

PRISONERS (EARLY RELEASE) (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. As required under Rule 9.3.3 of the Parliament’s Standing Orders, this Policy Memorandum is published to accompany the Prisoners (Early Release) (Scotland) Bill introduced in the Scottish Parliament on 18 November 2024.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 53–EN);
 - a Financial Memorandum (SP Bill 53–FM);
 - a Delegated Powers Memorandum (SP Bill 53–DPM);
 - statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 53–LC).
3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government’s policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

POLICY OBJECTIVES OF THE BILL

4. The provisions of the Prisoners (Early Release) (Scotland) Bill (“the Bill”) change the point at which some short-term prisoners (i.e. those serving a sentence of less than four years) are released from prison and enable further changes relating to that release point to be made by the Scottish Ministers by subordinate legislation. The Bill also allows the Scottish Ministers to amend the point at which people serving long-term sentences are to be released on non-parole licence via subordinate legislation. This Bill forms part of a range of measures designed to respond to the rising prison population.
5. Short-term prisoners are those sentenced to less than four years in custody. Currently, most short-term prisoners are released unconditionally after they have served half of their sentence (50%). The Bill proposes changes to that release point so that those eligible are released after they have served two fifths of their sentence (40%). This change does not apply to those serving sentences for domestic abuse or sexual offences, and relevant individuals will continue to be released after half (50%) of sentence served.

6. The changes will apply retrospectively, meaning they apply to those serving a short-term sentence on the date when the legislation comes into force as well as those sentenced to a short-term sentence following that date. This will result in both an immediate and sustained impact on the prison population. As discussed in more detail below, this will be subject to transitional provisions so that those immediately eligible for release can be released in tranches, reducing the burden on the Scottish Prison Service (“SPS”) and various community services.

7. The Bill provides for a subordinate legislation-making power to enable the Scottish Ministers to make further changes to the release point for short-term and long-term prisoners. In relation to short-term prisoners the power would also allow Scottish Ministers to make different provision (e.g. different points of release) for different purposes (e.g. categories of offender). In relation to long-term prisoners the power only permits Scottish Ministers to amend the point of release. Further information about this power is contained in the Delegated Powers Memorandum.

POLICY CONTEXT

Prison population

8. The Scottish Government is committed to ensuring that SPS is able to maintain safety and good order within prisons and uphold the human rights of those in its care. The focus is on ensuring the prison service functions effectively so it can accommodate those who pose the greatest risk of harm, and support rehabilitation and reintegration into the community, in order to reduce reoffending and protect victims and public safety.

9. The prison population has risen by around 14% since the start of 2023, with a particularly sharp rise between March and May 2024.¹ That rise has been driven by a complex set of factors, including: the court backlog, caused by reduced court capacity over the pandemic; an increase in the sentenced population; and the remand population remaining at a high level. In addition, the prison population is increasingly complex, and many groups are required to be accommodated separately from others. Modelling indicates the overall prison population will likely increase between September 2024 and January 2025. If the population follows current trends, the average daily prison population could be between 7,750 and 9,250 in January 2025.²

10. The safe operating capacity of the prison estate is not static and depends on several factors. These include: the availability of accommodation, services and other facilities within the prison establishments; prison staffing; the increasing complexity of the prison population and the need to keep sections of the prison population separate; delivery of necessary prison regime functions; and any public health concerns. However, as an illustration, as of 21 October 2024, SPS reports that six prisons, accounting for over 75% of the prison population, are currently declaring red risk status. Red is the highest level of assessed operational risk and is an abnormal risk status for a prison. This reflects the scale and breadth of the challenge the SPS is facing in terms of maintaining safety and security, as well as delivering rehabilitative regimes.

11. As a result of the rising and the increasingly complex prison population, substantial pressure is being placed on the prison estate and staff, with the day-to-day management of prisons

¹ [Safer communities and justice statistics monthly reports - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/safer-communities-and-justice-statistics-monthly-reports-2023-24/pages/12.aspx)

² [Scottish prison population projections: September 2024 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scottish-prison-population-projections-september-2024/pages/1.aspx)

becoming more challenging. SPS's ability to meet statutory requirements and deliver rehabilitative regimes is at significant risk; core services are being routinely closed to redeploy staff and the provisions of effective clinical services is impacted upon. This pressure directly increases the risk of operational disturbance and prison incidents and leaves the estates with no contingency accommodation and little or no flexibility within which to manage any other emergency that might arise.

12. Achieving a sustained reduction in the prison population is therefore necessary to help mitigate these risks, to maintain safety and good order within prisons and to uphold the human rights of those living and working within them, in line with the wider objectives of reducing reoffending and protecting victims and public safety.

13. A range of actions have already been progressed to sustainably reduce the prison population³ including: encouraging, where appropriate, more widespread use of community sentences and diversion from prosecution; extending the presumption against short sentences;⁴ introducing electronically monitored bail and enabling that time to be taken into account at sentencing. The Programme for Government 2024 - 2025 confirmed plans for an independent review of sentencing and penal policy; strengthening alternatives to remand; and adapting the use of Home Detention Curfew (HDC) to increase the period of time individuals can spend on release under licence conditions, subject to robust risk assessment.⁵

14. SPS has taken a range of actions to optimise the current prison estate in order to accommodate the increase in the prison population. This has included the transfer of prisoners to HMP Polmont following the Children (Care and Justice) (Scotland) Act 2024, which ended the placement of those under 18 in Young Offenders Institutes (YOI). The Scottish Government has also invested in the prison estate to allow construction of HMP Highland and HMP Glasgow, continuing modernisation of the prison estate to better meet the needs of staff and prisoners.

15. In addition to the 10% uplift in the Prison Services resource budget, funding for community justice has also been increased to £148 million in total for 2024-25, in order to support the availability and delivery of alternatives to custody. Community-based interventions and sentences help ensure effective justice, while supporting rehabilitation and reducing reoffending. The Bail and Release from Custody (Scotland) Act 2023 is also being implemented, which will ensure that remand is focused on those that pose the greatest risk to public safety, and that planning and improved support is available for those leaving prison.

16. Following sharp rises in the prison population in spring 2024, the Scottish Parliament approved the Early Release of Prisoners and Prescribed Victim Supporters (Scotland) Regulations 2024⁶ on 12 June 2024. This led to 477 short-term prisoners being released up to 180 days early. This was delivered in four tranches between 26 June and 25 July. The regulations also prescribed victim support organisations (VSOs) who could receive information under the Victim Notification Scheme on behalf of or as well as a registered victim.

³ [Prison population - proposed bill on release point for short term prisoners: information note - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/information-note-2024-01/pages/1-1-prison-population-proposed-bill-on-release-point-for-short-term-prisoners-information-note-2024-01.aspx)

⁴ [The Presumption Against Short Periods of Imprisonment \(Scotland\) Order 2019 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukdsi/2019/0106/eng/schedule/sch-1/pt-1/1-1)

⁵ [Programme for Government 2024-25: Serving Scotland \(www.gov.scot\)](https://www.gov.scot/publications/programme-for-government-2024-25/pages/1-1-programme-for-government-2024-25.aspx)

⁶ [The Early Release of Prisoners and Prescribed Victim Supporters \(Scotland\) Regulations 2024 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukdsi/2024/0106/eng/schedule/sch-1/pt-1/1-1)

24. While there is generally no statutory requirement for supervision for most short-term prisoners (subject to the exceptions discussed above), those released from short-term sentences may access voluntary throughcare services. They can request throughcare support from their local authority, which has a statutory duty to provide this if requested.⁸ The number of voluntary throughcare cases in 2022-23 was 1,900.⁹ Those leaving prison can also accept support from a range of third sector organisations, most notably from two national voluntary throughcare services delivered by public social partnerships (PSPs) of third sector organisations.

