



Long term Prisoner Release Consultation

August 2024

Scottish Women's Aid (SWA) is the lead organisation in Scotland working to end domestic abuse and plays a vital role in campaigning for effective responses to domestic abuse.

SWA is the umbrella organisation for the majority of local Women's Aid organisations across Scotland; each providing practical and emotional support to women, children and young people who experience domestic abuse. The services offered by our members include crisis intervention, advocacy, counselling, outreach, follow-on support and temporary refuge accommodation.

We also run the Scotland's Domestic Abuse and Forced Marriage Helpline taking over 1000 calls, WhatsApp messages, and texts (24h/365) every month.

Introduction

The Scottish Government proposes to amend the law defining the time period under which most long-term prisoners can be released into the community on non-parole licence before the end of their sentence. The current regime sets automatic release into the community at six months before the end of their sentence; the proposal will considerably extend this to one third of the sentence length i.e. release following service of only two thirds of their sentence, for several hundred offenders given a custodial sentence after 1 February 2016. This potentially includes perpetrators of domestic abuse, rape and sexual assault, who have previously been denied release into the community on parole licence for safety reasons and such abusers who are incarcerated for a non-related index offence.

SWA do not support these proposals given the potential impact on the safety of survivors of gender-based violence and abuse (GBV), with specific implications for women, children and young people experiencing domestic abuse.

Considerable alarm has been expressed by the Women's Aid groups within our network on how this will seriously undermine women's confidence in the criminal justice system, particularly women who, at considerable personal cost, participated in the trials against their abuser, and will deter them and other women from reporting abuse. The whole criminal justice process, from reporting through to sentencing, is a traumatic, stressful and often unsatisfactory experience for women and children, as highlighted in Scottish Government research¹. The proposals represent yet another

¹ Domestic abuse court experiences - perspectives of victims and witnesses: research findings <https://www.gov.scot/publications/domestic-abuse-court-experiences-research-perspectives-victims-witnesses-scotland/>
Domestic Abuse (Scotland) Act 2018: interim reporting requirement
<https://www.gov.scot/publications/domestic-abuse-scotland-act-2018-interim-reporting-requirement/>
Justice, Safety, and Support: What children and adults told researchers about the new law on domestic abuse
<https://www.gov.scot/publications/justice-safety-support-children-adults-told-researchers-new-law-domestic-abuse/>

barrier to justice for women experiencing domestic abuse; the prospect of abusers being released much earlier means they will ask “*what’s the point*” of reporting or becoming involved and “*it won’t be worth it*” for women. A further concern is that women’s fear of the perpetrator being in the community will result in women returning to abusers, a particular issue where children are involved.

The effect on the safety and wellbeing of children experiencing domestic abuse has not been considered. Existing safety issues around child contact would be amplified by their perpetrators being in the community and using child contact as a further device to abuse women and their children.

Many more high risk and acknowledged dangerous offenders, previously considered “*unsuitable for management in the community*”, presumably because the Parole Board Scotland (PBS) identified on a number of occasions their risk to the public or specific victim(s) made them ineligible and unsafe for parole release, are going to be released automatically into the community, potentially several years earlier than planned or anticipated by victims and in the face of mounting pressure on already over-stretched Justice Social Work workloads^{2, 3}, that will have more of these high-risk offenders to manage and over a longer period; the consultation paper notes that if the policy had been brought into force on 31 May 2024, around 320 people would have been released on non-parole licence immediately.

Domestic abuse offending has serious and long-lasting consequences for women’s enjoyment of their human rights, including their right to health and access to justice. Under international human rights law, governments must act with “due diligence” to protect women from, domestic abuse and other forms of GBV, as highlighted in Recommendation 35 of UN Committee on the Elimination of all forms of Discrimination Against Women.⁴ We would also refer you to the terms of the EU Directive⁵ establishing minimum standards on the rights, support and protection of victims of crime, incorporated into Scots law via the Victims and Witnesses (Scotland) Act 2014 (the 2014 Act.)

