



The Very Long-Term Prison Population in Scotland

A scoping document

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The views provided in the scoping document are those of the authors and do not necessarily reflect views of the Prison Reform Trust or any of the organisations mentioned in the document.

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Section 1: Introduction

The Prison Reform Trust (PRT) Building Futures (BF) programme

PRT is an independent UK charity working to create a just, humane and effective penal system. The BF programme is a five-year UK wide programme funded by the National Lottery Community Fund. The programme is exploring the experiences of people serving very long-term prison sentences.

The Scottish Research and Advocacy Collective (SPARC)

SPARC are a research and advocacy collective in Scotland made up of ex-prisoners who have gained advanced degrees after serving prison sentences of more than 10 years. SPARC has maintained links with people serving sentences in Scottish prisons – and have defined this population as our community of interest. In addition, we also have lived experience of imprisonment and come through the same arduous processes that make serving a custodial sentence in Scotland difficult.

The scoping document

This scoping document was commissioned by the BF programme to better understand the impact of long-term imprisonment in Scotland, drawing on the expertise of SPARC.

Initial background research from SPARC found that many of the issues faced by long-term prisoners in England and Wales are also faced by those in Scottish prisons. This document highlights these similarities and considers the differences.

The Scottish context

- On 23 May 2022 there were 1,044 prisoners serving 10 years or more in Scotland.¹
 - This means 19% of the convicted population in Scotland were serving over 10 years compared with 16% in England and Wales.²
- The average sentence for murder has increased from eight to nine years in the 1970's to nearly 20 years in 2021.³
- Successful parole applications in the early 2000's were just under 30%, this has now reduced to 12%.
- Progression is a major issue in Scottish prisons and 36 of 100 judicial reviews are concerned with progression or parole.⁴
 - SPARC have had requests from Scottish prisoners for advocacy work to navigate the progression and parole system.
 - Most advocacy requests related to “critical dates” which are those dates specific and relevant to progression, availability of spaces on offence focused programmes, spaces in community testing facilities, and the misapplication of risk scoring tools.
 - These issues were also highlighted during SPARC's community consultations for Glasgow University's 'Scotland in Lockdown' project.⁵
 - In 2018 SPARC delivered a training workshop to the Independent Prison Monitors in Scotland on the failings of the progression system.

Section 2: Long term imprisonment in Scotland

What is a 'long-term' prisoner?

In Scotland, long-term prisoners (LTPs) are defined as anyone serving four years or more.⁶ For the purposes of the BF programme, long-term prisoners have been classified as those serving 10 or more years in custody (for men), or eight or more continuous years in custody for women. In this document, LTPs will be referred to in line with these parameters and referred to as 'very long-term prisoners' (VLTPs).

Sentence type

VLTPs in Scotland will serve either a long determinate sentence of 10 years and over with a set liberation date, a parole qualifying date at the midway point, and a sentence expiry date to be served on licence post release. Those subject to life sentences (Lifers) or those subject to Orders of Lifelong Restrictions (OLRs) are serving indefinite sentences with indeterminate custodial periods. Both carry a minimum punishment part known as a "tariff" to be served before a prisoner can apply for parole. The end of the tariff is the punishment part end date (PPED). There are also a small number of prisoners serving Imprisonment for Public Protection (IPP) sentences in Scottish prisons.

Just as in England and Wales, prisoners in Scotland may be denied parole indefinitely if specific criteria are not met. This includes meeting recommendations made by the Risk Management Team (RMT). The RMT is part of the Integrated Case Management (ICM) process which operates in all prisons. It is a multi-disciplinary team of professionals from a range of agencies who come together to manage prisoners and assess any risk.

The RMT make decisions about whether to grant progression to less secure conditions (such as National Top End (NTE) facilities and or the Open Estate) and temporary release through community access.⁷ At NTE, individuals will have increased responsibility and be gradually tested in the community, so they are better prepared for transfer and able to succeed within open conditions. The Open Estate (OE) provides additional freedoms and responsibilities to allow the individual to evidence a reduction in risk which can demonstrate to the Parole Board they are suitable for release. The RMT case manage Lifers, LTPs, OLRs, IPPs and some short-term prisoners (STPs). When deciding to progress a prisoner consideration will be given to disciplinary reports, including those for minor infractions like swearing or vaping outside cells; having ongoing drug and or mental ill health; resettlement issues including family relationships and whether these are deemed to be a protective factor or not; outstanding programmes or intervention needs; and lack of appropriate testing in the community at NTE/OE. All of which may be grounds to view someone as too risky to be released on parole.⁸ Those released by the Parole Board on licence and community supervision can be recalled to custody at any time if their licence is breached. Lifers and OLRs are subject to these proceedings for the rest of their lives. Those serving an IPP sentence have the right to have their IPP licence reviewed by the Parole Board 10 years after first release.⁹

Unlike England and Wales, whole life terms are not possible in Scotland (yet), but there have been attempts to introduce these, most recently in a proposed bill. Scottish judges have set some precedent of 'ensuring' someone will die in custody.¹⁰ This is further evidence of Scotland's creep toward more punitive practices which is to the detriment of its 'different' approach to justice.¹¹

Offence type

VLTPs are typically those convicted of more serious violent or sexual offences. While specific data is not available for all VLTPs by offence type, it is noteworthy that:¹²

- 39% of Scotland’s prison population are convicted for a violent offence.
- 16% are convicted of attempted murder or serious assault.
- 17% are serving life sentences.
 - 73% of life sentences are for murder.
 - Homicide is the second most common violent index offence in Scotland.
- 16% of prisoners are convicted for sexual offences, with rape or attempted rape being the most common and quickly growing offence.

