

## Justice Committee

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

#### Written submission from Scottish Women's Aid

##### Foreword

Scottish Women's Aid ("SWA") is the lead organisation in Scotland working towards the prevention of domestic abuse. We play a vital role in campaigning and lobbying for effective responses to domestic abuse.

We provide advice, information, training and publications to members and non-members. Our members are local Women's Aid groups which provide specialist services, including safe refuge accommodation, information and support to women, children and young people.

An important aspect of our work is ensuring that women and children with experience of domestic abuse get both the services they need, and an appropriate response and support from, local Women's Aid groups, agencies they are likely to contact and from the civil and criminal justice systems.

We welcome the opportunity to comments on the proposals in this Bill.

##### Introduction

The Scottish Government's proposals in the Bill relate to the 'automatic' element of early release, so there is, effectively, nothing to prevent a relevant offender still being eligible for release after serving one-half of the sentence. The proposals thus 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.

##### SWA's position on early release

Our position on early release was set out in our submission to the Scottish Prisons Commission in 2008<sup>1</sup>, ... *"the process of early release does not take account of the legitimate fears and distress experienced by women, children and young people experiencing domestic abuse, and results in a loss of confidence in the criminal justice system, especially when someone released early from prison early, whether or not on licence, commits another serious offence.*

*This works against transparency and clarity in sentencing. When a woman experiencing domestic abuse hears the court impose a custodial sentence of a particular length, she has a legitimate expectation that that is the actual length of time that the abuser will serve in custody, particularly if she has no previous experience of the criminal courts. It therefore comes as an unpleasant and dangerous surprise to learn that this will not be the case, particularly if the woman has not been informed of the abuser's impending release and either meets him in*

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<sup>1</sup>Scottish Women's Aid written submission to the Scottish Prisons Commission 2008  
<http://www.scotland.gov.uk/Resource/Doc/925/0063071.pdf>

*public or is told by a third party that he is free. Seeing the offender can be, and is, distressing.*

*The system of early release is meant to convey the principle of the offender “serving” the remainder of their sentence in the community. In reality, there is no penalty whatsoever levied on the offender and they are free to behave as they so wish, which undermines any concept of reparation and justice for the victim. Confidence in the justice system is important for women in assisting them in the process of recovering from the abuse.”*

We support the ending of early release and note that the Policy Memorandum states that *“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.”*

The difficulties will arise in implementing the reforms and ensuring that dangerous offenders are controlled and we have set out below issues that will require to be addressed in the Bill and through supporting guidance, specifically:-

- limitations on the effectiveness of the proposals posed by time limits and categories of prisoner prescribed in the Bill
- the need for appropriate and robust risk assessment before prisoners are released early
- the necessity of ensuring post-release supervision for prisoners released early into the community
- work done in prison with prisoners who are not released early

### **Clause 1- Restriction on automatic early release**

The proposals seek to restrict the current regime of automatic early release allowing prisoners to be released at either the half-way point or two-thirds of their sentence, for some long-term (but not life) prisoners, namely sex offenders sentenced to custodial sentences of four years or more and other offenders sentenced to custodial sentences of ten years or more

#### **1) Limitations on effectiveness of the proposals posed by time limits and categories of prisoner prescribed in the Bill**

There is an issue that the time limits and categories of prisoner do not accurately reflect patterns of offending.

- 97% of offenders given a custodial sentence are sentenced to a term of less than four years<sup>2</sup>; therefore implementation of the Bill proposals with the current time limits would exclude the vast majority of prisoners.
- There is disparity in terms of the nature of the offences that the proposals will cover. If put into effect, the proposals would mean that sex offenders sentenced to prison sentences of 4 years or more could potentially have to serve all their sentence in prison if they were considered too much of a risk for early release. However, perpetrators of domestic abuse would only come under this scheme if they are sentenced to 10 years or more, unless part of

<sup>2</sup> Scottish Government (2013), *Criminal Proceedings in Scotland, 2012-13*, p. 44 ; <http://www.scotland.gov.uk/Resource/0043/00438958.pdf>

their overall sentence includes a custodial sentence of 4 years or more relating to a sexual offence.

The proposals do not recognise the risk that perpetrators of domestic abuse pose to women and the high incidence of repeat offending by these perpetrators.

Domestic abuse statistics recorded by the police in Scotland for 2012-13<sup>3</sup>, showed that for incidents where information regarding repeat victimisation of domestic abuse was available, 61% (31,397) involved victims who had previously experienced domestic abuse, the same as in 2011-12. Also, 30% of cases involved a single previous incident, 30% of cases involved two or three previous incidents, and 39% involved four or more previous incidents. The most common crime or offence was common assault, at 42% with threatening or abusive behaviour the second most common crime or offence, accounting for 19%.

