

Criminal Justice Committee
Wednesday 5 June 2024
22nd Meeting, 2024 (Session 6)

Emergency release of prisoners and other key challenges in Scotland's prisons

Note by the clerk

Background

1. As of 24 May, at the time of writing, the number of prisoners held in Scotland's prisons was 8,250. This is an increase of 575 (+7.5%) from the same period in 2023. **Annex A** contains more information on prisoner numbers in recent weeks. **Annex B** contains further information and prison population data collated by SPICe relating to Scottish prisons and prisoner numbers.
2. The Scottish Government has described the recent rate of increase in prisoner numbers as "significant" and that it "could not have been anticipated".¹ As a result of the increase, the Scottish Prison Service (SPS) reports that six prisons in Scotland – over a third of the estate – currently have a red risk rating.
3. The Scottish Government stated that the underlying, longer-term reasons for the rise are an increase in average sentence lengths, compounded by a high remand population, due in large part to the post-pandemic court backlog. In relation to the spike in prisoner numbers in more recent months, the Scottish Government said that the reasons are "not clear".
4. The unexpected rise in prisoner numbers over recent months is one of several key challenges in Scotland's prisons that the Committee has agreed it wishes to revisit, hence the organisation of today's meeting.

What is the Cabinet Secretary proposing/doing?

5. In recent weeks, the Cabinet Secretary lodged a laid-only instrument - [The Bail and Release from Custody \(Scotland\) Act 2023 \(Commencement No. 1\) Regulations 2024](#). This instrument brings into force sections 11 (power to release early) and 14 (provision of information to victim support organisations) of the [Bail and Release from Custody \(Scotland\) Act 2023](#) ("the 2023 Act") from 26 May 2024.
6. The laid-only instrument also brings into force section 5 (time spent on electronically monitored bail) of the 2023 Act from 1 July 2024.
7. Section 5 of the 2023 Act requires a court, when imposing a custodial sentence, to have regard to any period the person spent on bail subject to an electronically monitored (EM) curfew condition. This could be pre-trial bail or bail whilst awaiting sentence. The Act provides that each day of the qualifying bail period should be counted as half a day spent in custody. Courts now have the discretion

¹ Scottish Government, Actions to Address the Rising Prison Population, May 2024.

to disregard all or part of this bail period if they consider it appropriate. If a court decides that all or part of the bail period is to be disregarded then the court must then state its reasons for doing so. The Act does not seek to provide any guidance on what might amount to a valid reason.

8. In bringing section 5 into force, the Scottish Government is aiming to reduce sentence lengths and to incentivise and support the use of EM bail as an alternative to remand, including the acceptance of EM bail by accused persons.
9. Section 11 of the 2023 Act enables Scottish Ministers to instruct, by regulations, the early release of prisoners to protect the security and good order of a prison or prisons, and/or to protect the health, safety and welfare of prisoners or prison staff in the event of an emergency situation.
10. "Emergency situation" is defined in the 2023 Act as follows:
 - The incidence or spread of infection, contamination or the source of contamination which presents or could present significant harm to human health in Scotland (whether from risks originating there or elsewhere);
 - An event of situation which has resulted in any prison (or part of a prison)-to which the regulations would relate being unusable;
 - Any other event of situation which is reasonably considered by the Scottish Ministers to place at significant risk—
 - The security and good order of a prison or prisons generally;
 - The health, safety and welfare of prisoners, or those working in any such prison.
11. There are statutory exclusions to release under this power as listed in the provision and a Governor's Veto applies whereby a Governor of the prison within which the person is detained can veto the release of an otherwise eligible person if they consider that the person would, if released, pose an immediate risk of harm to an identified person or an identified group of people.
12. Finally, section 14 of the 2023 Act enables victims to nominate a victim support organisation (VSO) to receive certain information about the offender in their case, such as release from prison or conditional discharge from hospital. VSOs will also be able to request certain information relating to the prisoner in their case or certain information pertaining to the offender in the victim's case where they are subject to a compulsion order.
13. In relation to section 11 and emergency release, the Cabinet Secretary told Parliament on 16 May she will introduce a proposal for Parliament's consideration as soon as possible within the following two weeks of that date and that Members will have the opportunity to scrutinise and debate the approach. She said she would not release a single prisoner without Parliament's consent, and that she wanted to work with Parliament to expedite that process.
14. She also said it was her intention that those who are released would be serving sentences of under four years and that no one who is serving a sentence for sexual offences or domestic abuse will be released.

15. On 29 May, the Cabinet Secretary laid the following affirmative instrument - [The Early Release of Prisoners and Prescribed Victim Supporters \(Scotland\) Regulations 2024](#) - to bring into effect the changes described above. She also wrote to the Committee and a copy of that letter is set out in **Annex C**.
16. This affirmative instrument will be considered by the Committee at its next meeting on 12 June. It should be noted that the Cabinet Secretary has requested that the SSI be expedited so that, if Parliament agrees, the changes can be brought in as soon as possible.
17. Finally, more widely, the Cabinet Secretary said that emergency release through these SSIs will not solve the problem in the longer term. As such, she was going to consult on a Bill over summer (for introduction after recess) which will change how long-term prisoners are released. This, in her words, will address the current situation where there is effectively no automatic early release scheme for long-term prisoners because of the passing of the Prisoners (Control of Release) (Scotland) Act 2015. Currently, the system relies on more individualised assessment of readiness for release. The Cabinet Secretary is likely to propose through this Bill a move to increase the time that long-term sentenced offenders spend on supervised release before the end of their sentence, thereby freeing up capacity.

