

Long-term Prisoner Release Process: Consultation

July 2024

Introduction

1. This consultation seeks your views on proposed changes to the long-term prisoner release process. Long-term prisoners are those sentenced to 4 years or more in prison.
2. Our intention is to bring forward the point at which some long-term prisoners are released. This would mean that they spend less time in custody and more time in the community before the end of their sentence. In the community, they would be subject to licence conditions, supervision, and recall. Public and victim safety would remain an absolute priority, with specific support and supervision in place reflecting the outcomes of individualised risk assessment.
3. This proposal forms part of a range of measures designed to respond to the rising prison population, which has reached critical levels.¹ It is also intended to better support the reintegration of long-term prisoners by providing those leaving prison with a more managed return to their communities, with access to the support and rehabilitation they need for a longer period of time. Assessed risks would be managed in the community with the aim of supporting reintegration and reducing reoffending.

Responding to the consultation

Deadline

4. We are inviting responses to this consultation by **23.59 on 19 August 2024**.

How to respond

5. Please respond to this consultation using the Scottish Government's consultation hub, [Citizen Space](#). You can save and return your response while the consultation is open but please ensure that your response is submitted before the consultation closes at **23.59 on 19 August 2024**. You will receive a copy of your response via email.
6. If you respond using Citizen Space, you will be directed to the "About You" page before submitting your response. Please indicate how you wish your response to be handled, in particular whether you are content for your response to be published.
7. If you are unable to respond using Citizen Space, then please return your response and completed respondent information form to:

Email: Communityjustice.consult@gov.scot

Or

Community Justice Consultations
Community Justice Division
Scottish Government

¹ [Prison population: position paper - gov.scot \(www.gov.scot\)](#)

GWR
St. Andrew's House
Edinburgh
EH1 3DG

8. On the respondent information form, please indicate how you wish your response to be handled, in particular whether you are content for your response to be published.

Handling your response

9. Where respondents have given permission for their response to be made public, responses will be published on Citizen Space once we have checked that responses abide by our [Terms of Use](#).
10. All respondents should be aware that the Scottish Government is subject to the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation.
11. To find out how we handle your personal data, please see our [privacy policy](#).

Next steps

12. All responses will be analysed and considered along with other available evidence to shape our policy on changing the release process for long-term prisoners. Our intention is to introduce legislation on this topic later in 2024.
13. We will publish an analysis report of the consultation responses.

Comments and complaints

14. If you have any comments or complaints about how this consultation exercise has been conducted then please send them to:

Communityjustice.consult@gov.scot

Why we consult

15. Consultation is an essential part of the policy making process. It gives us an opportunity to consider your opinion and expertise. Your responses along with other available evidence help shape our policy.
16. You can find all Scottish Government consultations on [Citizen Space](#).

Prison population

Population trends

17. The prison population has risen by around 13% since the start of 2023, with a particularly sharp rise over a two month period between March and May 2024.

18. This has been driven by a number of factors. One of the main drivers has been a reduction (by over a third) in the backlog of court cases, with arrivals to prison exceeding departures.
19. Over the longer term, we have also seen increases in average sentence lengths imposed for certain offences; an increase in the number of serious sexual offence cases prosecuted in the courts; and an increase in the time individuals are held on remand.² The rising prison population is also a result of success in other areas of our justice system including increased reporting, investigation and conviction of crimes.³
20. As well as the overall population increasing, the Scottish Prison Service (SPS) reports that the prison population is considerably more complex to manage due to a variety of factors including managing serious and organised crime groups, substance abuse (including from new psychoactive substances),⁴ and increasingly complex health (including mental health) and social care needs.⁵

Prison population projections

21. There is continued uncertainty in the prison population projections⁶ over the next 6 months due to several factors, including variability in court case registrations and the progression of the cases through the system, as well as independent judicial decision making. The latest modelling suggests that the average daily prison population could be between 7,650 and 9,150 in October 2024. Modelling indicates it is likely that the overall prison population will increase between May and the end of October 2024.
22. The immediate cause of the increase seen in recent months is not entirely clear and it is not possible to say whether this rate of growth will continue or not. The projected total population range includes the levels that might be reached if population inflows continue at the rate observed at the beginning of this year.
23. It should be noted that the latest prison population projections do not include the effects of emergency release and other measures recently announced by the Scottish Government.

