



OFFICIAL REPORT
AITHISG OIFIGEIL

COVID-19 Committee

Thursday 21 May 2020

Session 5



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COVID-19 COMMITTEE
6th Meeting 2020, Session 5

CONVENER

*Murdo Fraser (Mid Scotland and Fife) (Con)

DEPUTY CONVENER

*Monica Lennon (Central Scotland) (Lab)

COMMITTEE MEMBERS

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)
*Annabelle Ewing (Cowdenbeath) (SNP)
Ross Greer (West Scotland) (Green)
*Shona Robison (Dundee City East) (SNP)
*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)
Adam Tomkins (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Patrick Harvie (Glasgow) (Green) (Committee Substitute)
Liam Kerr (North East Scotland) (Con) (Committee Substitute)
Craig McGuffie (Scottish Government)
Humza Yousaf (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

Virtual Meeting

Scottish Parliament

COVID-19 Committee

Thursday 21 May 2020

[The Convener opened the meeting at 15:49]

Subordinate Legislation

Release of Prisoners (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/138)

Criminal Justice (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/137)

The Convener (Murdo Fraser): Good afternoon, and welcome to the sixth meeting of the COVID-19 Committee. We have received apologies from Adam Tomkins and Ross Greer. Liam Kerr is attending as a substitute for Adam Tomkins, and Patrick Harvie is attending as a substitute for Ross Greer. I invite Liam Kerr and Patrick Harvie to declare any relevant interests.

Liam Kerr (North East Scotland) (Con): I am currently a practising solicitor and a member of the Law Society of Scotland and the Law Society of England and Wales.

Patrick Harvie (Glasgow) (Green): I do not think that I have any interests that are relevant to the committee, but all my interests are recorded in the register of members' interests for people to see.

The Convener: Thank you.

We are joined by Humza Yousaf, the Cabinet Secretary for Justice to consider two statutory instruments relating to the early release of prisoners. As they are linked, the cabinet secretary will take questions on both instruments at the same time rather than under two separate agenda items. Members will have received a clerk's paper, which provides background and procedural information, along with written submissions from the criminal justice voluntary sector forum and the Howard League Scotland.

The cabinet secretary is joined by Scottish Government officials Graham Robertson, who is from the community justice division, and Craig McGuffie, who is from the legal directorate. If the cabinet secretary would like the officials to contribute to the discussion, I ask him to make that clear. I remind everyone to take a breath before they speak, so that their camera and microphone can be switched on at the relevant point.

I welcome the cabinet secretary to the meeting and invite him to make a short opening statement.

The Cabinet Secretary for Justice (Humza Yousaf): Thank you for allowing me to give evidence on the two sets of regulations that are before the committee. As the convener rightly said, both instruments relate to prisoner release. The Release of Prisoners (Coronavirus) (Scotland) Regulations 2020 set out the classes of prisoners who are eligible for release and how release is being phased. The Criminal Justice (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020 make a number of necessary changes to the victim notification scheme so that it applies to those who are released under the early release arrangements. They also make provision so that the power to veto release that is conferred on governors will extend to the directors of private prisons in Scotland.

In bringing forward these regulations, I am clear that allowing for the limited release of prisoners was a necessary action to protect the health of all those who live and work in our prisons at this time, and to mitigate the impact of coronavirus on our prisons overall.

I am very grateful to colleagues from across all parties for the constructive way in which they have approached the issue. I note that the Parliament unanimously agreed to the Coronavirus (Scotland) Act 2020, which put in place the necessary legislation to permit the early release of prisoners, if it became necessary to do so. After careful consideration, and in agreement with the Scottish Prison Service, it became clear that it would be necessary for action to be taken.

On 21 April, I announced to Parliament my intention to bring forward regulations, and we laid the release of prisoners regulations before Parliament on Monday 4 May. The regulations set out the criteria for those eligible for the release process, with the key limits being that it would apply to those serving a sentence of less than 18 months, and to those who were three months or less away from their release date.