It also ignores the fact that the majority of perpetrators of domestic abuse are prosecuted under summary procedure, where the maximum sentence is less than 12 months and most receive a sentence of less than 3 months. In terms of sentencing, a response to a Parliamentary Question (**S4W-14791**) indicated that in 2011-12 a total of 8,869 offenders were convicted of crimes relating to domestic abuse, of which 2,739 were admonished; 2,253 were given community sentences, while 2,683 received a monetary penalty. 12% (1,104) were given custodial sentences, of which 79% of them were short term sentences of less than 6 months.

Both the category of offenders and custodial sentence periods covered by the Bill should more appropriately reflect these positions. The Bill should therefore be amended to allow the provisions to apply to both any category of offender and a lower threshold of sentences between six months to two years, which would be a positive move toward achieving the McLeish Commission recommendations on ending automatic early release for all prisoners.

## **2) Assessment of risk before prisoners are released early**

The current rules on early release from a custodial sentence provide that short-term prisoners (apart from sex offenders) sentenced to a period of less than four years must be released after serving one-half of the sentence, without specific licence conditions or restrictions.

Long-term prisoners, serving four or more years, may be released on either a discretionary basis by the Parole Board, following an assessment of whether the prisoner is likely to present a risk to the public if released, or automatically after serving two-thirds of the sentence. Long-term prisoners are, irrespective of the proportion of sentence served in custody, released on licence (under conditions set by the Parole Board) and subject to supervision by criminal justice social work. The licence, unless previously revoked, continues until the expiry of the whole sentence.

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<sup>3</sup>Domestic Abuse Statistics recorded by the Police in Scotland for 2012-13  
<http://www.scotland.gov.uk/Resource/0043/00435586.pdf>

As we have stated above, the proposals relate to the ‘*automatic*’ element of early release, so there is nothing to prevent a relevant offender still being eligible for release after serving one-half of the sentence and thus the possibility that most long-term prisoners could continue to be released automatically at the two-thirds point of their sentence on non-parole licences. Given that 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*”, this proposal does not act to protect the public.

Eligibility for any release prior to completion of the whole custodial sentence would be at the discretion of the Parole Board. The issue here is the form of risk assessment the Parole Board will be obliged to undertake before deciding whether the prisoner was in any way suitable for release prior to serving the full term of their sentence, or if they instead required to be detained until they had served the full term of their sentence, and if released, how the risk posed by the prisoner would be properly and closely managed in a community setting.

This raises a number of issues that will require to be adequately and appropriately addressed:

- Risk assessment- the Parole Board will require to have appropriate risk assessment tools and processes in place to determine whether an offender was suitable for early release and the license conditions which would then be applied. The prisoner’s conduct in the prison environment is not a particularly appropriate indicator of how perpetrators of domestic abuse will conduct themselves when released. Accordingly, any assessment of these perpetrators will necessitate the Parole Board obtaining formal and appropriate risk assessments from the Scottish Prison Service (“SPS”), both prison-based and community-based Criminal Justice Social Work, from Police Scotland on their risk assessment of the offender and from organisations such as Women’s Aid groups supporting the female partners of perpetrators and advocacy organisations such as ASSIST.
- Impact of release on victims- under the changes brought about by sections 27-29 of the Victims and Witnesses (Scotland) Act 2014, the views of victims of crime, particularly those involving domestic abuse and/or rape and sexual assault, on the risk posed to them by the offender, may also have to be considered. There are also requirements placed on the Scottish Government by the EU Directive establishing minimum standards on the rights, support and protection of victims of crime (“the EU Directive”),<sup>4</sup> which came into force on 15<sup>th</sup> November 2012, (The UK as a Member State, and thus, the Scottish Government, too, has 3 years to translate the requirements into law/procedure or ensure that existing law and procedure complies), that “... *The victim also has the right to be informed of applicable protection measures in line with the individual and risk assessment that the authorities carry out.*”<sup>5</sup>

<sup>4</sup> **DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 - establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA**

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>

<sup>5</sup> **EUROPEAN COMMISSION, DG JUSTICE, December 2013; Guidance to Member States on the victims’ rights directive:** page 19;

[http://ec.europa.eu/justice/criminal/files/victims/guidance\\_victims\\_rights\\_directive\\_en.pdf](http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf)

- Training- this will be crucial for Parole Board members, SPS staff, social workers and any other agencies charged with managing offenders. It must be suitably resourced and appropriate in issues relating to domestic abuse, so that risks posed by perpetrators can be identified and assessed before decisions to liberate are taken, supervision conditions are suitable and an ongoing risk assessment and supervision plan is in place for offenders.
- Resources- in terms of extending the role of the Parole Board to assess eligibility for early release accompanied by licence conditions, this will require the Parole Board to have the appropriate level of resources to carry out this increased function, in addition to support for the work that will be required by police, social work and other parties.