Addressing the rising prison population

24. As a result of the rising prison population, substantial pressure is being placed on the prison estate. This has resulted in increased risks to the safety and wellbeing of prisoners and SPS staff, and a reduction in the ability of SPS to provide and facilitate the purposeful activities that support rehabilitation.
25. Achieving a sustained reduction in the prison population is necessary to mitigate these risks. We are committed to taking action to ensure that SPS is able to maintain safety and good order within prisons and to uphold the human rights of those in its care.

² [Scottish Prison Population Statistics 2022-23 - gov.scot \(www.gov.scot\)](http://www.gov.scot)

³ [Recorded Crime in Scotland, 2022-23 - gov.scot \(www.gov.scot\)](http://www.gov.scot)

⁴ [Official Report \(parliament.scot\)](http://parliament.scot), [Official Report \(parliament.scot\)](http://parliament.scot)

⁵ [Prison population: social care needs - gov.scot \(www.gov.scot\)](http://www.gov.scot)

⁶ [Scottish Prison Population Projections: June 2024 Edition - gov.scot \(www.gov.scot\)](http://www.gov.scot)

26. A range of actions have already been taken in recent years to address and mitigate the rising prison population. These include extending the presumption against short sentences; introducing electronically monitored bail and enabling that time to be taken into account at sentencing; optimising the use of home detention curfew; and optimising the use of the prison estate. Funding for community justice has also been increased to £148 million in total for 2024-25, in order to support alternatives to custody.
27. Additional measures are now being explored to alleviate population pressures, including the potential to expand the prison estate through the use of temporary accommodation. However, with the prison population reaching critical levels, a range of additional actions are necessary for the population pressures to be alleviated.
28. In the immediate term, the Scottish Parliament approved the emergency release of certain short-term prisoners under section 3C of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (as introduced by section 11 of the Bail and Release from Custody (Scotland) Act 2023) on 12 June.⁷ The use of emergency release will alleviate immediate pressures. However, with no change to the underlying drivers of the rising prison population, it is anticipated that the impacts of this will be temporary. Further changes are therefore needed to ensure the prison population can be managed sustainably over the longer term.
29. There are limitations in terms of the policy options available to the Scottish Government that would have a substantial and sustained impact on the prison population. The impact of emergency release will likely be temporary, which means there is a degree of urgency.
30. It is the Scottish Government's view that changing the point of release for long-term prisoners is a feasible and proportionate way to reduce pressure on the prison estate. As noted above, this change is also intended to provide those leaving prison with a more managed return to their communities, with supervision and access to the support and rehabilitation they need for a longer period of time.

Current arrangements for the release for long-term prisoners

Overview

31. A long-term prisoner is defined as a prisoner serving a sentence of imprisonment of exactly four years or more.
32. Under the Prisoners and Criminal Proceedings (Scotland) Act 1993,⁸ most long-term prisoners become eligible for release on licence ("parole licence") at the halfway point of their sentence. This does not mean that they are automatically released at that point, but rather that their case will be referred to the Parole Board for Scotland for consideration. The Parole Board will consider any matter which is relevant to the case as set out in Rule 11 of the Parole Board

⁷ [The Early Release of Prisoners and Prescribed Victim Supporters \(Scotland\) Regulations 2024 \(legislation.gov.uk\)](#)

⁸ [Prisoners and Criminal Proceedings \(Scotland\) Act 1993 \(legislation.gov.uk\)](#)

(Scotland) Rules 2022.⁹ This can include justice social work reports and risk assessments, as well as information provided by SPS. If recommended by the Parole Board the prisoner must then be released.

33. 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 to ensure that most individuals spend at least that period of time on licence and under supervision in the community before the sentence end date, allowing for better reintegration following custody. This is known as release on “non-parole licence”. These release arrangements do not apply to:

- those already released;
- those who have been recalled from parole licence;
- those serving an extended sentence;
- those serving a life sentence; and
- those serving sentences for certain terrorism offences.

34. Prior to 1 February 2016, all long-term prisoners served at least one third of their sentence in the community (i.e. they were released at the two thirds point of sentence). This was changed to the minimum period of 6 months by the Prisoners (Control of Release) (Scotland) Act 2015.¹⁰ The previous position still applies to prisoners sentenced before that change took effect. This means that prisoners sentenced before 1 February 2016 are still released on non-parole licence after having served two thirds of their sentence.