There are safeguards in the 2020 act that exclude, for example, prisoners who have committed sexual offences or terrorist offences. The regulations add further exclusions in relation to domestic abuse and harassment. A governor's veto is also in place, which is to be used when a governor considers that the person, if released, would pose an immediate risk of harm to an identified person. Although all the individuals within the eligible cohort would, in any event, be released from prison at their liberation dates over the next 12 weeks, I believe that we have put in place a proportionate set of safeguards. Work is very much under way to assess all the eligible

individuals, and appropriate individuals will be released over the course of this month.

I would like to give a brief update on the release process so far. I have been advised by Scottish Prison Service management that the administration of the process has been progressing to plan. As of yesterday evening, 240 individuals have been released early since the process began, and a governor's veto has been applied in 55 cases in total. On Tuesday of this week, statistics on the release process were published on the SPS website. Further information will be made available on the SPS website as each phase concludes.

Plans for the release process were worked out in advance with local government, housing services and the third sector. The Convention of Scottish Local Authorities leadership, the Association of Local Authority Chief Housing Officers, Social Work Scotland and other stakeholders have been closely involved in that work, and I personally have been in regular contact with Councillor Parry of COSLA and third sector partners such as the Wise Group and Sacro.

Feedback from justice partners suggests that the release process has been operating effectively overall, with support available to individuals who need it. We already know that prison release can be a challenging time, so I am grateful for the way that partners have come together to share data and undertake release planning.

As I have said before, this was not an easy decision or one that we have taken lightly. I am acutely aware of the impact that the releases may have on those who have been victims of crime, and our decision should not diminish what those victims have experienced. That is why it was important that the second set of regulations modified the victim notification scheme to ensure that any victims who are already registered with the scheme will be notified if a specific prisoner is to be released.

I am more than happy to answer any questions that members have on the release process and the details of the regulations.

The Convener: Thank you for that helpful introduction.

If members want to ask supplementary questions, please type an R in the chat box at the relevant point and I will try to bring you in as best I can.

I will start with a couple of questions. The cabinet secretary referred to the victim notification scheme, which allows victims who have signed up to the scheme to be notified of an offender's early release. What proportion of eligible victims have

signed up to the scheme? Is there a risk that some victims may not currently be registered but intended to register closer to the original anticipated release date and therefore might not be notified, which would be an unintended consequence of the regulations?

Humza Yousaf: That is a hugely important question. If I may, I will get back to you in writing on the percentage of those who are eligible who have signed up. As a caveat, or to provide a bit of context, it is important to make the obvious point—you will understand this, convener, as will others, but it is nonetheless worth making—that not every victim would want to be notified when a certain prisoner is released. We know from talking to Victim Support Scotland that it can retraumatise an individual if they have any knowledge of a prisoner being released. Some victims simply do not want to know. That is an important bit of context.

It is also important to say that any victim can opt into the victim notification scheme at any point. Therefore, the fact that they were not part of the scheme previously does not mean that they cannot now opt into it. The Scottish Prison Service has made that process as easy as possible, with a link on its website and a phone number that people can call to opt into the scheme. Since March, a number of people have opted in—again, I can give you the exact detail in writing after the meeting, but I think that the number is around 30.

In my engagement with Victim Support Scotland, I will certainly ask whether there is a danger of victims being left out. If that is a danger, it is incumbent on us to ensure that we do everything that we can to make the process as streamlined and as easy as possible for victims.

The Convener: The release of prisoners regulations are provisional—they are what is known as a made affirmative instrument, which means that the provisions came into force immediately the regulations were laid, but the Parliament had not had a chance to consider them at that point. What would happen in the event that the Parliament decided not to approve the regulations within the 28-day period, particularly given that some prisoners have already been released earlier than specified in their original sentence?

Humza Yousaf: I appreciate your reasons for asking the question, but I hope that you and others will appreciate that we had to take the measures at pace, because of the nature of the crisis that we are facing, particularly in our prisons. The evidence that you have received from the Howard League Scotland, for example, points out that prisons can be an incubator for the virus. It was important that we quickly took action that we thought was necessary and proportionate.

