

NORTH LANARKSHIRE COUNCIL

REPORT

To: SOCIAL WORK COMMITTEE		Subject: SENTENCING COMMISSION FOR SCOTLAND - EARLY RELEASE FROM PRISON AND SUPERVISION OF PRISONERS ON THEIR RELEASE - CONSULTATION PAPER
From: DIRECTOR OF SOCIAL WORK		
Date: 25 AUGUST 2005	Ref: JS/JS	

1. Introduction

- 1.1 The purpose of this report is to advise Committee of the consultation paper on Early Release from Prison and Supervision of Prisoners on their release issued by the Sentencing Commission for Scotland.
- 1.2 To seek agreement on the response to the consultation document.

2. Background

- 2.1 The Sentencing Commission for Scotland is an independent body which was set up by the Scottish Executive.
- 2.2 The Commission has been given the remit to review and make recommendation to the Scottish Executive on:
 - The use of bail and remand
 - The arrangements for early release from prison and supervision of short-term prisoners on their release
 - The basis on which fines are determined
 - The effectiveness of sentences in reducing re-offending
 - The scope to improve consistency of sentencing
- 2.3 The Sentencing Commission were asked by the Scottish Executive to review and make recommendations on early release and supervision for all classes of prisoner.
- 2.4 The consultation paper "Early Release from Prison and Supervision of Prisoners on their Release" is concerned with this part of the Commissions remit
- 2.5 The closing date for responses is 30 September 2005.
- 2.6 The members of the Sentencing Commission are appointed by the Scottish Ministers.
- 2.7 The Director of Social Work for North Lanarkshire Council is a member of the Sentencing Commission.

3. Proposals/Considerations

- 3.1 "Early Release" is the term given to the arrangements which allow the release of a prisoner, either on a discretionary or automatic basis and either conditionally or unconditionally, prior to the expiry of the imprisonment term imposed by the Court.
- 3.2 In Scotland the law provides that prisoners sentenced to less than a four year term of imprisonment (unless subject to supervised release order) are released automatically and unconditionally (i.e. not on licence) after serving one half of their sentence. Similarly prisoners sentence to four years or more may be released on licence after serving one half of their sentence, if this is the decided by the Parole Board for Scotland and must be released on licence after serving two thirds of their sentence. Prisoners service life sentences may be released on a life licence after serving in full the "punishment" part of their sentence ordered by the court if this is directed by the Parole Board.
- 3.3 Where prisoners are released on licence they are liable to recall to custody for the remainder of their sentence if they breach a condition of licence.
- 3.4 A full explanation of the early release regime that operates in Scotland for each class of prisoner is contained in the consultation document.
- 3.5 The consultation document gives a detailed and concise overview of the "early release" of prisoners into the community, over five sections which explore the following areas:
- Introduction
 - The Law
 - Comparative law
 - The policy behind the supervision of early release in Scotland
 - Discussion of the system of early release
- 3.6 The final section of the document is devoted to a series of 32 questions addressing the key areas which have been identified by the Sentencing Commission.
- 3.7 The consultation paper seeks views on some or all of the questions detailed in the final section.
- 3.8 The key areas addressed by the questions were:
- The principles of the early release of the Prisoners
 - The scope of schemes for the early release of prisoners
 - The administration of schemes for the early release of prisoners
 - Sanctions for re-offending or breach of conditions of licence during the period before the expiry of the original sentence
- 3.9 The proposed response from North Lanarkshire Council is attached to this report as appendix 1

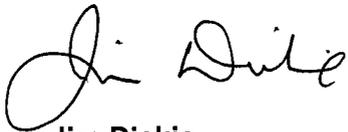
4. Personnel and Financial Implications

- 4.1 The paper is a consultation document and there are no financial or personnel implications for the Council at this time.

5. Recommendations

5.1. Committee is asked to:

- (i) Note the consultation document and;
- (ii) Agree the response to the consultation document



Jim Dickie
Director of Social Work
3 August 2005

A copy of the consultation document has been placed in the Members Library

For further information on this report please contact Jim Scullion, Service Manager, Justice TEL: (01698 332040)

EARLY RELEASE CONSULTATION: SENTENCING COMMISSION

Part Six: Consultation Questions

Question 1: Should the law:

- (a) **require every prisoner to serve the whole period specified in the sentence of the imprisonment**

No all-embracing absolute position is practicable or desirable, but clarity of the structure and balance across the different elements is essential.

Or;

- (b) **continue to provide that part of the sentence should be served in the community?**

Yes. Elements of sentences spent in the community.

Question 2: What are the arguments in favour of schemes for the early release of prisoners?