25. In April 2025, a new national third sector throughcare service will replace the current provision delivered by the PSPs. Upon commencement, section 12 of the Bail and Release from Custody (Scotland) Act 2023 will bring in specific duties for named public bodies to engage with release planning when requested to do so and for these partners to have regard to the role that the third sector might play in the development, management and delivery of prisoner release plans. Under section 13 of that Act, Scottish Ministers will also be required to publish standards of throughcare support, and public bodies will have a duty to comply with these standards. All of this together will improve the support that is available on release from custody for short-term prisoners and ensure consistency.

26. Those serving a short-term sentence can also be released on HDC under section 3AA of 1993 Act. HDC is a form of release which allows those who are eligible and have been risk-assessed to be released up to 180 days before their earliest date of liberation. All individuals released on HDC are placed under an electronically monitored curfew, and licence conditions.

Current approach to release of long-term prisoners

27. Long-term prisoners are those sentenced to 4 years or more in custody. Under the 1993 Act, for the most part, after a long-term prisoner has served half (50%) of their sentence, that prisoner must be released on parole licence if recommended to do so by the Parole Board for Scotland.

28. If a prisoner has not been recommended for parole, at that point or any subsequent parole review, long-term prisoners sentenced on or after 1 February 2016 must be released as soon as they have only 6 months of their sentence left to serve. This is release on non-parole licence and is to ensure that most individuals spend at least that period of time on licence and under supervision in the community before the sentence expires, allowing for supported reintegration following custody.

29. All long-term prisoners are managed via the Integrated Case Management (ICM) process and will have a pre-release ICM case conference where community partners will attend. Licence conditions are then set on the recommendations of the Parole Board and will reflect the conclusions of that process, individualised risk assessment, and any representations from victims. This process of case management, risk assessment and licence condition recommendation applies regardless of whether the release is on parole or non-parole licence. Those released on parole or non-parole

⁸ [Social Work \(Scotland\) Act 1968 \(legislation.gov.uk\)](https://legislation.gov.uk)

⁹ [8 Statutory/voluntary throughcare - Justice Social Work Statistics in Scotland: 2023-24 – Part 1 - gov.scot \(www.gov.scot\)](https://www.gov.scot)

licence are subject to recall to custody. Supervision is provided in the community by local authority justice social work services.

30. These release arrangements do not apply to those who have been previously recalled from licence; those on a life sentence; those on an extended sentence; and those serving terrorism-related sentences. Those who have previously been recalled from parole or non-parole licence can only be released, before their sentence expiry, following a further recommendation from the Parole Board. Those on a life sentence can only be released following a recommendation from the Parole Board and having served the punishment part of their sentence which is set by the court at sentencing. Those serving terrorism-related sentences can be released on the recommendation of the Parole Board following two-thirds of their sentence. For an extended sentence, the court determines the custodial part of the sentence followed by a further period of supervision in the community, which is the extension part.

Current approach to release of children detained in secure accommodation

31. Section 208 of the Criminal Procedure (Scotland) Act 1995 provides that when children are convicted on indictment, and the court considers that no other method of dealing with them is appropriate, they may be sentenced to a period of detention. The child is then detained under section 208 for the duration of their sentence (regardless of whether they turn 18 during their sentence). Those who are under 18 will be detained in secure accommodation. When the individual turns 18, they must move to a YOI to complete any remaining sentence.

32. Section 7 of the 1993 Act provides that where a child is detained under section 208, and the sentence is less than four years, they shall be released on licence as soon as they have served half (50%) of their sentence, if not released earlier. All those released following detention under section 208 are released on licence, and licence conditions are recommended by the Parole Board. It is possible for those detained under section 208 to have their case referred to the Parole Board at any point during their sentence, though in practice this is rare in cases where the sentence is less than four years.

33. In summary proceedings, where a child is found guilty of an offence under section 44(1) of the Criminal Procedure (Scotland) Act 1995, they may be detained in residential accommodation provided by a local authority for a period not exceeding one year. This can include secure accommodation if the Chief Social Work Officer and person in charge of the service are satisfied that the child meets the criteria for such a setting. The placement will be regularly reviewed and the child can be released at any time if they no longer meet the criteria. They must be released after serving no more than half (50%) of that sentence. The local authority will release the child under supervision for the remainder of the sentence. If the child commits an offence during this period, they may be returned to a residential establishment.

Victim notification

34. Those who are the victim of an offence for which a prisoner was sentenced to less than 18 months in prison, have the right to information about their date of release.¹⁰ Those who are the

¹⁰ Section 27A of the Victims and Witnesses (Scotland) Act as amended by [The Victims' Rights \(Scotland\) Regulations 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

victim of an offence for which a prisoner was sentenced to 18 months or more in prison have the right to register with the Victim Notification Scheme (VNS).¹¹ Under the VNS, a victim has the right to certain information, including the date of release. They also have a right to be told when the prisoner is considered for parole, and to make written representations (comments) about their release to the Parole Board for Scotland. Where a long-term prisoner is being considered for release on parole licence this information is considered in relation to whether the prisoner is suitable for release on parole and associated licence conditions. In the case of a long-term prisoner being released on non-parole licence, this information is considered by the Parole Board when making recommendations for licence conditions. Victims will be told if that person is released, and about any licence conditions which relate to contact with the victim.

35. A victim may also nominate a prescribed VSO to receive information under the VNS on their behalf, or as well as them.¹² Victim Support Scotland, Rape Crisis Scotland, Children 1st and ASSIST are currently prescribed to be provided with that information. This provides greater choice for victims in how the VNS or short-term information scheme operates for them, and to ensure a more trauma-informed, supported and person-centred approach to information provision for victims. Those who have been a victim of crime are able to decide whether or not they wish to join the scheme or nominate a VSO to receive information.

Consultation on release of long-term prisoners and development of proposals relating to short-term prisoners

36. A consultation¹³ was launched on 8 July 2024 and closed on 19 August 2024 seeking views on proposals to bring forward the release point for some long-term prisoners, which was considered by the Scottish Government to be a feasible and proportionate way to reduce pressure on the prison estate.

37. Further detail on this consultation is available in a later section but, in brief, while there was general support for finding a better balance between serving a sentence in custody and the community, in order to improve reintegration and reduce reoffending, respondents identified a number of operational issues that they felt had to be addressed in order for a change in release point to be implemented effectively. A significant proportion of respondents emphasised the need for sufficient preparatory time to be available before any changes were made, and expressed concerns at how the relevant individuals could be safely managed and supervised in the community within current resources. These concerns were reflected in both organisational and individual responses.

38. Taking into account the responses to the consultation exercise, the Scottish Government's view is that any change to the release point for long-term prisoners would require further consideration in collaboration with stakeholders and delivery organisations, and as such is not suitable as an immediate response to the rising prison population.