Non–parole licence conditions

35. Those released on non-parole licence are subject to individualised risk assessment to plan for their release, and licence conditions reflect the conclusion of that risk assessment and the recommendations of the Parole Board. The Parole Board considers any victims’ representations when making their licence condition recommendations, as well as other information as provided by justice social work and SPS.

36. Non-parole licence conditions must include requiring the individual to report to a supervising officer, to cooperate with that supervising officer and abide by all conditions named on the licence – for example, informing their supervising officer of a change of circumstances such as change of address or a change of employment. Additionally, depending on the circumstances of the case, licence conditions may include curfew requirements, which can be electronically monitored, and requirements to engage with certain services in the community (e.g. drug and alcohol services). The conditions of licence can also allow for the completion of offender behaviour programmes in the community.

37. Those released on non-parole licence are subject to being recalled to prison, if this is recommended by the Parole Board. Unless subsequently recommended for release on parole licence by the Parole Board, the individual would serve the full remaining term of their sentence in custody following recall.

⁹ [The Parole Board \(Scotland\) Rules 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

¹⁰ [Prisoners \(Control of Release\) \(Scotland\) Act 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

38. Committing a further criminal offence could be a breach of licence conditions and may result in recall to custody by the Parole Board. The court may impose a custodial sentence in relation to the new offence having regard to the offence being committed while on licence.
39. Individuals who have been convicted of sexual offences (and some violent offences) will also be subject to Multi-Agency Public Protection Arrangements, ensuring ongoing case management planning to address any identified issues post release.

Exclusions

40. These release arrangements do not apply to those on extended sentences, where the custodial part of their sentence is set out by the court. Extended sentences can be imposed when a person is convicted of a violent or sexual offence and the court deems it appropriate to protect the public from serious harm. The court determines the custodial part of the sentence followed by a further period of supervision in the community, which is the extension part. This consultation does not propose any change to the release process for extended sentence prisoners.
41. The High Court also has the power to impose an Order for Lifelong Restriction (OLR) in the most serious cases, meaning that following the custodial part of the sentence a person will be subject to lifelong risk management. This consultation does not propose any changes to that process.
42. Non-parole licence release arrangements do not apply to those serving certain terrorism sentences, for which there is a separate release process. Individuals serving a life sentence are also subject to a different release pathway. This consultation does not propose any changes to these processes.
43. Those who have previously been released on parole licence and subsequently recalled are also not eligible for release on non-parole licence. Those prisoners are still eligible for release on parole licence only, if they are again recommended for release by the Parole Board. This consultation does not propose any changes to that part of the process.

Victim notification

44. The Victim Notification Scheme (VNS) applies where someone is sentenced to 18 months' imprisonment or more. A victim may also nominate a prescribed victim support organisation¹¹ (VSO) to receive information under the VNS on their behalf, or as well as the victim. It is up to an individual victim to choose if they wish to join the scheme, or nominate a VSO to receive information.

¹¹ Victim support organisations currently prescribed for this purpose are ASSIST, Children 1st, Rape Crisis Scotland and Victim Support Scotland per The Early Release of Prisoners and Prescribed Victim Supporters (Scotland) Regulations 2024.

45. Under the VNS, a victim has two key rights: the right to information,¹² and the right to make representations.¹³ Under the right to information, victims can receive certain information about a prisoner in relation to their case, including the date of release.
46. Under the right to representation,¹⁴ victims can make written representations to the Parole Board about its consideration to release the relevant prisoner, and about licence conditions that might be specified. The right to make written representations includes release on non-parole licence. Victims will be told if that person is released, and about any licence conditions which relate to contact with the victim or the victim's family.

Release planning and support on release

47. A pre-release case management process is conducted by SPS in collaboration with justice social work and other relevant bodies to plan the supervision that will be put in place for release on non-parole licence. Support and supervision are put in place by justice social work following an individual's release.
48. New statutory duties will be introduced by the Bail and Release from Custody (Scotland) Act 2023¹⁵ (the 2023 Act) to improve the provision of support for individuals leaving prison.
49. Upon commencement, section 12 of the 2023 Act will bring in specific duties for 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 be required to publish standards of throughcare support and public bodies will have a duty to comply with these standards.
50. When commenced section 9 of the 2023 Act will introduce a new temporary release licence for long-term prisoners intended to provide individuals with more opportunities to make positive connections in their community and provide further evidence to the Parole Board.
51. Planning for the commencement and implementation of these provisions is underway. This includes working with our justice partners on the implementation plans for the Act to consider resource requirements, workforce implications and timescales for commencement of each section.