To give you a direct answer to your question, those releases would still be lawful. Once an individual has been released, they are released; there would be no question of people being recalled to prison in the situation that you describe. That simply would not happen, legally.

16:00

Of course, I understand the importance of parliamentary scrutiny. For example, if the committee does not recommend that Parliament approve the regulations, I will reflect on that. Bear in mind that, at any point, a minister can withdraw the regulations. I will reflect carefully on what the committee says and what the final outcome of the parliamentary process is.

The Convener: Thank you, cabinet secretary. Annabelle Ewing will ask the next question.

Annabelle Ewing (Cowdenbeath) (SNP): Good afternoon, cabinet secretary. I have two questions that relate to practical issues surrounding release.

Concerns have been expressed that, in some cases, release is being organised with less than 24 hours' notice. Obviously, that would involve practical challenges in a number of respects. Could you give us some clarification on that point?

My second question involves concerns that have been raised about the fact that, in some instances, face coverings are not being made available to the released prisoner, who has to get from the prison to their home area, often on public transport. Can you provide some clarification on that, as well?

Humza Yousaf: On your first question, it would probably be helpful to make the point that there are already on-going prison releases. There is the early release scheme and there are the usual releases of prisoners that take place in any given week, which could involve anywhere from 100 to 150 prisoners. Usually, local authorities are given 12 weeks' notice of prisoners who might be released in their area. That process continues for those who are on early release. There should, therefore, be quite a lot of advance notice.

You referred to releases in relation to which there was less than 24 hours' notice. That might have happened at the beginning of the process, and is regrettable. However, I am confident that the procedures that we now have in place mean that not only local authorities but other partners will have notice. I have spoken to people in the third sector about that, and I have also spoken to Councillor Parry from the Convention of Scottish Local Authorities, who is my counterpart in that organisation. I have been assured and reassured that the level of information and detail about every

prisoner is not only satisfactory but coming in a timely manner. I hope that that has resolved the issue, but I do not take away from what you say about some of the challenges that we faced at the very beginning of the scheme.

You make an important point about face masks. Forgive me, but I will have to go back and talk to the Scottish Prison Service about that. As you know, according to the guidance, wearing face masks on public transport is not mandatory, but it is still an important point. I will see what provision we have of the appropriate personal protective equipment and the supply of suitable face coverings that the Scottish Prison Service has and I will get back to the committee on that point. If there is anything that we can do, I am more than happy for us to be proactive in that regard.

Annabelle Ewing: It would be helpful if you could get back to the committee on that point, because it seems that we are all moving towards wearing face coverings in the appropriate circumstances in the next phase, and given that travelling on public transport appears to be one of those appropriate situations, face coverings should perhaps be made available. I look forward to getting clarification from you, perhaps in writing.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Cabinet secretary, as you know, many constituents and victims are understandably anxious about the changes that you have announced on early release, although it is welcome that certain categories of prisoner, including those who have been convicted of sexual offences and those who are in prison for life, will not be eligible for early release.

A greater number of remand prisoners are being released on bail, because their trials cannot proceed. That, too, is giving cause for concern, and some women are genuinely in fear for their safety. Can you give us some assurance that any additional measures that are required will be taken to ensure the safety of such women and their families?

Humza Yousaf: The important caveat to my answer is that bail and remand decisions are made independently by the court in all circumstances.

In the statutory framework on bail and remand, it is made explicit, in black and white, that consideration must be given to public safety. Therefore, any substantial risk of a person committing further offences or interfering with witnesses, for example, if they were to be granted bail, is, under the framework, a good, valid and appropriate reason for refusing bail. No change whatever has been made in that respect during the Covid-19 pandemic. That is the important point.

It is a challenging issue, because prisoners who are untried and have not been convicted must, by law, get the benefit of a presumption of innocence.