¹¹ The VNS was established by the [Criminal Justice \(Scotland\) Act 2003 \(legislation.gov.uk\)](#), and subsequently amended by [The Victim Notification Scheme \(Scotland\) Order 2008 \(legislation.gov.uk\)](#) and the [Victims and Witnesses \(Scotland\) Act 2014 \(legislation.gov.uk\)](#)

¹² [The Early Release of Prisoners and Prescribed Victim Supporters \(Scotland\) Regulations 2024 \(legislation.gov.uk\)](#)

¹³ [Long-term prisoner release process: consultation analysis - gov.scot \(www.gov.scot\)](#)

39. Alternative approaches to achieve a sustainable reduction in the prison population have therefore been considered, taking into account the responses to the consultation; the proposals put forward by the Institute for Government;¹⁴ and the recent changes made by the UK Government.¹⁵ As such, the Scottish Government has decided to introduce legislation to change the release point for short-term prisoners in order to reduce pressure on the prison estate, with exclusions for those serving sentences for domestic abuse and sexual offences. The Bill also creates a subordinate legislation-making power enabling the Scottish Ministers to change the point of release for short-term and long-term prisoners in the future.

40. As described above, the release process for long-term prisoners is more resource intensive than that for short-term prisoners due to the ICM process, the process for recommending licence conditions, and required supervision in the community on release. The proposed change to the existing process of short-term prisoner release will therefore be simpler to implement with less significant changes to when prisoners would have otherwise been released, and with a lower resource impact on community support services.

41. Given the recent rate of increase in the prison population, from an already high position, an urgent response which can be delivered quickly and effectively, is necessary. The Scottish Government considers this to be a more feasible and proportionate way to reduce pressure on the prison estate, as part of a wider range of existing and ongoing measures aimed at addressing the rising prison population.

42. In this context, the Scottish Government intends to seek Parliament's consent to pursue this Bill on an emergency basis. Subject to approval, it is intended that the changes would become effective in early 2025. The ability to make these changes on these timescales is judged essential to ensuring the prison estate can continue to function effectively.

EFFECT OF PROVISIONS

New release point

43. The Bill changes the point at which some people serving short-term custodial sentences are released from prison and enables further changes relating to the release point to be made by subordinate legislation in the future. The Bill requires those eligible to be released after they have served two-fifths (40%) of their sentence in prison.

44. The Scottish Government considers this new point of release (40%) to be a proportionate change as it will result in a sustained reduction in the overall prison population, while ongoing and further actions are progressed. The Scottish Government considers that this new release point strikes an appropriate balance between reducing the prison population sufficiently to mitigate the immediate risks arising within the prison estate and ensuring that relevant individuals still serve a significant proportion of their sentence in custody, maintaining confidence in the justice system and supporting the purposes of the sentence imposed. This results in a relatively small change for individuals leaving prison. For example (ignoring for these purposes the fact that release cannot take place on a weekend day and therefore that these release periods are not exact)—

¹⁴ [The crisis in prisons | Institute for Government](#)

¹⁵ [The Criminal Justice Act 2003 \(Requisite and Minimum Custodial Periods\) Order 2024 \(legislation.gov.uk\)](#)

- Person A was sentenced to 1 year in prison. Currently person A would be released after they had served 6 months in prison. Under the Bill, Person A would be released after they have served 4 months and 24 days.
- Person B was sentenced to 3 years and 6 months in prison. Currently person B would be released after they have served 1 year and 9 months. Under the Bill, person B would be released they have served 1 year, 4 months and 24 days.

45. The changes will apply retrospectively, meaning that subject to transitional provision, they apply to those serving a short-term sentence when the legislation comes into force and those sentenced to short-term sentences in the future. This will result in both an immediate and sustained impact on the prison population. It is estimated that the sentenced prison population will be reduced by around 5% and that this 5% reduction will be maintained compared to what the prison population would otherwise have been if the change had not been made. Some individuals will become eligible for immediate release, subject to the transitional provisions, on commencement of the policy. For example (again ignoring for these purposes the fact that release cannot take place on a weekend day and therefore that these release periods are not exact)—

- Person C was sentenced to 1 year in prison. Currently person C would be released after they had served 6 months in prison. Under the Bill, person C would be released after they have served 4 months and 24 days. If they had been sentenced on 8 October 2024 and the provisions came into effect on 1 March 2025 then person C would be eligible for immediate release, subject to the transitional provisions.

Applicability of new release point

46. The change does not apply to those serving sentences for domestic abuse or sexual offences, who will continue to be released after they have served half of their sentence. This results in no change in release process for those sentenced in relation to these offences. For example—

- Person D was sentenced to 2 years in prison for a sexual offence. Currently person D would be released, on licence, after they had served 1 year in prison. Under the Bill, there would be no change in the release process for person D.

47. The Scottish Government's overall ambition is for fewer crimes, fewer victims and safer communities. The significant impact of victimisation is recognised across a wide range of crime types and vulnerabilities. Nonetheless, the Scottish Government considers that there are specific issues in relation to domestic abuse and sexual offences that are not necessarily as prevalent in relation to other offences. For example, there is evidence of particular barriers to reporting sexual and domestic abuse offences. Domestic abuse is known to inflict long-term trauma on victims. It is rarely a one-off incident and has a particular damaging effect on victims and those around them. The Whole Lives Survivor Survey from Safe Lives¹⁶ found that, on average, survivors experienced four years of domestic abuse before telling someone.

48. There are also particular effects associated with the release of prisoners who have been convicted of domestic abuse offences, as there is an increased likelihood they will attend the home

¹⁶ [Whole Lives Scotland | National survivor survey - SafeLives](#)

of the victim on release. In 2022-23, 90% of all domestic abuse incidents occurred in a home or dwelling.¹⁷

49. Victims and their families may have been planning for release based on the existing legislative framework and would require sufficient time to adjust their plans accordingly, with appropriate support from service providers. This would be especially relevant if the policy was extended to those serving sentences for domestic abuse or sexual offences, since it is intended the policy will be implemented with retrospective application, in order to have an immediate impact on the prison population, meaning that some releases will take place sooner than anticipated.

50. Reducing barriers to reporting of sexual and domestic abuse offences is vital to the success of the Scottish Government's commitment to reduce violence against women and girls, as supported by the Equally Safe strategy.¹⁸ It remains imperative that victims of these offences retain confidence in the justice system when reporting and therefore the Scottish Government considers that changes should not apply to short-term prisoners serving a sentence for domestic abuse or sexual offences..

51. Short-term prisoners who are serving two or more terms where at least one of those terms is for a domestic abuse or sexual offence, and where those terms are to be served consecutively and/or concurrently, are to continue to be released after serving 50% of the single-term.¹⁹ This will mean that regardless of whether the prisoner is serving part or all of the sentence for a non-domestic abuse or non-sexual offence, there will be no change and such prisoners will continue to be required to serve 50% of their overall sentence in custody.

Subordinate legislation-making powers

52. The Bill provides for a subordinate legislation-making power to amend the point at which the Scottish Ministers must release short-term prisoners, which could be set by reference to either a proportion of the sentence or a particular period of time. In relation to short-term prisoners, it also allows for different provision to be made for different purposes, which is reflective of the different provision that is being provided for in the Bill for certain groups of prisoners. The power also extends to the release points of those who are consequently covered by the changes being made in the Bill, including children detained in summary and solemn proceedings and fine defaulters and those in contempt of court.