Today's evidence

18. At today's meeting, the Committee will take evidence from the following individuals and organisations as a means of exploring views on the Cabinet Secretary's proposals for an emergency release of prisoners and the other measures she plans to take:

Panel 1

- Professor Sarah Armstrong, Professor of Criminology, University of Glasgow
- Kate Wallace, Chief Executive, Victim Support Scotland
- Lynsey Smith, Chair of Justice Standing Committee, Social Work Scotland

Panel 2

- Wendy Sinclair-Gieben, Chief Inspector, HMIPS
- Phil Fairlie, Deputy General Secretary, Prison Officers Association Scotland
- Paula Arnold, Governor, HMP and YOI Stirling, Vice Chair, Prison Governors Association (Scotland)
- Ian Bryce, Legal Vice Chair, The Parole Board for Scotland

19. Following today's meeting, the Committee will hear from the Cabinet Secretary and officials from SPS on 12 June to look at the details of the early release SSI highlighted above.

20. In addition to the information set out in this paper, a small number of written submissions of evidence were received. These are set out in **Annex D** and contains submissions from:

- Prison Governors Association (Scotland)
- Families Outside
- Howard League Scotland

Further reading

21. Members may find the following documents published by the Scottish Government of use:

- [Actions to Address the Rising Prison Population, May 2024](#)
- [Action to reduce the prison population: information sheet, May 2024](#)

Action/recommendation

22. Members are invited to note the information contained within the paper when questioning today's witnesses.

**Clerks to the Committee
May 2024**

Annex A - Prison population (recent figures)

	15-Mar-24	22-Mar-24	29-Mar-24	05-Apr-24	12-Apr-24	19-Apr-24	26-Apr-24	03-May-24	10-May-24	17-May-24	24-May-24
Population in custody	7,948	7,980	7,977	8,042	8,107	8,174	8,198	8,203	8,277	8,294	8,250
Untried (including persons awaiting deportation)	1,837	1,838	1,852	1,903	1,920	1,918	1,897	1,933	1,984	2,011	1,990
Convicted awaiting sentence	259	274	263	263	275	276	295	292	295	285	269
Sentenced (including recalled lifers and civil prisoners)	5,852	5,868	5,862	5,876	5,912	5,980	6,006	5,978	5,998	5,998	5,991
Women	322	321	306	318	331	340	344	337	339	345	353
Untried (including persons awaiting deportation)	100	97	89	94	103	107	109	102	103	107	110
Convicted awaiting sentence	20	24	23	30	37	35	35	27	25	25	25
Sentenced (including recalled lifers and civil prisoners)	202	200	194	194	191	198	200	208	211	213	218
Men	7,626	7,659	7,671	7,724	7,776	7,834	7,854	7,866	7,938	7,949	7,897
Untried (including persons awaiting deportation)	1,737	1,741	1,763	1,809	1,817	1,811	1,788	1,831	1,881	1,904	1,880
Convicted awaiting sentence	239	250	240	233	238	241	260	265	270	260	244
Sentenced (including recalled lifers and civil prisoners)	5,650	5,668	5,668	5,682	5,721	5,782	5,806	5,770	5,787	5,785	5,773
Under 16 (total)	0	0	0	0	0	0	0	0	0	0	0
16-17	5	5	7	8	7	6	7	7	7	9	9
Untried (including persons awaiting deportation)	3	2	3	3	4	3	4	4	4	4	4
Convicted awaiting sentence	0	0	1	2	1	1	1	1	1	3	3
Sentenced (including recalled lifers and civil prisoners)	2	3	3	3	2	2	2	2	2	2	2
18-20	170	170	175	179	186	184	189	184	190	191	189
Untried	63	64	66	68	67	63	70	67	76	78	69
Convicted awaiting sentence	13	11	14	16	22	22	17	17	13	11	14
Sentenced (including recalled lifers and civil prisoners)	94	95	95	95	97	99	102	100	101	102	106
21 and over	7,773	7,805	7,795	7,855	7,914	7,984	8,002	8,012	8,080	8,094	8,052
Untried (including persons awaiting deportation)	1771	1772	1783	1832	1849	1852	1823	1862	1904	1,929	1917
Convicted awaiting sentence	246	263	248	245	252	253	277	274	281	271	252
Sentenced (including recalled lifers and civil prisoners)	5756	5770	5764	5778	5813	5879	5902	5876	5895	5,894	5883
Population on home detention curfew	72	73	79	85	87	90	89	96	95	91	95
Women	10	10	10	10	10	10	9	11	12	10	11
Men	62	63	69	75	77	80	80	85	83	81	84

Notes

1. The population in custody excludes prisoners released on home detention curfew.
2. The daily population can show substantial variation in the short and medium term due to seasonal effects and a range of other factors. Changes over time in the daily population counts should therefore be treated with caution to avoid misleading comparisons.

ANNEX B – Prison population data – SPICe briefing

Introduction

The following information is based on:

- [weekly updated prison population figures](#) published by the Scottish Prison Service (SPS)
- [prison population statistical reports](#) published by the Scottish Government.

SPS figures provide more up-to-date information but are only broken down by custody type (e.g. sentenced or remand), sex and age group.

Scottish Government reports include figures broken down by other factors (e.g. offence type and length of sentence) but the [latest report](#), published in December 2023, only provide figures up to 2022-23.

The importance of up-to-date figures is emphasised by the fact that the Scottish Government has highlighted a recent increase in the prison population when setting out plans for the emergency release of prisoners. For example, a [position paper](#) states that:

“On Thursday 16 May the prison population was 8,348 – a rise of around 400 over the last two months. That rate of increase is significant and could not have been anticipated. It comes in the context of a rise of around 10% since this time last year. A continued rise in the immediate term is plausible.”