However, in almost every conversation that I have with the chief constable and with the Lord Advocate, on the Crown side, it is clear that those individuals and the organisations that they represent are absolutely alert to the danger that victims and survivors of domestic abuse—children, as well as women—might well face as a result of the lockdown measures. A power of work is being done by Police Scotland, in particular, alongside partners such as Scottish Women's Aid, to make sure that we do everything possible to mitigate the risks of domestic abuse that people face.

Willie Coffey: Does an additional assessment of risk need to be made, given that more prisoners in the category that we are talking about are bound to be released on bail, because of the circumstances that we are in?

Humza Yousaf: As a general point, I am always happy to have a closer look at matters. I will pick up the issue with the Scottish Courts and Tribunals Service, and I am more than happy to have conversations with other appropriate stakeholders.

I reiterate that, as you know, bail decisions are for the independent courts to make. I go back to the point that I made in my previous answer, which is that the grounds for refusing bail, whether for public safety reasons or because of the risk of harm to an individual, have not changed.

I do not have the figures in front of me, but I will take a closer look at the issue and will ask the question. I have not seen any evidence thus far that indicates that more individuals have been granted bail in potential domestic abuse cases, but I will take a look at that and will speak to partners on the ground such as Scottish Women's Aid, which tends to have a good ear to the ground on such matters.

Liam Kerr: I have two or three quick questions on the prisoner release regulations. Similar challenges were faced down south, where one remedy that was looked at was temporarily expanding the capacity of the prison estate. I know that you and your officials are in regular contact with your colleagues down south. Can you help the committee to understand why that was not considered to be an option up here as an alternative to prisoner release?

Humza Yousaf: The member is right that I have had fairly regular engagement with United Kingdom Government counterparts. It has been a very constructive process of engagement, in which we have been keen to understand each other's plans for our jurisdictions and to share information when we can. However, the context of that sharing

of information has been an explicit understanding that we will take whatever course of action is necessary for the prison services in our jurisdictions. What is right for prisons in England and Wales might not be right for prisons in Scotland or, indeed, those in Northern Ireland.

It is worth saying that the UK Government announced the release of up to 4,000 prisoners, but my latest understanding is that, after a number of weeks, it has looked at abandoning or temporarily suspending that scheme. Northern Ireland has taken a similar approach to the one that has been taken in Scotland; it has an early release scheme for prisoners with three months or less of their sentence left.

We looked at an early release scheme because it would be the quickest method, alongside the use of home detention curfew, to help us to reduce the prison population, which is important because of the number of staff absences that we have and the ability that that would give us to greatly increase single cell occupancy. I struggle to see where we could implement a scheme to increase capacity and what capacity we could use to do that in any meaningful way. As the Howard League submission demonstrates, custody settings are—[*Temporary loss of sound*]
—I would certainly have been attracted to, and I think that we have the right balance in a scheme that is proportionate but necessary.

Liam Kerr: Thank you for that answer.

I want to take a different tack. There is perhaps a little less understanding of this issue than there might be. Yesterday, as part of our consideration of the Coronavirus (Scotland) (No 2) Bill, we discussed sunset clauses. Can you help the committee and anyone watching to understand when, precisely, the early release SSI will lapse and what will happen at that point? For example, if there is a prisoner who has not been released by, let us say, 23:59 on 30 September, will they not be eligible for release under the scheme, with the result that they will have to serve their sentence in accordance with the normal rules?

Humza Yousaf: Liam Kerr is right to say that the early release regulations will go on for 180 days unless the Government chooses to withdraw them or they are not approved. At that point, that would be the end of the early release scheme. I am not aware of there being any additional flexibility, but I will ask one of my officials on the legal side, Craig McGuffie, to make sure that I have got that absolutely right.

16:15

We should bear it in mind that, although we are talking about an early release scheme, we also have the normal release scheme, which is

progressing as normal. In any given week, 100 to 150 prisoners would be released anyway. Those individuals who missed the cut-off point would potentially be released at a later date.