Changes to determinate sentencing

The threshold of severity has risen in Scotland, due, in part, to the Prisoners (Control of Release) (Scotland) Act 2015.¹³ LTPs serving four years or more must now serve all but the last six months of their sentence if they do not secure parole, or the whole term where an extended sentence is also in place. An extended sentence combines a tariff to be served in prison with a set period of supervision in the extension part. The individual will serve the full punishment part of the sentence – unless the Parole Board recommends early release. As with long-term sentences, this normally will only start to be considered halfway through the individuals prison sentence. When released, the individual is on licence until the end of the extension part and like others on licence, they can be recalled to prison if they breach the terms of this. The maximum extension periods that can be issued are, five years at the Sheriff Court, and up to 10 years in High Court cases. With the abolition of automatic early release, it has become easier to serve longer in Scotland without an increase in serious offending.

How many VLTPs are there?

On 23 May 2022 there were 1,044 prisoners serving 10 years or more in Scotland.¹⁴ This excludes indefinitely sentenced prisoners who may still serve 10 or more years in custody¹⁵ and accounts for 19% of the convicted population, compared to 16% in England and Wales.¹⁶ Of the 1,044 identified within the FOI request, 510 prisoners (48%) had already spent 10 or more continuous years in custody.¹⁷

| Sentence Category | No. of Prisoners |
|-------------------------------------|------------------|
| Life Sentence Prisoner | 698 |
| LTP | 333 |
| OLR (Order of Lifelong Restriction) | 13 |
| Sum: | 1044 |

Table 1. VLTP population serving sentences of 10 years or more in Scottish prisons.¹⁸

What does the VLTP population look like?

Ethnicity

While specific information on ethnicity of VLTPs is not available, the Scottish prison population as a whole has remained steady at around 96% white (compared to 72% in England and Wales¹⁹) reflecting the characteristics of Scotland as a whole. Those in custody over the last decade identifying as non-white varied between 3.7% and 4.3%; broadly in line with the Scottish population generally (4% on census day 2011).

Gender

- Scotland's prison population is 95% male.
- 14% of the convicted male population are serving a life sentence, 3% are serving OLRs.²⁰
- 16% of convicted women are serving life. None are serving an OLR.²¹

Age

- Scotland has an aging prison population. There has been a 46% increase in prisoners over 60 years old since 2017. The average age of prisoners has risen to 31.²²
 - This is influenced (in part) by lengthier sentences and difficulties in obtaining parole. Another factor is the successful prosecution of higher numbers of historical cases of sexual abuse.

Deprivation

- The 10% most deprived areas identified by the Scottish Index of Multiple Deprivation (SIMD) were consistently over-represented in prison arrivals by a factor of three.
- The bottom four deciles comprised 85% of the prison population with increasing likelihood of imprisonment as levels of deprivation increased.
- Violent crime is consistently evidenced as being more prevalent in these areas.
- The least deprived 60% of areas were under-represented by increasing degrees as area deprivation decreased.²³

Factors impacting VLTPs in Scotland

Primary factors

- Increases in the average sentence length, including minimum tariffs for life sentences have increased the LTP population.
- The criteria for lower tariffs were tightened and the de facto maximum thirty-year tariff limit was scrapped,²⁴ allowing for longer minimum terms.²⁵
- The average time served for murder increased from eight to nine years in early 1970's to nearly 20 years today.²⁶
- 20 years ago, nearly 30% of lifers received parole, today this is around 12%. These figures are situated against a backdrop of long-term decline in crime (with exception of convictions for sexual offences including historic) and a long-term decline in convictions (66% drop over the last decade) and prosecutions.²⁷ There has also been a drop in the use of short-term sentences (of three months or less) from 41% to 27%.²⁸
- There has been an increase in recalls from supervision on license. Recalled individuals in the average daily prison population has risen 36% from 296 in 2009-10 to 403 in 2019-20.²⁹

| Year | Average punishment part for life sentences for murder |
|----------------------|--|
| 2007/08 | 14.6 |
| 2008/09 | 16.3 |
| 2009/10 | 15.4 |
| 2010/11 | 17.5 |
| 2011/12 | 16.8 |
| 2012/13 | 17.4 |
| 2013/14 | 18.0 |
| 2014/15 ^a | 19.2 |
| 2015/16 | 18.9 |
| 2016/17 | 19.1 |

Table 2. tariff increases in the past 10 years³⁰

Secondary factors

There has been an increase in the number of custodial sentences for less serious offences and a 21% increase in the average custodial sentence length in days. This has led to a steady rise in the average daily prison population (primarily in male prisoners). Home Detention Curfew (HDC) restrictions have had a large impact with nearly an 80% drop in use from 300 to 50 at any given time over a year due to the tightening of the requirements. HM Inspectorate of Prisons Scotland (HMIPS) have cited overcrowding as causing general operational difficulties due to the size of the prison population “adversely impacting and intensifying pressures in almost every aspect of prison life for both prisoners and staff”. This includes backlogs and lack of access to courses and other prison-based programmes necessary for progression, which have had an impact on LTPs. These issues which were pertinent pre-Covid-19 pandemic have intensified, with backlogs, restrictive regimes, staff shortages and a ‘relaxing’ of the prison processes including those for complaints and appeals.³¹ Recent responses to community consultations by SPARC have suggested Covid-19 has become a blanket excuse and an attempt to absolve the SPS for its pre-existing operational shortcomings.³²

Progression and parole in Scotland

This section will respond to BF’s publication, which focuses on progression and parole in England and Wales from the perspectives of those in custody.