Information on custody type, offence and length of sentence is important given the restrictions on which prisoners can be released. For example:

- the regulation making power allowing for the emergency release of prisoners (introduced by [section 11](#) of the Bail and Release from Custody (Scotland) Act 2023) does not allow for the release of untried remand prisoners, life sentence prisoners, or those serving a sentence for domestic abuse or subject to sexual offender notification requirements
- the [draft SSI](#) setting out who would be eligible for release in the current situation sets out additional restrictions, including that it would only apply to those serving a custodial sentence of less than four years.

COVID-19

In looking at figures for the past few years, the impact of the COVID-19 pandemic is apparent. There was a significant fall in the average total prison population in 2020-21. This was linked to temporary measures taken in response to the pandemic:

- additional powers to release prisoners before the end of their sentence – directly aimed at supporting the safe management of prisons by reducing the prison population during the pandemic
- restrictions on the carrying out of criminal court business – aimed at the safe running of the courts during the pandemic but limiting the level of business concluded and thus the number of custodial sentences imposed.

The reduction in 2020-21 was in the sentenced population only. The remand population increased. Although delays in concluding cases during the pandemic meant fewer people receiving custodial sentences, such delays also made it more difficult to keep periods of remand within normal statutory time limits. This was reflected in the temporary extension of those limits by COVID-related legislation.

Average daily prison population

The following charts use annual figures to show how the average daily prison population has changed over the period 1999-00 to 2023-24. As well as plotting the total population, they break this down into sentenced and remand prisoners.

The first chart includes both male and female prisoners – those under 21 as well as those aged 21 and over. Most of the prison population consists of men aged 21 and over.

The other two charts plot data for female and under-21 prisoners (different scales are used).

