

# **Criminal Justice Committee**

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

### **Written submission by Victim Support Scotland, October 2024**

This paper is in response to a request from the Criminal Justice Committee to collate the views regarding the automatic early release of prisoners and prosecution policy on public safety and prison population. This is part of the Government's commitment to engage directly with victim support organisations as they continue to consider proposals to address the overcrowded prison estate.

We have answered each of the questions posed within the three overall headings:

- 1. Short-term sentences**
- 2. Long-term sentences**
- 3. Lord Advocate's statement**

#### **1. View on short-term sentence proposals**

##### **1.1 Pros and cons of bringing forward the point of automatic early release from 50% to 40% of the sentence.**

As proposals pertain to short-term sentences of four years or less, the difference between 40% and 50% represents a maximum of approximately five-month's difference.

We are concerned that there is limited awareness amongst the public and victims that currently prisoners may only serve 50% of a sentence. VSS stresses the importance of sufficient communication with victims and witnesses as to the proportion of sentences that are served and why, as well as the change in release date. VSS recognises the challenges in contacting victims and the lack of mechanisms available to do so. This includes the Victim Notification Scheme to which there are well-documented and outstanding recommendations, and which are proposed to be included in the Victims, Witnesses, and Justice Reform Bill. Given that only 2% of relevant victims were notified of the prisoner releases in the previous scheme, we maintain our position that all victims should be automatically notified when emergency release measures are put in place and that all victims affected should all be offered support and safety plans to run alongside release planning for prisoners in their case.

We anticipate that these measures will negatively impact confidence in the Criminal Justice system both amongst victims and the general public. This is recorded in the [Scottish Crime and Justice Survey 2021/22](#) page 106 and states that:

*(Reports) are in line with findings from previous years which have tended to detect lower confidence in the criminal justice system amongst victims of crime compared to non-victims.*

In addition, the Institute for Government in its report [‘The crisis in prisons’](#) notes that this measure would ‘likely damage public confidence in the system.’

## **1.2 Whether prisoners serving sentences for certain offences be excluded from this, and if so which ones.**

Yes, VSS welcomes exclusions for prisoners serving custodial sentences for domestic abuse and sexual offences and appreciates Government considering the views expressed by victim support organisations.

## **1.3 What other measures aimed at mitigating the impact of the change on victims should be included?**

### **Risk assessment and Governor’s veto**

We have significant concerns that release at this stage will be automatic, and although a risk assessment may take place, it does not determine whether or not a prisoner is released.

VSS calls on the additional safeguard of a Governor’s veto to ensure prisoners who are deemed unsafe are not released early. This is extremely concerning and distressing to people impacted by crime as in some cases there may be a legitimate threat to their personal safety.

We highlighted the need for the inclusion of the Governor’s veto in our consultation response. We are extremely disappointed this is not included to prevent the release of individuals where there is sufficient evidence they may be a risk to victims and the public at large. This is a protection for victims that VSS lobbied to have included in the Bail and Release from Custody (Scotland) Act. We also call for greater use of Non-Harassment Orders, providing an additional layer of protection for victims who may still be at risk.

### **Transparency and Communication**

We call for greater education, transparency, and openness regarding the duration of sentences served. As serving 40% of a sentence is being proposed, it is not widely understood that short-term prisoners may only currently serve 50% of their sentence.

VSS has long expressed concerns regarding the lack of communication with victims and flaws with the Victim Notification Scheme (VNS). We repeat concerns about informing victims given that only 2% of victims were informed about prisoners released through Emergency Early Release 2024. We strongly believe that VNS reform must be expedited to help improve victim notification. This will be extremely difficult to complete retrospectively.

We ask for greater clarity on the plans for proactively notifying victims and witnesses about the release of the prisoner in their case. It is vital that victims be informed prior to their perpetrator’s release. We ask for legislative reform to consider how victims

can be contacted if they are not part of the VNS. This would ensure that no victim is left unaware or unsupported when a long-term prisoner is released early.

#### **1.4 Whether the change should be permanent or temporary**

We believe the changes should be temporary until the prison population is at a safe and sustainable level. We are concerned about the unintended consequences this would have if it would become a permanent measure including eroding victim and public trust in the Scottish prison system.

These measures were implemented in parliament as emergency measures to address an immediate and pressing need. As such they should be introduced in a temporary basis until such time it is no longer required.

## **2. Long-term sentences**

### **2.1 Issues covered in the Scottish Government's consultation**

VSS submitted a [response to the consultation in August 2024](#). In this, we highlighted concerns regarding the Scottish Government's proposal for the early release of long-term prisoners. We believe that this measure would:

- undermine public safety,
- increase harm to victims,
- weaken trust in the justice system.

#### **Detrimental impact on victims**

At VSS, we often hear victims and witnesses of crime express anger upon learning that their perpetrator may be released early and consider sentences to be overly lenient with the constituent parts being complex and confusing. Many victims and families express disappointment when the perpetrator in their case is convicted of lesser charges e.g., culpable homicide in place of murder. The Scottish Sentencing Council highlighted that the minimisation of charges compounds trauma of domestic abuse and rape survivors. Meaningful custodial sentencing enhances public safety and victims' trust in the justice system.