Our proposal

Overview

52. We are considering extending the period which some long-term prisoners must spend in the community before the end of their sentence from 6 months to one third of the sentence length (i.e. release following two thirds of sentence). This

¹² [Criminal Justice \(Scotland\) Act 2003 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2003/44)

¹³ [Criminal Justice \(Scotland\) Act 2003 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2003/44)

¹⁴ [Criminal Justice \(Scotland\) Act 2003 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2003/44)

¹⁵ [Bail and Release from Custody \(Scotland\) Act 2023 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2023/11)

would be the same as currently applies in relation to those sentenced before 1 February 2016, however it will not apply to extended sentence prisoners.

53. Other aspects of the release process (as described above) including the existing exclusions for those who have extended sentences or who have been sentenced in relation to terrorist offences, conditions of licence, and information available to victims, would remain as they are at present. Those released on non-parole licence would still be subject to being recalled to prison if they breach the terms of their licence.
54. It is our intention that this change would apply retroactively to all those sentenced on or after 1 February 2016, as well as to all those sentenced in future, resulting in an immediate release of some prisoners and a sustained reduction of around 3.5-4.1% of the prison population. As an illustration, if the policy had been brought into force on 31 May 2024, around 320 people would have been released on non-parole licence immediately.
55. Further detail on certain aspects of this proposal are set out below.

Rationale

56. The rising prison population requires us to consider the drivers and actions we can take to mitigate and address it, in the short, medium and longer term. Reviewing the point of release for long-term prisoners (given the significant impact as noted above) is a key component of that. There are, however, a number of other factors that support reviewing the changes that were made by the Prisoners (Control of Release) (Scotland) Act 2015.
57. International evidence shows that imprisonment can have damaging effects through weakening social ties, creating stigma, adversely impacting on employability and housing stability, and ultimately can increase the likelihood of reoffending.¹⁶ Therefore, to ensure greater chance of success in reducing reoffending and making communities safer, we must consider how those who will be leaving prison could be supported to reintegrate into our communities. There is evidence to suggest that supervision in the community can help people to reintegrate and reduce reoffending.¹⁷
58. This is in line with the Scottish Government's Vision for Justice and National Strategy for Community Justice, which aims to support rehabilitation and encourage the use of custody only where there is no alternative. Public and victim safety is an absolute priority, with the aim of reducing crime and reoffending, leading to fewer victims in future.
59. There are a number of reasons why someone will have reached the end of their sentence without being recommended for parole. However, these are often more complex cases that could benefit from additional time subject to support and supervision in the community, before the end of their sentence. A longer period of time in the community can allow for a person to be more effectively tested and monitored to address certain identified risks. Additional time may

¹⁶ [National Strategy for Community Justice - gov.scot \(www.gov.scot\)](http://www.gov.scot/national-strategy-for-community-justice)

¹⁷ [What Works to Reduce Reoffending: A Summary of the Evidence \(www.gov.scot\)](http://www.gov.scot/what-works-to-reduce-reoffending)

also help to better support their successful reintegration and reduce their risk of future reoffending, in line with the aims of the Vision for Justice.¹⁸

60. Moreover, the rising proportion of prisoners serving long-term sentences has contributed to increasing demand for progression opportunities, including temporary release and offending behaviour programmes. This may put some long-term prisoners at a disadvantage in preparing for and demonstrating their suitability for release on parole. Offending behaviour programmes can be completed in the community as part of conditions of non-parole licence.

Proportionate approach to release point

61. We are proposing that the point at which an individual must be released on non-parole licence should be proportionate to their sentence length, rather than a fixed period as at present. The same proportion would apply to all eligible prisoners. This is because those who have spent longer periods of time in custody may require more intensive support to reintegrate into the community, whereas those in custody for a short period may readjust more quickly.

Point of release

62. In the context of current prison population pressures it is essential that the approach taken sufficiently reduces the prison population and can be implemented quickly. As discussed above, the approach should also aim to improve the support for reintegration which is provided to long-term prisoners and continue to centre public and victims safety in decision making. We consider a proportionate approach would have a sustained impact on the prison population.

