

# **Actions to Address the Rising Prison Population May 2024**

This paper sets out information on the drivers of the rising prison population and the actions the Scottish government is taking to address it.

## **Summary**

Due to a rapid rise in the prison population, creating an unprecedented situation, similar to challenges faced across the UK, immediate action is needed to ensure the safety and wellbeing of SPS staff.

We need to ensure prisons can function effectively, focus on those who pose the greatest risk of harm, and provide programmes that help reduce reoffending. Protecting victims and public safety remains an absolute priority, that is why our proposal for emergency early release has specific safeguards built in. It will only be available to those who are serving short sentences under 4 years and are due to be released within the coming months. In addition no one serving a sentence for sexual offences or domestic abuse will be released, and a veto can be applied by governors for anyone deemed a risk to a specific individual or group.

## **Recent rise in the prison population**

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.

The prison population had been relatively stable between October 2023 and March 2024, but it was already high (around 7,950). The longer term drivers of the prison population are discussed in more detail below, but one of the most notable is an increase in average sentence lengths. This is compounded by a high population of those on remand (untried and awaiting sentence), due in large part to the post-pandemic court backlog.

Short terms spikes are generally more difficult to predict. Our most recent projections for the prison population were published in February 2024. At that time our expectation was that the prison population would either remain stable or increase slightly. The specific reasons for the sharp rise over the last two months are not clear.

SPS reports that six prisons – over a third of the estate – currently has a red risk rating, up from one just six weeks ago. This takes into account a number of factors, including the daily population compared to design capacity, the prevalence of double occupancy in cells, the protection of individuals, staffing levels and other factors affecting the overall safe running of the 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. The SPS also points to a number of factors that suggest the population is more complex than it ever has been, namely the burden of keeping serious crime groups apart, an ageing prison population, illegal drug use and demands on healthcare and other critical services, including mental health and social care support which adds to pressures in the system.

Taken together, we are now dealing with an unprecedented situation. Action is required to ensure the safety and wellbeing of SPS staff and those in their care, to ensure that programmes that contribute to reducing reoffending and rehabilitation can take place, and to ensure prisons continue to function effectively and can accommodate those who pose the greatest risk of harm.

### **Trends in the prison population**

It is worth noting that crime has fallen in Scotland and that from 2011-12 to 2022-23 the number of people entering prison each year has fallen substantially, from around 14,900 in 2011-12, to 10,950 in 2019-20 and then 8,400 in 2022-23. Yet we have a rising prison population. And whilst many countries across Europe have also recently experienced substantial annual increases in their prison populations, Scotland already had one of the highest populations in Europe along with the rest of the UK.

The annual statistics for the average daily prison population, from 2011 to date, are included at Annex A. The overall change between 2011-12 and 2022-23 was a nine percent reduction. Between 1 January 2023 and 16 May 2024 the overall population increased from 7,303 to 8,348; in the past year there has been an increase of 795 or 10.5% (7,553 to 8,348). Today the number in remand are 2,326 this is an increase of 12% since 1 January 2023.

The response to the Covid pandemic had a substantial impact on the prison population. Between March 2020 and May 2020, the population fell from just over 8,000 to just under 6,900, as a result of justice system responses, including emergency release of 348 prisoners.

### **Longer terms drivers of the prison population**

The drivers of the prison population are multifaceted, as are the numerous societal and socioeconomic factors that drive criminal behaviour. Outcomes in individual cases depend on a range of factors and independent decision making is, rightly, at the heart of the Justice system and that makes it difficult to model and predict what the future prison population will be.

We know some of the key longer term drivers that have contributed to the recent rise in the prison population, some of which are positive and show success within the justice and policing system, namely:

- An increase in average sentence lengths;
- While there has been a longer term trend away from shorter sentences, these still make up a notable proportion of the sentences given.

- The ending of automatic early release at the two thirds point for long term prisoners (sentences of 4 years or more) in 2016. Release now takes place six months before the end of the sentence for those not already granted parole;
- Previously under reported crime types such as domestic abuse and sexual offences have been reported and resulted in convictions and can attract lengthy custodial sentences.
- The use of home detention curfew (HDC) decreased from a high point of around 420 in August 2010 to around 50 to 60 in late 2023. HDC allows certain risk assessed individuals to spend part of their sentence in the community, subject to licence conditions and curfew.
- The post-pandemic court recovery programme has been resulting in an increased sentenced population, but is also helping to reduce the population of prisoners awaiting trial.

### **Comparisons with other countries**

Other countries are also dealing with rising prison populations. The latest statistics show that the prison population in England and Wales is rising. On 31 March 2024 it was 87,869, around 4,900 higher – 6 percent higher than it was on 31 March 2020. The remand population has reached a record high of 16,458, which represents 19 percent of the total prison population, and an increase of 13 percent from 31 March 2023.