Chart 1: all prisoners

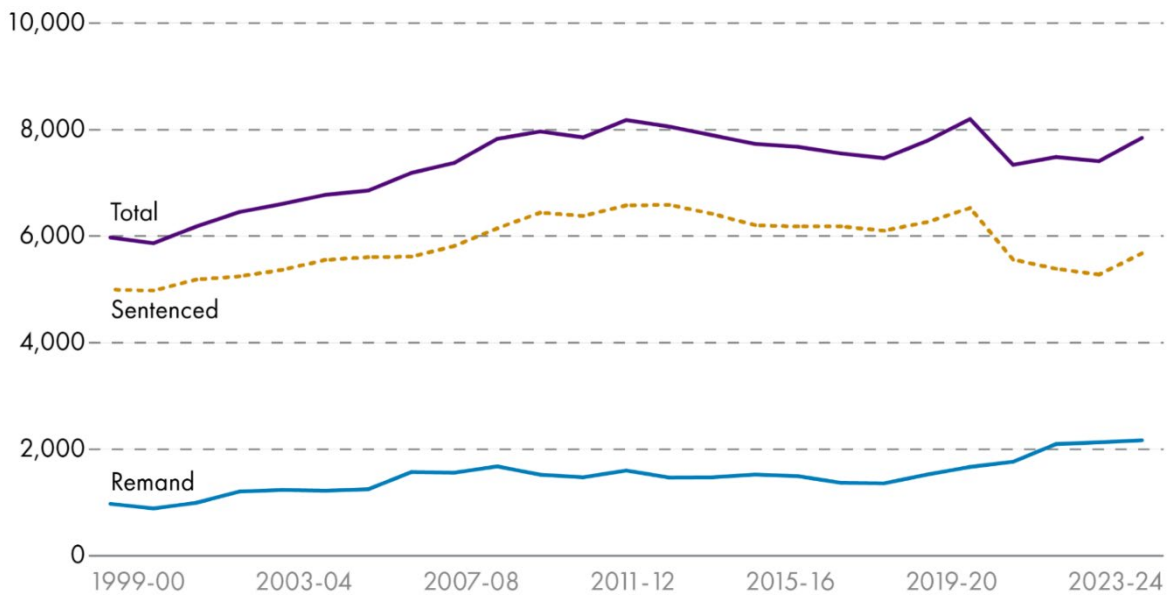


Chart 2: female prisoners

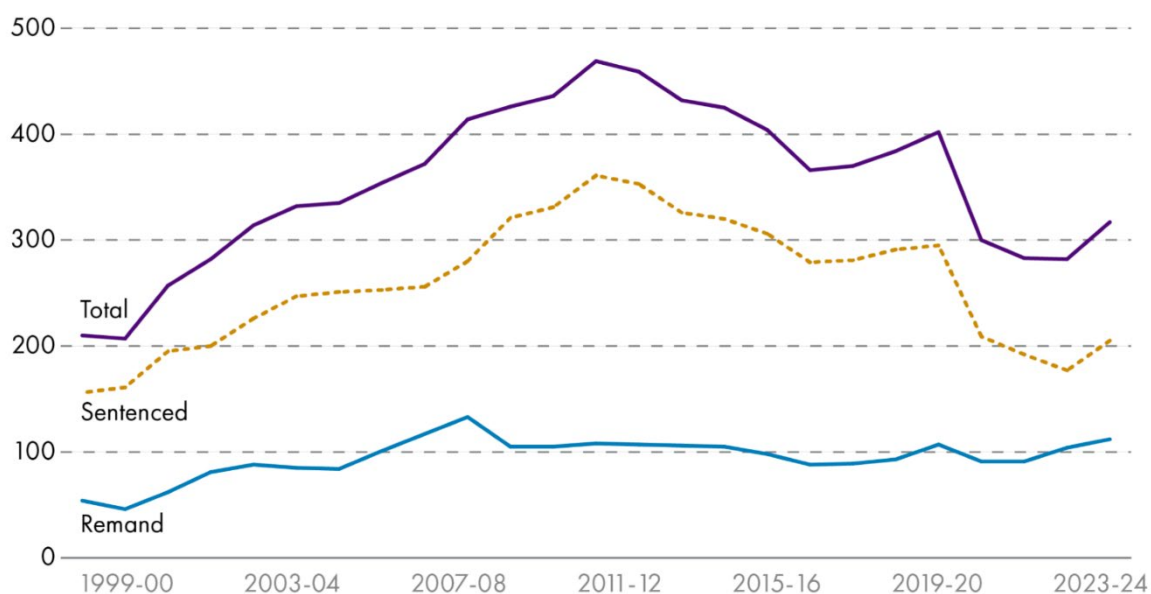
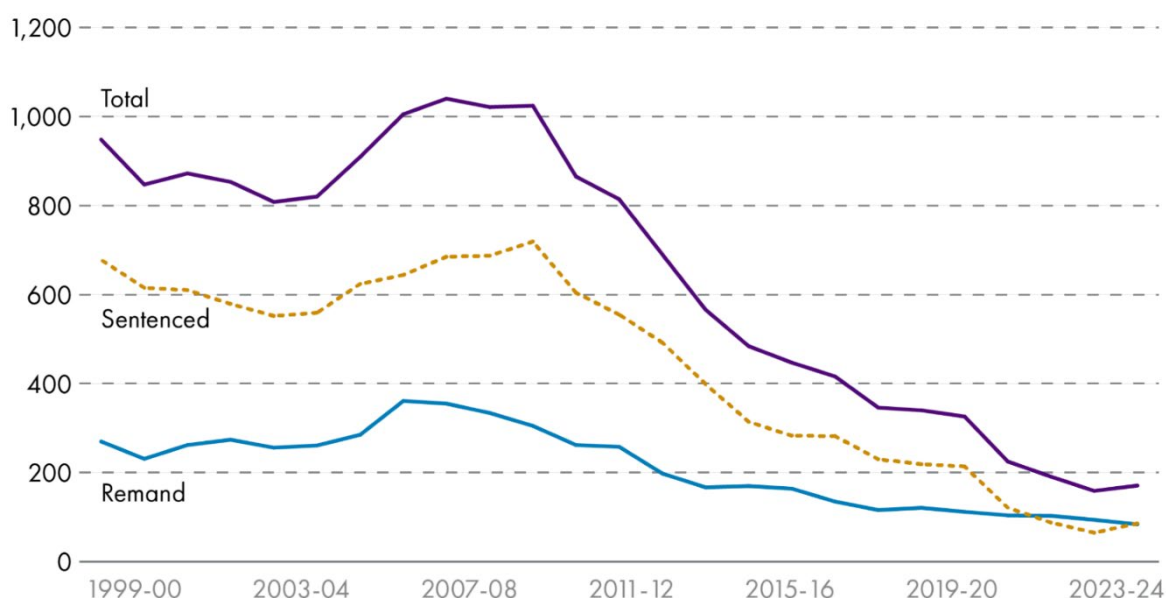


Chart 3: prisoners under 21



More recent prison population data

At the time of writing, information published by the SPS provides [weekly updated figures](#) up to 24 May 2024. Figures for that date include:

- all prisoners – total 8,250; sentenced 5,991; remand 2,259
- male prisoners – total 7,897; sentenced 5,773, remand 2,124
- female prisoners – total 353; sentenced 218; remand 135
- prisoners under 21 – total 198; sentenced 90; remand 108.

Offence and sentence data

As noted above, prison population statistical reports published by the Scottish Government include prisoner figures broken down by offence type and length of sentence.

The [latest report](#), published in December 2023, includes the following figures for 2022-23.

Looking just at the sentenced prison population (i.e. excluding remand prisoners) for that year, the average daily population consisted of the following number of people serving sentences for the following index offences:

- | | |
|--|-------|
| • Non-sexual crimes of violence (e.g. homicide or assault) | 2,530 |
| • Sexual crimes (e.g. rape or sexual assault) | 1,225 |
| • Crimes of dishonesty (e.g. housebreaking or shoplifting) | 304 |
| • Damage and reckless behaviour (e.g. fire-raising) | 80 |
| • Crimes against society (e.g. drugs supply) | 743 |
| • Antisocial offences (e.g. threatening and abusive behaviour) | 238 |
| • Miscellaneous offences (e.g. licensing offences) | 118 |
| • Road traffic offences (e.g. dangerous and careless driving) | 85. |

The above figures add up to around 260 less than the total figure for all sentenced prisoners in that year. This is due to offence data being missing from some published figures.

Turning to the length of custodial sentences being served, the average daily sentenced population during 2022-23 included 2,397 people with index sentences (the longest sentence an individual is serving) of less than four years. The current proposals for emergency release would only apply to those serving a custodial sentence of less than four years.

Frazer McCallum
Criminal Justice Researcher
SPICe

ANNEX C – Letter from the Cabinet Secretary for Justice and Home Affairs (dated 29 May)

Dear Convener,

I know the Committee is aware and concerned about the critical pressures facing the prison service and will have noted the measures I set out in my statement on 16 May to address this.

As I set out in my statement, one of those measures is to bring forward regulations to use the emergency release power provided for under section 11 of the Bail and Release from Custody Act 2023 (the 2023 Act).

