deciding on the proposed legislative changes.

Dr Monica Barry and Dr Beth Weaver  
University of Strathclyde  
12 May 2014

### **Reference:**

Barry, M. and Weaver, B (2013) *Control or Change: An exploration of the management of high risk offenders under MAPPA in London*, London: London Probation Trust/MAPPA Executive Office.

## **Written submission from Professor Cyrus Tata**

### **1. Will the ending of a compulsory period of supervision on licence in the community really increase public safety?**

The proposals are said to be motivated by a desire to "help ensure public safety is at the forefront of early release". It is difficult to understand the logic of these proposals, at least on the grounds of public safety, unless one chooses to abandon the widely-acknowledged need to resettle long term prisoners while on licence because it helps to reduce the chances of reoffending.

This raises the following question: Is it now the view of the Scottish Government that 'cold' release may often be safer than supervised release on licence? The only conceivable way of making sense of these proposals on the grounds of public safety is if the Scottish Government is adopting the curious view that 'cold' release into the community of a long-term prisoners is, at least in some cases, a safer option than a

required period of support and supervision on licence. This position would be curious because successive governments and inquiries have rightly recognised that public safety is better served through the release of long-term prisoners on licence.<sup>13</sup> It is well established that the most 'risky' time for a person being released from prison is the first year or two. This is when, after a long period of institutionalisation, prisoners have to adjust to life in the outside world. In the immediate period after release they have to find housing, seek employment, apply for financial ('benefits') support, deal with the re-emergence of an addiction problem, find their place in family relationships, face old (possibly offender) acquaintances etc, and so are at most risk of re-offending. Providing statutory support and conditions is not a matter of being 'nice' to the released prisoner it is in the public interest to support and supervise that person. To simply release someone without the controlled support and supervision may *sound* 'tougher' but in fact it would be irresponsible.

## **2. Why abolish the very part of the system that is most justifiable?**

The proposals focus on long term prisoners where the system of automatic early release is far more justifiable than the current *unconditional* automatic early release of short-term prisoners. The proposals seek to abolish the very element (conditional release on licence) which works best in promoting public safety and ignore the far less defensible practice of unconditional in relation to short-term prisoners.

## **3. Square Peg in round holes?**

The proposals apply only to determinate length sentenced prisoners (not to life sentenced prisoners). By definition determinate sentenced prisoners must be released at some point. Yet it seems that the proposals are seeking to import the logic of indeterminate (life) sentenced prisoners into a determinate sentence regime. This means that by inviting the Parole Board to reduce the time on licence, mandatory supervision and support to nil for those prisoners it considers to pose the highest risk, prisoners will be less settled and therefore more likely to re-offend. The Parole Board is being asked not to release on licence those very prisoners who are most at risk of reoffending.

## **4. Is the Parole Board being set up for reputational failure?**

Ostensibly, the proposals appear to place great faith in the Board's decision-making, but the effect will be to undermine the reputation of the Board – possibly fatally. The proposals would place the onus on the Parole Board to decide whether or not to release someone on licence 'early'. This decision will expose it to additional (and unnecessary) criticism when it is deemed by the media to have made the wrong decision in a high profile case.

No matter how good a system is, it is inevitable that some released prisoners will re-offend and some will, unfortunately, commit extremely serious offences. Currently, the *automatic* nature of conditional release means that the Parole Board is relatively protected from blame for releasing a long-term prisoner before the expiration of the full sentence. However, under the new proposals the Parole Board will be blamed for

---

<sup>13</sup> For example: Report of the (Kincaid) Review Committee *Parole and Related Issues in Scotland*, March 1989; *Report of the (Maclean) Committee on Serious Violent and Sexual Offenders* June 2000; Hutton and Levy (2002) *Parole Decisions and Release Outcomes* (Scottish Executive Central Research Unit); The Scottish Prisons (McLeish) Commission, *Scotland's Choice*, 2008

whatever it decides when a long term prisoner commits a serious and high profile offence after release. On the one hand, if, mindful of the need to reduce the risk of the release of prisoner, the Parole Board decides to release him/her on conditional licence and then s/he commits a very serious offence, the Parole Board will be blamed for being too 'soft': why, it will be asked, was the prisoner not kept in custody to the expiration of the sentence?<sup>14</sup> If on the other hand, the Parole Board decides not to release the person on licence until the expiration of the sentence and the person then commits a very serious offence questions will be asked about the wisdom of release without mandatory supervision on licence. Either way the Parole Board, (and community supervision more generally), is being set up for reputational failure.