You mentioned September, but it should be borne in mind that the early release scheme that we have in place at the moment is for a 28-day period, and it is happening in three tranches. We have already had the first tranche, which was the first two weeks of the scheme. The next tranche is this week, and the final week will be the third tranche. In that 28-day period, between 300 and 450 prisoners will be released, depending on the governor's veto. After the 28-day period, there is not another early release scheme planned. That can obviously be kept under review but, at the moment, I am not considering another early release scheme within the 180-day timeframe, although that could change, depending on the prison population.

If it is okay, I will bring in Craig McGuffie to clarify some of the legal issues, as he is our principal legal adviser on the matter.

Craig McGuffie (Scottish Government): The expedited procedure under the Coronavirus (Scotland) Act 2020 provides for the regulations to be in force for a period of 28 days. If they are approved within that period, they can extend for 180 days. The regulations that we have made have been structured in such a way that the eligibility of prisoners is determined by reference to the first day that they were in force alone. Therefore, there will be a tranche of prisoners who were identified on day 1 as being eligible for release over the course of the duration of the regulations.

The regulations plan for the release to be phased over the initial 28 days, because of the urgency of the requirement to release people and the guarantee that the regulations will be in force for 28 days. If the Parliament does not approve the regulations, they will fall after that 28-day period. Anyone who is released in that 28-day period will continue to be released even if the regulations fall on day 28. Anyone who obtains eligibility during the 28-day period—that is determined by reference to the time that they had left to serve on the day that the regulations came into force—but who is not released during the 28-day period, possibly on health grounds, if they are showing symptoms of coronavirus, can be released after the 28 days. Their eligibility will not fall when the regulations fall, by virtue of the Interpretation and Legislative Reform (Scotland) Act 2010.

Liam Kerr: That is very helpful from both of you.

Cabinet secretary, I know that you will share my disappointment that there are already some examples, although not many, of people who have

been released under the scheme and who have reoffended. You said at the start that you are in regular touch with the likes of local authorities and the Wise Group. Can you give the committee any reassurance about what is being done to ensure that local authorities and criminal justice partners have the resources that they need to prevent such reoffending and to help anyone who is released early to stay on the straight and narrow?

Humza Yousaf: I share your disappointment, but I have always been careful when talking about the early release scheme not to suggest that everybody who is released will somehow stay out of prison. That simply will not be the case. As Liam Kerr will know from his work on the Justice Committee, the individuals who we are dealing with have complex needs and often chaotic lifestyles, and the services that are available to them are somewhat limited compared to when we are not in lockdown. Mr Kerr is absolutely right—certainly, there has been publicity around one case in which an individual had to return to custody.

The direct answer to Mr Kerr's question is that resource has been part of the conversation with COSLA. We have allowed the additional £4 million that we gave to local authorities for community justice measures to be used flexibly, so it can be used to help with the early release scheme.

I have regular phone calls with representatives of the Wise Group, and I have had a conversation with Sacro. I continue to make the case to them that, if they feel that there is a need for further resource, my door is open to them. So far, they are managing to reprofile some of their spend for the work that they are doing.

The Convener: Patrick Harvie has a supplementary question.

Patrick Harvie: Cabinet secretary, I am sure that your officials and everybody in the Scottish Prison Service have been working extremely hard to adapt to the new circumstances. As the Howard League's written evidence to the committee points out, one effect of the situation is that a lot of the activity that would normally happen inside prisons to prepare prisoners for release is not possible. Given that, it is a little surprising that the early release scheme does not come with a package of additional measures to support prisoners who are being released, especially as they will not have had that support in the run-up to their release. Can you give us reassurance that measures will be in place for all prisoners who are released early to compensate for the fact that they will not have the additional support and pre-release preparation that they would normally have?

Humza Yousaf: That is a valid point from Patrick Harvie and the Howard League, which is

an organisation that I respect greatly on matters of penal reform.

I know that the committee is busy, but it might be worth while for you at some point to hear from the Wise Group and Sacro on throughcare support. I do not think that I am speaking out of turn when I say that their communications with me on the processes and support that we have in place and the collaboration between—[*Temporary loss of sound*]
—and the Prison Service is that they are the best that they have ever seen. I agree with the point that it should not have taken a pandemic for that level of support to be put in place.