I am acutely aware that using emergency release is a significant step and this is not a decision I have taken lightly. I am clear that situation in our prisons is so serious that emergency action is needed to keep people safe, and to protect the security and good order of prisons.

I am also clear that, for a decision of this magnitude, it is critical that Parliament have a role in scrutinising and debating the issues. That is why, in this instance, I have brought forward regulations using the affirmative procedure. I am grateful to Parliament, and to the DPLRC and Criminal Justice Committee, in agreeing to an expedited process.

I have laid the emergency regulations in draft today. Those regulations set out the criteria and timescales for release and provide for further information sharing with victims organisations and I wanted to provide some more detail on those points.

Turning firstly to the **criteria for release**. The regulations provide that only short-term prisoners would be released under this power – should Parliament approve the regulations.

That means that only individuals serving less than four years will be released. As you are aware, short-term prisoners (unless they are serving sentences for sexual or terrorist offences) are released automatically and unconditionally at the halfway point of their sentence. They are not subject to conditions or supervision on release.

Furthermore, only those who are due to be released within 180 days of the regulations coming into force can be considered for release under the emergency release power.

Therefore, the cohort of prisoners who would be released under this power would be individuals scheduled for release in the coming weeks.

A number of automatic exclusions apply to emergency release and the following groups of prisoners will not be released:

- Life sentenced prisoners (including Order of Lifelong Restrictions)
- Remand prisoners
- Terrorist prisoners
- Individuals serving extended sentences

- Individuals subject to supervised release orders
- Individuals subject to the sex offenders notification requirements
- Individuals liable for removal from the UK or subject to extradition
- Prisoners serving sentences following conviction under Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (2016 Act), Domestic Abuse (Scotland) Act 2018 (2018 Act), or the Domestic Abuse (protection) (Scotland) Act 2021 (the 2021 Act)

As you will see from the regulations, I have added additional criteria which are intended as further safeguards.

In addition to the above exclusions, anyone who *has previously served* a sentence of imprisonment following conviction under the 2018 Act or an offence aggravated under the 2016 Act will also be automatically prevented from being released, provided their conviction is not spent. Prisoners who are subject to a non-harassment order will also not be released as part of the emergency release process.

A Governor veto will also apply which allows prison governors to prevent the release of an otherwise eligible prisoner if they think that they would pose an immediate risk of harm to a specified individual or group of individuals if released.

Turning now to **timescales**. If Parliament approve the regulations, release will take place in 4 separate tranches. Releasing in this phased way is intended to mitigate the impact on community services, allowing for improved access to support.

Releases will begin on 26 June and the process will run until 25 July. No further releases will take place after that date.

The tranches are as follows:

Tranche 1 – those with less than 45 days left to serve (at point of regs coming into force) are to be released on 26- 27 June

Tranche 2 – those with 45-89 days left to serve (at point of regs coming into force) are to be released on 3-4 July.

Tranche 3 – those with 90-134 days left to serve (at point of regs coming into force) are to be released on 10-11 July

Tranche 4 – those with 135-180 days left to serve (at point of regs coming into force) are to be released on 17 July -18 July.

The regulations also include a provision that will allow for any eligible prisoner whose release is not completed within the appropriate tranche to be released as soon afterwards as is practicable, but no later than the process end date of 25 July

I also wanted to highlight a very important addition to the regulations which relates to the **provision of information to victim support organisations** about the release of prisoners under this power.

I am clear that it is essential that victims are provided with the information they are entitled to in relation to the prisoner in their case.

As you will recall from your scrutiny of the 2023 Act, section 14 of that Act provides the ability for victims to nominate a victim support organisation (VSO) to receive certain information about the prisoner in their case at the same time as them, or on their behalf. Section 14 also provides that a VSO can ask for certain information about a prisoner to inform the support they are providing to the victim in the case. This allows for a more trauma informed approach. Section 14 was brought into force at the same time as section 11 on 26 May.

In order for VSOs to receive the information I have described, they must be named in regulations. That is an important data protection safeguard.

That is why I have also prescribed four VSOs within the emergency release regulations. That will enable the named organisations to be provided with information about the release of a prisoner if the victim intimates that they wish the VSO to receive this information and provides their consent.

Those VSOs are Victim Support Scotland, Rape Crisis Scotland, ASSIST and Children 1st.

Information Sharing Agreements between the named VSOs and SPS are currently in development to allow the proportionate sharing of information about the release of prisoners under this emergency release process.

My officials are also working with the Crown Office and Scottish Prison Service to streamline the registration process for the Victim Notification and Victim Information Schemes for the purposes of this emergency release process. That will enable victims who are not currently registered with either scheme to receive information about the release date of the prisoner in their case, if they are released as part of this emergency process.

I hope this provides some additional context and I would be very happy to attend the Criminal Justice Committee to discuss these regulations in more detail.

Yours sincerely,

Angela Constance

ANNEX D – written evidence received

PRISON GOVERNORS ASSOCIATION SCOTLAND

Thank you for the inviting the Prison Governors Association Scotland to attend the Justice Committee meeting on the 5th June 2024.

Paula Arnold Vice Chair of Prison Governors Association (Scotland) will represent PGA(S) at the meeting. We would also like to provide the following back drop which sets out our immediate and long-term concerns around the prison population crisis we are currently facing.