In principle the practice of early release arrangements allows for managed reintegration of offenders into the community and provides safeguards in community safety terms, allowing for recall where there is failure to comply with conditions of early release.

Question 3: What are the arguments against schemes for the early release of prisoners?

There is an argument that sentences imposed on conviction appear not to mean what they say. The difficulties perceived by the public often relate to the view that elements of sentence served in custody are the principal effective element in the sentence. Public concern also appears to be articulated in terms of "honesty in sentencing". The issue is more obviously about clarity in the sentence, about its component parts, and about its "automatic" nature in many cases.

Question 4: What significance, if any, should the overall size of the prison population have in determining the existence and nature of schemes for the early release of prisoners?

The overall size of the prison population is a factor in our criminal justice system and no discussion of sentencing policy and practice, or indeed, rehabilitation of offenders can reasonably take place without recognition of resource factors. There is an assumption that custody is more effective in controlling criminality than it actually is. Identification of custody with public safety is highly questionable.

Question 5: What steps, if any, should be taken, and by what body, to publicise and explain the reasons for any early release regime>

The ultimate responsibility to inform the public rests with the Government, i.e. the Scottish Executive. But other "agencies" including the Courts, Parole Board and the SPS should publicise the arguments on their respective websites and in suitable publications. MSPs should also be much better educated about the arrangements so as properly to inform their constituents.

Question 6: What relationship, if any, should schemes for the early release of prisoners in Scotland have to those which apply to prisoners in other parts of the UK?

With the establishment of the devolved Scottish Parliament and the arrival of the Human Rights Act the scope for Scotland developing its own identity in relation to schemes for the early release of prisoners is both enhanced and constrained. It is likely that differences between different jurisdictions within the UK will be the subject of comment, comparison and of political debate. There is no fundamental requirement for schemes in the different UK jurisdictions to replicate each other. Scotland's criminal justice system should be designed to reflect Scotland's requirements.

Question 7: Should multiple sentences be aggregated to form a single term, in accordance with section 27(5) of the 1993 Act, or should sentences stand alone and run in parallel with each other?

Such judgements should be made by the sentencing judge with a material framework in accordance with principles of consistency, fairness and public safety.

Question 8: What should be the criteria for early release?

Public safety has to be an important consideration and should be assessed through an accredited risk management framework. It is important that we should not fall into the trap, which reflects historical practice e.g. in borstal training, of assuming that compliance with custodial regimes is an effective predictor of behaviour in the community.

Question 9: Should there be the same or separate schemes for short-term and long-term prisoners?

There should be a simplification of schemes which would enable greater consistency across different lengths of sentence. However a fundamental problem in the sentencing regimes which exist is the high incidence of short-term custodial disposals. Reduction of use of such disposals would greatly assist in promoting conditions for consistency across different lengths of sentence.

Question 10: If separate schemes for "short-term" and "long-term" prisoners are retained should the current distinction between the two types of prisoner be kept (i.e. 4 year threshold) or should it be revised and, if so, how?

It would be preferable for there to be a regime which did not have such a sharp distinction between short-term and long-term prisoners, since in reality the difference between a prisoner sentenced to 3 years and one to 4 years is likely to be fairly hazy. In terms of operational convenience "single-termining" has clear advantages. But it is apparent that sentencers, by and large, don't understand how it works. This results in sentences being imposed which have no impact upon the time a prisoner serves in custody which, in some cases, will not have been the sentencer's intention.

Question 11: What is the justification for (1) discretionary and (2) automatic early release?

Discretionary elements in determining release dates can very easily become oppressive but it can enable those who are not considered to present an unacceptable risk to the safety of the public to be released on licence for a proportion of their sentence. Essentially, it recognises that people can change and that the rehabilitative aspects of imprisonment can work. It "rewards" those who toe the line and work at their offending behaviour. It allows supervision in the community for a proportion of the sentence

and thus assists in resettlement. If there is to be an early release system it is difficult to justify automatic early release. Unconditional automatic early release appears to undermine the integrity of the initial sentence.

Question 12: Should different schemes of early release operate for different classes of prisoner? In other words should the nature of the offence have a bearing on the timing of release?

No. There is obviously greater public concern about certain types of offences than others, but it is difficult to see how a differential regime could withstand legal challenge. The likelihood of reoffending and risk to the public must be the core considerations.

Question 13: Should all early release of prisoners be discretionary? In other words should there be no automatic, unconditional release for short-term prisoners at half sentence; and automatic, conditional release for long-term prisoners at two-thirds sentence?

Discretionary early release has some merit, but its operation risks being oppressive and arbitrary. Criteria for early release should be linked closely to assessment of risk. Automatic unconditional release makes little sense.