#### **System readiness for an influx of people**

Prior to these proposals being announced, activity to allow for system readiness, including implementation of recommendations from the Victim Notification Scheme (VNS) review, would have been possible. This contributes to a view that victims' rights are not prioritised.

#### **Resourcing**

Adequate resourcing must prioritise victim safety. This includes the availability of support services, resourcing of social work, liaison with victim support organisations, and tailored support for survivors of domestic abuse and sexual crimes.

## **Communication**

Communication is critical. Victims have a right to be informed of their perpetrator's release and to have the necessary support in place. Currently, the low uptake of the VNS is a significant barrier to effective communication, which must be urgently addressed.

As with Emergency Early Release, VSS is willing to contact and support victims and families. However, we are aware of interpretations of GDPR which means that people not registered with VNS are not being proactively contacted.

VSS calls for legislative reform to allow victim support organisations to proactively reach out to all victims of serious crimes, regardless of whether or not they are registered with the VNS. This would ensure that no victim is left unaware or unsupported when a long-term prisoner is released early.

## **Displacing issues into the community increasing risk to public safety**

Although this proposal addresses prison overcrowding, this cannot be done at the expense of victim and public safety. We are concerned that, by focusing solely on prison overcrowding, the issue is being displaced into the community where factors become more complex, challenging to manage, and threaten victim and public safety.

## **Victim support organisation landscape**

The sentiments expressed by VSS were echoed by other victim support organisations. The analysis paper produced by Scottish Government revealed that responses representing victims' interests, were not supportive of early release in principle (including the current system of early release). Some felt that these measures would undermine public confidence in the justice system and would negatively impact both reporting of crime and victim experience. Many of these respondents called for similar measures to be applied as were used during the emergency early release process, such as offence-based exclusions and a process to block the release of prisoners deemed higher risk.

## **Impact on parole**

VSS is deeply concerned about the automatic release of prisoners who were previously denied parole. People are denied parole for valid reasons, following risk assessment, and consideration of community safety. Disregarding that decision is extremely concerning and distressing to victims and survivors, and places people at risk of harm.

VSS urges the Scottish Government to reassess the eligibility criteria for automatic release, ensuring that individuals who have been denied parole remain in custody until they are deemed safe for release through proper risk assessments.

There are currently no risk assessment measures that adequately consider the views of victims and witnesses. The safety of victims must be central when considering people for release.

### **3. Lord Advocate's Statement**

#### **3.1 Views on non-legislative proposals**

VSS highlights that any measures proposed by the Lord Advocate should be supported by robust and thorough risk assessment as part of the decision-making process. The safety of victims must be considered paramount at this stage. Additionally, we support early interventions that prevent remand being required when it is deemed safe to do so.

Any changes to practice must have the support of victim support organisations and support victims' confidence in the system. Victims supported by VSS have told us that they often feel responsible for monitoring home detention curfews and reporting breaches to police since radio frequency technology currently used does not monitor the live whereabouts of offenders, unlike GPS technology which is yet to be introduced. Constantly monitoring their perpetrator is actively detrimental to their wellbeing, makes them feel unsafe, and prevents people impacted by crime from moving forward.

Additionally, we must stress that remand serves an important role in the safety of victims and the public at large and therefore must continue to be used if it is necessary to ensure victim and public safety.

#### **3.2 How this may work in practice**

VSS primarily advocates and supports people affected by crime, to create a criminal justice system that puts victims at its heart.

We call on there to be meaningful and forthcoming communication with victims and witnesses throughout the process. We also ask that referral to a victim support organisation is embedded in the process to ensure all people impacted by crime have the offer of support.

We would also like to see the mechanisms by which victims can input into risk assessments prior to the release of the prisoner in their case should they wish to do so. Victims have the right to make representations and attend parole hearings, and we support this right being extended to risk assessments.

#### **3.3 What impact this may have on remand levels**

The impact the Lord Advocate's non-legislative measures will have on the remand population depends on whether they are temporary or permanent. We can imagine that in either instance they will reduce the remand population to a certain extent. However, this must be balanced with the rights and safety of victims at the public.

We highlight that remand serves a function, and in some cases may still be required. The Lord Advocate highlights the use of electronic monitoring and bail supervision, suggesting that increased use of these measures may reduce the remand population. We have previously stressed concerns around the use of monitoring and HDC measures. VSS is aware of cases where individuals have evaded radio frequency tracker undetected, and we again urge that the recommendations of reviews on HDC are implemented before expanding its use. We have long advocated for the implementation of Michelle's Law, GPS monitoring and exclusion zones.

### **Domestic abuse and sexual violence cases**

We welcome assurances that there will be no change to approach from prosecution around domestic abuse and sexual violence cases, and the Lord Advocate's commitment to addressing the societal problem of violence against women and girls.