SPARC is particularly sensitive to progression and parole in Scotland. All members are former long-term prisoners who remain subject to the system and who have sought to address progression related issues professionally and academically for some time.

SPARC’s most recent informal consultations with VLTPs were concerned with progression and parole. One complaint was about both false information and withholding relevant information to progression. This resulted in an FOI request. Another individual was seeking support in pursuing

a judicial review to challenge delays, parole proceedings and misapplication of risk scoring tools. Whilst searching for relevant judicial reviews for this client's request, we found that in searching for "prison" in the judicial review judgements more than a third were in relation to parole and/or progression.³³

Survey data from HMIPS, and their 2020-2021 report, stated delays in progression and parole remain the greatest concern for survey respondents.³⁴

Risk categories

Unlike the A – D category system for men in England and Wales, Scotland categorises prisoners as high, medium, or low risk.

- High Supervision: an individual for whom all activities and movements are required to be authorised, supervised, and monitored by prison staff.
- Medium Supervision: an individual for whom activities and movements are subject to locally specified limited supervision and restrictions.
- Low Supervision: an individual for whom activities and movements, specified locally, are subject to minimum supervision and restrictions. Low Supervision prisoners may be entitled to release on temporary licence (ROTL) and unsupervised activities in the community.

There are no A – D category prisons in Scotland. There are high, medium and low category prisoners in most halls in most prisons in Scotland. With the exception of the OE and Community Custody Units (CCUs) all prisons in Scotland are high security establishments. This means that a hall with low category prisoners is housed in a high security building which has implications for both the culture and opportunities available within it. Even purpose-built community testing facilities for men with a less restrictive regime such as NTE, are housed within high security prisons such as HMPs Barlinnie and Greenock. This is despite United Nations guidelines stating prisons should avoid housing low risk individuals within high security prisons. This is particularly difficult for VLTPs who are required to demonstrate behavioural compliance, the addressing of offending behaviours, and readiness for less secure conditions, while remaining for long periods in high-security environments. VLTPs who have progressed to NTE are subject to, and limited by, the overarching culture and governance of the high security closed establishments. They also attend work, education and/or training among the mainstream and short-term population whose risk, needs, volatility and priorities are distinctly at odds with VLTPs.³⁵

Regime categories

Closed conditions –

- High Security Specification for all categories of prisoner.

National Top End (NTE) –

- Less secure testing facilities for Lifer and some LTPs.
- Two operational adult male facilities: Chriswell House and Letham Hall, housed inside high security prisons HMPs Greenock and Barlinnie.
 - Operating at limited capacity, each unit has 72 and 64 beds respectively.

Open Estate –

- Scotland only has one open prison, HMP Castle Huntly, with a capacity of 285. At the time this data was collated it was running only at half capacity.³⁶
- Minimum security, life and long-term sentenced prisoners.
- The OE for women was formerly located at HMP Cornton Vale which is now HMP/YOI Stirling, a national closed facility for women.
 - Two new CCUs for women have opened: the Bella Centre and the Lilius Centre which function as both NTE and OE. There is a combined capacity of 40 spaces.

Progression pathways

The SPS states that it, "...seeks to provide a life sentenced offender with a reasonable opportunity, by the time of the punishment part expiry (PPE), to demonstrate that they are suitable for release by the Parole Board for Scotland" and that this "...should commence no earlier than four years prior to the expiry of their punishment part."

This four-year time frame is often colloquially termed the 'four-year window'. In a best-case scenario without setback or downgrade, this would equate to two years in the NTE and as close to two years as possible to transfer to the OE. As in England and Wales several issues can impact on the ability to move to NTE or the OE. These include:

- Positive engagement with the process including with staff.
- Participation in offence focused intervention programmes.
- Behaviour in custody.
- The requirement for a low-risk supervision level.
- The management of mental ill health and/or addiction issues.
- Security concerns or adverse intelligence including suspected involvement in organised crime.

The availability and demand for spaces within these facilities has contributed to a bottleneck for progression to NTE and can impact timing for progression to both NTE and the OE. An accumulation of these issues sees many Lifers passed the point of their qualifying dates for NTE or the OE or fast approaching their PPED before having the opportunity to progress. Research suggests this was true of 16% of Scotland's Lifer population – this same study also found 60 Lifers who were at least four years beyond their PPED.³⁷

Lifers need to be tested in the community at NTE to evidence a reduction of risk. This is typically done through home visits with two or three accompanying staff, these are known as Secure Escorted Leaves (SELs). An Unescorted Leave (UL) allows a prisoner to attend appointments and work placements, education or training in the community. Eventually this will lead to Home Leave in the OE (including to a secure hostel in partnership with SPS). Progression through these stages is dependent on decisions made by the RMT who will decide what level of access is granted at each stage of the progression regime and consider when to apply for First Grant of Temporary Release (FGTR). The SPS states that although the progression pathway is laid out in a linear format:

These steps need not be prescriptive, and the actual testing required is a matter for the Risk Management Team (RMT) to consider and the steps necessary to allow the offender to demonstrate that their risk is manageable and that they are suitable for release.³⁸

However, both NTE and the OE appear to work to a prescriptive standard. This can mean additional time for Lifers by either reducing the time they could have spent in less secure conditions with community access, or as is commonly the case, by extending the overall time they spend in prison.

