



The Scottish Parliament
Pàrlamaid na h-Alba

Justice Committee

8th Report, 2015 (Session 4)

Stage 1 Report on the Prisoners (Control of Release) (Scotland) Bill

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The Scottish Parliament
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Justice Committee

Remit and membership

Remit:

To consider and report on:

- a) the administration of criminal and civil justice, community safety and other matters falling within the responsibility of the Cabinet Secretary for Justice; and
- b) the functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.

Membership:

Christian Allard
Jayne Baxter (from 8 January 2015)
Roderick Campbell
John Finnie
Christine Grahame (Convener)
Alison McInnes
Margaret Mitchell
Elaine Murray (Deputy Convener)
Gil Paterson (from 28 November 2014)
John Pentland (until 8 January 2015)
Sandra White (until 28 November 2014)

Committee Clerking Team:

Tracey White
Joanne Clinton
Neil Stewart
Christine Lambourne



The Scottish Parliament
Pàrlamaid na h-Alba

Justice Committee

8th Report, 2015 (Session 4)

Stage 1 Report on Prisoners (Control of Release) (Scotland) Bill

The Committee reports to the Parliament as follows—

SUMMARY OF RECOMMENDATIONS

- 1. The Committee endorses the report of the Delegated Powers and Law Reform Committee.**
- 2. The Committee notes the Cabinet Secretary for Justice's commitment to end automatic early release for certain categories of prisoner and that these reforms, assuming their coverage is extended to all long-term prisoners, may be expected to affect around 3% of offenders receiving a determinate custodial sentence in any one year.**
- 3. The Committee welcomes the Cabinet Secretary's willingness to reflect on the concerns and issues raised in respect of compulsory supervision and cold release.**
- 4. The Committee is in favour of all long-term prisoners being subject to a period of compulsory community supervision on release from custody. It calls on the Scottish Government to confirm whether its intention is that a guaranteed minimum period of compulsory supervision should, where the court has not imposed an extended sentence, take place during the period of custody imposed by the court. If this is not the intention, the Committee requires further details of how a minimum period of compulsory supervision would be guaranteed in practice. The Committee also notes the views of Professor Fergus McNeill and Dr Monica Barry that this might require the imposition of a new form of sentence.**
- 5. In relation to the length of any minimum period of compulsory community supervision, the Committee notes that periods ranging from three months to one year have been suggested in evidence, with the Cabinet Secretary suggesting between three and six months. The Committee believes that any guaranteed minimum period should be sufficient to allow effective post-release work with an offender following continuous risk assessment and should be proportionate to the length of the sentence. The**

Committee also requires the Scottish Government to provide information on what supervision and support might reasonably be achieved within the suggested periods and why these periods have been proposed.

6. The Committee calls on the Scottish Government, in drafting any amendment, to fully consult the Parole Board for Scotland and representatives of criminal justice social work services on resource implications.

7. The Committee notes that debate on whether the extension of multi-agency public protection arrangements (MAPPA) might address some concerns about cold release has been overtaken by the terms of the Cabinet Secretary's letter of 3 February. The Committee notes the consideration being given to extending MAPPA to other offences and the Cabinet Secretary's commitment to keep the Committee informed of progress.

8. The Committee considers that the Cabinet Secretary's proposal to extend the Bill to end automatic early release for all long-term prisoners is an improvement on the Bill as introduced.

9. The Committee notes the Cabinet Secretary's comments about the resourcing of the provisions and acknowledges that the changes will have effect over a relatively long period of time. Nevertheless, the Committee calls on the Scottish Government to provide updated estimates of the cost of the new provisions and how they will be resourced.

10. The Committee notes that the Policy Memorandum envisages that the provisions of the Bill will incentivise prisoners to engage with prison rehabilitation programmes. However, the Committee has concerns that demand for certain programmes may currently outweigh supply and recommends that an independent assessment be carried out to inform the supplementary Policy Memorandum requested in paragraph 121 of this report. The Committee welcomes the commitment of the Scottish Government and Scottish Prison Service (SPS) to the development of prison rehabilitation programmes aligned to prisoner needs. The Committee calls on the Cabinet Secretary and the SPS to keep the Committee updated in relation to the development and resourcing of relevant programmes.

11. The Committee notes the concerns of Professor Cyrus Tata that the Parole Board is being "set up for failure" but also notes the reassurances provided by the Board's Convener, who disputed this comment and said he was "pretty sure that the board can cope with that".

12. In light of the Board's further written submission, the Committee calls on the Scottish Government to ensure that the Parole Board is sufficiently resourced.

13. The Committee notes the concerns of witnesses about the level of clarity for victims and the community in sentencing and is of the view that such issues should be prioritised for consideration by the Scottish Sentencing Council after it is established. The Committee also notes the comments of

the Cabinet Secretary that the Bill provides victims with greater certainty in respect of the release arrangements for offenders, but also notes that Victim Support Scotland has called for greater transparency and clarity in the system.

14. The Committee accepts that implementation of relevant reforms in the Custodial Sentences and Weapons (Scotland) Act 2007 (as amended by the Criminal Justice and Licensing (Scotland) Act 2010) may be problematic at this point in time. The Committee calls on the Scottish Government to review this area, with input from relevant stakeholders, to establish what wider reforms should be taken forward.

15. The Committee notes the comments of witnesses about delaying the Bill until the Scottish Sentencing Council is established, but notes the Cabinet Secretary's comments that current reforms should not be delayed.

16. The Committee is aware of ongoing concerns about the operation of automatic early release for short-term prisoners, but notes that the purpose of this Bill is the ending of automatic early release for long-term prisoners.

17. The Committee is concerned that Professor Alan Miller advised us that the human rights impact statement is inadequate, for example with regard to the availability of rehabilitation programmes, and calls on the Scottish Government to revisit the statement.

18. The Committee notes the clear support for the provisions of section 2 of the Bill and welcomes the flexibility that this provides for the SPS to better manage re-integration into the community.

19. The Committee welcomes the Cabinet Secretary's decision to act on evidence received at Stage 1. The Committee also welcomes the Cabinet Secretary's willingness to reflect on the recommendations of this report in informing the detail of his Stage 2 amendments. Nevertheless the Committee considers that the level of detail provided in the Cabinet Secretary's letter of 3 February 2015 was insufficient to inform the views of witnesses and the Committee on its proposed changes to the Bill. Given the extent of the proposed Stage 2 amendments, the Committee requests that the Scottish Government brings forward a supplementary Policy Memorandum alongside any other supplementary accompanying documents it may lodge at that point.

20. Again, given the extent of the proposed amendments, the Committee requests that the Scottish Government bring forward a supplementary Financial Memorandum at Stage 2.

21. The Committee supports the general principles of this Bill¹.

22. The Committee notes that, as set out in the Cabinet Secretary's letter to the Committee of 3 February, the Bill will be amended at Stage 2. Whilst the

¹ Margaret Mitchell MSP dissented from this paragraph.

Committee welcomes the broad policy intention of those proposed amendments, it requires further detail on their implications, and will seek sufficient time at Stage 2 to allow it to conduct the thorough scrutiny expected by witnesses and the general public.