#### **5. Will the proposals in fact end up undermining public confidence?**

It is claimed that the proposals will "reassure victims, witnesses and communities." However, for reassurance to be based in reality the proposals must actually work to enhance public safety, otherwise it will only serve to increase public cynicism. This will be brought into sharp relief when a released prisoner commits a very serious high profile offence.

#### **6. Will these proposals stoke up pressure for the extension of OLRs or some other form of indeterminate restriction?**

When it is seen that the very prisoners who are deemed to be at the highest risk of reoffending are not under any mandatory supervision upon release there is bound to be pressure to introduce some form of control after release. One option suggested by some is likely to be some form of indeterminate restriction (eg OLRs). This may well be an unintended consequence of the proposals.

#### **7. What is the reason for selecting the two categories?**

The ten year sentence and the four year sex offence sentence categories are said to have been chosen on the basis that they are synonymous with higher levels of risk to public safety if they re-offend. However, the length of sentence passed by judges and the risk of reoffending are not necessarily synonymous. Indeed it is meant to be the very basis of 'front-end' judicial sentencing that it takes account of risk *along with* many things but that the 'back-end' Parole Board decision-making is focused more narrowly on risk. So for example a person may be sentenced to, say, eleven years mainly on denunciation grounds (e.g. the crime is very heinous) even though it is not thought at all likely that s/he poses any significant risk of reoffending. In fact, those sentenced for the most serious offences (e.g. murder) tend also to have some of the lowest rates of reconviction, and vice versa. The perceived risk of reoffending and sentence length are by no means synonymous.

---

<sup>14</sup> There is some robust evidence that Parole Boards tend to overestimate risk. See for example: R. Hood and S. Shute (2000) *The Parole System at Work: A study of risk-based decision-making*. Research Development and Statistics Directorate, Home Office; S. Shute (2007) 'Parole and Risk Assessment' in N. Padfield (ed) *Who to Release?* Willan pp 21-42; this was also observed by L. Hutton and L. Levy (2002) *Parole Decisions and Release Outcomes* (Scottish Executive Central Research Unit)

## 8. Will the proposals violate proportionality?

By arbitrarily selecting certain length of years the proposals may undermines comparative proportionality of punishment, making the sentencing regime more complex and less easy to fathom. For instance, someone sentenced to nine years will be released after six years (two thirds point), but someone sentenced to ten years may well be required to serve ten years in prison: in other words a one year difference is quadrupled.

Professor Dr Cyrus Tata  
13 May 2014

### Written submission from the Howard League 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 custody<sup>15</sup>. The proposed end to early release would mean that no supervision of serious offenders in the community is possible once they are released from custody<sup>16</sup>. In the view of HLS, the proposal is likely to be to the detriment of public safety<sup>17</sup>.

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.

---

<sup>15</sup> "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.

<sup>16</sup> 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.

<sup>17</sup> The Scottish Prisons Commission, *Scotland's Choice*, 1 June 2008 ('the McLeish Report'), para 2.52

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 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*, (2<sup>nd</sup> 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 Scotland  
6 May 2014

### **Written submission from Positive Prison? Positive Futures**

We are very pleased to respond to the call for written evidence and trust that you will find it of use and interest.

#### **1.00 Positive Prison? Positive Futures**

1.01 We are a charitable organisation made up of and representing people who have been through the criminal justice system and found it possible to change their lives in positive ways and avoid re-offending. We work to help and support others still within the system by offering opportunities to change their lives for themselves, their families, friends and communities.