The progression pathway for OLRs typically reflects that of Lifers, though the relatively short minimum tariffs they receive affect what they can consider their 'window' for progression. This is usually no earlier than two years prior to the expiry of their punishment part for OLRs. This creates issues for this group, for example a three-year minimum tariff, would mean that in theory they may be eligible for NTE after serving a year of their sentence. However, this time frame is not likely enough time to address their risks and needs, not least in terms of participating in offence related programmes or other interventions deemed necessary by the RMT. As such these 'short' tariffs can be considered confusing and problematic as these individuals are unlikely to fit into the standard progression model due to their high needs and risks. 74% of OLRs are over tariff. Many are unable to demonstrate to the Parole Board that they are suitable for release on or around their PPED. While it is possible for an OLR to be transferred to the OE from a closed establishment, or released into the community from closed conditions this is unlikely given this group will need to satisfy the Parole Board the test of release is met. Therefore, OLRs are typically marked by the same problems as Lifers in terms of progression and timescales.

All OLRs are subject to an individual specific Risk Management Plan (RMP) in custody which is managed by the prison and audited by the Risk Management Authority (RMA). The standards and guidelines set by the RMA require the Lead Authority, that is, prison, State Hospital or Local Authority, to set out the requirements of the RMP and evidence how these objectives will be met. In terms of progression the RMP should also demonstrate collaboration with community-based partners, including social work to inform plans for progression and community access. In other words, a community facing RMP should be in place for the Parole Board to view. For OLRs the RMP will be in place for the rest of their lives whether in prison, State Hospital, or the community.

The means of progression

SPARCs interactions with those in custody continuously highlight risk practice issues.

Specifically, we received complaints about the misapplication of risk scoring tools, which informs behaviour management and other course requirements. There have been a number of issues around the primary risk scoring tools applied in Scotland, namely the Level of Service/Case Management Inventory (LS/CMI) and the analysis of Risk of Serious Harm (RoSH) which some in custody felt was being applied as a blanket measure to those who evidenced no problems with escalating violence. More broadly, it can be an issue at the OE for those who arrived having met the SPS wide generic criteria for progression were subject to a RoSH assessment before being granted community access, meaning it was months before people could begin the process of home leave. The issues that have been brought to the attention of SPARC have also been highlighted by the Scottish Government.

Sentencing trends

The introduction of the Prisoners (Control of Release) (Scotland) Act 2015 abolished automatic early release for long-term determinate sentenced prisoners. However, if a prisoner engages with progression and parole services, they may be eligible for release at 2/3rd if the Parole Board grant this. Should this not be the case, a determinately sentenced LTP will not be eligible for release until six months before their punishment part end date. In the case of an extended sentence, an individual will serve their whole sentence in custody unless the Parole Board recommends early release. They will then serve the rest of their sentence (the extension part) in the community. These changes have likely led to an increased population of prisoners who will spend 10 or more years in prison while creating the probability of increasing demand for the already limited spaces on offence focused programmes at NTE and the OE.

Section 3: Rapid Literature review

The initial plan for this report was to undertake a standard literature review of mostly academic papers. However, it became quickly evident that there is an absence of peer reviewed journal articles in this area, and so we included grey literature such as policy papers and SPS internal research documents. Another observation made early on, was within both the literature and policy documents, there was no mention of a very long-term prison population as a group. Therefore, our search strategy examined studies dealing with life serving prisoners, as this group comprise a large segment of the 10 years and over group who may have had a similar experience of imprisonment. Whilst this may be viewed as an assumption – this choice is informed by our own experiences as a group of ex-prisoners.

In Scotland as of 23 May 2022 there were 1,044 people serving a sentence of 10 years, with more than 2/3rds of these being life sentenced prisoners and just under a third being determinant sentences. The remainder serving an OLR.³⁹ According to the SPS quarterly public information page,⁴⁰ the convicted population within Scottish prisons was 5,300. Assuming this was still roughly the same six months later, this means almost 20% of the convicted population in Scottish prisons is serving 10 years or more constituting the VLTP group.

Research from Kelly and colleagues surveyed 197 long-term prisoners who were seeking early release on parole. Whilst this study does not fit neatly within the terms of reference for this review, it is not unlikely that a large number of the respondents would have been serving very long-term prison sentences, given that 20% of the population is within this group. This research revealed that prisoners did not understand the parole system and “did not feel fully engaged in the process.”⁴¹ The authors identify current parole research as predominantly concerned with the parole process or with recall, this research aimed “to understand the experiences of the many actors in the process, including prisoners who are eligible to participate in the parole process.” The surveys had a low response rate of around a third partial completions (38%) with the largest number being from Lifers (45%) and OLRs (35%). It is noteworthy that despite the limitations of the study in that only those who could read and write well enough could participate – it indicates that many of the individuals who were able to do so still failed to fully understand

the parole process. A FOI request in 2015 showed that only 30% of the Scottish prison population were literate,⁴² therefore understanding an inherently complex process is likely to be an obstacle for those serving very long-term prison sentences.