INTRODUCTION

Early release from custodial sentences

23. The current rules on early release from a custodial sentence are set out in the Prisoners and Criminal Proceedings (Scotland) Act 1993. They include the following:

- **short-term prisoners²** – an offender sentenced to a period of less than four years must be released after serving one-half of the sentence. For most prisoners, this release is not subject to licence conditions and thus not subject to supervision by criminal justice social work services. However, sex offenders receiving sentences of between six months and four years are released on licence;
- **long-term prisoners³** – an offender sentenced to a determinate period of four or more years may be released after having served at least one-half of the sentence. If not already released, a long-term prisoner must be released on licence after serving two-thirds of the sentence⁴. Any decision to release before the two-thirds point is taken by the Parole Board for Scotland (“the Parole Board”), following an assessment of whether the prisoner is likely to present a risk to the public if released. 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 services. The licence, unless previously revoked, continues until the end of the whole sentence;
- **life sentence prisoners (including those subject to orders for lifelong restriction)** – when sentencing an offender to a life sentence, the court sets a punishment part. This is the period that the court considers appropriate to satisfy the requirements of retribution and deterrence, but ignoring any period of confinement necessary for the protection of the public. The prisoner serves the whole of the punishment part in custody. Such a prisoner may be released after this point if the Parole Board considers that continued incarceration is not required for the protection of the public. The possibility of release is considered again periodically where the Parole Board does not initially order the release of the prisoner. Prisoners are released on licence, continuing until the person’s death, under the supervision of criminal justice social work services.⁵

² a short-term prisoner is an offender sentenced to a period of less than four years.

³ a long-term prisoner is an offender serving a determinate sentence of four years or more.

⁴ Prisoners and Criminal Proceedings (Scotland) Act 1993, s1(2). Available at: <http://www.legislation.gov.uk/ukpga/1993/9/section/1>.

⁵ SPICe briefing 14/60, Prisoners (Control of Release) (Scotland) Bill, pp6-7. Available at: http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_14-60.pdf

24. Breach of licence conditions can lead to a released prisoner being recalled to custody.⁶

Scottish Government's plans to reform automatic early release

25. The Scottish Government's Policy Memorandum notes that the current system of automatic early release has been in place since the mid-1990s and that any proposal for fundamental changes to the operation of the system of early release for all prisoners, must, in addition to public safety, take account of prisoner numbers, access to services and the capacity of an investment in the prison estate.⁷

26. The Policy Memorandum further notes that the report of the Scottish Prisons Commission in 2008 recommended that steps taken to end the current system of automatic early release could only be taken once prisoner numbers are established at a longer-term, lower-trend level so that capacity within the prison estate is available to deal with the short to medium impact of making changes to the system of early release.⁸ The 2011 SNP manifesto committed to ending automatic early release once the criteria set by the Scottish Prisons Commission are met⁹.

27. The Scottish Government wrote to the Committee on 3 September 2013, setting out its plans to end automatic early release for certain categories of long-term prisoners and indicating that the provisions would be brought forward by way of amendment to the Criminal Justice (Scotland) Bill¹⁰. The Committee agreed to seek views on the proposals before considering the relevant amendments. To that end, the Committee issued a call for evidence seeking views on the proposals and 11 submissions were received in response.¹¹

28. The then Cabinet Secretary for Justice subsequently announced to the Parliament on 23 April 2014 that Stage 2 of the Criminal Justice (Scotland) Bill would not commence until after the Post-corroboration Safeguards Review, chaired by Lord Bonomy, had reported. The Review is expected to report in April 2015.

29. On 27 May the then Cabinet Secretary wrote to the Committee advising that the provisions relating to automatic early release would be brought forward as a separate piece of legislation.¹²

⁶ SPICe briefing 14/60, Prisoners (Control of Release) (Scotland) Bill, pp6-7.

⁷ Policy Memorandum, p11. Available at:
[http://www.scottish.parliament.uk/S4_Bills/Prisoners%20\(Scotland\)%20Bill/b54s4-introd-pm.pdf](http://www.scottish.parliament.uk/S4_Bills/Prisoners%20(Scotland)%20Bill/b54s4-introd-pm.pdf).

⁸ Policy Memorandum, p11.

⁹ SNP Manifesto 2011. Available at:
http://votesnp.com/campaigns/SNP_Manifesto_2011_lowRes.pdf.

¹⁰ Letter from the Cabinet Secretary for Justice to the Convener: Automatic early release of prisoners, 3 September 2013. Available at:
http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/20130903_CSfJ_to_Convener_-_Early_release.pdf.

¹¹ Responses to that call for evidence are available at:
<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/75273.aspx>.

¹² Proposals to end the automatic early release of certain categories of prisoner,

Introduction of the Bill

30. The Prisoners (Control of Release) (Scotland) Bill was introduced in the Scottish Parliament on 14 August 2014. The Parliamentary Bureau designated the Justice Committee as lead committee in consideration of the Bill at Stage 1 on 19 August.

31. As well as seeking to reform automatic early release, the Bill includes measures aimed at supporting the process of reintegrating prisoners back into the community.

THE BILL'S PROVISIONS

32. The Bill, as introduced, 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 more¹³; and
- **early release for community reintegration** – allowing the Scottish Prison Service (SPS) 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).¹⁴

33. Further information on the Bill's provisions is available in SPICe briefing 14/60, *Prisoners (Control of Release) (Scotland) Bill*, published on 24 September 2014.¹⁵

PARLIAMENTARY SCRUTINY

Call for views

34. On 21 November 2014 the Justice Committee issued a call for written evidence on the Bill's proposals. 13 written submissions and one supplementary submission were received.

Evidence taking

35. The Committee initially took evidence on the Bill over three meetings between 13 and 27 January 2015, hearing from academics, representatives of victims and prisoners, campaigners for prison reform, the Risk Management Authority, the

Letter from the Cabinet Secretary for Justice to the Convener, 27 May 2014. Available at: http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/20140527_CSfJ_to_CG_AER_Bill.pdf.

¹³ Paragraph 37 of the Policy Memorandum makes clear that the Bill's provisions would only apply to offenders sentenced after the reforms come into force.

¹⁴ Copies of the Bill and accompanying documents are available at: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/80130.aspx>.

¹⁵ SPICe briefing 14/60, *Prisoners (Control of Release) (Scotland) Bill*. Available at: http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_14-60.pdf.

Parole Board for Scotland, the Scottish Prison Service (SPS) and the Cabinet Secretary for Justice.

36. Following those evidence sessions, the Cabinet Secretary wrote¹⁶ to the Committee on 3 February to advise that, in light of concerns raised in evidence, the Scottish Government would bring forward proposals at Stage 2 to—

- guarantee that all long-term prisoners are, on release from prison, subject to a minimum period of compulsory supervision in the community;
- extend, to all long-term prisoners, the provisions of the Bill seeking to end automatic early release.

37. Given the significance of the proposed changes, the Committee agreed to take further evidence in round-table format from witnesses who had previously raised issues about the Bill. This further session took place on 24 February¹⁷. Following that session, the Committee recalled the Cabinet Secretary to give oral evidence on 3 March, to respond to issues raised during the round table session.

Other committees

38. The Finance Committee received five responses to its call for views in relation to the Financial Memorandum on the Bill. These responses did not raise any substantive issues in relation to the Financial Memorandum and the Finance Committee therefore decided not to give any further consideration to that Memorandum.

39. The Delegated Powers and Law Reform (DPLR) Committee published its report on the Delegated Powers Memorandum on the Bill on 2 December 2014.¹⁸ That committee called on the Scottish Government to amend the Bill at Stage 2 to make the commencement power under section 3(2) of the Bill subject to negative procedure.

40. The Committee endorses the report of the DPLR Committee.

ISSUES

41. This report seeks to highlight key issues which have arisen during the Committee's Stage 1 scrutiny of the Bill, including evidence received in relation to the Cabinet Secretary's letter of 3 February 2015.

42. The report comments on the following issues, which arose in evidence—

¹⁶ Cabinet Secretary for Justice, letter to the Justice Committee, 3 February 2015. Available at: http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/20150203_CSFJ_to_CG_AER_and_nouncement.pdf.

