

Criminal Justice Committee

Automatic early release of prisoners and prosecution policy on public safety and prison population

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We welcome the opportunity to make a submission to the Committee in our capacity as academics in Criminology and Social Work, working in the Scottish Centre for Crime and Justice Research (SCCJR). We draw here both on our knowledge of research (in Scotland and internationally) and on our practical experience of continuing engagement with affected communities. Key insights we wish to emphasise are summarised here:

- There are three ways to reduce prison populations: send fewer people to prison; send people to prison for shorter times; and release people earlier. All three matter. Yet the Government proposals we are being invited to discuss only really relate to one of these.
- The timing of release point in short-term sentence cases – and whether to move it by a matter of weeks or months – is not likely to be the most significant factor influencing risk of reoffending, or determining the success of rehabilitation and desistance. We discuss key aspects of this but, in sum, it is more important to focus on the condition in which people are released, and the conditions to which they are released.
- In long-term sentence cases, we support proportionate approaches to early release and wider efforts towards decarceration. As with short-term sentences, it is crucial to focus on the condition in which, and the conditions to which, people are released. Fair, safe and effective release and reintegration depend not only on well-functioning prison and parole systems, but also on proper resourcing of Justice Social Work and other supports for reintegration (including third sector and community organisations), as well as good communication with and support for victims and families.
- The slow pace of progression (through the custodial parts of original sentence), waiting lists for offending behaviour programmes, and the practice and management of recall are critical issues contributing to our crowded and clogged up prison system.
- While currently being framed as an emergency, the prison population and jail conditions are important issues which have been raised for decades¹. It will take

¹ McAra ([2008](#)); Audit Scotland ([2008](#); [2019](#)); Armstrong and McNeill ([2009](#)); Brangan ([2021](#)).

political will, moral courage, resources, and action on several fronts to achieve meaningful change.

1. Proposals on changing the release point for short-term prison sentences

The Scottish Government propose to change the proportionate point of automatic early release for most people serving short-term prison sentences: moving the point from 50% down to 40% served. If passed by Parliament, this will begin in February 2025. Exclusions mean that those serving short sentences for sex offences or domestic abuse offences will continue to be released at the 50% point. Scottish Government estimates suggest that, in early 2025, this proposed change to the release point is expected to produce a 5% reduction in the sentenced prison population, or an approximate reduction of between 260 and 390 people.

We are not aware of empirical evidence (in Scotland or internationally) that this small change in the timing of release will have a significant adverse effect in terms of reoffending. Rather, the weight of criminological evidence suggests that risk of reoffending is much more likely to be affected by the condition in which people are released and the circumstances to which they are released.

Risk of reoffending relates to the likelihood of an offence occurring. Risk of harm concerns the gravity of the impact should an offence occur. Neither is determined by factors that solely reside within the individual. Rather risks arise because of interactions between people and a wide range of factors in their environments. This is why it is crucial to consider when and whether the conditions of imprisonment themselves might be 'criminogenic' (or risk-generating), and why it is crucial to consider whether the circumstances to which a person is released might reduce (or increase) risk. If, in Scotland, we are failing to provide prison conditions that enable rehabilitation (including because of overcrowding) and if we are failing to provide appropriate reintegration support (for example, via provision of adequate and safe housing), then it is our system that poses a 'risk' to public safety (and to the proper administration of justice, which must include bringing punishment to an end), rather than risk residing simply in the people within it.

Accepting that this is the current situation (as we think most informed observers do) may lead to an even more precautionary approach to releasing people from unfavourable conditions into unfavourable circumstances. That reaction, however, would exacerbate the systemic problem rather than addressing it. Indeed, it would lock us into a spiral of worsening prison conditions and reintegration prospects, and of wasting an ever-greater volume of public (and human) resources.

For this reason, even in advance of improvements in prison conditions and reintegration circumstances, we still support the proposed change to the release point for short-term prison sentences. It is a small step in the right direction because it will slightly reduce the harms that overcrowded prisons cause. That notwithstanding, in isolation from or in the absence of other courses of action, we do not expect this tweak to release point for this group to achieve *a substantial and sustained reduction* in the prison population or a positive change in terms of reoffending and reintegration.