53. This will enable the changes made to the release point by section 1 of the Bill to be kept under active review and ensure the groups of prisoners to which release points apply reflect the current legislative framework and evidence base. This power is considered necessary to provide flexibility to respond to changing circumstances and to make changes quickly without the need for further primary legislation. For example, it may be desirable to revisit the changes being made to the point of release if the circumstances around the prison population change. It may also be necessary to include new offence types within the list of those who are to be released at the halfway point (50%) of their sentence as opposed to the two fifths (40%) point of their sentence.

¹⁷ [Domestic abuse: statistics recorded by the police in Scotland, 2022-23 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/domestic-abuse-statistics-2022-23/pages/10.aspx)

¹⁸ [Equally Safe 2023 - preventing and eradicating violence against women and girls: strategy - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/equally-safe-2023/pages/10.aspx)

¹⁹ [Prisoners and Criminal Proceedings \(Scotland\) Act 1993 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1993/11/section/1)

54. The power also enables the Scottish Ministers to amend the point at which long-term prisoners are released on non-parole licence. This is to support the Scottish Government’s intention to look again at whether a better balance can be achieved between time spent in custody and time spent reintegrating within the community, as part of a person’s overall long-term sentence, in order to improve outcomes for those leaving prison, and reduce reoffending and the impact on victims and the community.

55. The changes made by the Prisoners (Control of Release) (Scotland) Act 2015 (“the 2015 Act”) mean that the Scottish Ministers can no longer use the power under section 27(2)(b) of the 1993 Act to change the release point for long-term prisoners who have been sentenced since 1 February 2016. This is because the power only allows Ministers to change a proportion of sentence, not a fixed period of time, and the 2015 Act amended the release point to a fixed period of time, namely 6 months before the end of the prisoner’s sentence.

56. The Bill therefore proposes to create a similar power to the one that existed before the changes made by the 2015 Act. It gives the Scottish Ministers the power to amend the release point for long-term prisoners to either another proportion of the sentence or a fixed period of time. This will allow changes to be proposed in future, following further work in this area including consideration of the feedback received through the recent consultation exercise.

57. The power in relation to long-term prisoners is more limited than for short-term prisoners. The Scottish Government’s view is that if more substantial changes were to be made to the process for long-term prisoner release then this should be pursued through further primary legislation, in order to ensure an opportunity for additional scrutiny and debate. However, considering the context of the high prison population and the need to ensure that a wide range of options is available to address this, the Scottish Government considers it appropriate that a limited power is restored now. The power would allow the changes to apply retrospectively and include incidental, supplementary, consequential, transitional, transitory or saving provision. It would be subject to the affirmative procedure, in recognition of the Parliament’s interest in matters relating to the release of prisoners. Further detail is provided within the Delegated Powers Memorandum.

Release of children detained in secure accommodation

58. The Bill amends section 7 of the 1993 Act so that children detained in solemn proceedings, where the sentence is less than four years, are released on licence following two-fifths (40%) of their sentence. The Bill also amends section 44 of the 1995 Act so that children detained in summary proceedings will be released after serving no longer than 40% of their sentence. This would not apply to any child serving a sentence in whole or in part in relation to domestic abuse or sexual offence.

59. This approach is essential to the swift operationalisation of the changes and therefore the intended impact to reduce the prison population. It would also avoid potential confusion for the individual, for the services involved in preparing them for release, and for victims regarding the release date of the person sentenced. This would also avoid a situation where co-accused who receive the same sentence are released at different times by virtue of their ages when the offence was committed.

60. Additionally, it is the Scottish Government's view that amending the point of automatic release for children is in line with the principles of Article 37 of the UNCRC (the right not to be punished in a cruel or harmful way), which requires that the detention or imprisonment of children must be used only for the shortest possible period of time. The Scottish Government also considers that the same issues in relation to barriers to reporting of sexual and domestic abuse offences apply regardless of the age of the person who has committed the offence, and therefore the new release point would not apply to those serving sentences for those offences.

Fine defaulters and individuals imprisoned for contempt of court

61. Section 5 of the 1993 Act makes provision for the release of individuals imprisoned for non-payment of a fine or for contempt of court. Section 5(2)(a) provides that the Scottish Ministers are required to release that individual as soon as they have served one half of their term of imprisonment. Section 5 is being amended to ensure the changes being made in section 1 of the 1993 Act will apply consistently to those released under section 5.

Home Detention Curfew

62. Consequential changes are required in relation to HDC which allows those who are eligible and have been risk-assessed to be released up to 180 days before their earliest date of liberation. Accordingly, the point when eligible prisoners may be released on HDC is changed from up to 180 days before the halfway point of their sentence to up to 180 days before the date on which they would otherwise be released (regardless of the point of automatic release).²⁰

63. In practice, this means that the HDC will continue to function in line with the new release point for short-term prisoners so that eligible short-term prisoners can continue to be released on licence up to 180 days before their automatic release point.

Transitional provisions

64. If the relevant provisions were commenced fully on a specified date, this would necessitate the immediate release of all eligible short-term prisoners who have already served two-fifths (40%) or more of their sentence. If commenced in this way, there would be a risk that community services would be overwhelmed, individuals would not be suitably prepared for their release and victims who wish to be would not be informed.

65. In order to reduce the impact on community services and allow sufficient time for SPS to prepare individuals for release, including necessary case management and engagement with community based services and providing victims with information, it is intended that releases will be in tranches and the Bill provides for this. The dates of the tranches will be tied to the commencement date set by regulations in due course. It is intended that there would be three distinct tranches of release with two weeks between each tranche. The first tranche will begin on the first Tuesday following commencement. Those eligible will be released within each tranche based on how much of their sentence has been served.

²⁰ This will not change the risk assessment process applied before a prisoner can be granted HDC.

ESTIMATED IMPACT

66. The “eligible population” as referred to below means those who have served two-fifths (40%) of their sentence, are not serving a sentence for domestic abuse and sexual offences and have no outstanding remand warrants.²¹ The existence of further warrants would generally mean in effect the person would not be released but instead transferred to the remand population and so they are discounted from the eligible population figures.

67. It is estimated the eligible population, as a proportion of the sentenced population, would be around 5%. Accordingly, the expected reduction on the projected sentenced (and total) population in January 2025²² is around 260 to 390. The number of individuals eligible will vary depending on the size and make-up of the short-term sentenced population at the time of commencement.

68. As set out above, provisions within the Bill set out the phased commencement of this legislation so that initial releases occur in tranches. Once fully implemented, it is likely the initial population reduction would be sustained over time, which means the sentenced prison population would continue to be 5% lower than it would have otherwise been if the change had not been made, assuming the population composition remains broadly consistent. The actual reduction to the population will depend on the population in the months ahead, driven by the flows into and out of prison.

69. While the Bill does not create any new approach to the delivery of services within the community for those leaving prison after having served a short-term sentence, there could be an impact for some of those services, where more people are supported within the community over a longer period of time. These impacts are described as part of the Financial Memorandum.

