

Justice Committee

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

Written submission from Professor Dr Cyrus Tata, University of Strathclyde

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

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

This raises the following question: Is it now the view of the Scottish Government that ‘cold’ release may often be safer than supervised release on licence? The only conceivable way of making sense of these proposals on the grounds of public safety is if the Scottish Government is adopting the curious view that ‘cold’ release into the community of a long-term prisoners is, at least in some cases, a safer option than a required period of support and supervision on licence. This position would be curious because successive governments and inquiries have rightly recognised that public safety is better served through the release of long-term prisoners on licence.¹ It is well established that the most ‘risky’ time for a person being released from prison is the first year or two. This is when, after a long period of institutionalisation, prisoners have to adjust to life in the outside world. In the immediate period after release they have to find housing, seek employment, apply for financial (‘benefits’) support, deal with the re-emergence of an addiction problem, find their place in family relationships, face old (possibly offender) acquaintances etc, and so are at most risk of re-offending. Providing statutory support and conditions is not a matter of being ‘nice’ to the released prisoner it is in the public interest to support and supervise that person. To simply release someone without the controlled support and supervision may *sound* ‘tougher’ but in fact it would irresponsible.

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

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

3. Square Peg in round holes?

The proposals apply only to determinate length sentenced prisoners (not to life sentenced prisoners). By definition determinate sentenced prisoners must be

¹ For example: Report of the (Kincaig) Review Committee *Parole and Related Issues in Scotland*, March 1989; *Report of the (Maclean) Committee on Serious Violent and Sexual Offenders* June 2000; Hutton and Levy (2002) *Parole Decisions and Release Outcomes* (Scottish Executive Central Research Unit); The Scottish Prisons (McLeish) Commission, *Scotland’s Choice*, 2008

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

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

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

No matter how good a system is, it is inevitable that some released prisoners will re-offend and some will, unfortunately, commit extremely serious offences. Currently, the *automatic* nature of conditional release means that the Parole Board is relatively protected from blame for releasing a long-term prisoner before the expiration of the full sentence. However, under the new proposals the Parole Board will be blamed for whatever it decides when a long term prisoner commits a serious and high profile offence after release. On the one hand, if, mindful of the need to reduce the risk of the release of prisoner, the Parole Board decides to release him/her on conditional licence and then s/he commits a very serious offence, the Parole Board will be blamed for being too 'soft': why, it will be asked, was the prisoner not kept in custody to the expiration of the sentence?² If on the other hand, the Parole Board decides not to release the person on licence until the expiration of the sentence and the person then commits a very serious offence questions will be asked about the wisdom of release without mandatory supervision on licence. Either way the Parole Board, (and community supervision more generally), is being set up for reputational failure.

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

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

² There is some robust evidence that Parole Boards tend to overestimate risk. See for example: R. Hood and S. Shute (2000) *The Parole System at Work: A study of risk-based decision-making*. Research Development and Statistics Directorate, Home Office; S. Shute (2007) 'Parole and Risk Assessment' in N. Padfield (ed) *Who to Release?* Willan pp 21-42; this was also observed by L. Hutton and L. Levy (2002) *Parole Decisions and Release Outcomes* (Scottish Executive Central Research Unit)

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

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

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

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

8. Will the proposals violate proportionality?

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

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