1.02 We became a Scottish Charitable Incorporated Organisation in September 2012. We work with, and receive funding and logistical support from, the Community Justice Division of the Scottish Government, the Scottish Prison Service Headquarters, the Violence Reduction Unit of Police Scotland, The Robertson Trust and The Monument Trust. We are actively engaged with academic researchers in the field of Criminology.

1.03 The majority of our trustees are practitioners working in a variety of roles within the criminal justice system and the members of our group are widespread across Scotland, some of them serving prisoners.

## 2.00 Automatic Early Release of Prisoners – the wider picture

2.01 The Scottish Government have stated their aim to end the system of automatic early release of prisoners once the conditions of the McLeish Commission are met.

2.02 We are of the opinion that it would not be reasonable, practical or viable to end or change the system of automatic early release of prisoners (of any category or description) without making extensive changes across the entire criminal and community justice system in Scotland. The origins of automatic early release are to be found in an effort to reduce the prison population without seeking to change sentencing practices within the judicial system. The size of the prison population in Scotland can be seen as a symptom of sentencing practices whereas the cause is not, according to Scottish Government figures, a rise in the crime rate.

2.03 If the aim of automatic early release was to reduce or limit the prison population then it appears to have missed the target. Please refer to:  
[http://www.ejprob.ro/uploads\\_ro/757/Scotland.pdf](http://www.ejprob.ro/uploads_ro/757/Scotland.pdf)

2.04 A fundamental change in sentencing practice has a key part to play in the state and size of our prison population as, according to elsewhere in the McLeish Commission:

*The Commission recommends that imprisonment should be reserved for people whose offences are so serious that no other form of punishment will do and for those who pose a threat of serious harm to the public;*

*These are the right and proper uses of imprisonment. Scotland's problems with violence signal the need not to use prison more, but to use it better and more effectively in pursuit of these purposes;*

*If we are to use prisons properly we need to break with the idea that the only real punishment is prison. Imprisonment is a relatively recent invention - one that made sense at a time when society needed something to replace transportation to the colonies. In many respects it is a 19th century strategy that has difficulties tackling 21st century problems.*

2.05 We seek a comprehensive review of the way in which people progress from arrest through to release, including how sentences are considered, handed down and managed through release and back into the community. This must be done if Scotland is to make significant progress towards becoming a safer and happier place within the terms of the Reducing Reoffending Policy and much more besides. The existing process for the automatic early release of prisoners is not founded on evidence but on political expediency.

2.06 There is also the opportunity to align the judicial sentencing process with aims, direction and intent of the Scottish Prison Service Organisational Review entitled – “Unlocking Potential Transforming Lives” as published in November 2013.

### **3.00 Response to the letter from the Cabinet Secretary for Justice to the Convenor of the Justice Committee dated 3 September 2013**

#### **3.01 Public safety**

We agree that there is a need to focus on the consideration of risks to public safety and public harm when serious fixed length and other prisoners are being considered for early release. However, the ways in which the risks are considered cannot be taken in isolation but should be incorporated within a 'whole systems approach' that starts on Day One of a sentence for any prisoner. This whole systems approach must include and incorporate all aspects of the process from being charged through an entire sentence through to release from and, in some cases, beyond prison.

#### **3.02 Rehabilitation from day one**

The SPS Organisational Review includes within its general terms that the first day of a prisoner's sentence, of whatever length, is the first day of his or her rehabilitation process. We support this approach to imprisonment only when the sentence has been applied after all other reasonable non-custodial options have been given due and fair consideration. We recognise that the SPS and the agencies they work with have a substantial responsibility to recognise and fulfil in terms of actively supporting each prisoner as an individual throughout their sentence to maximise their potential to resume their in place the wider community as a citizen. It remains to be seen if the appropriate understanding of what is required to achieve this can be accepted across the board and resourced accordingly.

