

Consultation Response

Long-term prisoner release process

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Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Criminal Law Committee welcomes the opportunity to consider and respond to the Scottish Government consultation: Long-term prisoner release process. The Committee has the following comments to put forward for consideration.

Consultation questions

Question 1: It is necessary to reduce the prison population in a way which is sustainable and feasible within a short period of time. This proposal is part of a package of measures to reduce the prison population.

Please share any views you have on the general proposal that the point of release on non-parole licence for long-term prisoners should be at an earlier point.

We do not have particular views on the proposal. However, we want to comment on the practical effects of the measures proposed.

In our Written Evidence Response on the Prisoners (Control of Release) (Scotland) Bill -that became an Act in 2015-, we highlighted the lack of an evidence base for the changes proposed. A potential lack of capacity in prisons was highlighted by some witnesses who provided oral evidence to the Criminal Justice Committee when the 2015 Bill was scrutinised¹.

We are of the view that if the long-term prisoners release will occur, adequate access to meaningful rehabilitation or reintegrative services need to be assured. This type of support is necessary to enable the person to satisfy the conditions of their licence, once the person is released into the community.

¹ For an analysis of the 2015 Act, see M Barry "The Automatic Early Release and Supervision of Prisoners in Scotland". [Available the 29th July 2024 here](#) and D Thomson "The Future of Custodial Sentencing after Recent Legislative Change" 2015 SLT 107-110.

Question 2: Please share any views you have on the general proposal that the point of release on non-parole licence should be proportionate to sentence length (as opposed to a fixed point).

In our view, it seems fairer that the point of release should be proportionate to sentence length.

At present, the longer the sentence, the greater proportion of it will be spent in custody. For example, prisoners serving a standard 4-year sentence would serve 3 years 6 months before being released on non-parole licence (87.5% of their sentence) whereas prisoners sentenced to 10 years would require to serve 95% of their sentence.

Question 3: Please share any views you have on the specific proposal to release most long-term prisoners on non-parole licence following two thirds of their sentence.

We consider that the approach proposed will place long-term prisoners sentenced since January 2016, other than those on extended sentences or sentenced for certain terrorism offences, on the same footing as those sentenced before the 2015 Act came into force. If the proposed change is necessary to alleviate pressure on the prison estate, then it is appropriate that a consistent approach is taken.

Question 4: Would you like to offer any additional views or evidence in relation to these proposals? This could include consideration of the operational impacts of the proposed changes.

We are of the view that rehabilitation of prisoners is an important piece of the sentencing process that cannot be properly achieved in the current prison population crisis.

We noted the proposals of [the UK Government to release prisoners after serving from 50% to 40% of their sentence in certain cases](#). If those changes come into force, we are of the view that it will create a great gap in both sides of the border.

While we appreciate that the proposed change aims to minimise the risks associated with the rise in the prison population, we want to highlight that public and victim safety should not be jeopardised.

As we indicated in Question 1, the Scottish Government should ensure that there is sufficient meaningful support and the necessary services available to prepare long-term prisoners for release according to their needs. That support should continue once the person is released.

There must be sufficient resources to enable Justice Social Work to fulfil their supervisory responsibilities. There is a risk that without adequate supervision and reintegrative support, more prisoners may be subject to avoidable recall.

Many prisoners are vulnerable with a range of physical and mental health problems, substance misuse issues, or learning disabilities. They may have few family or other social ties, and face difficulties in securing housing and employment opportunities. Long-term prisoners should not be released, forgotten and at risk of further offending.

We welcome the aim to ensure that victims are to be advised of the prisoner's impending release and have the opportunity to make representations.



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