¹⁷ Scottish Parliament Justice Committee. *Official Report, 24 February 2015*, Cols 32-58.

¹⁸ Scottish Parliament Delegated Powers and Law Reform Committee. 71st Report, 2014 (Session 4). *Prisoners (Control of Release) (Scotland) Bill at stage 1*. Available at: http://www.scottish.parliament.uk/S4_SubordinateLegislationCommittee/Reports/suR-14-71w.pdf.

Section 1 (Restriction of automatic early release)

- public protection;
- categories of prisoner covered by reforms;
- prison rehabilitation programmes;
- impact on the Parole Board;
- clarity in sentencing;
- alternative approaches; and
- the Bill's human rights statement.

Section 2 (Early release for community reintegration)

- timing of release.

SECTION 1 (RESTRICTION OF AUTOMATIC EARLY RELEASE)

Public Protection

43. The Scottish Government indicated in the Policy Memorandum that its proposed reforms to end automatic early release are intended to enhance public protection by allowing some prisoners who are assessed by the Parole Board as presenting an unacceptable risk to be kept in custody for longer. The Policy Memorandum states—

“The overall impact of the reforms in this Bill would be that a prisoner would be kept in prison for the entire sentence if the Parole Board considered that they posed an unacceptable risk to public safety throughout the period of their sentence when they are able to be considered for parole”.¹⁹

Initial evidence

44. The main arguments advanced in favour of the proposals enhancing public protection included—

- that the release of a potentially dangerous offender may be delayed; and
- that relevant offenders may be incentivised to engage with rehabilitation programmes whilst in custody so as to increase their chance of being released early on parole.

45. Witnesses questioning whether the Bill would in fact enhance public protection focused on the importance of post-release supervision in safely reintegrating long-term prisoners back into society. Concerns were expressed that the provisions of the Bill may simply involve “storing the risky”²⁰ for longer whilst undermining

¹⁹ Policy Memorandum, p3.

²⁰ Professor Fergus McNeill, written submission, p3.

effective reintegration by allowing some long-term prisoners to be released without mandatory supervision in the community – sometimes referred to as “cold release”.

46. Professor Cyrus Tata from the University of Strathclyde described the issue in the following terms—

“We need to explain to members of the public that eventually prisoners have to come out and that if someone is released cold they are more likely to reoffend.”²¹

47. Peter Johnston from the Risk Management Authority (RMA) described anything that produces cold release as a “matter for concern” for the RMA, adding that —

“it goes against what we believe Government has done well in tackling a difficult challenge, and we are concerned that cold release, which is perhaps an unintended consequence of the bill, could constitute a retrograde step”.²²

48. He also made clear that effective supervision was “vital”.²³

49. In written evidence, SACRO argued that consideration should be given to mechanisms to provide support to the offender and enhance protection for the public, such as providing a form of automatic early release for the last three months of the sentence to ensure that there is some brief period of compulsory supervision to oversee reintroduction to the community.²⁴

50. The Cabinet Secretary responded to concerns about cold release by reminding the Committee that the Bill “deals with a select group of prisoners”. He advised that some long-term prisoners are already released on parole prior to the end of their sentence and thus not subject to cold release, whilst others are serving extended sentences imposed at the time of their original sentence. Questions around cold release only apply to a third category of prisoners, namely those who have not qualified for parole but who are coming to the end of their sentence (and who are not serving extended sentences).²⁵

51. Extended sentences are provided for in the Criminal Procedure (Scotland) Act 1995, which gives courts powers to impose an extended sentence on any offender who is convicted on indictment of a relevant sexual or violent offence, in circumstances where the court is of the opinion that the period of supervision on licence would not be adequate for the protection of the public from serious harm from the offender.

52. On introduction of the Bill the Scottish Government drew attention to the use of multi-agency public protection arrangements (MAPPA) to ensure public protection in this context.²⁶ These are a statutory set of arrangements, provided for by the

²¹ Scottish Parliament Justice Committee. *Official Report, 20 January 2015*, Col 3.

²² Scottish Parliament Justice Committee. *Official Report, 20 January 2015*, Col 4.

²³ Scottish Parliament Justice Committee. *Official Report, 20 January 2015*, Col 4.

²⁴ SACRO written submission, page 2.

²⁵ Scottish Parliament Justice Committee. *Official Report, 3 March 2015*, Col 40.

²⁶ Policy Memorandum, paragraphs 14-17.

Sexual Offences Act 2003, to ensure public protection and manage the risk of serious harm.

53. The Cabinet Secretary indicated that the Scottish Government is currently carrying out work on MAPPA to assess whether it could be extended to cover violent offenders. He indicated that this work is scheduled to be completed by the end of the year. He agreed to keep the Committee informed of progress.²⁷

54. The RMA indicated that it would support the extension of MAPPA to other offences²⁸.

55. However, some witnesses asserted that MAPPA would not directly address issues that would arise around cold release if the Bill as introduced were to have been passed. For example, Dr Monica Barry of the University of Strathclyde advised that it would not make up for the lack of supervision and support that can be given through criminal justice social work services.²⁹

Cabinet Secretary's letter

56. In his letter to the Committee of 3 February 2015, the Cabinet Secretary again highlighted the "existing arrangements under which a court can impose supervision conditions on offenders which extend beyond the terms of their custodial sentence".³⁰

57. However, in light of concerns expressed about cold release, he also stated that the Scottish Government would bring forward proposals at Stage 2 to ensure that—

"anyone serving a sentence of 4 years or more for any crime, being released from prison will be subject to a minimum period of compulsory supervision in the community. The focus of such supervision will be on ensuring both the immediate and longer-term protection of public safety".³¹

58. Whilst welcoming some of the principles underpinning the letter, witnesses expressed concern at a lack of clarity in respect of compulsory supervision. For example, witnesses were not clear whether the Scottish Government's intention was: (a) to add on compulsory supervision to sentences already completed in custody (described in evidence as "Option A"); or (b) to provide for compulsory supervision in the community for a fixed period within the existing custodial sentence (described as "Option B").³²

59. Dr Barry and Professor Fergus McNeill of the University of Glasgow indicated that, if Option A was intended, it would amount to a "de facto increase in the punishments imposed by the courts"³³. Concerns were expressed that any attempt

²⁷ Scottish Parliament Justice Committee. *Official Report*, 27 January 2015, Col 16.

²⁸ Scottish Parliament Justice Committee. *Official Report*, 13 January 2015, Col 11.

²⁹ Scottish Parliament Justice Committee. *Official Report*, 13 January 2015, Col 5.

³⁰ Cabinet Secretary for Justice, letter to the Justice Committee, 3 February 2015. Available at: http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/20150203_CSfJ_to_CG_AER_an_nouncement.pdf.

³¹ Cabinet Secretary for Justice, letter to the Justice Committee, 3 February 2015.

³² Dr Monica Barry and Professor Fergus McNeill, written submission, p1.

³³ Dr Monica Barry and Professor Fergus McNeill, written submission, p1.

to impose a period of compulsory supervision over and above the parameters of a sentence imposed by a court may lack legitimacy and be open to challenge on human rights grounds. Thus, Option A might require the imposition of a new form of sentence.³⁴

60. If Option B was intended, Dr Barry and Professor McNeill argued that there should be a fixed minimum period of supervision of one year within the existing sentence, and that, any supervision period should be proportionate to the length of the original sentence³⁵.

