

# Stage 1 Briefing

## Prisoners (Early Release) (Scotland) Bill

November 2024



## Introduction

The Law Society of Scotland is the professional body for over 13,000 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.

The Prisoners (Early Release) (Scotland) Bill<sup>1</sup> (“the Bill”) was introduced into the Scottish Parliament on 18 November 2024. On 20 November 2024, Parliament agreed to treat the Bill as Emergency Bill, with the Stage 1 debate expected to take place on 21 November 2024.

We welcome the opportunity to consider and provide comments on the Bill ahead of the Stage 1 debate.

## General Comments

The prison population crisis in Scotland is a serious issue that has been repeatedly highlighted by relevant agencies for years. In her most recent Annual Report, HM Chief Inspector of Prisons for Scotland expressed her concerns on the “entrenched issue of overcrowding in Scotland’s prisons”<sup>2</sup>. This concern has been reported in previous Chief Inspector’s Annual Reports<sup>3</sup>.

We are of the view that the prison population crisis has been steadily escalating over the years. While we appreciate that measures are required, we are concerned that emergency legislation is proposed only when the situation is unmanageable. As we have indicated in previous opportunities<sup>4</sup>, the emergency legislation procedure limits the opportunity for Parliament and the public to fully scrutinise the proposals. We regret that a proactive approach to the prison population crisis was not adopted earlier, despite prior indications of this issue.

We note that the measures proposed are anticipated to impact a very small proportion of the prison population. The Policy Memorandum indicates that it is expected that the measures proposed in the bill reduce the prison population in

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<sup>1</sup> [Prisoners \(Early Release\) \(Scotland\) Bill – parliament.scot](https://parliament.scot/Bills/Prisoners%20(Early%20Release)%20(Scotland)%20Bill)

<sup>2</sup> HM Chief Inspectors Annual Report 2023-24 (published in August 2024). [Available the 20 November 2024 here.](#)

<sup>3</sup> Cfr. HM Chief Inspectors Annual Report 2022-23 (published in August 2023). [Available the 20 November 2024 here.](#)

<sup>4</sup> Law Society of Scotland – Stage 1 briefing Post Office (Horizon System) Offences (Scotland) Bill – [lawscot.org.uk](https://lawscot.org.uk)



around 5%<sup>5</sup>. We also note that the Scottish Government analysed the responses to the long-term prisoner release consultation and considered that further consideration should be taken to propose an earlier release point for this group<sup>6</sup>. However, we want to highlight that according to the Scottish Parliament's Information Centre (SPICe) Bill's report<sup>7</sup>, in October 2024, approximately 28% of the total prison population were prisoners on remand. We are concerned for the lack of consideration of measures to address the crisis on this group of prisoners.

We have a final general comment on the Bill. As indicated in our [consultation response to the long-term prisoner release process](#), meaningful rehabilitation or reintegration services are critical in the context of early release of prisoners. The Scottish Prison Service indicated that the rising prison population makes very difficult to provide quality rehabilitative work that supports individuals to reduce the risk of reoffending<sup>8</sup>. Having robust rehabilitative services benefits sentenced people, victims and the public. We regret that measures to improve these services were not considered.

## Comments on sections of the Bill

### Section 1

Section 1 modifies the release point for certain short-term prisoners allowing them to be released after serving 40% of their sentence.

This change will not be applicable to those who were sentenced for terrorism offences, sexual offences, and domestic abuse offences. The release point for short-term prisoners under the excepted categories will be maintained as currently is.

We consider that the statutory exceptions for domestic abuse and sexual offences are arbitrary. We can anticipate cases in which two prisoners are sentenced to the same time in prison for the same offence but with different aggravating factors. If, for example, one of the aggravating factors in one of the cases is domestic abuse, the release point for those two prisoners will be different. This will make that, effectively, the domestic abuse aggravation circumstance is double counted (as a factor for determining the sentence and for the differentiation in the release point). While we appreciate that this differentiation already exists in the release provisions for long-term prisoners, we consider this arbitrary in current and proposed legislation.

We note that the Policy Memorandum indicates that "there are specific issues in relation to domestic abuse and sexual offences that are not necessarily as

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<sup>5</sup> Policy Memorandum – [parliament.scot](#)(para 45).

<sup>6</sup> Idem (para 38).

<sup>7</sup> Scottish Parliament's Information Centre (SPICe). Research briefing on the Prisoners (Early Release)(Scotland) Bill – [parliament.scot](#)

<sup>8</sup> Written Submission by the Scottish Prison Service (November 2024) – [parliament.scot](#)



prevalent in relation to other offences”<sup>9</sup>, mentioning barriers for reporting, long-term trauma inflicted on victims, and that they are rarely one-off incidents. As we agree with that, those issues are already considered in the sentencing process. In addition, other aggravating factors can be as damaging as the one excepted from the provisions.

## Section 2

Section 2 modifies the release point for children sentenced to detention for less than 4 years. Except from those sentenced for sexual offences or domestic abuse offences, detained children can be released after serving 40% of their sentence, and not 50% as currently stated.

We reiterate our comments made in Section 1.

## Section 3

Section 3 provides to the Scottish Ministers the power to amend by regulations the release point of short-term and long-term prisoners, and those detained as children.

We reiterate our comments on [our consultation response on long-term prisoner release process](#). We have expressed that while it is very important to minimise the risk associated with the current prison population, the public and the victims’ safety cannot be jeopardised. We emphasize again the importance of allocating sufficient resources into the Justice Social Work that allows an appropriate supervision. As indicated in our consultation response “There is a risk that without adequate supervision and reintegrative support, more prisoners may be subject to avoidable recall”.

## Section 4

Section 4 deals with consequential, transitional and transitory provisions contained in the Schedule.

We have no comments on this section.

## Section 5

Section 5 contains ancillary provisions, allowing to the Scottish Ministers to regulate any incidental, supplementary, consequential, transitional or saving provision related to the purpose or the full effect of the Bill.

We have no comments on this section.

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<sup>9</sup> Policy Memorandum – [parliament.scot](http://parliament.scot)(para 47).



## Section 6

Section 6 provides that Sections 5 and 7 will come into force the day after Royal Assent. The remaining provisions will come into force on such day the Scottish Ministers appoint by regulations.

We have no comments on this section.

## Section 7

Section 7 provides for the short title.

We have no comments on this section.



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