In raising our concerns about the prison population crisis in Scotland, there are six areas of risk we would highlight to the committee. These are as follows;

1. The immediate risk of increased tensions resulting in greater violence against staff and other prisoners, drug seeking/taking behaviour, greater control taken by SOCG to fuel these issues and ultimately more suicides/ drug related deaths as hope is eroded.
2. The potential for concerted indiscipline on mass, physical risk of violence overspill and ultimately loss of current accommodation with nowhere to relocate prisoners. This could lead to a period in history that is synonymous with the prison riots of the late 1980's, early 1990s.
3. Our members having no options other than to consistently contravene the law as set out in the prison rules. Where it has become physically impossible to provide entitlements and statutory rights to prisoners as there simply are not enough hours in the day to manage the increased numbers and complexity of the population.
4. The inability to provide education, forensic programmes, or any other purposeful activity that supports any individual's rehabilitation or progression. This will only serve to increase risk to the public. This also includes our capacity to support our colleagues in the National Health Service and Criminal Justice Social Work who provide services in our prisons.
5. The cost to the taxpayer in increased running/operating costs, and the significant potential for future legitimate legal claims and an outpouring of judicial reviews.
6. The inability to recruit new staff which may increase personal risk, and in turn could increase frontline staff absence levels and vicarious trauma.

Moving Forward

We do recognise that there is always a very understandable desire to seek a finite number when the prison estate would be deemed as full. Our members have no choice but to receive individuals as prisoners into our prison establishments. We have a duty to serve the court and to protect the public. It is not just about numbers of people. It is numbers of people multiplied by complexity of population mix, multiplied by a sustained period of time. Any of these core factors can be the spark that ignites people residing in prison to say ‘**no more**’.

The Prison Governors Association in Scotland is not affiliated with any particular political party. We are serious when we state that this is an issue for all political parties in Scotland. The justice system is now fundamentally broken. This is no different to similar events occurring in England and Wales and we care not about political name calling. We have called for short term emergency action only as a very temporary buffer. This, at best, buys us some breathing space, but in no way fixes the problems. It is also clear to us, that small changes in various justice policies whilst also welcome, are not solutions to the issues around justice in Scotland.

Furthermore, whilst we need new accommodation to replace unfit, dilapidated buildings in HMP Inverness and HMP Barlinnie, it would be disingenuous to conclude that their replacements have any significant impact on the current population crisis.

The question of great debate, post the prison disturbances of the late 1980’s and early 1990’s, was one that we have heard asked again recently, namely what is the purpose of prisons? Some said that the purpose of prisons should be humane containment whilst others stated their purpose should be to support people to live a good and purposeful life. We would argue that in the true sense of the scales of justice, prisons in Scotland and in the whole of the UK, should be both.

Prisons should always be humane and should always be supportive of positive change in any individual person. This dual purpose, whilst undoubtedly held in tension, are the purpose of prisons and prisons should only be for seriously dangerous offenders.

We conclude by restating our members concerns for the current and potentially sustained crisis. We would however offer our counsel and assistance where we can, providing support in the improvement of our justice system and extend that offer as a trade union representing experts in penal leadership.

FAMILIES OUTSIDE

Families Outside is the only national charity in Scotland working solely on behalf of families affected by imprisonment. Our purpose is to improve outcomes for children and families, creating and promoting opportunities for families to uphold and defend

their rights. We offer a range of services including a national helpline, local 1 to 1 and group support, and training for professionals; whilst also working to raise awareness of the issues facing families affected by imprisonment, influencing policy and practice to bring about longer-term change. We are pleased to have the opportunity to highlight the issues facing families in relation to the rising prison population and the early release proposals.

Families affected by imprisonment

With the daily prison population now reaching 8,300², 96% of whom are male³, Scotland has the highest imprisonment rate in Western Europe standing at 134.9 per 100,000 inhabitants compared to an average of 116.1.⁴ Looking beyond the statistics, this means that thousands of families – mothers, fathers, partners, brothers, sisters, grandparents, children - are affected by imprisonment each day. Moreover, an estimated 20-27,000 children are affected by parental imprisonment each year – twice as many as experience a parent’s divorce.⁵ This number is likely to be far higher, as no systematic process is in place to identify children and families affected by imprisonment at any stage of the criminal justice process, meaning they are often unseen, unheard, and unsupported. There is a fundamental need for better identification of families affected by imprisonment to ensure support is recognised, promoted, and designed into policies and services.

Imprisonment fractures families. Properly funded community-based measures reduce the need to send people to prison for remand or sentence, address the reasons behind the offending more effectively, and prevent children and families from the harm’s imprisonment can bring. Families Outside strongly advocates that this early release measure to reduce the prison population is temporary at best and calls for a more systematic approach. We agree with CEO of Community Justice Scotland’s latest comments calling for ‘radical change’. We need to see adequately funded local services and the third sector, as well as considering ending the use of short-term sentences.⁶ More radical approaches such as capping the prison population should also be considered.

Overcrowding

Families Outside welcomes the proposals set forth by the Cabinet Secretary relating to emergency measures to reduce the prison population. We share the concerns of HM Chief Inspector of prisons for Scotland in the latest annual report highlighting the ‘...entrenched issue of overcrowding in Scotland’s prisons.’ It is clear, with continued rises in prison numbers, that in Scotland we send far too many people to prison for the limited accommodation and resourcing available to support their safe and successful return to the community.