These concerns were echoed in a SPS internal research document by McAllister.⁴³ She identified various themes in regards to a prisoner's difficulty in navigating the progression system, these included an acknowledgement that NTE is not fit for purpose, and that "a lack of awareness of the difficulties prisoners face because of institutionalisation is evident [and that] this creates a 'them and us' atmosphere and attitude".⁴⁴ This in turn 'heavily influenced' an individual's ability to navigate the new conditions at NTE and contributed to their lack of progression to the OE. McAllister noted this often resulted in increased drug taking, which then placed the life serving prisoner deeper into a cycle of limited progression and downgrade. Lack of progression can lead to frustration and often impact relationships with staff. It was identified that the support of a personal officer is a crucial factor in making it to the next state of progression.⁴⁵ These findings highlight the importance of staff support and may indicate a need for staff training in this area. Understanding the diversity of needs and complexities within the prisoner group and how to respond to these needs effectively, building relationships of dialogue and reciprocity should help to alleviate some of the pressures on prisoners. Whilst this research project has not undergone the process of peer review, it is included here as it shows that progression-based issues have been highlighted to the SPS in previous years.

A further internal piece of research by Lorna Gray who is now Head of Psychology for the SPS found "according to the Scottish prisoner records system (Pr2), 133 (16%) of life sentenced prisoners are past, or fast approaching their PPED."⁴⁶ In Ceesay's forthcoming publication which also derived data from Pr2 it is indicated that the total number of Lifers, including recalls and OLRs that are post tariff is around 29%.⁴⁷

Van Zyl Smit and Morrison⁴⁸ show that despite Scotland's rhetoric of penal liberalism it currently oversees a higher prison population per capita than any other nation in Western Europe.⁴⁹ Their research into life imprisonment in Scotland highlights the increase in sentence lengths for those convicted of murder and the impact of OLRs on the VLTP population.⁵⁰ From 2007 to 2016 Scotland witnessed a large increase in the numbers of life sentenced prisoners and the steady use of the OLR which became available to the Scottish Courts in 2006 (see table 3). There may be a discrepancy in how many life sentenced prisoners are in Scottish prisons. Table 1 (section 2) is taken from information gained through a FOI request. This showed 698 lifers in Scottish prisons. Table 3 shows a steady increase to over 872. This means 274 life sentenced prisoners would need to have been released in six years with no one else receiving a life sentence, despite us knowing that only 32 of the 434 who applied for parole in 2019/20 (7%) were released.⁵¹ 37 of the 494 (7.5%) who applied for parole were granted release in 2020/2021.⁵² This means there is a real possibility the number of VLTPs in Scotland is larger than 20% of the convicted population indicated by the FOI (due to the parameters of the research and the definition of VLTPs within this). In 2022 the total number of active OLR cases in Scotland was 202 according to the RMA.

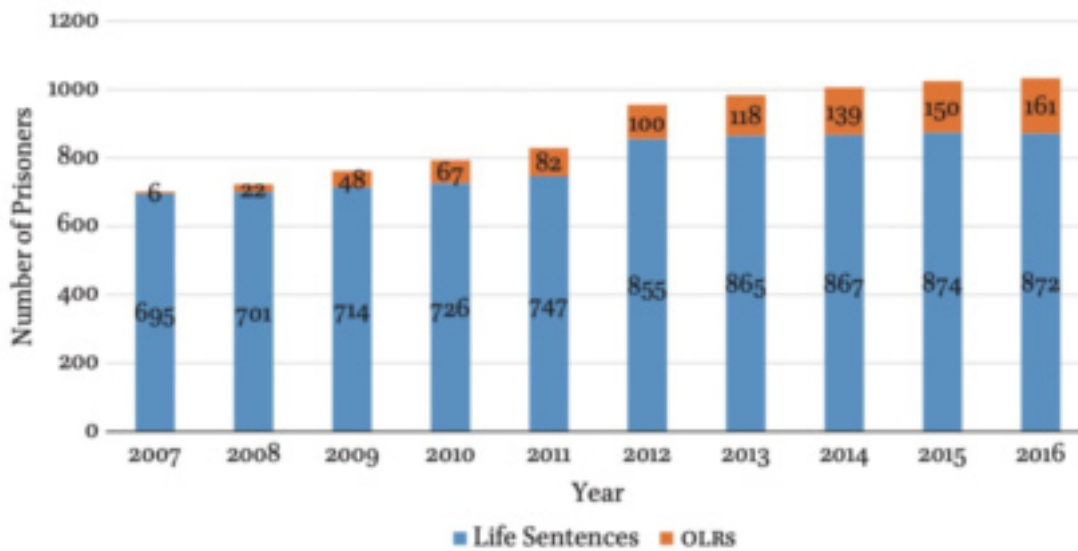


Table 3. rise in both life sentenced prisoners and OLRs

Ceesay’s small scale qualitative analysis of the custodial journeys of life sentenced prisoners in 2021-22 sought to explore the progression of 12 individuals subject to a life sentence (including two OLRs) through custody in Scottish prisons. She found that the system can often act as a barrier to progression due to an overbearing focus on risk management which detracts from the identification of needs which have not been met. The prioritising of a risk-based approach rather than a needs-based approach results in longer in the system, further harm and the re-traumatisation of life sentenced prisoners who often have a range of vulnerabilities not unlike those present in other groups.⁵³

Armstrong highlights the punitive trends of prisons and courts which are predicated on notions of care, rehabilitation and rights in the European context.⁵⁴ Yet in Scotland prison is being redefined in terms of longer spells in custody on the basis that this is “helpful and supportive...by [providing rehabilitative courses]”, but this deflects attention from the innate damage done by prisons. For Armstrong, rehabilitation provides a trump card that works to cover and to excuse the arbitrary exercise of power.