70. It is recognised that there will be some impact on the transitional arrangements for the new national third sector voluntary throughcare service, as well as an impact of the provision of accommodation, for those who are released with an identified housing need. It is likely that some of the individuals being released will already have been engaged by the PSPs providing the current throughcare support and will be supported through the release process by these services. However, due to the transitional arrangements, these individuals’ cases will then require to be transferred over to the new service for this support to continue. The Scottish Government will work closely with the current providers and the new service to ensure a smooth transition.

71. The release of the prisoners who are immediately eligible for release, even on a phased basis, is likely to have an impact on the ability of the PSPs to deliver support upon the day of release, as it may not be possible to provide a mentor to accompany every prisoner signed up to their service due to the high number of releases on the same day.

72. It is recognised that any proposed change to prisoners release processes will impact victims of crime and may cause concern for some victims. As a result of the changes proposed by the Bill,

²¹ Some individuals in the sentenced population who would meet the criteria for release have outstanding remand warrants meaning they are also remanded on an active case, pending either a conviction or sentence decision. It is then assumed they would join the remand population if they departed the sentenced population on the day of their release.

²² [Scottish prison population projections: September 2024 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/prison-population-projections-2024/pages/introduction.aspx)

there will be a cohort of prisoners who are serving between 40-50% of their sentence who are immediately eligible for release. Victims and their families may have been planning for release based on the existing legislative framework, including with the support of VSOs, and may feel unprepared for an earlier release date of the prisoner involved in their case. This may impact victims' sense of security and the timescale they have to plan for the release of a prisoner involved in their case. The Scottish Government will continue to engage with VSOs to consider the impact for victims and their families, and to inform ongoing work to ensure that the victim notification and information schemes can respond to the changes as effectively as possible.

ALTERNATIVE APPROACHES

Do not legislate

73. In recognition of the existing policy in this area and wider actions to manage the rise in prison population (as set out above), an alternative approach of not introducing legislation in this area was considered.

74. However, informed by the most recent prison population projections and in recognition of the Scottish Ministers' responsibility to ensure the safety and good order of prisons, the Scottish Government considers that additional action is required. The Scottish Government also considers that action that will result in a sustained reduction to the prison population, which can be achieved at pace, is a necessary mitigation. The Scottish Government's view is therefore that making the proposed changes to the release point for short-term prisoners is a critical part of this action and so not legislating is not considered to be a viable option.

Use of existing subordinate legislation-making powers

75. The Scottish Ministers already have the power under section 27(2)(b) of the 1993 Act to provide that references to a particular proportion of a prisoner's sentence should be read as referring to another proportion of a prisoner's sentence, i.e. to change the point of release for short term prisoners. However, that power is limited.

76. While it would have been possible to ensure that short-term prisoners who were sentenced to a term of 6 months or more and are subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 were excluded from the changes, it would not have been possible to exclude any other categories of short-term prisoner from the new release point. This means that more nuanced changes could not be made for different groups of prisoners, namely those serving sentences for domestic abuse offences and sexual offences not covered by the criteria above. The changes are therefore being made via primary legislation in order that different release points can be set for all those serving sentences for domestic abuse and sexual offences. Primary legislation also allows for the changes to be made on the face of the 1993 Act, making interpretation of the legislation easier for those impacted by it.

Release at alternative proportion of sentence

77. Alternative release points were considered taking into account a number of factors, including the potential impact on the prison population and operational feasibility. Higher release points would have less (or the opposite) impact on the prison population, which would defeat the

primary objective of the Bill to ensure the prison service continues to function effectively. Lower release points would result in some people serving extremely short sentences, which is not considered to be a proportionate change.

78. Ultimately, the Scottish Government considers that this new release point strikes an appropriate balance between reducing the prison population sufficiently to mitigate the immediate risks arising within the prison estate and ensuring that relevant individuals still serve a significant proportion of their sentence in custody, maintaining confidence in the justice system and supporting the purposes of the sentence imposed. The new release point also is within the 40 – 45% range recommended by the Institute for Government²³. This is the same as the recently changed release point for most standard determinate prisoners within England and Wales.

Applicability of new release point

79. Consideration was given to which, if any, categories of prisoners should be excluded from the proposed change, or whether any mechanism should exist to retain individual prisoners in custody until the existing release point.

80. The Scottish Government's view is that the proposed exclusions for domestic abuse and sexual offences recognise particular concerns in relation to those offences, especially with regard to barriers to reporting and the progress which has been made in recent years in ensuring that victims and survivors can have confidence in the justice system when coming forward. This approach finds a balance between recognising the concerns of victims and survivors, while ensuring that the measures have a sufficient impact on the prison population, so that the prison estate can continue to function safely and effectively, accommodating those who pose the highest risk to public safety.

81. Exclusions for specific offences do not reduce the trauma caused to victims and survivors of other offences. However, the Scottish Government considers that this is a proportionate way to address some of the historic barriers to reporting, which arise in relation to those offences.

82. This proposal and the existing process of automatic early release for short-term prisoners is distinct to emergency early release processes in a number of ways. Under emergency early release processes, Scottish Ministers in effect select a small group of prisoners to be released (up to 180 days early) in a single circumstance, as part of the response to an emergency situation. By the nature of this process, decisions will be made quickly and there will be minimal time for release planning. This same process does not apply to the automatic early release of short-term prisoners, where there is no selection and the process is permanent and ongoing. However, the Scottish Government considered it appropriate to consider the applicability of some of the additional safeguards which can apply in the context of emergency early release in relation to the changes being made to the standard release process for short-term prisoners. The Scottish Government concluded that the mechanisms as described below would not be appropriate or proportionate in the context of standard early release of short-term prisoners.

²³ [The crisis in prisons | Institute for Government](#)

83. The applicable exclusions set out in the Bill are focused on those currently serving sentences for those offences. Consideration was given to whether previous convictions should be taken into account, as was the case in relation to the emergency early release process undertaken earlier in 2024. However, while this was considered an appropriate and workable safeguard in relation to emergency early release, given the focus on quickly identifying and releasing a cohort of prisoners within a short period of time, the Scottish Government does not consider that this should be part of the standard release process. Given the relatively small changes to release dates and the need to ensure operational sustainability, the approach set out is considered to be an appropriate way of ensuring that certain prisoners are not released any earlier than at present, while not making significant and resource intensive changes (which would be necessary if previous convictions were to be considered in all cases) to the standard release processes.

84. Consideration was also given to whether a “governor veto” should exist, enabling prison governors to prevent the release of certain individuals. The availability of the governor veto in relation to emergency early release reflects the fact that those powers are likely to be used at extremely short notice, in an emergency, to select a specific group of prisoners that will be released early. In those circumstances, governors could prevent the release of an eligible individual, where there is evidence of an immediate risk of harm to an individual or a group. The process associated with operating the governor veto is extremely resource intensive for SPS and Police Scotland in particular, as well as both prison based and community based justice social work, the Risk Management Authority (RMA), and other community partners. Applying such an assessment to every eligible short-term prisoner would involve significant workforce planning and additional resource. To establish this process on a permanent basis would threaten resource availability within these services.

85. The Bill would alter the automatic release point for short-term prisoners on an ongoing basis. While there will be an initial release of prisoners when the legislation comes into force, release at the 40% point will apply to short-term prisoners going forward. In that context, the Scottish Government does not consider the processes established for emergency early release to be comparable to the changes set out in the Bill. Nor would such an approach be considered proportionate, given that no such mechanisms currently apply. A governor veto was considered proportionate in relation to emergency early release due to discretion which Scottish Ministers exercised in that process and the pace at which emergency releases are likely to start taking place.. This same discretion and pace does not apply to the standard process of release for short-term prisoners.