61. Professor McNeill expressed concerns that, although workable, Option B might not address the concerns of some witnesses, because—

“In effect it creates a new system of automatic early release but calls it something else and changes the dates. That is the net effect of option B. Unless the bill can be amended or some other legislative device can be found so that something is done about clarity in sentencing in the first instance, we cannot address Victim Support Scotland’s concerns appropriately or deliver what it is requesting”.³⁶

62. The issue of clarity in sentencing is considered further later in this report.

63. In relation to the mechanics of guaranteeing a period of compulsory supervision, and also the length of the minimum period, the Cabinet Secretary stated in oral evidence that “a period of six or three months at the end of a sentence could be created within the sentence period”.³⁷

The Cabinet Secretary also indicated that the final detail of the proposal will “reflect the concerns and issues that the committee raises in its stage 1 report”³⁸. Pressed on these matters and on whether problems might arise if the period of supervision provided for by the amendment were to be “guaranteed” but not necessarily “compulsory”, the Cabinet Secretary confirmed that the proposal would involve a period of compulsory supervision during which there would be a power of recall.³⁹ He also advised that, in 2012-13 476 prisoners were subject to supervision in the community after parole release and 403 were subject to supervision in the community after non-parole release. He added that the rate at which non parole-released prisoners breached their licence conditions was 37%, compared with 5.5% for parole-released prisoners.⁴⁰

Recommendations

64. The Committee notes the Cabinet Secretary’s commitment to end automatic early release for certain categories of prisoner and that these reforms, assuming their coverage is extended to all long-term prisoners,

³⁴ Dr Monica Barry and Professor Fergus McNeill, written submission, p2.

³⁵ Dr Monica Barry and Professor Fergus McNeill, written submission, p3.

³⁶ Scottish Parliament Justice Committee. *Official Report*, 24 February 2015, Col 50.

³⁷ Scottish Parliament Justice Committee. *Official Report*, 3 March 2015, Col 38.

³⁸ Scottish Parliament Justice Committee. *Official Report*, 3 March 2015, Col 46.

³⁹ Scottish Parliament Justice Committee. *Official Report*, 3 March 2015, Col 47.

⁴⁰ Scottish Parliament Justice Committee. *Official Report*, 3 March 2015, Col 35.

may be expected to affect around 3% of offenders receiving a determinate custodial sentence in any one year⁴¹.

65. The Committee welcomes the Cabinet Secretary's willingness to reflect on the concerns and issues raised in respect of compulsory supervision and cold release.

66. The Committee is in favour of all long-term prisoners being subject to a period of compulsory community supervision on release from custody. It calls on the Scottish Government to confirm whether its intention is that a guaranteed minimum period of compulsory supervision should, where the court has not imposed an extended sentence, take place during the period of custody imposed by the court. If this is not the intention, the Committee requires further details of how a minimum period of compulsory supervision would be guaranteed in practice. The Committee also notes the views of Professor McNeill and Dr Barry that this might require the imposition of a new form of sentence.

67. In relation to the length of any minimum period of compulsory community supervision, the Committee notes that periods ranging from three months to one year have been suggested in evidence, with the Cabinet Secretary suggesting between three and six months. The Committee believes that any guaranteed minimum period should be sufficient to allow effective post-release work with an offender following continuous risk assessment and should be proportionate to the length of the sentence. The Committee also requires the Scottish Government to provide information on what supervision and support might reasonably be achieved within the suggested periods and why these periods have been proposed.

68. The Committee calls on the Scottish Government, in drafting any amendment, to fully consult the Parole Board and representatives of criminal justice social work services on resource implications.

69. The Committee notes that debate on whether the extension of MAPPA might address some concerns about cold release has been overtaken by the terms of the Cabinet Secretary's letter of 3 February. The Committee notes the consideration being given to extending MAPPA to other offences and the Cabinet Secretary's commitment to keep the Committee informed of progress.

Categories of prisoner covered by reforms

Bill as introduced

70. As noted above, the Bill as introduced seeks 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.

⁴¹ If the reforms had applied to offenders sentenced in 2013-14, they would have affected 450 out of 14,026 offenders receiving a determinate custodial sentence (see table 10(a) of the Scottish Government's statistical bulletin: Criminal Proceedings in Scotland, 2013-14 (2014). Available at: <http://www.gov.scot/Publications/2014/12/1343>.

71. The particular focus on sex offenders, and whether offenders posing a greater risk of serious reoffending were being omitted from the proposed reforms, was commented on by a number of witnesses.

72. For example, the Risk Management Authority highlighted that, based on Parole Board statistics, sex offenders are less likely to reoffend than other offenders, and that the Bill would benefit from re-focussing on risk of serious harm rather than on offence type.⁴² This was also a concern of Dr Barry⁴³ and Howard League Scotland⁴⁴. Scottish Women's Aid noted that the proposals excluded the vast majority of perpetrators of domestic abuse, who can be considered to pose a high risk of reoffending⁴⁵.

73. Howard League Scotland stated that it was "not entirely clear" why the Bill homed in on two particular categories of offenders when people who commit low-tariff offences are more likely to re-offend⁴⁶.

74. On 27 January 2014 the Cabinet Secretary stated that the approach of successive governments has been to deal with sex offenders in a different way, largely because of the impact that sexual offences have on victims, their families and the wider community. The Cabinet Secretary stated that he, and the Chief Executive of the SPS, expected engagement in rehabilitation programmes among sex offenders to increase from 50% to 67% once the provisions of the Bill as introduced were enacted.⁴⁷

75. The SPICe briefing on the Bill provides more detail on the numbers of prisoners who might be affected by the provisions of the Bill as introduced.⁴⁸

Letter from the Cabinet Secretary

76. As referred to earlier in this report, the Cabinet Secretary wrote to the Committee on 3 February indicating that—

"Having considered this issue, I can confirm that we will also bring forward amendments at Stage 2 of the Bill to extend the provisions to end the existing system of automatic early release for all long-term prisoners".⁴⁹

77. Thus the letter proposes that all offenders receiving a determinate custodial sentence of four years or more should be covered by the reforms (with the particular focus on sex offenders being removed).

78. Whilst welcoming the ending of automatic early release for all long-term prisoners, witnesses responding to the letter expressed concerns that a major change of this nature was being carried out by means of a Stage 2 amendment,

⁴² Scottish Parliament Justice Committee. *Official Report*, 20 January 2015, Cols 4-5.

⁴³ Scottish Parliament Justice Committee. *Official Report*, 13 January 2015, Cols 6-7.

⁴⁴ Scottish Parliament Justice Committee. *Official Report*, 13 January 2015, Col 17.

⁴⁵ Scottish Women's Aid, written submission, pp 2-3.

⁴⁶ Scottish Parliament Justice Committee. *Official Report*, 13 January 2015, Col 17.

⁴⁷ Scottish Parliament Justice Committee. *Official Report*, 27 January 2015, Col 14.

⁴⁸ SPICe briefing 14/60, Prisoners (Control of Release) (Scotland) Bill, p6.