Returning the system of non-parole release to that in force prior to the changes brought about by the Prisoners (Control of Release) (Scotland) Act 2015, introduced by the Scottish Government due to concerns around victim safety, is a regressive step in the commitment toward victim support, a victim-centred and trauma- informed justice system and flies in the face of the commitments expressed in the “Equally Safe” Strategy⁶; Women’s Aid groups commented that “*things are going backwards.*” This sends a negative message to society about the seriousness of this abuse and the “*worth of women and children*” and also diminishes all the work done, and in progress, to bring perpetrators of domestic abuse to account; firstly, by Police

Domestic Abuse (Scotland) Act 2018 and the Criminal Justice System: Women’s experiences two years in; the emerging findings. <https://www.sccjr.ac.uk/wp-content/uploads/2022/08/Domestic-Abuse-Scotland-Act-2018-and-the-Criminal-Justice-System.pdf>

‘The Lived Experiences of Victims of Coercive Control, Stalking and Related Crimes, as they progress through the Criminal Justice System’ <https://www.sccjr.ac.uk/wp-content/uploads/2023/03/The-Lived-Experiences-of-Victims-of-Coercive-Control-Stalking-and-Related-Crimes-as-they-progress-through-the-Criminal-Justice-System150323.pdf>
Domestic Abuse and Child Contact: The Interface Between Criminal and Civil Proceedings Research paper December 2022 <https://www.sccjr.ac.uk/wp-content/uploads/2023/01/SCJH-Report-January-2023.pdf> and <https://www.sccjr.ac.uk/publication/executive-summary-domestic-abuse-and-child-contact/>

² <https://new.basw.co.uk/policy-and-practice/resources/social-work-placement-experience-report-sasw>
<https://news.sssc.uk.com/news/report-shows-scottish-local-authorities-find-it-difficult-to-recruit-social-workers>
<https://socialworkscotland.org/reports/settingthebar/>

³ Early release for long-term prisoners is horrifying, says victim <https://www.bbc.co.uk/news/articles/cwx2983yppzo>

⁴ “The failure of a State party to take all appropriate measures to prevent acts of gender-based violence against women in cases in which its authorities are aware or should be aware of the risk of such violence, or the failure to investigate, to prosecute and punish perpetrators and to provide reparations to victims/survivors of such acts, provides tacit permission or encouragement to perpetrate acts of gender-based violence against women. Such failures or omissions constitute human rights violation.” UN Committee on the Elimination of all forms of Discrimination Against Women, General Recommendation 35 on Gender-Based Violence Against Women, para 24(b)
<https://documents.un.org/doc/undoc/gen/n17/231/54/pdf/n1723154.pdf?token=D9AmVdgCizCIGZm5Kq&fe=true>

⁵ “Victims of crime should be protected from secondary and repeat victimisation, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice...”
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN> DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012

⁶ <https://www.gov.scot/publications/equally-safe-scotlands-strategy-preventing-eradicating-violence-against-women-girls/>

Scotland, through the Domestic Abuse Task Force and MATAC process, in particular; by the COPFS, in investigating and prosecuting serial and repeat offenders and by the courts.

Various explanations have been given for the sudden increase in the prison population; the consultation paper; Scottish Government statistical reports^{7, 8}; their Position Paper⁹ and the Audit Scotland 2023 report on criminal courts backlog¹⁰ all highlight criminal justice system delays in both bringing offenders to trial/ sentencing and failures to manage the prison estate and population. None of this is the fault of victims of crime. It is unjust and inequitable that women, children and young people's human rights and safety should be compromised by criminal justice system failures, the inference being that the human rights of dangerous offenders, particularly those posing a risk to women, specifically serial and repeat perpetrators of domestic abuse and GBV, are being prioritised over the human rights, and safety, of victims.

In addition to concerns about the actual proposals, the conduct of the consultation exercise itself is not acceptable, given that it is only open for a six-week period, part of a noticeable trend in increased use of truncated consultation periods in Scottish Government consultations, and is taking place during the summer holiday period.

It has also been suggested that any related draft legislation will likely be fast-tracked through the Scottish Parliament and paragraph 70 of the consultation indicates that if the proposed changes are made, the Scottish Government intend to ensure that the point of release for non-parole licence and associated exclusions can be further amended by secondary legislation. Neither of these processes will allow adequate and appropriate Parliamentary and public scrutiny and comment.