The Bill does not address the matter of guidance on risk assessment and training and should therefore contain a provision requiring Scottish Ministers to produce guidance on the operation of the early release provisions, to ensure that these procedures are carried out.

### **3) Post- release supervision of prisoners released early into the community**

Potentially, the proposals could end the supervision of sex offenders and dangerous perpetrators on their release; a relevant sex offender or perpetrator of domestic abuse could serve potentially the whole of their sentence in custody with no early release, meaning that there would be no period of supervision in the community licence under licence conditions although they would have “*appropriate access to support services*” and possibly be supervised under Multi Agency Public Protection Arrangements (MAPPA) but this has not been put forward as an option.

We noted above that long-term prisoners released automatically at the two-thirds point of their sentence on non-parole 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.*” Although long-term prisoners are subject to conditions, these do not appear to offer adequate protection to the public and there is a perception, often reflected in reality, that breach of licence is not taken seriously and punished appropriately.

For most short-term prisoners, this release is not subject to licence conditions and, thus, they are not subject to supervision by criminal justice social work.

In line with the Scottish Prison Commission’s recommendations, the Bill should provide that all prisoners, including specifically short-term prisoners who are not made to serve their full sentence and are released early, should have conditions placed on their release, regardless of the length of their sentence. This would instil reassurance in women, children and young people experiencing domestic abuse that the perpetrator’s behaviour is, indeed, being monitored after release and would also act as both a possible deterrent to the perpetrator harassing the victim.

This will require a wholesale review of the regime of supervision on release along with the introduction of a suite of appropriate and robust conditions, which are rigorously enforced, to protect victims.

The restrictions and requirements of release conditions would depend upon the nature and severity of the offence, with an appropriate risk assessment based not solely upon their behaviour in prison, but also on the index offence, information from Police Scotland and social work on the nature of the offending and the risk posed by the perpetrator to the victim. On the matter of risk assessment and release of offenders generally, and the relevance of electronic monitoring considerations to early release, we would draw the Committee's attention to our submission in response to the Scottish Government's 2014 consultation on use of electronic monitoring.<sup>6</sup>

This assessment process and imposition of conditions should be supported by mechanisms which facilitate quick and effective responses to breach of conditions, particularly to provide protection to victims where these breaches pose a threat to their safety and security, and a process which swiftly presents offenders in breach before the court and back into prison to serve the remainder of their sentence.

Breach of licence conditions must be regarded as a crime punishable in its own right resulting in the imposition of further penalties, and not just solely a recall to custody to serve the unexpired term of the original custodial sentence. Recall to prison on breach of the terms of supervision should be mandatory, with the offender serving the remainder of the unexpired part of the custodial sentence in addition to any penalty imposed for offences committed during the supervised release period, to serve as an effective deterrent to re-offending.

Again, the Bill is silent on these matters but since other procedures and legislation will require amendment to address them, and the appropriate guidance is also required, this must be taken into consideration in the Bill.

#### **4) Work in prison with prisoners who are not released early**

There is also no indication of whether perpetrators of domestic abuse who are not released early, particularly where they were assessed as posing a risk, would require to, or be encouraged to, attend the equivalent of the Caledonian Programme while in prison.

As a general position, in working to change the attitudes of abusive men, particularly toward demonstrating that they have accepted responsibility for their abuse, a consistent programme of appropriate and informed work with perpetrators of domestic abuse, based on the RESPECT and Caledonian Programme principles and delivered by organisations such as White Ribbon Scotland and the City of Edinburgh Safer Families (Working with Men ) should be developed in prisons in both the SPS and private prison regimes.

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<sup>6</sup> Scottish Women's Aid; response to Scottish Government consultation on the development of electronic monitoring in Scotland; 2013; <http://www.scotland.gov.uk/Resource/0044/00443238.pdf>

## 5) The Bill and the provisions of the Custodial Sentences and Weapons (Scotland) Act 2007

It is noted that provisions in Chapter 2 of the Custodial Sentences and Weapons (Scotland) Act 2007, as amended by the Criminal Justice and Licensing (Scotland) Act 2010, reform the current rules on early release but are not yet in force.

These provide for two categories of prisoners; the first category of “*short-term custody and community prisoners*”, would be released after serving one-half of their sentence, potentially without supervisory conditions unless they fell within a very narrow defined category, and assessed and managed by the local authority. This “*short-term*” period has not yet been fixed in subordinate legislation but the Scottish Prisons Commission recommended that this be 2 years.<sup>7</sup>

The other category was “*custody and community prisoners*”, namely offenders sentenced to a determinate period equal to, or greater than that fixed for the “*short term*” prisoners. This category would have a custody part set by the court (“*the part of the sentence that the court considers appropriate to satisfy the requirements of retribution and deterrence whilst ignoring any period of confinement necessary for the protection of the public*”), which would be between one-half and three-quarters of the total sentence.