Question 14: If early release were to continue to exist at what point of the sentence should a prisoner be eligible to be released early?

In theory at any point, but in practice it would be dependent on substantial evidence of assessment of the risk factors. Other jurisdictions e.g. in Scandinavia operate such systems fairly effectively.

Question 15: How should the early release arrangements for determinate prisoners interact with the statutory arrangements governing the release of prisoners sentenced to life imprisonment?

It should be recognised that a prisoner is required to serve the full punishment part of a life sentence imposed by the Court before being reviewed for release. There is no consideration at the half-way point of the punishment part. While a punishment part statutorily excludes any period for risk it can nevertheless be regarded as being broadly equal to the custodial part of a determinate sentence, in other words a punishment part of 15 years is equal to a determinate sentence of 30 years. In determining the punishment part for a mandatory life prisoner, the court should be required to carry out the same calculation as statute requires when a discretionary life sentence is being imposed. In other words the Court should be required to take into account the early release regime that is applicable to prisoners sentenced to determinate terms.

Question 16: If early release is not to be automatic, who should decide if prisoners are to be granted early release?

The body best placed to deal with such matters must be an extended Parole Board structure linked closely to the Risk Management Authority.

Question 17: What roles, if any, should be played by the Scottish Executive, the Scottish Parliament, the Scottish Prison Service and the Parole Board, the Risk Management Authority and Social Work Agencies?

The agencies identified would each have a distinctive contribution to make to such decisions. The Executive and the Parliament would work to set the framework within which the system would operate and it would be administered via the Parole Board which would receive advice and reports from the other agencies such as the Prison Service, the Risk Management Authority and Social Work agencies. On the basis of this advice it would take decisions within the framework set by the Executive and Parliament.

Question 18: What conditions should apply to those released early on licence?

Conditions in relation to those released early on licence should be at the discretion of the Parole Board and could include elements relating to accommodation, treatment, employment, training, or indeed any others which might reasonably be imposed in order to protect public safety.

Question 19: Who should decide what the conditions should be?

The Parole Board.

Question 20: Should all prisoners granted early release be under supervision on release?

If early release were to become substantially discretionary and subject to conditions, then it follows that some supervision is required. The supervision would be intended to monitor compliance and would have to be given effect by a duly appointed supervisory authority. However it is not necessary to require that all prisoners subject to early release are supervised.

Question 21: Who should be responsible for supervising prisoners on early release?

Criminal Justice Social Work Authorities and the Police should have responsibility as appropriate to their function.

Question 22: What form and level of supervision should be operated in respect of prisoners granted early release?

Forms and levels of supervision can be prescribed and should be appropriate to the risk and circumstances of each individual offender. The precise details could be determined in an early release plan which would be subject to monitoring and review where appropriate. Currently Social Work operates within a framework of National Standards and Objectives.

Question 23: Should the sentencing judge be required to take account of the terms of the current schemes for the early release of prisoners in determining what sentence to impose?

Yes

Question 24: Does the Appeal Court have a role to play in issuing guidance on this topic for sentencing judges?

Yes

Question 25: Does the Scottish Parliament have any role to play in enacting statutory guidance or this topic for sentencing judges?

Yes

Question 26: Should a sentencing judge require to explain, in open court, what the sentence being imposed will mean in terms of when the accused may or will be released from prison?

Yes

Question 27: If early release is to be discretionary, what role, if any, should the sentencing judge play in informing/being consulted about/taking the decision to release a prisoner early?

None

Question 28: What should happen to a prisoner granted early release who commits a breach of licence conditions before the expiry of the original sentence?

Breach of licence should be the basis for return to court for consideration of what further measures might be required.

Question 29: Does the Appeal Court have a role to play in issuing guidance for sentencing judges on the imprisonment of appropriate sanctions on those convicted of a new offence before the expiry of the original sentence.

The experience of the Appeal Court in dealing with such matters would be useful in framing guidance for Sentencing Judges.

Question 30: Should the court have a discretion as to the period for which the prisoner should be returned to prison or should the court be required to return the prisoner to prison to serve the whole "un-served period" of the original sentence, between the date of the commission of the new offence and the expiry of the original sentence?

Discretion should lie with the Court for any revised disposal.

Question 31: Should there be any other statutory sanction(s) for breach of licence other than recall to custody?

Such sanctions should be at the discretion of the Court on considering breach of licence and the circumstances of the offender.

Question 32: Should the Parole Board issue fuller and better publicised guidance as to the circumstances in which they will recall prisoners on early release to prison?

Yes.