Justic Committee

Management of Offenders (Scotland) Bill

Written submission from the Parole Board for Scotland

Overview

1. This response relates to Questions 7 and 8 of the Call for Views which relate to the provisions concerning parole contained in Part 3 of the Bill.

2. The Parole Board for Scotland (“the Board”) broadly welcomes the provisions in the Bill. We have been pressing for some time for legislation around the parole process; to provide clarity around the status and role of the Board, address areas in which the current legislation is inconsistent, ambiguous or silent, and to make changes to simplify and modernise our practices and processes.

3. The provisions in the Bill go some way to addressing these issues although we feel there is scope to go further in some areas such as independence and governance and that some opportunities have been missed, for example around the tests for release that the Board applies.

Question 7. Do you support Part 3 of the Bill, which makes provision for the Parole Board for Scotland, in terms of its membership and appointment system; its functions and requirements in relation to prisoners, its independence, and its administration?

Provisions concerning composition, appointment and reappointment

4. We are content with these provisions and note that they would bring these arrangements into line with similar bodies such as tribunals operating in the Scottish Courts and Tribunals Service structure. For consistency we would like to see transitional arrangements that would move existing members onto the new arrangements when these come into force.

Provisions concerning statutory review periods

5. It is important that review periods are specified in statute. This provides clarity for the Board, prisoners, victims and other interested parties. We are pleased that the Bill introduces some clarity around statutory review periods but note that there are still gaps. Specifically there is still no statutory review period specified for recalled extended sentence prisoners. We would like to see the proposed provisions amended to include a statutory review period for recalled extended sentence prisoners. Subsection 3A (2) of the Prisoners and Criminal Proceedings Act (1993) sets out the review arrangements for this category of prisoner as follows: -

(2)Subject to subsection (3) below, a prisoner to whom this section applies may require the Secretary of State to refer his case to the Parole Board—
(a) where his case has previously been referred to the Parole Board under this section or section 17(3) of this Act, not less than one year following the Board’s disposal of his case
(b) in any other case, at any time.

6. Whilst this provides for an annual review period, this is not mandatory but subject to the prisoner requiring Scottish Ministers to refer the prisoner's case. We believe this needs to be strengthened to mandate a statutory review period of not less than annually which is not dependent on a requirement from the prisoner. In practice Scottish Ministers do refer these cases on an annual basis and we believe that legislation should be amended to reflect this.

**Provision regarding removal of the word ‘immediate’ in relation to release after recall**

7. We agree with this provision which will address concerns that have been raised with us by SPS and Criminal Justice Social Work that the use of the word ‘immediate’ can cause operational issues for organisations implementing the decisions of the Board. There are occasions where for practical reasons, including reasons relating to public safety, there may need to be a short delay to address operational issues. We are clear that this provision needs to be interpreted with reference to Article 5 rights concerning arbitrary detention.

**Provision concerning release of prisoners subject to deportation**

8. We note that this provision removes Scottish Ministers from the decision on whether prisoners subject to deportation should be released and that this provides consistency with other decisions made by the Board.

**Provision relating to time limits for HDC appeals**

9. We welcome the provision introducing time limits to HDC appeals.

**Provisions relating to judicial and administrative independence**

10. The Board believes these are critical issues. The Worboys case in England reinforces the importance of the Board being both independent and being seen to be independent. Whilst we welcome the fact that these issues are partly addressed in the Bill we do not believe that the provisions go far enough.

11. There are court authorities to confirm that the Parole Board for Scotland ‘the Board’ has “all of the attributes of a Court” and is, indeed, a “Court” for the purposes of Articles 5 and 6 of the European Convention on Human Rights (ECHR). The Board believes that this should be clearly recognised in legislation and that there needs to be more clarity around its independent status as a Tribunal NDPB and a Court (for the purposes of Articles 5 and 6 of ECHR).

12. We recognise that the current statutory provisions may have been appropriate at the time of the 1993 Act however the Board’s membership and functions have
since increased significantly, as has the requirement for executive support. Legislation needs to be clearer about the status and governance of the Board – particularly around its authority as a Court and the responsibility and accountability for the management of the Board and its support functions. We believe legislation should clearly state that the Board is a Tribunal NDPB and is independent of Scottish Ministers in its decision making.