Before the custody part expired, the prisoner would be assessed by the Parole Board to determine whether they were “*likely to cause serious harm to members of the public if released at the end of the custody part.*” Depending upon the assessment, the prisoner would then either be released or have their case referred to the Parole Board for decision as to whether they would be released at that point or later. Regardless of which category they fall under, the prisoner must be released after serving three-quarters of the total sentence.

However, even if implemented, since they have major shortcomings, these provisions still would not address, or improve, the deficiencies in the existing process, which the Bill goes further toward addressing

- Unlike the Bill, the 2007 Act provides for automatic release. While the Act’s two year sentence qualification would clearly bring more prisoners into the regime than those sentence lengths currently proposed in the Bill, the Act’s requirement of automatic release at the half-way mark for short-term custody and community prisoners is detrimental. It allows these prisoners both a potentially faster route to early release, as they would be in prison for a much shorter time than the Bill requires, and release without adequate licence terms and close supervision.
- Early release under the 2007 Act cannot be totally restricted, as opposed to the proposals in the Bill, and prisoners under either category must be released after serving three-quarters of the total sentence.

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<sup>7</sup> Scotland's Choice - report of the Scottish Prisons Commission; Scottish Government; 2008 <http://www.scotland.gov.uk/Resource/Doc/230180/0062359.pdf>

## 8) Use of Extended sentences

It has been suggested in the Policy Memorandum that another way of ensuring that there is a period of supervision in the community for prisoners released early might be through an increased use of extended sentences.

Currently, a court may impose an extended sentence on a person convicted under solemn procedure of a sexual or violent offence, where it considers that: *“the period (if any) for which the offender would, apart from this section, be subject to a licence would not be adequate for the purpose of protecting the public from serious harm from the offender”*; in relation to violent offences only, this power is further restricted to cases where the custodial sentence is of at least four years. The imposition of an extended sentence does not alter the custodial element of the whole sentence. What it does is to add a further period (the ‘extension period’) during which the offender is subject to supervision in the community. This extension period may be up to 10 years (five years where sentenced by a sheriff).

However, unless the extended sentence procedures and relevant legislation is amended, this option would be of no use in dealing with the majority of perpetrators of domestic abuse, in that the majority of perpetrators are prosecuted under summary procedure, where the maximum sentence is less than 12 months.

### Clause 2- release timed to benefit re-integration

The Bill would also allow the SPS, acting on behalf of the Scottish Ministers, discretion to release sentenced prisoners up to two days early where this would help *“facilitate community reintegration (e.g. by allowing for early access to key public services)”*.

There are already instances reported by women using our local Women’s Aid services of perpetrators being released without women being given accurate and sufficient notice of release dates, which has implications for the protection of women and their children. This uncertainty and shifting of previously notified dates can impact on safety planning, both for women and for partner agencies, in that deadlines and time limits on actions to protect women and their children, possibly through moving them into refuge spaces or away from the home, or making court applications for emergency protection orders are needed, are accelerated and become more immediate.

If there is to be any adjustment to release dates, this can be anticipated well in advance by calculating the dates based on the statutory time limits. Where offences have involved domestic abuse, sexual offending, and/or stalking and there is any concern for the safety of the victim and their family, as identified by statutory or support agencies or previously expressed by the victim themselves, the SPS must immediately notify the police, who, in turn, contact women personally with details of revised and accelerated release dates as soon as possible.

Women, and any agencies such as Women’s Aid supporting them, should be told far in advance of projected release dates and locations, and it is vital that any change to these is communicated immediately to the woman in person, as opposed to relying

on postal notification. We would reiterate to our comments above on the provisions of the Victims and Witnesses (Scotland) Act 2014 and the EU Directive on victims' rights in terms of the obligations on notifying victims and consideration of safety issues.

The Policy Memorandum published along with the Bill states that the Scottish Government would work with the SPS to produce guidance on the circumstances in which this discretion would be applied. We would comment, firstly, that this commitment should be reflected on the face of the Bill itself as an obligation, and not left as a discretionary action in the Policy Memorandum. Further, this collaboration must be extended to include consultation and input from statutory organisations such as the police and social work and organisations such as Scottish Women's Aid, in order that the issues facing victims, in our case women, children and young people experiencing domestic abuse, are fully taken into account and the procedures referred to are fully integrated into practice when the discretionary release is applied.

Scottish Women's Aid  
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