⁴⁹ Cabinet Secretary for Justice, letter to the Justice Committee, 3 February 2015. Available at: http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/20150203_CSfJ_to_CG_AER_announcement.pdf.

and had not been subject to formal consultation. Howard League Scotland argued that the letter left many unanswered questions—

“Has the judiciary been consulted, given that it is a key stakeholder? We do not know. What impact will there be on the prison population? The SPS says that it will need more resources. How much money has been set aside for that? Prison is expensive, so what is the likely total cost to the public purse? We do not know.”⁵⁰

79. Professor McNeill expressed his concerns in the following terms—

“If we take a rough estimate of 400 additional prison places to accommodate the numbers in this instance—we think that it is a conservative estimate—that £40,000 per place per annum will cost £16 million. We have to be pretty sure that that investment is buying us improvements in public safety. I do not think that storing risk for longer buys us improvements in public safety. That is my caution”.⁵¹

80. When asked about the financial implications of the proposed to come forward by amendment, the Cabinet Secretary advised—

“It is worth keeping in mind that we are talking about a very small number of prisoners and that it will be several years into the future before any of this will start to have an impact. There would be a danger in starting to put some limits on it now, thinking about what we may require in five or six years’ time. If there is a need for some additional resource going forward, we will be alive to that and will seek to address that. However, we must get the balance right. If there is a need for additional resource—as I say, that will be a number of years ahead—we will look at that, but, as I have mentioned, it is also about the balance in the system. Some of the resource that we have got tied up in dealing with the churn of short-term offenders may be better directed to dealing with issues around the end of a sentence. It may be a matter of reallocating existing resource in order to make the balance more effective”.⁵²

Recommendations

81. The Committee considers that the Cabinet Secretary’s proposal to extend the Bill to end automatic early release for all long-term prisoners is an improvement on the Bill as introduced.

82. The Committee notes the Cabinet Secretary’s comments about the resourcing of the provisions and acknowledges that the changes will have effect over a relatively long period of time. Nevertheless, the Committee calls on the Scottish Government to provide updated estimates of the cost of the new provisions and how they will be resourced.

⁵⁰ Scottish Parliament Justice Committee. *Official Report, 24 February 2015*, Col 35.

⁵¹ Scottish Parliament Justice Committee. *Official Report, 24 February 2015*, Col 34.

⁵² Scottish Parliament Justice Committee. *Official Report, 3 March 2015*, Col 47.

Prison rehabilitation programmes

83. The Bill's policy memorandum envisages that the removal of automatic early release would incentivise prisoners to engage with prison rehabilitation programmes as a way of increasing their chances of obtaining early release on parole⁵³. A number of witnesses agreed that this could be the case, with a representative of the Parole Board stating that—

“The changes will incentivise some prisoners who at the moment are happy to wait until they get two thirds of the way into their sentence in the knowledge that they will get out. Knowing that they had a significant period to go after that would have to incentivise some, but how many? Who knows?”⁵⁴

84. On the same point, the Chief Executive of the SPS stated that—

“Some will be motivated to engage in order to get released early, while others will not. I am more interested in engagement for the purpose of not coming back to prison and in how we as a system and society gear up to help people make that transition”⁵⁵.

85. Witnesses also commented on the adequacy and availability of relevant rehabilitation programmes within prisons. Professor Alan Miller from the Scottish Human Rights Commission (SHRC) noted that—

“If more people are demanding them—rightly, because society has said that that is the deal—and if the Parole Board has to make more decisions than in the past on the adequacy of the programmes, the spotlight will be on those arrangements. The committee has heard evidence from a number of witnesses that the spotlight might not be very favourable, because the programmes will be seen to be inadequate.”⁵⁶

86. Dr Barry and Professor Tata argued that there is an issue with the supply of, rather than the demand for, prison programmes. Dr Barry argued that, if prisoners cannot get on the waiting list for a programme, they are unlikely to get parole.⁵⁷ Professor Tata highlighted the possibility of human rights challenges by prisoners claiming they could not access programmes due to lack of availability.⁵⁸

87. The Chief Executive of the SPS acknowledged that there was a waiting list for programmes, but argued that, within the context of the resources and highly specialised skills necessary and held by the SPS, “we try to prioritise those programmes and opportunities as best we judge fits people's needs—but perhaps not their wants”.⁵⁹

⁵³ Policy Memorandum, paragraphs 57-60.

⁵⁴ Scottish Parliament Justice Committee. *Official Report*, 20 January 2015, Col 24.

⁵⁵ Scottish Parliament Justice Committee. *Official Report*, 20 January 2015, Col 24.

⁵⁶ Scottish Parliament Justice Committee. *Official Report*, 13 January 2015, Col 15.

⁵⁷ Scottish Parliament Justice Committee. *Official Report*, 13 January 2015, Col 5.

⁵⁸ Scottish Parliament Justice Committee. *Official Report*, 20 January 2015, Col 12.

⁵⁹ Scottish Parliament Justice Committee. *Official Report*, 20 January 2015, Cols 20-21.

88. Giving evidence on 24 February, the SPS's Director of Operations explained that there were complex reasons for the waiting lists—

“Some prisoners will deny that they have a problem until very close to their critical date and then they will try to move up the list. Some people are recalled into custody. We currently have about 675 recalls in the system who we have to mobilise quickly, which means that it is not reasonable to expect that we can always catch everybody who scores with a lower need”.

89. Giving evidence on 27 January the Cabinet Secretary committed to discussing the issue of resourcing of programmes.⁶⁰ He also stated that an increase in demand would build up over a 10 to 11 year timeframe, thus allowing time to plan for the likely increase.⁶¹

90. In evidence on 3 March the Cabinet Secretary added—

“I know that the Prison Service is keen to look at developing programmes that are much more aligned to the assessment of the prisoner's needs to make sure that programmes are more tailored and reflect more what prisoners require. That is a significant undertaking for the Prison Service, but it wants to move in that direction, which it feels would be a more appropriate way to deliver rehabilitation programmes. We are keen to support the SPS to move in that direction. I have no doubt that the SPS will start to take a much more bespoke approach to how rehabilitation programmes are developed for prisoners in order to improve the delivery of those programmes and the outcomes that can be gained from them”.⁶²

Recommendation

91. The Committee notes that the Policy Memorandum envisages that the provisions of the Bill will incentivise prisoners to engage with prison rehabilitation programmes. However, the Committee has concerns that demand for certain programmes may currently outweigh supply and recommends that an independent assessment be carried out to inform the supplementary Policy Memorandum requested in paragraph 121 of this report. The Committee welcomes the commitment of the Scottish Government and SPS to the development of prison rehabilitation programmes aligned to prisoner needs. The Committee calls on the Cabinet Secretary and the SPS to keep the Committee updated in relation to the development and resourcing of relevant programmes.

Impact on the Parole Board

92. The impact of the provisions on the work of the Parole Board was also discussed. Expressing his concerns over cold release, Professor Tata feared that the Parole Board would end up taking the blame for possible unintended consequences of the Bill. It was, he said, being “set up for failure”⁶³. However, the Convener of the Board disputed that comment, asserting that the Board was

⁶⁰ Scottish Parliament Justice Committee. *Official Report, 27 January 2015*, Col 9.

⁶¹ Scottish Parliament Justice Committee. *Official Report, 27 January 2015*, Cols 10-11.

⁶² Scottish Parliament Justice Committee. *Official Report, 3 March 2015*, Col 36.

⁶³ Scottish Parliament Justice Committee. *Official Report, 20 January 2015*, Col 8.

“happy to account for its decisions” and he was “pretty sure that the board can cope with that”⁶⁴. He acknowledged that the Board would be “more in the public eye” but said that this was not something that caused him concern.⁶⁵

93. Following the Cabinet Secretary’s letter of 3 February, the Parole Board provided further written evidence in which it stated—

“The proposed changes to the Bill will necessarily increase the work to be undertaken by the Board to a greater extent than first envisaged and while the Board will endeavour to do so within existing budgets, it may need some support from Scottish Government to manage the impact.”⁶⁶

Recommendations

94. The Committee notes the concerns of Professor Tata that the Parole Board is being “set up for failure” but also notes the reassurances provided by the Board’s Convener, who disputed this comment and said he was “pretty sure that the board can cope with that”.

95. In light of the Board’s further written submission, the Committee calls on the Scottish Government to ensure that the Parole Board is sufficiently resourced.