Padfield notes that the threshold Lifers are required to meet is extremely high relative to their perceived risk.⁵⁵ The impetus is not on the state to prove their continued need to be detained (this is effectively taken for granted by nature of the sentence), it is on the prisoner to meet the critical tests required to satisfy the Parole Board. This is significant as in the case of serious violent offenders (who are the overwhelming majority of life sentenced prisoners in Scotland) these tests may not indicate the inherent dangerousness of the individual and may not be able to adequately determine risk of further offending in terms of comparable or greater harm, as outlined by Bushway.⁵⁶ These tests appear to carry more weight than the absence of further violent or serious offending in custody. Padfield also points to the significant bureaucratic hurdles of the progression and parole system in the UK, and while she focuses primarily on England and Wales, her analysis is relevant in terms of the similarities of the processes and systems. Padfield states that prisoners face unclear pathways through the minefield of the prison with many powerless in the face of an apparently uncaring and unpredictable system. Their sentence is shaped by:

...decisions made about them and imposed upon them. Important decisions affecting the course and length of a sentence are taken by distant, anonymous prison authorities (allocation, categorisation etc.), as well as more visible prison authorities (incentives and earned privileges, access to courses, release on temporary licence, adjudications, HDC etc.), the Parole Board (some releases, more re-releases) and the courts (appeals, judicial review). There is little that is systematic in the hierarchy of decision making. Legal advice is often not available, and even practical advice may be hard to access. Luck plays a significant part in a prisoner's progress e.g., in whether they find staff who have the time and commitment to champion their progress. Widespread variations in treatment undermine perceptions of legitimacy and leave prisoners feeling both frustrated and disaffected.

There is a wealth of research on risk prediction by those who challenge its efficacy such as Farrington. In particular the projected homicide risk where a substantial proportion of those indicated as posing a future risk did not go on to perpetrate a homicide.⁵⁷ Those considered to have developed some of the most empirically sound studies of risk prediction, such as Bushway argue for young first-time offenders, after seven years of abstaining from offending, the risk of reoffending is comparable to and in some cases lower than a person never convicted. For persistent offenders this is between 10 and 15 years.⁵⁸ The latter argue that after three to five years of no offending the predictive risk of past offences is effectively zero.⁵⁹

In which case we might ask, what is classified as a risk and on what grounds? For example, if a person is held for six years over their tariff because they have continued to fail drug tests. This may be justified in practice when drug use was a factor in the commission of the offence for which the sentence was imposed. The continued presence of drug addiction is viewed as a risk promoting factor and therefore synonymous with risk of further reoffending in the community. But how much weight can we place on this factor of addiction? If the same individual in custody has maintained a drug addiction since the index offence and has engaged in drug seeking and procuring, during his or her time in prison, but has not been involved in violence, the emphasis placed on substance misuse may not be proportionate. The literature indicates the presence of addictions is of little predictive value. Insistence in treating such factors as risk promoting can be viewed as symbolic punishment, or a moral stance that must be factored into our assessment of who is considered risky.⁶⁰

This is a noteworthy concern in the light of Scotland's drive to be seen as an international leader in rehabilitative, as opposed to punitive, approaches to punishment.⁶¹ Evidencing a prisoner's successful rehabilitation and progression through proactive engagement with prison activities has become increasingly important. Consequently, the rehabilitative model, coupled with simultaneous risk aversion, has legitimised ever longer spells of imprisonment. Longer sentences, with the dual aim of punishing and 'meeting the needs' of those in custody before considering them for release may be construed as effectively criminalising public health concerns like addiction and mental ill health.⁶² This is echoed in Padfield's critique of the English and Welsh parole system where she states that:

Prisoners who fail to co-operate consistently with the authorities, and who fail to establish that they are seeking pro-social relationships are unlikely to impress the Parole Board. If illegal drugs are a risk factor, then a recent positive drugs test will be a strong negative. Providing that it is safe to release a long sentenced prisoner in a difficult and unsafe environment is nightmarishly difficult.⁶³

Moving on from the academic literature, the Chief Inspector of Prisons in Scotland identified progression as a major area of concern stating there was, “a level of confusion, anxiety and frustration amongst prisoners”. This has led to a significant number of prisoners not able to progress appropriately through their sentence due to a lack of availability of, or capacity within, treatment programmes.⁶⁴ As part of this evidence review, we searched all judicial reviews concerning Scottish prisons and found a large number were about progression and rehabilitation courses. Due to time constraints we took snapshot data by examining the first 10 pages of the reviews, this revealed that more than a third were related to progression and parole issues for LTPs.⁶⁵ Whilst not all of them will be from the VLTP population, we are making the assumption that this will impact them in similar ways or worse than a determinately sentenced prisoner serving less than 10 years for men or eight years for women.

Section 4: Current debates around reform

VLTP specific developments

- Sentencing structures, thresholds and tariffs have made sentences longer and more punitive in recent years.⁶⁶
- The means of progression has become more difficult, and parole has become harder to attain (12% granted in the case of lifers).⁶⁷
- SPS states it is moving towards a holistic approach that does not place primacy on programmes and interventions.
 - Two years later programmes are still an important factor which may point to an overdependence on these.
- Risk practices have been amplified in recent years, particularly due to high-profile incidents which have affected changes to internal SPS assessments and in the Parole Boards (review of processes).⁶⁸ There have also been changes routed in victims’ movements such as the presence of victims at parole hearings and requiring Parole Board members to provide a direct written justification to the victim of their decision should they grant parole.⁶⁹
- Delays and backlogs are an issue.
- Attempts have been made by the Scottish Conservatives to introduce whole life sentences for the ‘worst offenders’. While this was rejected by the government it was done so primarily on the grounds that Scotland already retained the ability to hold those it deemed too dangerous indefinitely, including till the point of their death. In so doing they argued that there was a lack of need for such sentences.⁷⁰

A largely punitive trend towards longer sentences, tighter restrictions, limited opportunities for release and increased probability of recall is set against a backdrop of often hostile public and political punitive sentiment which feels justice in Scotland is ‘soft’ and focused on the rights of those who offend rather than victims.