#### **3.03 Opportunities for personal development and learning in prisons**

Part of the risk management process available to prisoners is access to education and other courses as one progresses through the system. The content, delivery and frequency of courses should be reviewed and restructured as appropriate to better fit the needs of the individual prisoner and their specific sentence. We have been made aware of a number of people who have been unable to apply for parole for considerable lengths of time on the basis that courses intended to promote self-reliance (such as 'Constructs') have not been available at a time to fit with the parole board timetables. We would call for a full and independent evaluation of the personal development, behavioural and other similar courses provided within all Scottish prisons to determine, amongst other things, their relevance, effectiveness and availability.

#### **3.04 Good behaviour**

We recognise that any decision by any prisoner to avoid further offending cannot be predicted or predetermined but we do believe that the conditions under which any individual is imprisoned can have an effect upon their decision making process in that respect. We support the principle of recognising the value of 'good behaviour' and the like but only within well established and durable guidelines not left to the interpretation of a prison system that has yet to achieve its full potential within the terms of the SPS Organisational Review. There is an unfortunate and apparently stubborn legacy to overcome arising from a minority of prison officers not willing to see the potential for change within the prisoners under their care.

### **3.05 Need for changes in public attitudes**

It is also the case that there is a significant lack of appreciation within society at large of the potential for prisoners to re-join their community without reoffending and also a lack of belief in the SPS for their capacity to make this possible. This lack of trust in the criminal justice system must be recognised, addressed and informed to better enable the process of the reformed offender to return to the community.

### **3.06 Sentencing practices**

It is a matter of regret that there is no mention within the Justice Secretary's letter of the opportunity and pressing need to review, redesign, restructure and reinvent the sentencing procedures, practices and options available to the judiciary for use in Scottish courts. A comprehensive introduction of new guidelines and options available to the judiciary could remove the need for automatic early release whilst acknowledging the potential of community based sentences and the new and improved SPS approach to transforming the lives and unlocking the potential of the people in their custody.

### **3.07 Pre-release planning**

It should come as no surprise to the SPS in general or any prison when a prisoner is likely to be released. There is considerable potential to be unlocked in tailoring the courses available within any prison to match the planned dates for release for individual prisoners. If the courses are well planned and matched to the needs of the individual their effectiveness should be evident by the reduced rate of return to custody.

### **3.08 Breaches of licence and recall**

We are seriously concerned at the rate of recall to custody of people released on licence. It could be said that the conditions attached to some licences are based on progressively restrictive and numerous conditions within a risk averse approach by social workers alongside a perceived change in thresholds of tolerance towards non-compliance leading to what might have been seen as an avoidable return to custody.

### **3.09 Resources in the community outwith prison**

Any changes to the automatic early release of prisoners must be linked to a coherent and effective application of viable and achievable licence conditions on a person centred basis matched with appropriate resources from statutory and non-statutory agencies.

### **3.10 Empowering the parole board**

It would be a key part of any of the proposed changes to the automatic early release of prisoners for the Parole Board to be resourced adequately and appropriately to fit with the possible release dates of any prisoners that might be eligible for early release.

### 3.11 Timing

We are pleased and relieved to note that any changes to the system of automatic early release will not be retrospective but this does not imply our support the proposed changes in their current form. We do not consider it appropriate to dismantle the automatic early release of prisoners in a piecemeal fashion.

### 3.12 Impact of proposed changes

From our perspective the changes proposed in the Cabinet Secretary's letter of 3<sup>rd</sup> September should not be implemented in isolation. As set out in the points above we believe that these changes, and others for different categories of prisoner, can only be brought into effect as part of a complete overhaul of the entire criminal justice process from arrest to release.

## 4.00 Summary

4.01 We can see the value in changes to the automatic early release of prisoners but only as part of a comprehensive review and restructuring of the criminal justice system from arrest through to release and rejoining the community.