2. Proposals on changing the release point and process for long-term sentences

There has been a 27% increase in the average number of long-term prisoners in the eight years since the relevant provisions in the Prisoners (Control of Release) (Scotland) Act 2015 commenced, from 1st February 2016 onwards². In February 2016, there were 1,820 long-term prisoners, whereas in August 2024, there are 2,410 – an increase of 590. While more than one factor may influence this upwards trend over time, it is apparent that the actions of the Scottish Government and Scottish Parliament in the 2015 Act have contributed to rises in the prison population. When that Act was being debated in Parliament and news media, multiple people and organisations expressed concerns to politicians and policymakers (including some of us and colleagues³) and those concerns turned out to be well-founded.

Our standpoint and reasoning have not changed since this issue was debated ten years ago. We support bringing the release point forward by using a proportionate approach to early release – that is, the approach taken prior to February 2016 in Scotland. In discussing the length of the early release period under supervision, as one of us (McNeill) said in giving evidence to the Justice Committee in 2015:

“Imagine that you were coming out of prison having served 10 years... How long does it take you to belong to and feel safe in the community that you have come into? How long does it take before you feel that you are a part of its everyday life, so that you are relaxed and confident in how you navigate your routines? It seems obvious that if you have spent 10 years in prison, six months is a very short period, not least because of the accumulated effects of the institutionalisation that a long sentence brings.”

This is coherent with a key point made by the Scottish Government a decade later, in their recent consultation on bringing forward the release point for this group and returning to a proportionate approach: it is ‘intended to better support the reintegration of long-term prisoners by providing those leaving prison with a more managed return to their communities, with access to the support and rehabilitation they need for a longer period of time.’ Scottish Government also emphasise that, ‘public and victim safety would remain an absolute priority, with specific support and supervision in place,’ reflecting risk assessment.

We recognise that Justice Social Work and local authorities are facing critical budget and resource pressures as well as workforce issues of staff recruitment and retention, and increasingly higher and complex caseloads⁴. COSLA and Social Work Scotland describe JSW funding arrangements as ‘currently very fragmented’ and ‘falling short’, highlighting how ‘work demands, vacancies and increasingly complex caseloads are placing pressures on a depleted and tired workforce.’ Third sector organisations who offer support in release and reintegration processes are facing an acutely austere funding landscape. These are prominent considerations if changes are to be made to the point of release for long-term prison sentences.

As criminologists and social work scholars, one of the issues regularly raised with us is progression. What we hear through research and at meetings and events, and

² Date from SSI 2015 No.409 ([C. 52](#)). Figures from Scottish Prison Service FOI ref: HQ24103 ([2024](#)).

³ McNeill and Tata in Scottish Parliament Justice Committee ([2015](#)); McNeill (2014); Barry ([2016](#)); and Barry, McAra, McNeill, Tata and various organisations, reported in Holyrood Magazine ([2015](#)).

⁴ Ormston et al. ([2024](#)); Weaver and Ipsos MORI ([2023](#)); COSLA and Social Work Scotland ([2024](#)).

from those directly involved, is coherent with the serious concerns raised in the inspection of progression by HM Inspectorate of Prisons (HMIPS). It is also reflected in work being done by others to understand experiences of people serving long-term sentences in Scotland and England⁵.

There are people waiting in prison for years longer than necessary due to lack of opportunities to demonstrate readiness for release. This undermines the ‘right to hope’ for release, which is linked to recognition of human dignity. It sits in tension with obligations on authorities under the European Convention of Human Rights (ECHR). The denial of hope and of progression also undermines rehabilitation and reintegration, not least by increasing institutionalisation and alienation. It also makes the work of prison staff much harder, because it undermines the legitimacy of the system, and therefore constructive engagement of prisoners with it. The realities of protracted waiting and institutional barriers to progression need to be considered for how they may affect any forthcoming policy proposals about long-term prisoners and the prison population, as well as the implementation of ‘reintegration licence’ temporary release measures already authorised through the Bail and Release from Custody (Scotland) Act 2023.