Broader developments that have had consequences for the VLTP population

- Scotland has made attempts to modernise the prison system. However, many establishments are still unfit for purpose, most notably the largest male prison HMP Barlinnie which houses NTE. Also, the OE facility for men at HMP Castle Huntly where VLTPs will be tested prior to release.
- Scotland is heralded as introducing progressive evidence led policies,⁷¹ however these have often focused on young people and women in custody. Research grant applications to the SPS account for over 80% for these groups even though each group constitutes just five percent of the prison population.⁷² There has been a commitment to complete the physical and philosophical transformation of the women's estate. The aim here is to support trauma informed practice in safe and therapeutic spaces that target the multiple forms of trauma and abuse leading many women and young people to offend, and to support parental/familial and community links which promote resettlement and reintegration.⁷³
- A large AHRC research project focused on LGBTQ+ prisoners (as part of which a SPARC member undertook their Masters degree) and the development of a transgender inclusion policy.⁷⁴ This is significant to the LGBTQ+ prison population broadly but particularly in respect of transgender VLTPs who now have the opportunity to serve their sentences in environments that reflect their gender identities.
- Greater recognition of developmental issues such as Adverse Childhood Experiences (ACEs).
 - The ACE framework was incorporated by the Scottish government and Police Scotland with its supporters hoping to make Scotland the first 'ACE-aware nation' in the world.⁷⁵
 - There are many criticisms of the ACEs framework, including that its focus can unfairly stigmatise and pathologise individuals whilst attributing criminogenic behaviours to personal and developmental failings. This obfuscates environmental and socio-economic factors such as inequality and other forms of disadvantage and how these influence crime and criminal behaviour.⁷⁶
- Following a report from the Scottish Sentencing Council Scottish Judges were advised to consider an individualistic approach for sentencing those under 25 years old, in which life experiences and brain development inform sentencing.⁷⁷
 - This has met several of the same criticisms as ACEs and falls foul of counter claims challenging the efficacy of Western developmental brain science more broadly. Specifically, it has been accused of bolstering a dichotomising narrative, juxtaposing children's innocence, and lack of agency against adult culpability and deservingness of punishment.⁷⁸

Most reforms are not directed specifically at the VLTP population. Moreover, the extent to which these reforms can be considered victories remains to be seen. We do not know what the outcome or benefit of these new environments or regimes will be. In Scotland we look to the Scandinavian model in a bid to emulate their success but cannot know how this may be enacted within the legal context and culture of Scotland's criminal justice system. What is noteworthy however, is that such policies are believed to be progressive, and that they have been successfully advocated for on behalf of the distinct pains attributed to their respective interest groups. Yet there is a lack of energy and focus on the VLTP population and in particular adult men. Diversity concerns, while necessary, must also be weighed against this same criticism, in so far as policy makers and practitioners within

SPS and outside bodies such as HMIPS express an outsized focus on minority concerns. This focus neglects the majority of Scotland's prison population which is 95% male, 97% heterosexual, and 96% white. It seems to us to be ironic that our largest population are being neglected in both the policy and academic arena.

Section 5: Prisoner engagement in Scotland – prisoner networks in Scotland

Peer-led initiatives in Scotland are in early stages of development and are experiencing varying degrees of success. Groups focused solely on prisons and prison reform are few – with SPARC (to our knowledge) being the only group of ex-prisoners who have served more than a month or two in prison and who are advocating on behalf of prisoners.

The following have been identified as peer-led initiatives or groups active in the area of prison reform/change in Scotland.

CISCO

For the past five years CISCO have been developing and delivering recovery initiatives within the SPS. Their model was set up to offer multiple pathways to recovery and is fundamental to individuals caught up in the cycle of addiction. They offer prisoners who have complex needs a safe environment to address trauma caused by addiction. CISCO run events across Scotland and have good links with the SPS.

Inside Out

Inside Out is a youth-led steering group for care-experienced young people and adults in HMP YOI Polmont and is part of Staf and CYCJ's Youth Justice Voices project. Through pro-social and creative participation activities the young people "speak out" to improve the care and justice systems. With YJV's and Barnardo's support they created a national newsletter to combat boredom and isolation. They have worked collaboratively with the Children's Commissioner to create 'Know Your Rights in Custody' and are creating guidance and resources based on their own experiences to help other young people.

SPARC¹

SPARC (Scottish Prisoner Advocacy and Research Collective) comprises of doctoral candidates and researchers many of whom have personal experience of long-term imprisonment. As well as being committed to penal reform here in Scotland, we also welcome outside expertise and will consider any future involvement such as sharing introductions to wider networks on a case-by-case basis.

HMIPS prison expert group*

HMIPS have established a lived experience expert group to ensure they are carrying out their function to the best of their ability. Members are drawn from those currently serving prison sentences and those with recent lived experience. SPARC is a member of this group alongside other organisations such as the Wise Group and AidnAbet.