Positive Prison? Positive Futures...  
6 May 2014

### **Written submission from Victim Support Scotland**

Victim Support Scotland is the largest organisation in Scotland supporting people affected by crime. We provide practical help, emotional support and essential information to victims, witnesses and others affected by crime, both in the community and in every Sheriff and High Court in Scotland. The service is free, confidential and is provided by volunteers. Victim Support Scotland welcomes the opportunity to respond to the Justice Committee on the Scottish Government's proposals to end automatic early release of certain categories of prisoners and does so with the best interests of victims in mind.

We understand that the Scottish Government's proposals would change the current system to end the automatic early release of offenders sentenced to ten years or more in custody, and of sexual offenders sentenced to four years or more. We appreciate that the proposals target offenders of particularly serious crimes, such as culpable homicide, attempted murder, serious assault, robbery and sexual offences, because these categories of offenders may constitute a high risk to public safety. This is certainly a step forward in ensuring that public safety is considered when releasing violent and dangerous prisoners, and would also encourage prisoners to deal with their offending behaviour and related issues through engagement with rehabilitation programmes. The rehabilitation of offenders and the aim to reduce offending is in everyone's interest, including victims of crime. Victim Support Scotland therefore supports these proposals. This support is on condition that victims are kept informed of the decisions made in their case; they should be able to understand why the sentence was chosen and what it will mean in practice.

However, to achieve real clarity in sentencing and to facilitate greater protection of the public, VSS believes that the proposals on ending automatic early release of prisoners

should be extended. We are aware that 97% of offenders given a custodial sentence are sentenced to a term of less than four years<sup>18</sup>; as such, implementation of the current proposals would fail to impact on the vast majority of prisoners who do not fall into the proposal's designated narrow categories. The proposals would also fall far from satisfying the Scottish Prisons Commission's recommendation that automatic early release should be ended for those convicted to a custodial sentence of two years or more. VSS believes that the Scottish Government's aim to "bring the focus back firmly on consideration of risks to public safety and public harm"<sup>19</sup> cannot be achieved if these proposals continue to allow the possibility for most long-term prisoners to be released automatically at the two-thirds point of their sentence on non-parole licences. If prisoners released on such licences are considered to be "generally those whose conduct in prison and other circumstances (e.g., failure to address drug issues) present an unacceptable risk of re-offending without supervision"<sup>20</sup>, it follows that public safety is not the paramount concern. In addition, VSS believes that ending automatic early release for only some categories of prisoners would work to further complicate an already confusing system; the proposals would in fact create another rule that needs to be taken into account when calculating the release date of an offender. Victim Support Scotland would like to see a system in which sentences are straightforward and understandable to the victim(s) and the wider community, rather than one that requires research or calculation. Therefore, Victim Support Scotland believes that the Scottish Government's proposals should be extended to end automatic early release for all prisoners serving two years or more.

Also in accordance with the Scottish Prison Commission's recommendations, we further contend that short-term prisoners should have conditions placed on their release if this takes place before the full term of their sentence has passed. Not only would this provide reassurance to victims of crime and the broader community that the behaviour of the offender is being monitored post-release, this would also provide an incentive for short-term prisoners to desist from further offending and enable them to access any support that they may need for reintegration into the community. We would welcome consideration from the Scottish Government to extend their proposals in an attempt to move closer to fulfilling the recommendations of the Commission, and to move towards a clearer and safer system for victims and the general public.

Victim Support Scotland  
6 May 2014

---

<sup>18</sup> Scottish Government (2013), *Criminal Proceedings in Scotland, 2012-13*, p. 44  
<http://www.scotland.gov.uk/Resource/0043/00438958.pdf>

<sup>19</sup> Letter from the Cabinet Secretary for Justice to the Convener of the Justice Committee on Automatic Early Release of Prisoners, 3 September 2013  
[http://www.scottish.parliament.uk/S4\\_JusticeCommittee/Inquiries/20130903\\_CSfJ\\_to\\_Convener\\_-\\_Early\\_release.pdf](http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/20130903_CSfJ_to_Convener_-_Early_release.pdf)

<sup>20</sup> Scottish Prison Service <http://www.sps.gov.uk/VictimNotificationScheme/sentencing-explained.aspx>