Sentencing policy and practice must be robust and offer survivors confidence in the criminal justice system. There are other changes that would have a positive impact on women's safety and act as a protection and deterrent to any further offending after release, such as an increase in the use of NHOs of sufficient length and with appropriate protective conditions, and we would welcome the opportunity for further discussion on this matter.

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.

⁷ Safer Communities and Justice Statistics Monthly Data Report : July 2024 <https://www.gov.scot/publications/safer-communities-justice-statistics-monthly-data-report-july-2024-edition/>

⁸ Prison population projections: June 2024 edition <https://www.gov.scot/publications/scottish-prison-population-projections-june-2024-edition/>

⁹ Position Paper <https://www.gov.scot/publications/prison-population-action/>

¹⁰ https://audit.scot/uploads/docs/report/2023/nr_230525_criminal_courts_backlog.pdf

We reiterate comments opposing early release in our written submission to the 2014 Bill; response to the 2021 consultation on bail and release from custody¹¹ and Stage One response to the Bill¹².

Longer prison sentences for perpetrators “*are a relief*” to women, “*give them a chance to get things sorted*”, even when the index offence for the current offending does not relate to abuse of their partner, as this still offers women protection and the opportunity to safety plan.

Use of remand to keep abusers away from vulnerable women and children, pre-trial especially, is central to ensuring their safety and promoting confidence in the justice system. Reducing the remand population through increased use of bail cannot be done at their expense. The COPFS must continue to oppose bail where appropriate and the Courts’ decision-making on use of bail and remand, set out in the Bail and Release from Custody (Scotland) Act 2023, must take proper cognisance of women’s safety and the very real threat of perpetrators interfering with witnesses.

Also, it would be unconscionable if moves to reduce the custodial and remand populations were to result in an increasing use of non-custodial disposals, particularly unpaid work as part of community sentencing, for serial and repeat perpetrators of domestic abuse and GBV, and those whose persistent, prolonged and targeted abusive behaviour caused long-term harm and misery to women, children and young people.

Consideration of the human rights of prisoners cannot be done to the detriment of, or take precedence over, the human rights of victims; victims’ rights also cannot be subjugated to financial and other imperatives to reduce the prison population. To free up space in the more secure establishments, consideration must be given on how to more appropriately re-accommodate older, long-term prisoners and those with health problems, recognising the continuing need to protect the public or specific victims.

In terms of priorities for funding services and support for offenders, no account has been taken of the resource implications and pressure this will put on services for victims in the community, especially the impact on local and national funding for vital specialist support services like Women’s Aid.

Additionally, in terms of funding, given budget constraints, it is not clear why these measures are being prioritised and funded over the commencement of important provisions in existing legislation, for instance, child advocacy support and regulation of Child Welfare Reporters in the Children (Scotland) Act 2020 Act, repeatedly delayed due to a lack of funding in the Scottish Governments budget.

Putting in place a system that fulfils both victim’s rights to protection from harm, where the government is aware of the risk, and the rights of accused persons is important, so rushing through changes risks undermining the safety of victims. Failure to take these matters into account would constitute a wholesale failure to protect victims of GBV and represent a breach of their human rights.

¹¹ https://consult.gov.scot/justice/bailandreleasefromcustody/consultation/view_respondent?sort-order=excerpt-ascending& b index=60&uuld=756774402

¹² https://yourviews.parliament.scot/justice/bail-and-release-from-custody-bill/consultation/view_respondent?uuld=323148810

And, finally, this can only be viewed as moving one area of overstretched resourcing to another. The end of June saw the Scottish Government declare a national housing emergency. With almost 31,000 open cases across homelessness teams, and a recent constant of 10,500 households currently stagnant in Temporary Accommodation¹³, it is difficult to see that women and children won't be placed at even further risk through a lack of accommodation. Until there is both accommodation and a reliable protocol in place to ensure perpetrators have a roof over their head (confirmed and in place prior to release), this is not a safe workable solution. Any changes to the current release system must have housing built into and recognised as one of the key factors in terms of risk minimisation.