86. In summary, further exclusions, or a mechanism to retain individual prisoners in custody on a discretionary basis, are not considered to be proportionate for a relatively small change to the standard release process for short-term prisoners. These would also have a considerable impact on how swiftly the changes could be made by SPS, as well as an ongoing operational impact given this would be a permanent change. It would also reduce the intended impact on the prison population and therefore the objective to ensure the prisons can continue to function safely and effectively, accommodating those who pose the highest risk to victim and public safety.

87. Consideration has also been given to whether the change should apply retrospectively or not. The Scottish Government does not consider there to be a justifiable reason to require those currently serving short term sentences to serve a longer custodial period than new prisoners.

Release of long-term prisoners

88. The public consultation that ran from 8 July to 19 August 2024 sought views on proposals related to the release of long-term prisoners. The core proposal set out in the consultation was to amend the point at which long-term prisoners must be released on non-parole licence, for a period of supervision in the community, before the end of their sentence. The consultation proposed that this point could be set in line with the position before 2016, which was following two thirds of sentence. Indicative modelling suggested this could lead to around a 3.5-4.1% sustained reduction of the prison population.

89. Reflecting on the challenges of altering the release process for this cohort of prisoners, in a context where there is a need for expedited implementation, the Scottish Government considers that changes to the release point of long-term prisoners should not be progressed on the intended timescales for this Bill. However, the Scottish Government does intend to continue to develop policy on long-term prisoner release in discussion with stakeholders, and consider how issues raised as part of the consultation can be addressed or mitigated. The Bill therefore proposes to create a similar power to the one that existed before inadvertent changes made by the 2015 Act. As set out above, this would provide the necessary flexibility should it be considered appropriate to make changes to the release point for long-term prisoners in the future within the context of the prison population, and achieving better outcomes for those leaving prison and the communities to which they return.

CONSULTATION

90. The Bill has been developed taking into account responses received to the consultation on changing the release point for long-term prisoners and the need to consider further how some of the issues raised in relation to changing the release point for that cohort might be addressed or mitigated. Alternative approaches have also been considered following the proposals put forward by the Institute for Government and the recent changes made by the UK Government. As set out above, the Scottish Government has decided to change the release point for short-term prisoners. While there has been no public consultation on that specific proposal (due to the Bill being developed on an emergency basis), there has been targeted engagement with public and third sector stakeholders. There have also been other public consultations which have been considered in relation to the release processes for prisoners, for example, on the Bail and Release from Custody (Scotland) Act 2023.²⁴

91. Targeted engagement has been ongoing with a number of operational delivery partners to support the planning and delivery of these changes, should they be approved by the Parliament. That ongoing development work includes engaging with public and third sector stakeholders whose activities include support for prison leavers, to examine how this change would impact the delivery of their services, and any mitigations required. It also involves engagement with VSOs to consider the impact for victims and their families, and to inform ongoing work to ensure that the victim notification and information schemes can respond to the changes as effectively as possible.

92. SPS has been closely engaged in the development of this proposal and has set out in detail the various steps that would be required to operationalise this policy. These include recalculation

²⁴ [Bail and release from custody arrangements: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/bail-and-release-from-custody-arrangements-consultation-analysis)

of release dates, staff training, and communications to staff, prisoners and those registered with the VNS. Therefore, adequate time and resource will be required ahead of commencement to allow for SPS to operationalise the policy. (More detail on the impacts on SPS can be found in the Financial Memorandum).

93. Local authority partners including representatives from COSLA, Social Work Scotland (SWS) and the Association of Local Authority Chief Housing Officers (ALACHO) have been engaged to assess the potential impacts on local authority services. It is estimated that there will be limited impact in relation to justice social work provision, given that there is no statutory requirement to supervise those who will be released at 40%. However, there may be a temporary increase in demand for provision of voluntary throughcare support from the local authority. It is estimated that there will be a more significant impact on the provision of housing. This is explored more fully within the Financial Memorandum.

94. COSLA has highlighted that the “Secure housing on release for everyone” (“SHORE”) standards should be adhered to in planning for the release of prisoners as a consequence of this Bill. It has highlighted existing gaps in current service levels when applying the SHORE standards at the point of leaving prison for example missed or delayed housing options discussions, failure to meet the targets for making a homeless application, and ensuring that support is in place ahead of liberation. Taking into account these existing gaps and the current demands on housing and homelessness services, COSLA has highlighted that the changes in the Bill could lead to additional pressures on services that would hinder an individual’s journey back into the community through a single plan, which includes accessing accommodation and support. It is COSLA’s view that for the SHORE standards to be met, to improve joint working, and to achieve improved outcomes for an individual following their liberation , it is vital that the approach is appropriately resourced.

95. SWS have highlighted that the proposals will mean that community services need to be able to respond and meet complex needs more quickly. A proportion of this group may seek voluntary throughcare from the local authority which may involve engagement with the individual and their family, addressing issues related to mental health, substance use and trauma. Collaborative work with the third sector will help support families, especially where there are waiting lists for universal services. SWS also noted that together with the presumption in favour of HDC for short-term prisoners, some individuals will spend only a short period in prison.

96. The Scottish Government have also engaged with a range of colleagues at Community Justice Scotland, in particular with the team undertaking the commissioning of the national throughcare service. There remains ongoing discussions about how this policy might impact on the delivery of services if there is a significant increase of those seeking services due to an earlier release point. The process also focused on other aspects such as the range of community-based services that support throughcare such as addiction and mental health services.

97. In addition, the Criminal Justice Voluntary Sector Forum has been engaged. Its members have indicated their willingness to work with the Scottish Government in developing plans for implementation of the policy. The PSPs providing the current third sector throughcare services have also been engaged and have agreed to work with the Scottish Government to ensure those who are eligible to be released are offered support.

98. As above, VSOs have been engaged in relation to the impact the policy may have on victims of crime and how provision of accurate information to victims can be improved. Generally, VSOs are not supportive of the proposals in the Bill.

Summary of responses to consultation on long-term prisoner release process

99. There were 161 responses to the public consultation in relation to the release of long-term prisoners. In addition to the public consultation, two virtual workshops were held for relevant stakeholders on 26 July and 6 August 2024. The events provided attendees with the opportunity to share their views on the policy. An analysis report of the consultation responses was published on 10 October 2024,²⁵ which includes an overview of the outcomes of those events.

100. The analysis report identified a number of key themes cited by respondents. These themes relate to both the supportive and non-supportive views that respondents expressed for the proposals as well as a number of operational issues around implementation and delivery of the proposals.

101. There was notable support amongst the responses for increasing the time some long-term prisoners spend in the community as part of a sentence, and recognition that this can improve reintegration and other outcomes. Respondents expressed concerns about the general risk profile of this cohort and the ability of services to safely manage that risk in the community within current resources. In some cases, where support was given to the proposals, it was with the caveats that sufficient resources and time for planning is made available or that additional restrictions be put in place (for example, that the new point of release should only apply to certain risk assessed prisoners). Whilst most respondents were supportive in principle of a change to the point of release for long-term prisoners, given the operational issues they also raised in some of their responses, it was not always clear the degree to which respondents supported the proposal as framed. Some respondents, particularly those representing victims' interests, were not supportive of early release of long-term prisoners in principle (including the current system of early release). Some felt that the proposals to change the release of long-term prisoners 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 those deemed higher risk.