Clarity in sentencing

96. Victim Support Scotland indicated support for the ending of automatic early release, and for the provision of a period of post-release supervision for prisoners, but added—

“We want greater clarity and transparency in the system, so that victims and the community are better able to understand sentencing. In our experience, a lot of victims do not currently understand the system; they do not understand what part of the sentence is custodial and what part is served in the community. We want to work towards something that provides more clarity to them”⁶⁷

97. Howard League Scotland was concerned that the Bill pre-empted the work of the Scottish Sentencing Council^{68 69} whilst Dr Barry argued that the Bill “muddies the waters” in respect of clarity of sentencing⁷⁰. Professor Tata shared this view and went further, arguing that the Bill is a “way of trying to change sentencing by suggesting extended sentences and trying to increase the length of time that people serve”⁷¹.

⁶⁴ Scottish Parliament Justice Committee. *Official Report*, 20 January 2015, Col 27.

⁶⁵ Scottish Parliament Justice Committee. *Official Report*, 20 January 2015, Col 27.

⁶⁶ Parole Board for Scotland, supplementary written submission (P5B), p1.

⁶⁷ Scottish Parliament Justice Committee. *Official Report*, 24 February 2015, Col 36.

⁶⁸ The Scottish Sentencing Council was created by the Criminal Justice and Licensing (Scotland) Act 2010 with the objectives of promoting consistency in sentencing practice, assisting the development of policy in relation to sentencing and promoting greater awareness and understanding of sentencing policy and practice. It will be operational in autumn 2015.

⁶⁹ Scottish Parliament Justice Committee. *Official Report*, 13 January 2015, Col 14.

⁷⁰ Scottish Parliament Justice Committee. *Official Report*, 13 January 2015, Col 8.

⁷¹ Scottish Parliament Justice Committee. *Official Report*, 20 January 2015, Col 15.

98. The Cabinet Secretary made clear that he did not agree with the view that the Bill “muddies the water” in respect of sentencing, arguing that it gives victims the certainty that the offender will not be released automatically two-thirds into their sentence, irrespective of circumstances.⁷²

99. The Committee notes the concerns of witnesses about the level of clarity for victims and the community in sentencing and is of the view that such issues should be prioritised for consideration by the Scottish Sentencing Council after it is established. The Committee also notes the comments of the Cabinet Secretary that the Bill provides victims with greater certainty in respect of the release arrangements for offenders, but also notes that Victim Support Scotland has called for greater transparency and clarity in the system.

Alternative approaches

100. During evidence, alternative approaches, such as the commencement of relevant provisions of the Custodial Sentences and Weapons (Scotland) Act 2007 (as amended by the Criminal Justice and Licensing (Scotland) Act 2010), or waiting for the Scottish Sentencing Council to be established to consider the wider issues around sentencing before ending automatic early release were discussed. The Committee also heard evidence relating to the operation of automatic early release for short-term prisoners.

2007 and 2010 Acts

101. Provisions in the Custodial Sentences and Weapons (Scotland) Act 2007, as amended by the Criminal Justice and Licensing (Scotland) Act 2010, set out significant reforms to the current rules on early release. They provide for the replacement of the current categories of short- and long-term prisoners with “short-term custody and community prisoners” and “custody and community prisoners”. Those reforms would not end automatic early release but would ensure that all released prisoners are subject to licence conditions for the remainder of their total sentence. The relevant provisions have, as yet, not been brought into force.⁷³

102. The views of witnesses on the un-commenced provisions were mixed. Dr Barry said that “I do not know why the 2007 act reforms have not been enacted” and that “it is vital that any custodial sentence has a community part, because that enables people to be tested in the community”⁷⁴. She added that it “needs to be brought into force”⁷⁵.

103. Victim Support Scotland said that it “quite likes” the 2007 Act, as it would give the victim clearer knowledge of the amount of time being spent in custody and in the community by the offender⁷⁶.

104. However, Howard League Scotland indicated its opposition, stating that the McLeish Commission⁷⁷ highlighted concerns.⁷⁸ Professor Tata described the

⁷² Scottish Parliament Justice Committee. *Official Report, 27 January 2015*, Col 13.

⁷³ SPICe briefing 14/60, Prisoners (Control of Release) (Scotland) Bill, p14.

⁷⁴ Scottish Parliament Justice Committee. *Official Report, 13 January 2015*, Col 4.

⁷⁵ Scottish Parliament Justice Committee. *Official Report, 13 January 2015*, Col 8.

⁷⁶ Scottish Parliament Justice Committee. *Official Report, 13 January 2015*, Col 11.

provisions as having “fundamental problems and contradictions” in their detail⁷⁹. He added that a senior civil servant had described them as “unworkable”⁸⁰.

105. The development of relevant provisions in the 2010 Act was informed by the recommendations of Scottish Prisons Commission. The Commission recommended that “any implementation of the early release provisions of the 2007 Act must follow the implementation of the Commission’s other recommendations and the achievement of a reduction in the short sentence prison population.”⁸¹ The Commission also recommended that the Government should pursue a target of reducing the prison population to an average daily population of 5,000⁸². As noted in the SPICe briefing on this Bill, the average daily prison population in 2013-14 was 7,851⁸³.

106. When asked why the Scottish Government was not adopting the alternative approach of implementing the 2007 Act as amended by the 2010 Act, the Cabinet Secretary reminded the Committee of the wider context of these reforms whilst reiterating the Government’s commitment to ending automatic early release—

“The other thing that is worth keeping in mind around the other approach to changing sentencing arrangements is that, as Henry McLeish pointed out, a number of other issues would have to be addressed before such an approach could be introduced. A large part of that would be about addressing short-term sentences in order to create capacity in the prison estate to keep prisoners in prison for longer periods of time. A number of things would need to be done before that would be possible, some of which we are already doing, but it is also important that we send out a clear signal about ending automatic early release”.⁸⁴

Scottish Sentencing Council

107. As referred to earlier in this report, the Committee received evidence, for example from Professor McNeill⁸⁵, that the Bill should be delayed until the Scottish Sentencing Council (SSC) is established and had the opportunity to be consulted and consider the proposals in the wider context of “front-door sentencing” (sending people to prison) and “backdoor sentencing” (release arrangements)⁸⁶.

108. The Cabinet Secretary indicated that he was “not entirely persuaded” of the benefits of delaying the Bill to allow the SSC to consider the impact of the reforms on sentencing policy, adding that “many victims would find it difficult to understand why, when there is a bill before Parliament that could end automatic early release,

⁷⁷ *Scotland’s Choice: Report of the Scottish Prisons Commission*, July 2008. Available at: <http://www.gov.scot/Resource/Doc/230180/0062359.pdf>.

⁷⁸ Scottish Parliament Justice Committee. *Official Report*, 13 January 2015, Cols 11-12.

⁷⁹ Scottish Parliament Justice Committee. *Official Report*, 20 January 2015, Col 10

⁸⁰ Scottish Parliament Justice Committee. *Official Report*, 20 January 2015, Col 10

⁸¹ SPICe briefing 14/60, Prisoners (Control of Release) (Scotland) Bill, p14. and *Scotland’s Choice: Report of the Scottish Prisons Commission*, July 2008, p51.

⁸² *Scotland’s Choice: Report of the Scottish Prisons Commission*, July 2008, p57.

⁸³ SPICe briefing 14/60, Prisoners (Control of Release) (Scotland) Bill, p15.

⁸⁴ Scottish Parliament Justice Committee. *Official Report*, 27 January 2015, Col 6.

⁸⁵ Scottish Parliament Justice Committee. *Official Report*, 24 February 2015, Cols 33 and 55.