The Wise Group*

A Scottish Social Enterprise group focused on elevating poverty, with a work stream specifically on community justice. Wise offer peer mentoring for individuals leaving the criminal justice system (CJS) - with many of their mentors having direct experience of the CJS. As an organisation Wise are active in pursuing policy change for those leaving prison. Wise offer mentoring to short-term sentenced men, and women serving prison sentences through Shine Women's Mentoring Service.

AidnAbet*

A peer led organisation offering a peer-mentoring support service to people on release from prison in the Edinburgh and Lothian's area. This group was founded by individuals with lived experience of prison. During a consultation with this agency, they highlighted an interest in becoming involved with future PRT initiatives in Scotland. They were also keen to make arrangements for PRT representatives to meet with SPS contacts, and other third sector organisations who may also further the aims of important work being done. However, they were keen to point out this would be on a case-by-case basis.

CAP Scotland*

This is a newly established group of people frustrated with the cycles of penal reform in Scotland who are working together to stimulate radical thinking and action on punishment from the grassroots up.

Drug support groups

There is a lot of interest and activity in Scotland around drug use linked to the high level of drug related deaths, and Scottish government's Drug Death Task Force. Although not focused directly on prison(ers) issues, there are some organisations working in this area within Scottish prisons such as CISCO and others.

Creative Arts*

There are a number of creative arts organisations in Scotland who work with, and in, the Scottish Prison system. This includes *VoxLiminus Distant voices project* which paired songwriters with those who have experience of the CJS to write and produce songs about crime, punishment and reintegration.

Academics*

We met with various academics, both early career and those more established. There was a sense among them that SPARC might be inadvertently naive in our decision to collaborate with the Prison Reform Trust with a concern that we could be used for our contacts as a 'way in through the back door'.

Additionally, a few expressed worries about a trend they've observed throughout their careers: London-centric organisations entering Scottish affairs and dominating discussions with perspectives that don't quite align with the prevailing sentiments or mood in Scotland. This, they cautioned, could lead to our own viewpoints and involvement being overshadowed, similar to how debates are often skewed in favour of London in England and Wales, particularly in matters of penal reform and other public sectors.

The academics highlighted the importance of SPARC remaining vigilant to ensure our collaboration does not inadvertently mirror the north-south resource allocation disparity seen in England and Wales, and that we contribute positively without deepening any divides.

Section 6: Conclusion

Evidence within the academic literature as well as statistics released by official sources such as the Scottish Government and the SPS highlight that the VLTP population is growing and will be an important area of penal debate and reform in the near future. PRT's interest in this area is therefore significant for Scotland as there is currently no specific literature on this population. The problems faced by VLTPs are not dissimilar to those faced by prisoners in England and Wales. Sentences are increasing as well as the use of imprisonment which is putting pressure on already scarce resources such as offender rehabilitation courses and spaces in open prisons.

In Scotland there are at least 1,044 people serving sentences of 10 years or more, which is 19% of the total population as opposed to 16% in England and Wales.⁷⁹ With the continued use of OLRs and increasingly high rates of recall, this percentage may become even higher. The average sentence for murder has increased whilst the rate of successful parole applications has more than halved in the last 20 years or so. However, current penal reform debates in Scotland barely cover this rise in people serving over 10 years – although issues affecting parole such as the use of risk assessment tools and an over reliance on coursework have been highlighted previously. Ironically, this largely punitive trend in Scotland is against the backdrop of claims and presumptions that the Scottish criminal justice system is less punitive and more progressive than in England. A belief so commonly held that 'soft touch Scotland' is continually levied by politicians and the tabloid press.

Peer-led initiatives in Scotland are largely in their infancy when compared to other jurisdictions. There is a real feeling that prison reform here is a Scottish issue which should be handled largely by people in Scotland. However, external expertise in setting up initiatives which have worked well in other jurisdictions should not be discounted, as long as concerns of London-centric justice narratives dominating Scottish debates are taken into account along the way.

In outlining the problems faced by VLTPs in Scotland, this scoping study has highlighted areas where prisoner networks are needed to increase the transparency of the issues. For example, networks which can directly challenge policies around the overuse of risk tools and the overuse of programmes. This paper has highlighted partners who can be supportive of networks aiming to work towards the progression and parole of the VLTP population, both serving and released. In undertaking the work for this project, the development of peer-led networks across the Scottish prison estate has been welcomed by other groups, and individuals with lived experience.

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Section 7: Glossary

CCUs – Community Custody Units

HDC – Home Detention Curfew

HMIPS – HM Inspectorate of Prisons Scotland

FGTR – First grant of temporary release

ICM – Integrated Case Management

IPP – Imprisonment for Public Protection

LTP – Long-term prisoners

NTE – National Top End

OE – Open Estate

OLR – Order of Lifelong Restrictions

PPED – punishment part end date

RMA – Risk Management Plan

RMA – Risk Management Authority

RMT – Risk Management Team

RoSH – Risk of Serious Harm

ROTL – Release on temporary licence

SELs – Secure Escorted Leaves

SPARC – Scottish Prisoner Advocacy & Research Collective

SPS – Scottish Prison Service

UL – Unescorted Leave

VLTP – Very long-term prisoners

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The logo for the Prison Reform Trust, featuring the words "PRISON REFORM TRUST" in white, uppercase, sans-serif font, stacked vertically on a dark red rectangular background.

**PRISON
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About the Prison Reform Trust

The Prison Reform Trust is an independent UK charity working to create a just, humane and effective prison system. For further information about the Prison Reform Trust, see www.prisonreformtrust.org.uk/