As highlighted in the 2006 Prison Inspectorate Report, overcrowding serves no one and can increase risk and harm to people in prison, staff, the wider families, and

² <https://www.sps.gov.uk/about-us/transparency/data-research-and-evidence>

³ <https://www.gov.scot/publications/scottish-prison-population-projections/documents/>

⁴ <http://www.scottishlegal.com/articles/scotlands-prison-population-rate-remains-above-european-average>

⁵ <https://www.familiesoutside.org.uk/content/uploads/2017/12/Rendering-Them-Visible-FINAL.pdf>

⁶ [Scotland’s prisons are a human rights disaster in the making that early release of inmates won’t fix – Karyn McCluskey \(scotsman.com\)](#)

communities. The ‘nine evils of overcrowding’, including worries for safety, mental ill health, and access to support, are as pertinent today as they were then.⁷ We welcome the recognition from the Cabinet Secretary in her statement to put forward measures to address this in a timely manner.

Imprisonment has significant impacts beyond the prison walls on the children and families left behind. Overcrowding within prison further exacerbates concerns and issues reflected in our work supporting families. Concern for the person in prison is one of the main reasons people seek support from our organisation. Recently, we have seen an increase in these concerns being reflected through an already stretched and strained prison system. We recently supported a woman whose family member was in prison on remand, held as one of three people in a cell built for one. The prison had run out of bedding, so the staff had to put together make-shift pillows for the men out of track suit bottoms.

Some of the key issues relating to overcrowding and a rising prison population affecting families are: limited access to support and programmes to aid progression; population management meaning people are often moved further away from their families; sharing cells, meaning there is a lack of privacy; being locked up for 32 hours over the weekend due to staffing pressures; and often limited and more restricted visits and children’s visit times. The impact on SPS staff is also significant, and we know that overcrowding is not an issue that sits in isolation.

Financial issues and poverty - at point of release

The impact of imprisonment of a family member on children and families is, without question, significant. Wide-ranging challenges face families, including issues with housing, family dynamics, lack of information, victimisation, media intrusion, and stigma. Arguably, one of the greatest challenges facing families is the serious financial consequences they face associated with imprisonment.

Families Outside would like to highlight to the recent ‘Paying the Price: the cost to families of imprisonment and release’⁸, which explored in depth of the financial cost to families of supporting someone in prison and after release. The research unequivocally demonstrated the role of imprisonment in creating, sustaining, and deepening poverty amongst children and families and revealed the costs of imprisonment at the point of remand, during sentence, and upon release to be, quite frankly, crippling to families. We are concerned that measures around early release that do not consider the impact on families will continue to exacerbate not only financial strains but also the emotional pressures.

Family impact assessments – Pre-release planning

Families Outside has long called for family impact assessments to become part of pre-release planning processes to ensure adequate support, where required, is given to families and people leaving prison at the point of release.

⁷ prisonsinspectoratescotland.gov.uk/sites/default/files/publication_files/0041065.pdf

⁸ <https://www.familiesoutside.org.uk/content/uploads/2022/11/Paying-the-Price-October-22022.pdf>

For some families, the return of a parent or other family member from prison is not always a positive experience. A lack of notice about the upcoming releases can make the experience even more stressful for families and, in some cases, may place them at risk of harm.

Where appropriate, whole family approaches and family-inclusive practices should be adopted so that families are involved in the pre-release planning process and their needs are considered alongside those of the individual leaving custody.

Support for families at point of release

Families Outside provides support to children and families across Scotland and is part of the Public Social Partnership (PSP) for throughcare working alongside families who may want some extra support. However, there are concerns about resources that are already at capacity becoming even more stretched. This includes our own capacity to provide support for all families who may need it within a short space of time as well as limitations on local resources such as housing and healthcare.

No statutory support is available for families affected by imprisonment or when a family member leaves prison, and the third sector is often left to plug this gap. Clear routes for referrals to relevant support services also need to be in place to ensure they are receiving sufficient support at this time. At present, some family support services do receive referrals through PSP throughcare providers, and any potential surge in referrals for both throughcare PSPs and family support services will need to be planned for and effectively managed.

Families can feel pressured to provide an address for the person in prison to come home to and can often feel a level of responsibility and duty to do so. This often comes without any support and can place extraordinary burdens on family relationships. Our Coming Home⁹ resource outlines some of these concerns and the supports available. Finally, we support the addition to the regulations to include an ability for victims to nominate a Victim Support Organisation (VSO) to receive certain information about the perpetrator in their case at the same time as them, or on their behalf.

For further information and follow-up, please contact:
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⁹ <https://www.familiesoutside.org.uk/content/uploads/2019/08/Coming-Home-Aug-2019.pdf>

HOWARD LEAGUE SCOTLAND

Written evidence to the Criminal Justice Committee on Measures to Reduce the Prison Population.

Howard League Scotland (HLS) has been calling for measures to reduce Scotland's prison population for many years. We have highlighted the lack of correlation between an increasing population and a decreasing rate of crime; Scotland's high rates of imprisonment internationally; the need to use alternative disposals; and the negative impact of such a high population on prisoners and their families, prison staff and the wider public. Keeping more people in prison does not make Scotland safer.

Emergency Release

SPS Chief Executive, Teresa Medhurst advised in recent evidence to the Public Audit Committee that with 7 out of 17 prisons at a high/red level of risk, "[prisons] are on the brink"¹⁰. HM Chief Inspector of Prisons for Scotland, Wendy Sinclair-Gieben, warned in her evidence to the same Committee, of increases in both violence and deaths in custody and expressed surprise and relief that levels of insurrection weren't higher¹¹. Meanwhile the Chair of the Prison Governors' Association Scotland (PGAS), Natalie Beal wrote to you late last year, warning that unless remedial action was taken that prisons would be "at best providing humane containment resulting in the provision of little or no positive rehabilitative work".

The situation can only be relieved by either sending fewer people to prison; sending people to prison for shorter periods of time; building more prisons; or releasing more people from prison.