102. As noted above, the Scottish Government intends to continue to develop policy on long-term prisoner release in discussion with stakeholders and consider how issues raised as part of the consultation can be mitigated.

²⁵ [Long-term prisoner release process: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/long-term-prisoner-release-process-consultation-analysis/pages/25.aspx)

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

103. An Equality Impact Assessment was carried out. The policy will directly impact people who are being released from custody following a short-term sentence, as well as their families, victims of crime, and the wider community.

104. The Bill brings forward the release point for eligible short-term prisoners but it does not generally change the process for their release. The changes made in the Bill apply regardless of a person's protected characteristic(s). However, given the demographics of the prison population, earlier release would apply to some groups of people who share specific characteristics more than others. There is a significantly higher proportion of men in prison than women (women comprised just 4% of the average daily prison population in 2022-23)²⁶, therefore more men than women will be eligible for release at an earlier stage as a result of this Bill. However, the impact of this change on individuals who are released at an earlier stage should not be significantly lesser or greater based on any specific protected characteristic.

105. There may be a slightly positive impact on people with disabilities. This is because accommodating the needs of individuals as a result of a disability can be challenging within a prison context, due to difficulties adapting some of the older prisons to accommodate social care needs, and prison population pressures limiting the availability of staff to identify and manage individual needs. Some individuals with disabilities may therefore benefit from being able to access a wider range of suitable support at an earlier stage. Reducing population pressures may also have a positive impact on people with disabilities within the wider prison population, if a reduction in these pressures allows SPS staff to better identify individual needs and ensure access to relevant support for those in their care.

106. There may also be a slightly positive impact on prisoners who are gay or bisexual in cases where there is access to a wider range of support in the community at an earlier stage. Evidence suggests there are particular challenges around experiences of discrimination, stigma and isolation for gay or bisexual people in prisons. Likewise, there may be a slightly positive impact for trans people with some evidence on an increased likelihood of mental health issues in prison, in cases where there is earlier access to a wider range of support in the community.

107. There may also be a slightly positive impact in terms of pregnancy and maternity. The earlier release of a pregnant prisoner could allow for the development of a better connection with the community and early access to local healthcare support. The release of an expectant parent could also provide better support to a pregnant partner. Parental imprisonment is considered an Adverse Childhood Experience (ACE), so limiting the period of separation of imprisonment may be beneficial to dependent children.

108. There is evidence that some protected characteristics can have an impact on the types of crime experienced, for example, women are more likely than men to be victims of sexual and

²⁶ <https://www.gov.scot/publications/scottish-prison-population-statistics-2022-23/pages/women-in-custody/>

domestic abuse offending.²⁷ The new release point would not apply to those serving sentences for domestic abuse and sexual offences to reduce any impact on reporting of those offences, which is vital to the success of the Scottish Government's commitment to reduce violence against women and girls, as supported by the Equally Safe strategy. As men are also more likely to commit sexual offences and domestic abuse than women, more men than women overall will be excluded from an earlier point of release.

109. Overall, no significant impacts were identified as a result of the Equality Impact Assessment on those who share particular protected characteristics. Any impact would likely occur at the current release point rather than being specifically related to moving that release point to the two-fifths point (40%). There may be limited positive impacts on specific protected characteristics; however any positive impact is likely to be limited given the maximum time period an individual could be released early as a result of the Bill is approximately 21 weeks.

Human rights

110. The Scottish Government has assessed the potential impact of the provisions on human rights and considers that the provisions in the Bill are compatible with the European Convention on Human Rights (ECHR).

111. In general, the scope of the Bill is relevant to article 2 which is the right to life; article 3 which prohibits degrading or inhuman treatment or punishment; article 5 which provides that a person can only be deprived of their liberty in certain specified circumstances and in accordance with a procedure prescribed by law; and article 8 which protects the right to private life including a person's physical integrity. Some of the provisions in the Bill result in different release points for some categories of prisoners on the basis of their offence type, in that the new release point would not apply to those serving sentence for domestic abuse and sexual offences. This is relevant to article 14 which prohibits discrimination in the enjoyment of other Convention rights, in this case, article 5.

112. The Scottish Human Rights Commission and the National Preventative Mechanism published a report on 25 July 2024 on human rights within Scottish prisons. This report emphasised that a high prison population "negatively impacts almost all outcomes of a prison – from purposeful activity, right to fresh air, right to healthcare, rehabilitation, and right to two hours of meaningful contact. Action to reduce the prison population is essential to upholding the human rights of those in prisons." As the Bill is intended to ensure the prison estate functions effectively to protect the safety, health and wellbeing of those living and working within them, it is fundamental to upholding Articles 3 and 8 rights of those who remain in or are entering custody.

113. To the extent that the proposed exclusions would amount to differential treatment that engages Article 14, the Scottish Government considers that such exclusions are justified on the grounds for the preservation of public confidence, and in particular, victim confidence and the impact on the incidence of reporting of such crimes. As set out above, there is evidence of particular barriers to reporting domestic abuse and sexual offences. The risk to reporting, which in turn risks successful conviction when these offences have been committed, is relevant in the context of the Scottish Government's positive obligations under articles 3 and 8 and the Istanbul

²⁷ <https://www.gov.scot/publications/women-justice-system/>

Convention, to maintain an effective system for the investigation and prosecution of gender-based crime. As noted above, women are much more likely than men to experience sexual and partner abuse and violence against women and girls is a fundamental violation of human rights.

Article 7

114. Article 7 of the ECHR provides: “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.”

115. The principle of non-retrospectivity applies both to the provisions defining the offence and to those setting out the penalties incurred. Even after the final sentence has been imposed and/or is being served, the principle prevents the legislature, administrative authorities and the courts from redefining or modifying the scope of the penalty imposed to the sentenced person’s disadvantage.²⁸ However, the European Court of Human Rights has drawn a distinction between measures which redefine or modify the scope of the penalty imposed on an individual and measures which affect only the manner of execution of a sentence.

116. Mechanisms for early release affect only the manner of execution of the sentence. It does not alter the penalty, which ultimately remains the same. Prisoners would continue to be serving a custodial sentence, the length of which would not change. Instead, early release allows the prisoner an opportunity to serve part of their sentence in the community.

117. The Scottish Government considers that the changes being made to the early release prisoners do not constitute a change to the “penalty” but instead concern the execution of the sentence and therefore the rights under article 7 are not engaged. This is relevant both to the change being made by bill and future changes which may be made using the subordinate legislation making power within the bill.

Article 5

118. Article 5(1) of the ECHR provides for the right to liberty and security. A person can only be deprived of their liberty in certain circumstances (including the lawful detention of a person after conviction by a competent court) and in accordance with a procedure prescribed by law. The law on release from prison is clearly relevant to considerations of deprivations of liberty. However, the Scottish Government does not consider that the provisions of the Bill raise issues under article 5.

