Committee for Justice

OFFICIAL REPORT (Hansard)

Commencement of Articles 19, 20, 26 and 30 of the Criminal Justice (Northern Ireland) Order 2008: Department of Justice Officials

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Members present for all or part of the proceedings:
Mr Alastair Ross (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sammy Douglas
Mr Paul Frew
Mr Alban Maginness
Mr Patsy McGlone
Mr Edwin Poots

Witnesses:
Mr Alan Smyth Northern Ireland Prison Service
Mr Paul Doran Northern Ireland Probation Board

The Chairperson (Mr Ross): I welcome Alan Smyth, head of licensing and legislation in the Prison Service, and Paul Doran, deputy director of the Probation Board for Northern Ireland. I remind you that a Hansard report of this session will appear in due course. When you are ready and in your own time, you can brief the Committee, after which I will open it up to questions.

Mr Alan Smyth (Northern Ireland Prison Service): Paul and I are grateful for the opportunity to talk to your Committee again about the Department's plans to commence articles 19, 20, 26 and 30 of the Criminal Justice (Northern Ireland) Order 2008. As you know, these cover two quite separate aspects, namely a conditional early release scheme for prisoners together with certain ancillary powers regarding recall and curfews and then a separate power to release prisoners on compassionate grounds in exceptional circumstances.

The Justice Minister wrote to you on 19 May setting out his plans in some detail. I do not intend to take you through every last line of that letter but will instead try to pick up the salient points. I will also try to cover some of the concerns that were raised the last time officials gave evidence. I am conscious that the Minister covered much of this in an earlier written reply to your then Chairman, but I am equally conscious that a few of you are coming to this for the first time.

I should like to begin by saying something about conditional early release. It is not a particularly novel idea; it has been utilised for some time now in other jurisdictions as ideas on how best to rehabilitate and resettle offenders change and develop. Indeed, more extensive early release schemes already exist in Great Britain and the Republic of Ireland. For example, England and Wales, together with Scotland, operate home detention curfew arrangements, while the Irish Prison Service launched a community return scheme in 2011. These schemes see sizeable numbers of prisoners released early from the custodial parts of their sentences.
It is an accepted fact that everyone receiving a custodial prison sentence has been found guilty of breaking the law and is being punished for that by the deprivation of their liberty. However, the Department believes that a small number of prisoners who present a low risk of reoffending and who have been model prisoners during their time in custody should be given the opportunity of early release, under strict licence conditions, for rehabilitation and resettlement purposes. In introducing this scheme, the Prison Service and Probation Board hope to demonstrate that we are forward-thinking, progressive organisations that reward hard work and exemplary behaviour and, in doing so, help some low risk offenders reintegrate back into society more quickly. However, our scheme is deliberately restrictive because we want to maximise public confidence in it and in the wider criminal justice system, and we only want to facilitate the release of the low-risk model prisoner.

A number of members previously raised concerns that the Department is motivated by a drive to reduce prison numbers. That is simply not the case. Article 19 provides the Department with quite a wide-ranging discretionary power to release prisoners early. Although it includes a number of statutory disqualifications, the way it is written means that many prisoners could qualify for early release if we were so minded. To address this issue, we have included a number of tests, which have been drawn up to ensure that only those offenders who have demonstrated that they pose a low risk of reoffending, have been well behaved whilst in custody, have approved, stable and supportive accommodation in the community and have complied fully with all conditions imposed during any early periods of temporary release would qualify to be considered for early release.

To underpin our desire to maximise public confidence in the scheme, we have now further tightened these original qualifying criteria by including a number of offences that will give rise to a presumption that a prisoner is unsuitable for early release. These exclusions follow closely those offences that are already applied in Great Britain on a non-statutory basis and that deem the applicant to be presumed unsuitable for home detention curfew. They identify prisoners who have been convicted of a crime, the serious nature of which makes them unsuitable for consideration for early release, and who, if so released, could undermine public confidence in the scheme and, by association, the wider criminal justice system. While these excluded offences will not preclude an individual from applying for conditional early release (CER), their existence will deem the applicant unsuitable for release unless they are able to convince the governor that exceptional circumstances exist to support their release and that such a release will not have an adverse effect on public confidence.