Under these circumstances, HLS agrees that to protect the "security and good order" of prisons and "the health, safety or welfare of prisoners, or those working, in any such prison"¹² there is no option but to use affirmative legislation provided for under Section 11 of the Bail and Release from Custody (Scotland) Act 2023.

We do, however, have a number of related observations/concerns:

- There is an obvious irony in having kept emergency release provisions ostensibly related to the pandemic on the statute books, to allow an entirely predictable situation to get to the status of an "emergency situation" in order to be able to enact the emergency release provisions as provided for under the legislation.
- The requirement for other measures – reviews of long-term prisoner automatic early release and home detention curfew eligibility – makes it clear that the emergency release of a maximum of 500 short term prisoners will

¹⁰ <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=15841>

¹¹ <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=15765>

¹² Prisoners and Criminal Proceedings (Scotland) Act 1993, section 3C(2), as inserted by the Bail and Release from Custody (Scotland) Act 2023, section 11

only relieve prison population pressure for a very short period of time. It also highlights that cherry-picking the implementation of emergency release provisions from the Act, whilst failing to ensure the systematic implementation of the remaining provisions of Part 2 of the 2023 Act in respect of release from custody (notably release planning and throughcare support), will not solve the problem in the long term.

- The pandemic-related emergency release resulted in the early release of 348 short-term prisoners with a re-offending rate of between 35% and 45%. This underlines the ineffectiveness of short-term prison sentences and demonstrates that measures taken to date have done very little to break the cycle of re-offending. We know that community sentences are more effective than custodial sentence: the reconviction rate for Community Payback Orders is 29.2%, whereas the rate for being discharged from prison custody is 43.8% in Scotland in 2018-2019 (i.e., pre-pandemic) (Scottish Government, 2021¹³). Properly developed and resourced systems of throughcare and aftercare must be provided to mitigate against reconviction.
- Consideration should be given to moving from a presumption against, to a ban of, sentences of less than 12 months, accompanied by tailored community payback orders involving intensive wraparound community support.
- Short term prisoners should be provided with intensive rehabilitative support whilst in custody. Currently there is only one general offending behaviour programme for male and female short-term prisoners which addresses problem-solving and impulsivity.
- Those on remand account for c.30% of the current population. We understand that remand prisoners are not covered by this legislation due to their differing legal status under the auspices of the Scottish Courts and Tribunal Service (SCTS). In response to a question by Liam McArthur MSP during her statement on 16 May 2024, the Cabinet Secretary advised that she would look into what could be done in relation to this group of prisoners. We would be very keen to hear the outcome of these discussions, particularly given statements from the Lord President during the passage of the Bail and Release from Custody (Scotland) Act 2023 that its provisions were unlikely to impact on sentencing decision-making¹⁴ i.e. it would make very little difference to the number of people being remanded into custody.

Automatic Early Release

Recognising the significant amount of time since the passing of the Prisoners (Control of Release) (Scotland) Act 2015, HLS welcomes the launch of a consultative exercise to inform proposals for changes to how long-term prisoners are released.

¹³ <https://www.gov.scot/publications/reconviction-rates-scotland-2018-19-offender-cohort/>

¹⁴ Bail and Release from Custody (Scotland) Bill Stage 1 Report, 3rd Report, 2023, page 24

The Cabinet Secretary has correctly identified that increases in average sentence length should be taken into account. We would hope that the following areas will also form part of the consultation:

- Access to, provision of, and funding of, offending behaviour rehabilitative programmes within custody.
- An actionable review of the SPS's progression process based on HMIPS's 'Thematic Review of Risk Management, Progression & Temporary Release', which is due to be published in June 2024.
- Access to and provision of mental health support in custody.
- Expansion and funding of mentoring schemes, including mandatory provision.
- Consideration of the introduction of 'half-way houses'/approved premises upon release.
- Introduction of recovery-based responses to drug use in custody as part of a review of the Prison and Young Offenders Institutions (Scotland) Rules 2011.

Home Detention Curfew (HDC)

HLS strongly agrees that, on the whole, enabling a prisoner to serve part of their sentence in the community can help their reintegration. While services in prison can prepare an individual for integration, ultimately, prison is a very artificial environment in which to build the relationships, capital and hope required for successful reintegration. True integration can *only* occur in the community.

Guidelines introduced following the tragic case of Craig McClelland in 2017, and since amended, have done little to bring HDC rates back to the previous 250-300 mark. The Bail and Release from Custody (Scotland) Act 2023 attempted to address this for long-term prisoners with the introduction of the alternative 'release on reintegration licence', however, this is not yet in force.

Whilst HLS is supportive of measures to increase eligibility criteria, we would be surprised if increasing the period of time individuals can spend on release under licence conditions alone is sufficient to make the desired changes to the uptake of HDC. For example, the current application process for HDC is a protracted and complex one, involving circa 8 different stages and the onus is currently on the prisoner to apply. Consideration should be given to making the process easier to navigate, with HDC being considered automatically for some categories of prisoner.

Other

We know that indeterminate sentences (not included in the proposals under consultation here) have been getting longer over the past decades. We doubt that murders and rapes are worse now than they were 20 years ago, yet that is what these sentences suggest. The cumulative effect of increased sentence length adds considerably to the overall prison population. We argue it is time for robust consideration of how to prevent, or ideally reverse, some of these increases in consultation with sentencers.

HLS is keen to hear whether further discussion has taken place regarding the potential for alternative accommodation (outwith the existing prison estate) to be utilised for elderly, infirm prisoners who have significant social care needs and who do not require high security arrangements.