Article 14

119. As outlined above, some of the provisions of the Bill involve treating different categories of prisoner differently to others on the basis of their category of sentence or their index offence. In particular, the changes to the point of automatic early release for short-term prisoners will not apply to those serving a sentence of imprisonment for a domestic abuse or sexual offence. The difference in treatment must be within the “ambit” of another Convention right – in this case,

²⁸ Del Río Prada v. Spain (Application no. 42750/09) 21 October 2013, paragraph 89.

article 5. To the extent that such provisions engage article 14, the Scottish Government considers that such differential treatment is justified for the preservation of public confidence and in particular, victim confidence and the impact on the incidence of reporting of such crimes if such prisoners were to be released earlier than they already are under the current regime. Through the Scottish Government's engagement with VSOs in the course of developing the Bill and in response to the public consultation on long-term prisoner release, VSOs expressed concerns regarding the impact the provisions may have on victim confidence in the justice system should sexual or domestic abuse offences be included.

Statement of compatibility under section 23(1) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024

120. The Cabinet Secretary for Justice and Home Affairs has made a statement in writing that, in her view, the provisions of the Bill are compatible with the UNCRC requirements.

121. There are already specific provisions in place in relation to the detention of young offenders under the Criminal Procedure (Scotland) Act 1995 and the Children (Care and Justice) Scotland Act 2024. The court is only permitted to impose a period of detention for a child if it considers that no other method of dealing with that individual is appropriate and children must not be detained in prison. Where a child is sentenced to a period of detention under the Children (Care and Justice) (Scotland) Act 2024 those under 18 must be detained within secure accommodation and not within a YOI.

122. A Children's Rights and Wellbeing Impact Assessment has been conducted in developing the legislation. The policy implemented by the Bill brings forward the release point on licence for children who have been sentenced to less than four years. It does not generally change the process for their release. The evidence gathered during the assessment process highlighted the ways in which children can experience the justice system in different ways. In summary, it is assessed that the policy will have a generally positive impact on children released from custody earlier than they otherwise would have been, could have both positive and negative impacts on children whose parent or carer is released earlier and could have a negative impact on children who are victims of crimes. However, in each instance, any change to the identified impacts would be small reflective of the scale of the change which is being made, and there is no evidence to suggest that bringing forward the release point from 50% to 40% would disproportionately impact children.

Island communities

123. A partial Islands Community Impact Assessment has been carried out, which considers the impact of the Bill with the available evidence. It is established that release can be more difficult for those returning to island communities, due to availability of transport, support services and the potential for increased stigma or isolation. However, there is no evidence to suggest that bringing forward the release point from 50% to 40% would disproportionately impact island communities.

Local government

124. Local government plays a key role in the delivery of community justice and other services in Scotland and has a number of statutory responsibilities. It is estimated this would primarily impact on the provision of voluntary throughcare services and the services supporting the

provision of accommodation to those leaving prison. There may be an increase in demand for the delivery of voluntary throughcare support during the initial release period though accessing these services is voluntary and the type of service provided will also vary between local authorities. The Bill will also result in a temporary increase in the number of individuals released into the community need of housing support. This will impact on the assessment of housing needs and the provision of accommodation advice and support for those accepted for rehousing. The impact on individual local authorities will vary depending on where individuals are released to. This is discussed more fully within the Financial Memorandum.

125. Additionally, it can be anticipated that there may be an impact on social care services. Local authorities will have a responsibility to ensure there are care packages available within the community for those released. For prisoners with care needs, social care is procured from an external care supplier, which differs from prison to prison depending on the local authority. The care provided will vary depending on the needs of the relevant prisoners and the agreement in place with the care supplier.

126. If the powers were to be used to amend the release point for long-term prisoners, there would be an impact justice social work and other community services to supervise and support long-term prisoners. Supervision in the community will vary significantly depending on the assessed level of risk. There would likely be a similar impact on housing, with a rise in the need for support services and temporary accommodation. The social care provided will again vary depending on the needs of the relevant prisoners. This is discussed more fully within the Financial Memorandum.

Sustainable development

127. The Bill contributes to implementation of the Vision for Justice,²⁹ which is underpinned by the Scottish Government's National Performance Framework³⁰ and contributes to Sustainable Development Goal 16 (Peace, Justice and Strong institutions).

128. The potential environmental impact of the Bill has been considered with a pre-screening Strategic Environmental Assessment. No environmental impacts have been identified, and therefore a full assessment did not need to be undertaken. There will be no direct impact on job creation or the economy. There may be some consequential impact in that demand may increase for community supports such as voluntary throughcare.

129. A Fairer Scotland Duty Impact Assessment was also conducted. This assessment found evidence that many people in contact with the criminal justice system have already experienced socio-economic disadvantages. This relationship has not changed over the past decade, with most people in custody likely to be from the 10% most deprived areas of Scotland, this group accounted for 31% of all arrivals to prison in 2022-23.³¹ In addition, the likelihood of experiencing any crime was higher among those living in the 15% most deprived areas of Scotland.³²

²⁹ [The Vision for Justice in Scotland - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/vision-for-justice-2022-23/pages/1-1-introduction/)

³⁰ [National Performance Framework | National Performance Framework](https://www.gov.scot/publications/national-performance-framework-2022-23/pages/1-1-introduction/)

³¹ <https://www.gov.scot/publications/scottish-prison-population-statistics-2022-23/>

³² <https://www.gov.scot/publications/scottish-crime-justice-survey-2019-20-main-findings/documents/>

130. The Hard Edges report³³ found that poverty is a significant background factor to offending, with people who have experienced custody more likely than the general population to have experienced material deprivation; financial stress and debt; housing deprivation; and severe poverty. Within the 2019 prisoner survey, 16% of respondents were of the opinion that unemployment was a factor which may have led to their offending and 15% said financial difficulties were a factor.

131. The Bill is therefore likely to impact many people who face socio-economic disadvantage who are eligible for release from prison at an earlier stage, as well as their families.

132. There may be a limited positive impact for some people who are released an earlier in providing more time to reintegrate into communities, engage with a wider range of support options available in the community and access employment opportunities. This may have a positive impact on families in cases where there is a possible increased household income and assistance with childcare and caring responsibilities.

133. There can be challenges with transitioning from prison back to the community, including challenges accessing housing, social security benefits and employment. However, there was no evidence to suggest that bringing forward the release point from 50% to 40% would have a significant impact. Those being released are able to request voluntary throughcare support.

CROWN CONSENT

134. It is the Scottish Government's view that the Bill as introduced does not require Crown consent. Crown consent is required, and must be signified during a Bill's passage, where the Bill impacts the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Sovereign, the Prince and Steward of Scotland or the Duke of Cornwall. The Scottish Government's view is that this Bill does none of those things.

135. For the source of the requirement for Crown consent, see [paragraph 7 of schedule 3 of the Scotland Act 1998](#), and [rule 9.11 of the Parliament's Standing Orders](#). For further information about the considerations that go into determining whether Crown consent is required for a Bill see [Erskine May](#), the guide to procedure in the UK Parliament.

³³ <https://lankellychase.org.uk/publication/hard-edges-scotland/>

This document relates to the Prisoners (Early Release) (Scotland) Bill (SP Bill 53) as introduced in the Scottish Parliament on 18 November 2024

PRISONERS (EARLY RELEASE) (SCOTLAND) BILL

POLICY MEMORANDUM

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot

Produced and published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at: www.parliament.scot/documents