‘Offending behaviour programmes’ are the main approach used by the Scottish Prison Service to try to reduce risk and prevent reoffending. There are well-rehearsed reservations about over-reliance on these programmes (since they focus narrowly on ‘within-person’ changes rather than taking a more holistic and systemic view of risk and reintegration). Nonetheless, the Parole Board for Scotland, not unreasonably, pays significant attention to engagement in these (or lack thereof) within their deliberations regarding progression and parole. There are seven programmes which target different types of ‘criminogenic’ risks and/or groups. In mid-2024, there are lengthy waiting lists⁶ for two programmes specifically for those may pose a moderate or high risk of harm:

- 384 people on the waiting list for the Self Change Programme (SCP) which targets the risk of high intensity violence and takes a year to complete; and
- 144 people on the waiting list for the Moving Forward 2 Change (MF2C) programme for men which targets the risk of sexual offending.

To put this bottleneck in some perspective, according to an SPS FOI response, only 47 people have completed an OBP to address sexual offending behaviour between April 2021 and March 2024.

Such waiting lists and delays are a serious concern for people affected who are being denied one crucial means of evidencing their readiness for release. As academics from SCCJR have said previously in evidence to the Criminal Justice Committee, for a prisons’ roundtable:

‘lengthening the time prisoners will spend in prisons adds to their suffering and that of their families; it is also a waste of public resources. By way of analogy, imagine the public outcry if Scotland pursued an education policy which kept our young people in school until they achieved certain exam results, but failed to run any classes to support their learning.’

⁵ Prison Reform Trust consultation submission ([2024](#)); Prison Reform Trust Building Futures ([2024](#)).

⁶ *BS v Scottish Ministers* ([2024](#)) (CSOH 47); Scottish Prison Service FOI ref: HQ24088 ([2024](#)).

This issue is also likely to be a concern to victims and the wider public who may reasonably expect offending behaviour programmes to be made widely available in the prison estate in a timely fashion, precisely to ensure that people are helped towards safe release and change so that no one else is victimised (which is very often a major concern of victims).

Prison data collection and reporting are not available to a sufficient level because the prisoner records system (PR2) is old, problematic, and not fit for purpose. This affects access to data which is needed to inform decision-making and policymaking, and it may obfuscate accountability and scrutiny efforts which are in the public interest. To give a pertinent example: in September 2024, the Scottish Prison Service stated⁷ that they are unable to provide the numbers of prisoners who have been liberated on licence and broken the terms of their licence, attributing this to 'limitations' of their prisoner records system. The SPS claim that to produce this data for the 2,092 instances of prisoners being liberated on licence between 2019-2020 and 2023-2024 'would require a manual review of all 2,092 records to establish how many have broken the terms of their licence', which would be very time-consuming. Not being able to name the number of people who have broken the terms of their licence is not good enough. This information is relevant to Criminal Justice Committee scrutiny regarding the prison population and legislative proposals, and it will be relevant for any forthcoming Sentencing and Penal Policy Review. Notwithstanding the hard work of SPS research and Scottish Government Justice Analytical Services colleagues, prison data collection and underpinning prison IT infrastructure is an area that needs better resourcing.

Further to this, we want to draw attention to the importance of better understanding how and why recall to prison custody is used, and what affects compliance or non-compliance with post-release licences⁸. Recall is one of the relevant levers affecting the prison population.

3. Giving careful consideration to reoffending, rehabilitation, and desistance

Policy debates and political and news media discussions of prisons and prisoner release frequently involve claims being made about risk of reoffending, public safety, rehabilitation and desistance. We want to offer some clarifications and discuss these topics, given that we teach about and research⁹ them. These terms are interrelated, but they are not exactly the same thing: reducing risk of reoffending is only one part of the much wider work needed to support and enable rehabilitation, and to secure both desistance from crime and reintegration into society.

Firstly, reoffending is much more complex than the impression given in some commonly made claims in this debate. Reoffending rates vary significantly by crime type. Reoffending rates also differ by punishment/sentence type – imprisonment itself can be criminogenic (or crime-generating) in various ways; it can lead to a higher likelihood of reoffending on release. Available evidence shows that several factors are often associated with risk of reoffending: having social supports for crime like 'pro-criminal' friends and associates; having pro-criminal attitudes; 'anti—social'

⁷ Scottish Prison Service FOI ref: HQ24134 ([2024](#)).