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.

We oppose the re-framing of early release, referring to our comments above.

There are no actual figures on those who may be released, indicating the number of different offence types likely to be included, sentence length and refusals of parole, so management data outlining this is needed, particularly for numbers of domestic abuse perpetrators and perpetrators of other GBV-related offences this would likely include.

Sentence length reflects the nature of the offence, the risk the offender poses and the court's view of the gravity and impact on victims so the intention of the court should not be frustrated. To be clear, our concerns are not around prisoners whose offending is not a risk to the community or to specific victims; we have grave concerns about the implications for domestic abuse offenders and their suitability for this early release.

Safeguarding for women, even when the abuser is still in prison and subject to close scrutiny, is an issue as abusers are able to manipulate procedures to continue the abuse directly themselves or via other prisoners, noting both can also direct accomplices and family members in the community.

Release should be predicated on risk; non-parole licence release is automatic and not risk-based, and perpetrators continue to present a risk to women, children and young people for long periods following involvement in the criminal justice system and release from prison. Although there are references in the consultation to risk assessment, our experience of risk assessments does not give us confidence that licence conditions and supervision will control and reduce this threat. It is not clear what meaningful and robust risk assessment will be carried out for this cohort and whether victims can make representations to the Parole Board and raise safety concerns to directly influence licence conditions and supervision arrangements.

We mentioned social work caseloads above; there will be more pressure on all parts of the information gathering and risk assessment process and on the effective and safe management in the community of many more high risk and potentially dangerous offenders. Rural and island areas present different and very particular

¹³ <https://www.gov.scot/publications/homelessness-in-scotland-update-to-30-september-2023/>

geographic and service delivery problems for offender management, around response times by police and agencies, location of services, monitoring of offender whereabouts and behaviour and ensuring women's safety, so it is not clear how these matters have been considered

Another very apposite point in relation to risk management and women's safety is that if abusers do not comply with licence conditions, whether they will be returned to an "overcrowded prison", noting that return to custody is not necessarily automatic. If this breach posed a danger to women and children's safety, then release on bail, as opposed to remand, and imposition of community sentence would be wholly unacceptable.

We reiterate that the Government's human rights obligations related to GBV, including domestic abuse, are to protect victims from harm that the Government knows or should know about. Harm to a victim from an abuser released following an inadequate risk assessment is likely to constitute a human rights violation.

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.

SWA strongly oppose this, particularly the process, in which there are significant failings: -

Exclusions-Automatic release on non-parole licence, with only a couple of offence categories excluded, does not mirror the process currently in place for short-term release which excludes perpetrators of domestic abuse and rape and sexual assault. Earlier non-parole release exclusions must be expanded to include offences under the 2018 Act, 2016 aggravation, rape and sexual offences and GBV- related offending.

- There is no barrier to introducing such exclusions - the absolute statutory exclusions to HDC set out in the Prisoners and Criminal Proceedings (Scotland) Act 1993 (the 1993 Act) provide existing legislative precedent while the 2019 "*HDC Guidance for Agencies*" has a stated presumption against granting HDC to imprisoned individuals assumed as being unsuitable for HDC, in the extensive categories listed
- Similarly, a more recent legislative precedent exempting classes of prisoner from release is in section 11 of the 2023 Act, adding section 3C to the 1993 Act around emergency release; it may also apply to these proposals as they are, in effect, an "emergency" release¹⁴
- Lessons learned from both the COVID, and recent emergency short-term release process must be applied.

Governor's Veto-SWA has also stated that the Governor's Veto should be available and again, section 11 of the 2023 Act provides precedent for this to apply, under Section 3C (5)(b).¹⁵

¹⁴ Section 3C (5) and (6) provide a list of prisoners excluded from release which includes prisoners subject to Sex Offender Notification Requirements and prisoners serving sentences for certain domestic abuse offences under the 2018 and 2016 Acts.

¹⁵ ¹⁵Section 3C (5)(b) gives prison governors a right to veto the release of any person who would otherwise be released by virtue of the regulations, if they consider that that person poses an immediate risk of harm to a particular person or an identified group of people.