⁸⁶ The Scottish Sentencing Council is due to be established in autumn 2015.

we would decide to delay it for an indeterminate period of time”.⁸⁷ Nevertheless, he indicated that the SSC can play an important part in sentencing policy in the years to come and “will provide an invaluable insight”, and that the Scottish Government will engage with it on an ongoing basis.⁸⁸

Short-term prisoners

109. Concerns were expressed in evidence that there are no current plans to end automatic early release for short-term prisoners (those serving sentences of less than four years). For example, Howard League Scotland argued that, statistically, short-term prisoners are more likely to offend⁸⁹, a point echoed by Professor Miller from SHRC⁹⁰. Professor Tata described release for short-term prisoners as “less justifiable”⁹¹.

110. Commenting on the issue of short-term prisoners, the Cabinet Secretary stated that the Scottish Government had already moved for a presumption against sentences of less than three months but that he was happy to explore ways of tackling the effectiveness of short-term sentences.⁹² He added that “it has been demonstrated that short-term sentences are very ineffective in dealing with offending behaviour” and that they take up a tremendous amount of SPS resources.⁹³ He made clear the Scottish Government’s view that this money would be better spent on rehabilitation of more serious offenders.⁹⁴

Recommendations

111. The Committee accepts that implementation of relevant reforms in the Custodial Sentences and Weapons (Scotland) Act 2007 (as amended by the Criminal Justice and Licensing (Scotland) Act 2010) may be problematic at this point in time. The Committee calls on the Scottish Government to review this area, with input from relevant stakeholders, to establish what wider reforms should be taken forward.

112. The Committee notes the comments of witnesses about delaying the Bill until the Scottish Sentencing Council is established, but notes the Cabinet Secretary’s comments that current reforms should not be delayed.

113. The Committee is aware of ongoing concerns about the operation of automatic early release for short-term prisoners, but notes that the purpose of this Bill is the ending of automatic early release for long-term prisoners.

The Bill’s Human Rights Statement

114. Professor Miller described the Bill’s human rights impact statement⁹⁵ as “simply not adequate”⁹⁶. He said he did not believe that the statement considered

⁸⁷ Scottish Parliament Justice Committee. *Official Report*, 3 March 2015, Col 47.

⁸⁸ Scottish Parliament Justice Committee. *Official Report*, 3 March 2015, Col 48.

⁸⁹ Scottish Parliament Justice Committee. *Official Report*, 13 January 2015, Col 17.

⁹⁰ Scottish Parliament Justice Committee. *Official Report*, 13 January 2015, Col 21.

⁹¹ Scottish Parliament Justice Committee. *Official Report*, 20 January 2015, Col 2.

⁹² Scottish Parliament Justice Committee. *Official Report*, 27 January 2015, Col 7.

⁹³ Scottish Parliament Justice Committee. *Official Report*, 27 January 2015, Cols 11-12.

⁹⁴ Scottish Parliament Justice Committee. *Official Report*, 27 January 2015, Col 12.

⁹⁵ Policy Memorandum, paragraph 98.

⁹⁶ Scottish Parliament Justice Committee. *Official Report*, 13 January 2015, Col 16.

the foreseeable consequences of ending automatic early release, specifically “the jeopardy that the public might be put in and the consequences for prisoners’ rights if they are not given the rehabilitation programmes that they will be looking for more than in the past”⁹⁷.

Recommendation

115. The Committee is concerned that Professor Miller advised us that the human rights impact statement is inadequate, for example with regard to the availability of rehabilitation programmes, and calls on the Scottish Government to revisit the statement.

SECTION 2 (EARLY RELEASE FOR COMMUNITY REINTEGRATION)

Timing of release

116. The Committee received evidence on the proposals in section 2 of the Bill which would provide some flexibility in the timing of prisoner release to benefit re-integration. The Bill provides the Scottish Ministers (in practice the SPS) the discretion to release an offender up to two days in advance of their release date.

117. Evidence received was supportive of this provision. The Risk Management Authority considered that it is “good common sense” as a practical solution to the issue of someone being unfortunate to be released on the wrong day⁹⁸. Positive Prison? Positive Futures⁹⁹ and the Cabinet Secretary¹⁰⁰ highlighted issues faced by prisoners released from prison in one part of the country and having to travel some distance to get home. According to Positive Prison? Positive Futures, individuals released on a Friday who do not make it back home, for example, for housing appointments, tend to reoffend, commit self-harm, overdose or commit suicide; or who reoffend in order to get back to prison because they have nowhere else to go¹⁰¹. The Cabinet Secretary made clear that introducing flexibility in this area allows the SPS and other agencies to improve throughcare and better manage re-integration into the community¹⁰².

118. In the round table evidence session on 24 February, Positive Prison? Positive Futures stressed the importance of keeping the provisions of section 2 of the Bill, regardless of the Parliament’s decision on section 1.¹⁰³

Recommendation

119. The Committee notes the clear support for the provisions of section 2 of the Bill and welcomes the flexibility that this provides for the SPS to better manage re-integration into the community.

⁹⁷ Scottish Parliament Justice Committee. *Official Report*, 13 January 2015, Col 16.

⁹⁸ Scottish Parliament Justice Committee. *Official Report*, 20 January 2015, Col 17.

⁹⁹ Scottish Parliament Justice Committee. *Official Report*, 13 January 2015, Col 18.

¹⁰⁰ Scottish Parliament Justice Committee. *Official Report*, 27 January 2015, Col 19.

¹⁰¹ Scottish Parliament Justice Committee. *Official Report*, 13 January 2015, Col 18.

¹⁰² Scottish Parliament Justice Committee. *Official Report*, 27 January 2015, Col 19.

¹⁰³ Scottish Parliament Justice Committee. *Official Report*, 24 February 2015, Col 39.

POLICY MEMORANDUM

120. The lead committee is required under Rule 9.6.3 of Standing Orders to report on the Policy Memorandum which accompanies the Bill. The level of detail provided in the Policy Memorandum on the policy intention behind the provisions in the Bill and why alternative approaches were not favoured was satisfactory in assisting the Committee in its scrutiny of the Bill.

121. As mentioned earlier in this report, the Committee welcomes the Cabinet Secretary's decision to act on evidence received at Stage 1. The Committee also welcomes the Cabinet Secretary's willingness to reflect on the recommendations of this report in informing the detail of his Stage 2 amendments. Nevertheless the Committee considers that the level of detail provided in the Cabinet Secretary's letter of 3 February 2015 was insufficient to inform the views of witnesses and the Committee on its proposed changes to the Bill. Given the extent of the proposed Stage 2 amendments, the Committee requests that the Scottish Government brings forward a supplementary Policy Memorandum alongside any other supplementary accompanying documents it may lodge at that point.

FINANCIAL MEMORANDUM

122. The same rule requires the lead committee to report on the Financial Memorandum. The Committee notes that no substantive issues were raised by the Finance Committee on the Bill as introduced.

123. Throughout this report, the Committee has sought to consider the resource implications, in particular for the SPS, the Parole Board and criminal justice social work services, of the Bill's provisions and of the Scottish Government's proposed Stage 2 amendments. **Again, given the extent of the proposed amendments, the Committee requests that the Scottish Government bring forward a supplementary Financial Memorandum at Stage 2.**

GENERAL PRINCIPLES

124. Under Rule 9.6.1 of Standing Orders, the lead committee is required to report to the Parliament on the general principles of the Bill.

125. The Committee supports the general principles of this Bill¹⁰⁴.

126. The Committee notes that, as set out in the Cabinet Secretary's letter to the Committee of 3 February, the Bill will be amended at Stage 2. Whilst the Committee welcomes the broad policy intention of those proposed amendments, it requires further detail on their implications, and will seek sufficient time at Stage 2 to allow it to conduct the thorough scrutiny expected by witnesses and the general public.