In response the UK Government is taking a number of actions for England and Wales, including legislating for a presumption against short sentences, continuing to significantly extend the use of compassionate release, and expanding provision facilitating the early removal of foreign nationals (this is a reserved matter and will apply across the UK). The UK Government have used their powers on early release to release individuals 18 days early from October, which increased to around 35 in march and is reported to rise to 70 days from this month. It has also been reported that police cells are being use (Operation Safeguarding), as well as delaying certain Court appearances (Operation Early Dawn).

According to the latest full report on Prison Populations (2022) by the Council of Europe's Annual Penal Statistics, sixteen countries recently experienced substantial annual increases in their prison populations (percentage increase): Slovenia (23), Finland (15), France (15), Northern Ireland (13), Montenegro (12), Croatia (10), Turkey (9.2), Sweden (8.2), Albania (8.2), Hungary (7.9), Armenia (7.9), Latvia (7.3), Romania (6.5), Poland (6.1), North Macedonia (5.8), and Denmark (5.5). Scotland saw a 1.1 percent increase over the same period.

### **Action the Scottish Government is taking**

The Scottish Government has and is taking a range of actions to address and mitigate the rising prison population, including:

- Extending the presumption against short sentences to those of 12 months or less in 2019. As above, there is still a notable proportion of short sentences

being given. Those decisions are rightly a matter for the independent judiciary, but we have seen a slight uptick recently.

- Introducing electronic monitoring of bail in 2022, with those being monitored this year now reaching around 400.
- Making express provision enabling time spent on electronically monitored bail to be taken into account at sentencing (due to come into force in July 2024).
- Optimisation of home detention curfew across the prison estate, which has resulted in an increase of around 30 to 40, to 97 as of 16 May.
- SPS has and continues to take action to optimise the prison estate, creating 138 additional spaces for adult male prisoners at HMP & YOI Polmont, with scope to increase that to 210 once under eighteens have been transferred into secure care accommodation.
- SPS is also working towards creating around 100 additional spaces at HMP Low Moss, which will take time to achieve, and to maximise the space available at HMP Grampian.

Given the recent sharp rise in the prison population and the difficulty in ascertaining the drivers, further action is now necessary.

That action will seek to ensure SPS staff and prisoners can be kept safe and secure. It will also seek to ensure that rehabilitative activities – which are key in reducing re-offending behaviour and victimisation in the longer term – can be properly managed and delivered. In short, allowing the situation to worsen would not serve the interests of the public, nor public safety.

The Scottish Government is therefore proposing the following actions in the immediate to short term:

- **Emergency release:** under section 11 of the Bail and Release from Custody (Scotland) Act 2023, which enables the release of certain prisoners up to 180 days early for a specific period of time. Parliament's agreement will be sought through secondary legislation, engaging with a wide range of stakeholders and partners.
  - Victim safety is a key priority and only those on short sentences (under four years) would be eligible.
  - The Victim Notification Scheme would apply as it would otherwise
  - The following prisoners will not be eligible:
    - life sentence prisoners;
    - terrorist prisoners;
    - those serving sentences for domestic abuse;
    - those serving sentences for sexual offences;
    - those subject to the sex offender notification requirements.
  - Those that would be eligible would be due to be released in the time period defined, i.e. within a maximum 6 months.
  - A Governor's veto would also apply so where a prisoner was considered to pose an immediate risk of harm to an identified person, or group, would not be released.

- **Automatic early release:** a consultative exercise to inform a proposal for changes to how long term prisoners are released, recognising the rationale for the reforms to automatic early release that took place in 2016, and taking account of the aforementioned increases in average sentence length and other relevant evidence.
- **Home detention curfew (HDC):** bringing forward secondary legislation to amend the eligibility criteria for HDC, increasing the period of time individuals can spend on release under licence conditions.

## Scottish Government

Justice Directorate

16 May 2024

### Annex A: Average Daily Population (All) by Financial Year

Financial Year	Average Daily Population	Percentage Change	Overall volume change
2011-12	8,133		
2012-13	8,014	-1.5%	-120
2013-14	7,851	-2.0%	-163
2014-15	7,731	-1.5%	-120
2015-16	7,676	-0.7%	-55
2016-17	7,551	-1.6%	-125
2017-18	7,464	-1.2%	-88
2018-19	7,789	4.4%	325
2019-20	8,197	5.2%	408
2020-21	7,339	-10.5%	-858
2021-22	7,506	2.3%	167
2022-23	7,426	-1.1%	-80