The Wise Group and Sacro have played a big role in that. The liberation pack that the Wise Group has proactively begun giving to prisoners under the early release scheme includes things such as an Asda voucher that is enough for the individual to buy a very basic mobile phone so that they can contact their mentor. Sacro's shine programme, which is for female prisoners who are being released, gives them a mobile phone in their liberation pack.

Because we have detailed information on who is being released and some of the support that they need, local authorities are able to put in place—[*Temporary loss of sound*]
—that those individuals require to the best of their ability, while understanding that there are, of course limitations—[*Temporary loss of sound*]. I would say that the prisoners who are being released under the current scheme are getting more in the way of support than—[*Temporary loss of sound*]. The processes and the collaboration that we have put in place between partners are things that we will want to embed post Covid-19.

The Convener: Cabinet secretary, some of us were having difficulty hearing some of your answer to Patrick Harvie. I think that you were having one or two microphone difficulties there. It might be helpful if you were to write to the committee to put on record the answer that you have just given, as I am not sure how much of your answer will be caught in the *Official Report*.

Monica Lennon (Central Scotland) (Lab): Good afternoon, cabinet secretary. I was able to hear most of what you said and I hope that you can hear me. I will pick up on some practical issues similar to those that Annabelle Ewing asked about at the beginning. I was pleased to hear you say that you have worked closely with COSLA, Councillor Parry and other colleagues. That is reassuring.

What plans are in place to support prisoners who are released under the scheme? I was not aware of a turnaround as short as 24 hours, but I am aware that lots of staff in local authorities have been absent because of the coronavirus, although

numbers vary across the country. Will you say some more about the plans that are in place for prisoner release in relation to housing support? What is in place to try to minimise, wherever possible, the risk of homelessness? Have local authorities and the third sector been given extra resources to assist them?

I also have a question on the separate subject of testing. Colleagues in Parliament have raised the idea of regular testing for prisoners before release. I do not think that that was supported at the time, but we are learning more all the time, especially about people who have the virus but are asymptomatic. Will you give us an update on your thinking on that? You said at the start of the meeting that, as of last night, 240 prisoners had been released under the scheme. Can you or your officials advise us how many of those individuals were tested for coronavirus?

Humza Yousaf: There may well be an issue with my internet connection, because I missed some of what you said. I think that I managed to pick up the gist of it, but if I do not address any of your questions, please come back to me.

On housing and other support, I have put an emphasis on addiction services because of the cohort and the population that we are dealing with. As I said in my answer to Patrick Harvie, notwithstanding the difficult challenges in relation to staff absences and pressures on local government, which you articulated well, the service that is being received has been really first class. That is not simply my observation; it is the observation from COSLA and from partners such as the Wise Group and Sacro.

After my most recent phone call with Councillor Parry this week, I asked COSLA to come back to me with any particular concerns from any specific local authorities about any gaps in service so that I can address those specifically. COSLA has not yet come back to me on that point, but I am due to have another phone call with it next week.

The housing side is progressing really well, because we have a 12-week list and accommodation has been found. I am not aware of any prisoner coming out and having any housing issues. The Wise Group told me one or two anecdotes where there was perhaps a mix-up about a prisoner's housing when they were released and they were meant to attend to get that housing provision. However, that was quickly resolved; the individual was able to contact the Wise Group, which was then able to contact the council and get the issue resolved. We are looking into that side of things regularly.

The latest position on testing is that, in nine of our prison establishments, the health boards have taken the position of testing prisoners if they are

symptomatic. Our conversations and the Scottish Prison Service's conversations with the other health boards have indicated that we expect every prison establishment to test prisoners if they display symptoms of Covid-19. I will not rehearse the limitations on testing. We continue to monitor developments, but there are limitations around what testing can tell us at a specific moment.

With regard to the early release scheme, there is an additional safeguard. If the health professionals in a prison believe that an individual is Covid-19 positive, which can be reaffirmed by the testing in the nine establishments, they have the ability to delay release until the individual is no longer Covid-19 positive.