¹⁰⁴ Margaret Mitchell MSP dissented from this paragraph.

ANNEXE A: REPORTS FROM OTHER COMMITTEES

Finance Committee consideration

The Finance Committee received five written submissions in response to its call for evidence on the Prisoners (Control of Release) Bill's Financial Memorandum (FM). None of the submissions raised any substantive issues in relation to the FM. The submissions are available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/80591.aspx>

Delegated Powers and Law Reform Committee consideration

The Delegated Powers and Law Reform Committee's 71st Report 2014 (Session 4): Prisoners (Control of Release) (Scotland) Bill is available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/84443.aspx>

ANNEXE B: EXTRACTS FROM THE MINUTES

29th Meeting, 2014 (Session 4) Tuesday 18 November 2014

Prisoners (Control of Release) (Scotland) Bill (in private): The Committee considered its approach to the scrutiny of the Bill at Stage 1 and agreed: (a) proposed witnesses; and (b) to issue a call for written evidence.

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

Prisoners (Control of Release) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

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

3rd Meeting, 2015 (Session 4) Tuesday 20 January 2015

Prisoners (Control of Release) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Professor Cyrus Tata, Professor of Law and Criminal Justice, University of Strathclyde;
Peter Johnston, Convener, Risk Management Authority;
Colin McConnell, Chief Executive, Scottish Prison Service;
John Watt, Chair, Parole Board for Scotland;
Phil Thomas, Scottish National Committee, Prison Officers Association (Scotland).

4th Meeting, 2015 (Session 4) Tuesday 27 January 2015

Prisoners (Control of Release) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Michael Matheson, Cabinet Secretary for Justice, and Philip Lamont, Head of Criminal Justice and Sentencing Unit, Scottish Government.

5th Meeting, 2015 (Session 4) Tuesday 3 February 2015

Prisoners (Control of Release) (Scotland) Bill (in private): The Committee considered correspondence from the Cabinet Secretary for Justice in relation to the evidence received on the Bill. In light of this correspondence, the Committee agreed to hold a further evidence session, in round-table format, at a future meeting.

6th Meeting, 2015 (Session 4) Tuesday 24 February 20156

Prisoners (Control of Release) (Scotland) Bill: The Committee took evidence, in round-table format, on the Bill at Stage 1 from—

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

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

Yvonne Gailey, Chief Executive, Risk Management Authority;

Eric Murch, Director of Operations, Scottish Prison Service;

Sean McKendrick, Social Work Scotland;

Professor Fergus McNeill, Professor of Criminology and Social Work, University of Glasgow;

Professor Cyrus Tata, Professor of Law and Criminal Justice, University of Strathclyde;

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

7th Meeting, 2015 (Session 4) Tuesday 3 March 20156

Prisoners (Control of Release) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Michael Matheson, Cabinet Secretary for Justice, Scottish Government.

9th Meeting, 2015 (Session 4) Tuesday 17 March 20156

Prisoners (Control of Release) (Scotland) Bill (in private): The Committee considered a draft Stage 1 report. Various changes were agreed to. It was proposed that the wording of footnote 104, recording Margaret Mitchell's dissent, be agreed to. The proposal was agreed to by division: (For 8 (Christian Allard, Jayne Baxter, Roderick Campbell, John Finnie, Christine Grahame, Alison McInnes, Elaine Murray, Gil Paterson), Against 0, Abstentions 1 (Margaret Mitchell)). The report, as amended, was agreed to.

ANNEXE C: INDEX OF ORAL EVIDENCE

[2nd Meeting, 2015 \(Session 4\) Tuesday 13 January 2015](#)

Dr Monica Barry, Principal Research Fellow, University of Strathclyde
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

[3rd Meeting, 2015 \(Session 4\) Tuesday 20 January 2015](#)

Professor Cyrus Tata, Professor of Law and Criminal Justice, University of
Strathclyde
Peter Johnston, Convener, Risk Management Authority
Colin McConnell, Chief Executive, Scottish Prison Service
John Watt, Chair, Parole Board for Scotland
Phil Thomas, Scottish National Committee, Prison Officers Association
(Scotland)

[4th Meeting, 2015 \(Session 4\) Tuesday 27 January 2015](#)

Michael Matheson, Cabinet Secretary for Justice, and Philip Lamont, Head of
Criminal Justice and Sentencing Unit, Scottish Government.

[6th Meeting, 2015 \(Session 4\) Tuesday 24 February 2015](#)

Lisa Mackenzie, Policy and Public Affairs Manager, Howard League Scotland
Pete White, National Co-ordinator, Positive Prison? Positive Futures
Yvonne Gailey, Chief Executive, Risk Management Authority
Eric Murch, Director of Operations, Scottish Prison Service
Sean McKendrick, Social Work Scotland
Professor Fergus McNeill, Professor of Criminology and Social Work,
University of Glasgow
Professor Cyrus Tata, Professor of Law and Criminal Justice, University of
Strathclyde
Sarah Crombie, Acting Director of Corporate Services, Victim Support
Scotland

[7th Meeting, 2015 \(Session 4\) Tuesday 3 March 2015](#)

Michael Matheson, Cabinet Secretary for Justice, Scottish Government.

ANNEXE D: INDEX OF WRITTEN EVIDENCE

Submissions received on the Prisoners (Control of Release) (Scotland) Bill

Evidence received in alphabetical order

[Barry, Dr Monica, University of Strathclyde and McNeill, Professor Fergus, University of Glasgow \(275KB pdf\)](#)
[Barry, Dr Monica, University of Strathclyde and McNeill, Professor Fergus, University of Glasgow \(supplementary submission\) \(121KB pdf\)](#)
[Faculty of Advocates \(186KB pdf\)](#)
[Glasgow Community Justice Authority \(166KB pdf\)](#)
[Howard League Scotland \(171KB pdf\)](#)
[Law Society of Scotland \(280KB pdf\)](#)
[Law Society of Scotland \(supplementary submission\) \(298KB pdf\)](#)
[McNeill, Professor Fergus, University of Glasgow \(125KB pdf\)](#)
[Parole Board for Scotland \(153KB pdf\)](#)
[Parole Board for Scotland \(supplementary submission\) \(123KB pdf\)](#)
[Parole Board for Scotland \(supplementary submission\) \(124KB pdf\)](#)
[Police Scotland \(117KB pdf\)](#)
[Positive Prison? Positive Futures \(206KB pdf\)](#)
[Prison Officers Association \(Scotland\) \(125KB pdf\)](#)
[Risk Management Authority \(268KB pdf\)](#)
[Risk Management Authority \(supplementary submission\) \(129KB pdf\)](#)
[Sacro \(266KB pdf\)](#)
[Scottish Human Rights Commission \(119KB pdf\)](#)
[Scottish Human Rights Commission \(supplementary submission\) \(130KB pdf\)](#)
[Scottish Prison Service \(203KB pdf\)](#)
[Scottish Women's Aid \(385KB pdf\)](#)
[Social Work Scotland \(121KB pdf\)](#)
[Social Work Scotland \(supplementary submission\) \(119KB pdf\)](#)
[South Lanarkshire Council \(119KB pdf\)](#)
[Tata, Professor Cyrus, University of Strathclyde \(317KB pdf\)](#)
[Victim Support Scotland \(194KB pdf\)](#)
[Victim Support Scotland \(supplementary submission\) \(175KB pdf\)](#)

Written submissions are also published (in the order received) on the Committee's webpage at:

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