⁸ Weaver et al. ([2021](#)). See also Casey ([2023](#)) for these issues in uses of HDC tagging post-release.

⁹ See Weaver, Graham et al. ([2023](#)); McNeill and Schinkel (2024); Ugwudike, Graham et al. ([2019](#)); McNeill and Schinkel ([2016](#)); Graham (2016); Weaver ([2015](#); [2019](#)); McNeill ([2012](#)).

patterns like aggression or impulsivity; harmful substance use and addiction; having a lack of positive or pro-social leisure and recreational activities; as well as criminalisation and punishment itself. These are things which skilled Justice Social Workers, forensic psychologists and others are experienced at assessing, supervising, and supporting people to change.

Secondly, rehabilitation is not only about changes within the individual that help them to desist from offending. It is at least as much to do with (1) basic material needs being met (no-one can be said to be rehabilitated if they lack a basic income and safe accommodation), (2) with the restoration of legal and political status (since this is a precondition of participation in society, particularly in the labour market, but also in civic and political life), (3) with reconciliation with those affected by the person's offending (if this is possible, perhaps via restorative justice), and with (4) reintegration into a community that provides acceptance and a place of belonging (rather than stigmatisation and exclusion). Research in Scotland and elsewhere – research which has had global recognition and impact, for example, via the United Nations¹⁰ – makes it abundantly clear that if these other aspects of rehabilitation are not secured, then changes within the individual are not likely to be enough to sustain desistance. More generally, the reintegration of people who have been punished is properly understood as a key duty of the state, as international standards and conventions¹¹ (by which we are bound) make clear. In our assessment, partly because of our excessive use of imprisonment and the resultant over-crowding, Scotland is failing in its duties in this respect.

Thirdly, factors associated with desistance – the developmental process of leaving crime behind and changing lives – include: relationships which support change; de-stigmatising and de-labelling processes; recognition of positive identities (e.g., as co-worker, volunteer, parent, friend, teammate); opportunities and supports for meaningful work; ageing and maturation. Macro-economic conditions and lack of resources affect prospects for desistance – it is not solely down to individual factors. Some of the best supports for desistance are found outwith the criminal justice system, though penal policymakers and practitioners are wise to be alert to what justice interventions might help or hinder desistance processes.

Opportunities for rehabilitation-oriented and desistance-oriented activities for adult men on short-term sentences are severely limited in what is a challenging environment in prisons. In this context, moving their release forward by a matter of weeks or months (e.g., being released at 10 months or the 40% point of a two-year prison sentence, instead of at 12 months or 50% point) is not likely to be the largest influencing factor of either reoffending or desistance.

Wider questions worth asking include: what is being done to support people leaving prison to address factors associated with risk of reoffending? What is being done to support and enable rehabilitation and desistance? Which aspects of imprisonment and release processes might hinder or undermine their rehabilitation and desistance processes? What is being done in communities and by authorities to help prevent reoffending and support rehabilitation and desistance?

¹⁰ For a summary, see McNeill's (2021) plenary address to the UN Congress on Crime Prevention and Criminal Justice.

¹¹ For example, the Kyoto declaration (2021).

Politicians also have an important role to play here. This is not just about their decisions in relation to penal and social policies and laws; it is also about the public and political discourse about punishment, rehabilitation and reintegration to which they make critical contributions. Where politicians stoke what sociologists term 'populist punitiveness', they can make the climate for rehabilitation, desistance and reintegration much less favourable¹². In the long term, this can affect public safety and public fear of crime.

4. Why are more significant changes needed? The impetus for action and change

When the Scottish Government say the current situation in prisons is becoming 'unsustainable' and 'a wide range of actions' are needed to address this, we recognise that characterisation as accurate. Alongside the salient warnings of others¹³, researchers in our Centre continue to offer evidence of what the critical issues are and why action across a few fronts is needed.