16:30

Monica Lennon: I have a brief supplementary question. If the cabinet secretary cannot answer now the question about how many of the released prisoners had been tested, it would be helpful if he could give the committee the answer in writing.

When the committee took evidence from Sir Harry Burns a couple of weeks ago, he talked about staff in health and social care settings who, because they are asymptomatic, unwittingly transmit the virus. You mentioned that testing is limited to people who have symptoms, but we are learning more all the time. Given the further things that you have heard in recent days and weeks, are you looking to revisit that with your officials?

Humza Yousaf: Those who work in the Prison Service have access to the drive-through testing facilities and they have been making good use of them. That can be demonstrated by the fact that a number of those who were absent have now returned. The absence rates in our prisons have dropped from a high of around 25 per cent to closer to 17 or 18 per cent.

The prison policy is aligned to the national Health Protection Scotland advice. If that develops or changes, the prison service will consider changing its guidance. I will write to you with the numbers that have been tested. As per the guidance, if prisoners were not symptomatic, they would not have been tested. Thus far, nobody has had their release delayed because they were displaying Covid-19 symptoms.

Shona Robison (Dundee City East) (SNP): Good afternoon, cabinet secretary. You said in your opening remarks that the statistics on prisoner release will be on the SPS website. Will they be broken down by age and local authority? Will the SPS publish information about how many vetoes prison governors have used? I am sorry if you mentioned that—if you did, I did not catch it.

Humza Yousaf: Yes. The information that is published on the SPS website will be broken down by age, local authority, prison establishment and gender. There is a lot of detail in relation to the numbers that are being released. That statistical report is released after every tranche, so the next one will be released next week. I confirm that it also gives a breakdown of cases in which governors' vetoes have applied. I do not have the report in front of me, but if my memory serves me correctly, they are also broken down by establishment.

Shona Robison: That is helpful. As the first tranche of prisoner releases comes to an end, are there early signs of progress on prison occupancy rates? Again, I apologise if you have already touched on that. Has the process been as effective as you hoped it would be?

Humza Yousaf: The short answer is yes. However, early release schemes are not the only tool that we have in our armoury for dealing with the prison population. As you will know from your work on the Justice Committee, we also have home detention curfew, the use of which has been ramped up recently. Combining that with the early release programme has meant that we now have greater single-cell occupancy across the prison estate.

It is worth remembering where we were prior to the pandemic. Almost every single one of our prisons was overcrowded, and some severely so: Barlinnie was close to being at 150 per cent occupancy. We are now down to having just short of 7,000 people in custody across the estate. That is well below our operating and design capacity, which is good.

What I have never done—and will never be able to do—is to give you an absolute guarantee of a definitive number at which we might have single-cell occupancy in every prison establishment. That is because every prison is configured differently. For example, some house more long-term prisoners, those serving life sentences or sex offenders, none of whom would be released under the current scheme. Other prisons hold mixed populations. Although single cells might be available in female halls or wings there, we would, obviously, not transfer male prisoners to them.

I have always been careful to say that what we would see from the early release scheme, HDC and the other measures that we have taken was greater availability of single-cell occupancy. We have now seen that happen, and we have already announced that we have reached that level in one establishment. I expect that trend only to continue as the scheme progresses.

The Convener: Patrick Harvie has a brief supplementary.

Patrick Harvie: It is on the point that has just been explored. It has been suggested that the biggest driver of the current reduction in the prison population has been the reduction in court business rather than the other measures that you have mentioned. Are you able to produce a projection for what you expect the prison population to be as court business resumes, even with the new measures such as prisoner release in place, or is it impossible to say what that will be?

Humza Yousaf: It is absolutely correct to say that the single biggest driver in prison population reduction has been the reduction in court business. There is simply no dubiety about that. Early release and home detention curfew have certainly played their part, but without doubt the reduction in court business has been the biggest driver.