13. Section 44 of the Bill relates to Judicial independence. The provision states that:

   The Parole Board is to continue to act as an independent tribunal when exercising decision-making functions by virtue of Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (or decision-making functions by virtue of another enactment relating to the same things).

14. Whilst this goes some way to addressing the Board’s concerns we would argue for a more robust statement such as Section 3 of the Tribunals (Scotland) Act 2014.

3 Upholding independence

   (1) The following persons must uphold the independence of the members of the Scottish Tribunals—
   (a) the First Minister,
   (b) the Lord Advocate,
   (c) the Scottish Ministers,
   (d) members of the Scottish Parliament,
   (e) all other persons with responsibility for matters relating to—
      (i) the members of the Scottish Tribunals, or
      (ii) the administration of justice,

   where that responsibility is to be discharged only in or as regards Scotland.

   (2) In particular, the First Minister, the Lord Advocate and the Scottish Ministers—
   (a) must not seek to influence particular decisions of the members of the Scottish Tribunals through any special access to the members, and
   (b) must have regard to the need for the members to have the support necessary to enable them to carry out their functions.

15. There is similar appropriate wording at sections 1(1) and (2) of the Judiciary and Courts (Scotland) Act 2008.

16. With respect to administrative independence we believe the Bill should also set out arrangements for governance through a Management Board, including the role of the Chairman, Chief Executive and the Management Board and make provisions for that Board to include (through appointment or co-opting) additional non-executives with relevant experience of, for example finance, audit or HR. There should be a clear distinction made between the Parole Board (as in all appointed members), the Management Board (whose responsibilities should include setting the Board’s strategic direction, monitoring the discharge of statutory duties, agreeing and monitoring key organisational performance measures, monitoring the Board’s budget
and ensuring appropriate measures are in place in respect of audit and the monitoring of risk), and the executive support staff. The Board should have the ability to employ its own staff (and/or continue to second staff from other organisations, and to secure premises and infrastructure including IT equipment.

17. Section 45 of the Bill refers to regulation making powers through which this could be achieved. Whilst we would rather have seen these issues covered on the face of the Bill we are pleased to see that the issue has been recognised as one that the Scottish Government wishes to address. The Board believes it is important that all the issues covered in the paragraph above are covered by these regulations and that these should be laid as soon as possible after commencement. We would request that these Regulations are developed, in consultation with the Board, in parallel with the Bill process.

18. Whilst we anticipate no immediate significant additional cost in relation to establishing administrative independence, should the Board decide within the scope of Regulations to secure premises or to move to a different staffing model this may have financial implications. We wrote to the Scottish Government regarding this earlier this year requesting that this be noted appropriately in the financial memorandum to the Bill. We are disappointed to note that the financial memorandum does not cover this point.

19. Finally, it would be consistent with judicial independence that appointment of Members to the Board should be made by a body independent of Scottish Ministers such as the Judicial Appointments Board for Scotland and we would support such an approach.

**Question 8. Do you have any further views on the role, purpose and functions of the Parole Board?**

20. The 2017 Scottish Government consultation on Parole Reform in Scotland sought views on whether there should be a common test or test(s) applied by the Board in relation to their decisions. The Board believes that the current provisions regarding tests for release lack clarity. We do not necessarily believe that there should be a single test but we do believe that the tests need to be set out more clearly and, where no test is currently specified in current legislation (for example the release of long term determinate prisoners or the decision whether to direct the cancelation of the revocation of a Home Detention Curfew Licence), a test to be applied should be clearly specified. Further, the Board considers that the standard which should be applied by it when considering whether a test has been met should be the civil standard, that is, it should be satisfied on the balance of probabilities. We believe this Bill offers the opportunity to clarify the position.

21. Current legislation is inconsistent in referring to the status of decisions of the Board. Specifically it refers to ‘recommendations’ (most of which are binding) as well as ‘directions’ (which are also binding). We believe that the Bill should be amended to take the opportunity to tidy up these anomalies in order to increase the transparency of our role.
22. We understand that the Scottish Government also intends to review the existing Parole Board Rules in parallel to the Bill process. We believe there are a number of changes to the Rules that would be beneficial. Whilst this is not the place to comment on these in detail, the Board are keen to closely be involved in any discussions around amending the Rules and to share our experiences of issues involved in their application.

23. We would be happy to provide further information if that would be helpful to the Committee.

Colin Spivey
Chief Executive
Parole Board for Scotland
13 April 2018