Support for victims-The Victim Notification Scheme (VNS) is offered as another protection for victims, but the current Scheme is not fit for purpose and progress of the VNS Review reforms has stalled; the Scottish Government has not yet even formally responded to the recommendations. Women may have moved address and lost touch with, or forgotten about, their VSN registration so automatic registration should be considered.

Women who have not signed up to the VNS also need support: survivors can be emotionally and physically exhausted after the trial, focussing on other more immediate issues such as finance and housing so may not be aware of any legislative changes to release, anticipating and planning for a different release date, far in the future. They are still entitled to know that the offender is being released, information particularly important for women who are not still in touch with support services and women where the perpetrator is in custody for a non-domestic abuse related offence but still poses a danger to them, and potentially, other partners and their children, too, and for victims of serial offenders.

Retrospective application-The intention is to apply the provision retrospectively to all those sentenced on or after 1 February 2016, as well as to all those sentenced in future. This is not stated Scottish Government policy in relation to implementation of legislation and will result in a large group of offenders, who have already served more than two thirds of a long-term sentence, including perpetrators of domestic abuse previously denied parole, suddenly being automatically released.

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.

Noting the proposals are part of a package of justice measures, action is needed in other areas before these can be implemented, as follows:

Support for Victims-The existing early release process, use of parole and non-parole licences is not understood by women, especially why perpetrators are unable to serve their full sentence in prison- "*If that is the sentence, why are they not serving it?*" Early release process and decisions must be made more transparent, understandable and accessible for victims.

- The SSI under section 14 of the 2023 Act, prescribing organisations under the 1993 and 2003 Acts with powers to seek information around release that a victim could approach, must be expanded to include organisations such as local Women's Aid groups, and as soon as possible, so that for prisoners already due for scheduled release, women currently signed up to the VNS, or otherwise, can be informed and safety plan accordingly.
- Release pre-planning; notification of, information to and engagement with, victims is an absolute necessity and must happen considerably far in advance of release at the same time as the statutory agencies are informed; generally improved communication and engagement by community justice services with victims and support services like Women's Aid is needed to monitor perpetrators' behaviours along with a clear pathway for alerting the police and CJSW to breaches. Women's Aid workers cite lack of information

around release and exact dates as a major risk and a significant hindrance to effective and timely safety planning.

Standards for throughcare and supervision in the community

- Resources to support women and children in place and funded along with support for offenders.
- The 2023 Act provisions on Standards actioned, and Standards created and in place before any consideration of additional early release.
- Only RESPECT and SAPOR accredited domestic-abuse offender programmes can be made a condition of parole/ non-parole licences.
- Although statute prescribes that social work deliver offender management and supervision, it is entirely possible that, because of pressure on workloads and for financial exigency, the law is changed allowing commission of non-statutory services to support or directly deliver this work. SWA would robustly oppose this. Third sector or non-statutory offender support organisations and services must not be used to deliver post-release supervision work in the community for offenders of GBV.
- Housing or holistic services must categorically not “engage” with abusers about their “behaviour” or use/refer them to inappropriate CPD, peer mentoring, emotional and practical support or anger management. This work can only be done by trained and qualified CJWS with an in-depth understanding of domestic abuse in programmes such as the Caledonian.
- Staff of any support services must be domestic-abuse competent, alert to the perpetrator re-offending and liaise with the police and CJSW around any concerning behaviour.
- Meaningful accountability, reporting and evaluation infrastructure, fully engaging with victims and support organisations, to assess the impact of these proposals, must be put in place.

Housing for offenders

Access to housing for abusers mean they may be less likely to try to return to the woman’s home because they have alternative accommodation arranged. In addition to our concerns noted in terms of housing stock, care must be taken to ensure that abusers are not housed near women, or elsewhere that would compromise women’s safety; equally, housing needs of offenders must not be prioritised over that of survivors.

Publishing & Availability

We thank you for the opportunity to respond to this. We are more than happy for our response with names and details to be published, for it to be shared internally with other Scottish Government policy teams and for the Scottish Government to contact SWA again in relation to this consultation exercise.

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