People are living in acutely difficult conditions in prisons. Taking a wider view of rehabilitation, stark disparities exist between what is available and doable in the men's estate, compared to the variety of what is available in the women's estate. Often-mentioned prison facilities which are materially different, have higher staffing levels and a range of activities available, such as the two Community Custody Units, are only available to a combined maximum capacity of 40 women (which constitutes 0.4% of the total prison population). Organised crime-related problems are having a negative impact across the men's prison estate, underscoring the need for violence reduction and anti-corruption efforts.

Beyond the rehabilitative limits of a high prison population, is the basic issue of safety and wellbeing in prison. There is evidence that prisons are becoming less safe as populations rise. People are dying in avoidable ways and preventable circumstances in prisons¹⁴, with serious concerns about deaths by suicide and drug overdose in custody.

Families are bearing the emotional, social and financial costs of imprisonment and release¹⁵, with women disproportionately affected. Recent research has once again demonstrated the key role imprisonment plays in creating, sustaining and deepening poverty in Scotland, with financially insecure families spending as much of a third of their household income on supporting the person in custody.

Prison and NHS staff are working in stressful conditions, with associated workforce issues of leaving or going on leave. Prison-based social work staff are similarly working under pressure.

Upon release and in processes of reintegration, common themes in our research show that people face very difficult circumstances, including homelessness, stigmatisation, loneliness and a lack of opportunities for employment or other

¹² See Urie, et al. (2019); Rubio Arnal (2021).

¹³ Scottish Human Rights Commission (2024); Mental Welfare Commission for Scotland (2023); Audit Scotland (2023); National Preventive Mechanism (2021) assessing the implementation in Scotland of recommendations by the European Committee for the Prevention of Torture (CPT).

¹⁴ Barkas, Allan et al. (2021); Armstrong et al. (2022; 2024).

¹⁵ Jardine (2021); Barkas, Deacon et al. (2021); Families Outside (2022; 2023).

meaningful activity. Some have spent so much time in prison on repeated sentences that their sense of belonging is stronger in prison than outside, and they comment that adjusting to imprisonment itself is easier than adjusting to living in the community afterwards. This is not an endorsement of prison conditions, especially given our comments above; rather, it is both evidence of the institutionalisation to which we referred above and an indictment of conditions in the community and the absence of support and connection there. More sustained investment in small charities, which do the bulk of the work of supporting both people after prison and the communities to which they return is an urgent priority.

5. Conclusion

It is possible to reduce the prison population and improve prison conditions. Other nations have, like the Netherlands and Finland. Examples from places where there has been a significant and sustained drop in prison population are not associated with rising crime trends and increased threats to public safety. In recent years in Scotland, there have been drastic reductions in the number of young people being prosecuted in courts and sentenced to prison custody; this is a welcome trend and multiple factors have contributed to it.

It is understandable that emergency measures are being considered to manage very challenging situations in prisons – and we support the proposals to change release point. On its own, that will not be enough to realise meaningful change. Beyond crisis management, we hope to see a wider range of solutions considered and bigger and braver courses of action put forward. We would be happy to discuss what those might be. While they are not within scope of the release-related proposals we are being invited to comment on here, the two other ways of reducing prison populations are what we wish to emphasise in closing. As criminologists in our Centre have been saying for a long time, across-the-board changes to ensure that Scotland criminalises fewer people and sends fewer people to prison need to be pursued, alongside action to address sentence inflation¹⁶. These implicate many more people and groups than just the formal decision-makers on punishment and penal policy (Government; Parliament; judiciary, courts and Scottish Sentencing Council). A wider and longer view of the issues is needed to inform more significant actions in the present.

This evidence submission has been co-authored by academics across the SCCJR: Dr Hannah Graham at the University of Stirling; Prof Sarah Armstrong, Prof Fergus McNeill, and Dr Marguerite Schinkel at the University of Glasgow; Dr Cara Jardine and Prof Beth Weaver at the University of Strathclyde; and Dr Katrina Morrison at Edinburgh Napier University. We would be happy to offer further clarification on what is stated in this evidence submission.

1 November 2024.

¹⁶ For a rare intervention by five of the most senior former judges in England and Wales, offering a perceptive judicial critique of trends of sentence inflation, see Lords Woolf, Philipps et al. ([2024](#)).