My concern is what could happen as crime levels begin to come back to normal. The chief constable and his deputies tell me that they are beginning to see those levels come back towards normality and that, as the current restrictions are eased in line with the road map that was published today, we can expect to see crime levels normalise even further.

That is already having an impact on the prison population, to the extent that, had we not already had the early release scheme and home detention curfew in place, this week the prison population would have increased for the first time since the lockdown measures were put in place.

The second part of your question relates to a piece of work that we are doing internally at the moment. I have to confess that it is a very difficult piece of work, because we do not know at what rate court business will resume—that is obviously another area of the work that I am engaged in at the moment. It is also very much dependent on the Scottish Courts and Tribunals Service, and on other factors.

That work is being done, and the issue is why we continue to keep early release under review. Although I am not at this stage contemplating another early release review, I would not rule that out if it will keep our prison population low, because that is what we need to do to keep our prisons as safe a working environment as possible.

The Convener: The last question is from Stewart Stevenson.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I am making the assumption that early release does not remove a single day from the sentence that has been imposed on the person who is subject to that early release, and that therefore their sentence continues after they are released into the community until its expiry.

Assuming that I am correct, does that therefore mean that those people could be subject to recall to custody, if appropriate? That is important, because the grounds for recall are of course not those which are required for a new conviction under the criminal justice system but are more straightforward—[*Temporary loss of sound*—]—might be difficult for the victims of crime or for the community at large. Is recall still in operation?

Humza Yousaf: I will bring in Craig McGuffie again, who is our principal legal officer and will be able to give you the legal on that. In certain limited circumstances, it might well be possible for the courts to recall. However, when somebody is released, to all intents and purposes it is as if they were released at their liberation date. I will bring in Craig to make sure I have that right.

Craig McGuffie: The cohort of prisoners who are being released just now are all short-term prisoners, which means that they are serving sentences of fewer than four years. When they are released at the halfway stage of a sentence, they are released unconditionally; there is no licence condition in place. Those prisoners are still serving their sentence in the community, but they are not subject to licence conditions. If they were to commit a further offence during the second half of their sentence, they could be returned to prison to serve the rest of that sentence. It is not a recall as would be the case for somebody who is out on licence; there is the prospect of a return to person if they commit further offences.

I should also say that everyone who is being released just now would, in accordance with the Coronavirus (Scotland) Act 2020, be treated as if they were being released at the halfway stage of their sentence unconditionally. It is like bringing forward that halfway stage of their sentence. Everyone who is now released will be subject to serving their sentence in the community up until the expiry of that sentence.

Humza Yousaf: I suppose, in essence, being careful with the language, they could return to prison to serve the rest of their sentence but would not be recalled—as Craig summarised.

The Convener: I think that those are all the questions that we had for you, cabinet secretary. Thank you for your evidence.

Are members content not to make any recommendation to the Parliament on the negative SSI, that is, the Criminal Justice (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/137)?

I do not see any disagreement with that, as no member has typed “N” into the chat bar.

16:45

We move to consideration of the motion on the affirmative SSI. I invite the cabinet secretary to move motion S5M-21738.

Motion moved,

That the COVID-19 Committee recommends that the Release of Prisoners (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/138) be approved.—[*Humza Yousaf*]

The Convener: The question is, that motion S5M-21738 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division. I am sure that members of the committee will be familiar with the voting system.

For

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Lennon, Monica (Central Scotland) (Lab)
 Robison, Shona (Dundee City East) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Wishart, Beatrice (Shetland Islands) (LD)

Abstentions

Fraser, Murdo (Mid Scotland and Fife) (Con)
 Kerr, Liam (North East Scotland) (Con)

The Convener: The result of the division is: For 7, Against 0, Abstentions 2.

Motion agreed to,

That the COVID-19 Committee recommends that the Release of Prisoners (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/138) be approved.

The Convener: In the coming days, the committee will publish a report to Parliament that sets out our decision on the statutory instrument. I thank the cabinet secretary, his officials and members of the committee.

Meeting closed at 16:47.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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