

Criminal Justice Committee

Automatic early release of prisoners and prosecution policy on public safety and prison population

Written submission by His Majesty's Inspectorate of Prisons for Scotland (HMIPS), November 2024

1. The measures announced on 10 October 2024, by the Cabinet Secretary for Justice and Home Affairs, and the Lord Advocate, to help address the prison population crisis are welcomed by HMIPS.
2. We have been repeatedly shining a light on Scotland's high imprisonment rate and detailing in our reports the serious impacts accommodating a prison population above design capacity is having on prisoners, the prison regime, SPS staff and ultimately the aim to rehabilitate and reduce reoffending.
3. Our most recent Annual Report for 2023/2024, published in August this year, once again detailed our concerns referring to the "stubbornly entrenched issue of overcrowding in Scotland's prisons. The high numbers in Scotland's prisons and the issues that it causes are sadly not unexpected and remain a serious concern". Indeed, almost 20 years ago HMIPS's [Annual Report 2005-6](#) pointed to "The nine evils of overcrowding" a stark description of the harms caused that remains disappointingly relevant today (see Annex A).
4. The same document alludes to at least five ways in which it might be possible to defeat overcrowding:
 - building more prisons
 - rethinking sentencing
 - capping prison numbers
 - reducing re-offending
 - reducing crime
5. In this context it is encouraging that the measures now being developed go beyond reconsideration of release dates. We therefore welcome the independent review of sentencing and penal policy that is to be established, noting that a requirement to build additional prison capacity whilst undoubtedly expensive and undesirable may be required if the proposed plans do not assist in reducing the population to a manageable level.
6. Effective measures to reduce the prison population are extremely urgent. This requires a collaborative approach across a number of programmes of work and sufficient resources. The planned introduction, on an emergency basis, of primary legislation to bring forward the point of release for some short-term prisoners will bring some welcome sustained reduction to the number of people in custody.

This must, however, be just one element of a much broader range of measures to secure the reduction in numbers required.

7. Recent Scottish Government modelling indicates that the prison population could continue to rise, potentially to over 9,000 by the end of this year, and HMIPS are concerned that the measures announced may be insufficient should the pressures indicated at the higher end of the Scottish Government modelling assumptions be realised.
8. We note that following the consideration of the consultation responses, amendment of the release point for long-term prisoners will no longer form part of the planned primary legislation, other than as a power to amend the point of release via secondary legislation. We note that there was support in principle for some long-term prisoners spending a greater part of their sentence in the community under supervision, but we understand the concerns that changing the automatic release point at pace could present a range of further issues.
9. We recognise that others are better placed to comment with expert knowledge regarding risk management, but in our view significantly earlier release of long-term prisoners may still require an appropriate and individualised consideration of risk such as that currently undertaken by the Parole Board to ensure that any reduction in this cohort is brought about safely and at the appropriate point in the prisoner's rehabilitative journey. We would urge the Scottish Government to work rapidly with delivery partners and wider stakeholders, particularly organisations representing victims, to consider this further. A critical aspect of this is for SPS, Local Authority Social Work Services and other partners to work together effectively managing prisoners through the progression system to National Top End and open conditions where they can gain gradual access to communities to evidence risk reduction and ensure that individuals can be both supervised and supported in the community upon release at the earliest appropriate stage.
10. We note with concern that no additional resources have been allocated to assist community services to deal with a potential surge in demand when this is implemented. We are aware that the Emergency Early Release Scheme, while essential, imposed additional pressures on community partners working to secure housing and support those released. In a similar vein we very much welcome the Throughcare services that are being commissioned through Community Justice Scotland but note that they are due to come on stream in April 2025 and will not have expected to potentially have to deal with additional demand at that time. It will be essential therefore that implementation plans and the timing of releases are staged at a pace that takes account of the need for community partners to plan safe and effective reintegration into local communities. A rushed implementation risks failure and potentially further victimisation.
11. The collaborative approach to the crisis as evidenced by the Lord Advocate's statement was heartening as it recognises that prisons full beyond capacity will not deliver justice or public safety and puts forward the encouraging proposition that there are three practical ways in which the number of people being remanded in custody pre-trial may be reduced. These centre on better and speedier information to inform decisions, fuller consideration of risk and the

potential benefits of measures such as electronic monitoring as well as more holistic consideration of underlying unresolved issues such as mental health. This aligns with the findings from our [Joint Review of Diversion from Prosecution](#) published last year which found that the practice of diverting some accused persons from prosecution was working well but had potential to be used more widely. We believe that greater use of electronic monitoring in particular has the potential to make a significant impact in reducing the prison population. HMIPS is hopeful that the temporarily amended prosecution guidance quickly results in much-needed reductions to the number of individuals held on remand, which is far too high at approximately 27% of the prison population.

12. In our inspections we have found that remand prisoners can suffer from particular paucity of prison regime as they are not legally required to work. They do not therefore receive earning or financial allowances thereby affecting their families. We believe that the challenges which this brings to those held on remand and the impacts on the wider prison regime are well understood, but we are nevertheless gathering more evidence via our Independent Prison Monitors and pre-inspection surveys.
13. Prisoners are particularly vulnerable to encroachment on their human rights, but we are aware too that overcrowding imposes intolerable stress and pressures on hard working prison staff too.
14. The risk that the current unacceptable levels of overcrowding will only increase without further intervention cannot be ignored and we therefore welcome the fact that decisive action is being taken. HMIPS remained concerned, however, as to whether the proposed measures are sufficient.
15. I finish by reaffirming that during periods of overcrowding external scrutiny of Scotland's prisons is more vital than ever to assess the extent to which the treatment and conditions of prisoners are being appropriately maintained and we will continue to do that within the resources made available to us.