63. Looking at all of the factors, our preferred approach is to return to the position that most long-term prisoners must serve at least one third of their sentence in the community. This means release on non-parole licence will follow two thirds of the sentence. This position has the advantage that it is consistent with the approach that currently applies to prisoners sentenced before 1 February 2016.

64. We welcome suggestions of alternative approaches in response to this consultation. Any approach would need to be assessed against the factors set out above.

Eligible cohort

65. Our position is that the new point of release should apply retroactively to long-term prisoners with sentences imposed on or after 1 February 2016. This retroactive application will result in an immediate reduction in the prison population once the provision comes into full effect, relieving pressure on the prison estate. Implementation and associated planning would be carefully considered.

66. It is proposed the statutory exclusions continue to apply to extended sentence prisoners and prisoners sentenced in relation to certain terrorism related

¹⁸ [The Vision for Justice in Scotland - gov.scot \(www.gov.scot\)](http://www.gov.scot)

offences as set out within the Prisoners and Criminal Proceedings (Scotland) Act 1993.

Conditions of licence

67. Release on licence would be subject to the same conditions as currently within the Prisoners and Criminal Proceedings (Scotland) Act 1993, including those conditions as recommended by the Parole Board.

Victim information

68. Victims registered with the VNS would be notified of the date of release for the person who committed the offence against them. The right to provide written representations to the Parole Board which inform licence conditions would also remain.

Ability to make further changes to release point

69. As a result of the changes made by the Prisoners (Control of Release) (Scotland) Act 2015, primary legislation is required in order to make the changes proposed in this consultation. Before this Act, Scottish Ministers had the ability to amend the point of release on non-parole licence via secondary legislation (subject to parliamentary approval).

70. If the proposed changes are made, we intend to ensure that the point of release for non-parole licence and associated exclusions can be further amended by secondary legislation, allowing this to be altered more easily in future should this be required. Crucially, this would enable the operation of any new point of release to be kept under active review should circumstances change or should new evidence emerge, including as a result of the planned review of sentencing and penal policy.

Illustrative examples

71. To illustrate the above proposal the following examples are provided, which demonstrate differences between the current release process and what is proposed. In all of the examples below, parole qualifying date (PQD) is the halfway point of the overall sentence.

Person A was sentenced to 12 years in custody in 2015 (i.e. before the previous changes were made to release arrangements) and was not recommended for release on parole at their PQD or subsequent review.

Currently person A would be:

- released on non-parole licence following 8 years in custody;
- subject to licence conditions as recommended by the Parole Board;
- subject to supervision in the community for 4 years.

Under the proposal:

- There would be no change.

Person B was sentenced to 9 years in custody in March 2016 and was not recommended for release on parole at their PQD or subsequent review.

Currently person B would be:

- released on non-parole licence following 8 years and 6 months in custody;
- subject to licence conditions as recommended by the Parole Board;
- subject to supervision in the community for 6 months.

Under the proposal person B would be:

- released on non-parole licence following 6 years in custody;
- subject to licence conditions as recommended by the Parole Board;
- subject to supervision in the community for 3 years.

If person B is then recalled to custody 4 months following release on non-parole licence.

Currently person B would:

- return to custody for 2 months; and,
- be released at the end of their sentence without any licence conditions or supervision.

Under the proposal person B would:

- return to custody for 2 years and 8 months; and,
- be released at the end of their sentence without any licence conditions or supervision

Person C was sentenced to 9 years in custody in March 2016 and was recommended for parole at their PQD.

Currently person C would be:

- released on parole licence following 4 years and 6 months in custody;
- subject to licence conditions as recommended by the Parole Board;
- subject to supervision in the community for 4 years and 6 months.

Under the proposal:

- There would be no change.

If person C is recalled to custody 4 months following release on parole licence

Currently person C would:

- return to custody with their parole decision reviewed annually;
- if not recommended for parole following recall, they would serve the remaining 4 year and 2 months in custody;
- be released at the end of their sentence without conditions or supervision.

Under the proposal:

- There would be no change.

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.

Please limit your response to 3000 characters.

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).

Please limit your response to 3000 characters.

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.

Please limit your response to 3000 characters.

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.

Please limit your response to 3000 characters.



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