That said, given the serious nature of the types of offences that will bring an offender into the presumed unsuitable category, it is doubtful that many of them would be deemed as presenting a low risk of reoffending.

The Deputy Chair, Raymond McCartney, previously raised some concerns about how the scheme would operate. I can confirm that prisoners will have to apply and that applications will be subject to review against the set criteria. If an applicant passes all the tests, he or she will qualify for conditional early release. When commenced, the power vested in article 19 of the Order will be exercised by the Prison Service on behalf of the Department of Justice. Early release licences will include those standard conditions set out in the Criminal Justice (Sentencing) (Licence Conditions) (Northern Ireland) Rules 2009. The licence may also include such other conditions as may be required by the sentencing court and such other conditions as the Department deems necessary. The licence will also include a curfew condition provided for under article 26 of this Order that will require a released prisoner to remain at a particular place for a set period each day during the early release period. That period cannot be less than nine hours in any one day. Prisoners who fail to comply with licence conditions may be recalled to custody at any time before the custody expiry date is reached.

Given the preparatory and assessment work that will be involved in considering an application for CER, a period of up to four weeks from the date the application is received is allowed before release takes place, if that is granted, although every effort will be made to complete within three weeks. In addition, to avoid an early inundation of applications, prisoners will not be able to make an application until eight weeks before their CER date.

Articles 26 and 30 of the Order will be commenced at the same time as article 19. They provide for individuals released under article 19 to be subject to a curfew, as explained earlier, and to recall during the early release period.

I reiterate that the scheme is for low-risk offenders only and specifically excludes those guilty of more serious crimes, regardless of risk. It is therefore expected that very few of those released early will have victims registered with the prison release victim information scheme. However, in the event that
they do, the victims will be informed of the pending release and the reasons for it under normal prisoner release victim information scheme arrangements.

Why introduce it now? It is a legitimate question. The Committee is aware that the Department has been considering the early release of some categories of prisoner for some time now. However, that has required a large number of technical changes to our information management system and in-depth discussions with probation colleagues, our legal advisers and prison-based administrative and operational staff. With all of the preparatory work now complete, this period, just before the summer, is the ideal time to launch such a scheme. With the courts in recess during much of July and August, the reception and turnover of prisoners is less than during other times of the year. That reduction in normal business will give our establishments time to process the initial number of applications and embed the scheme properly. The scheme will be subject to a review process when sufficient out-turn data is available.

I will quickly turn to release on compassionate grounds. Article 20 mirrors article 7 of the Life Sentences (Northern Ireland) Order 2001, which deals with life sentence prisoners only, by providing for the release on compassionate grounds of all other categories of prisoner if the Department is satisfied that exceptional circumstances exist that justify such a release. As with lifers, the qualification bar will be set at a high level. Such releases will only be considered in exceptional circumstances, ie, where a prisoner is nearing death or where his or her health has deteriorated to such an extent that he or she requires a level of round-the-clock intensive care that is impossible to deliver in a prison environment. We will take advice from our healthcare partners, the South Eastern Health and Social Care Trust, on those matters. Again, any victims will be informed of release under the normal prison release victim information scheme arrangements.

I hope you have found that helpful. Paul and I are now happy to take questions.

**The Chairperson (Mr Ross):** OK. I have a few questions before we open it up to other members. Anyone who has been at the justice seminars will appreciate that I am of the view that if we can avoid sending low-level offenders to prison in the first place, that is probably a good thing, both from an economic point of view and from a rehabilitation point of view, although I must say that I have some difficulty with somebody who has been given a sentence not serving that entire sentence. I think that is slightly different. I think that is something that it will be difficult to convince the public of as well. You mentioned the fact that the motivation and rationale behind it is not about trying to save money by getting people out of prison or to stop overcrowding. I suggest to you that the sceptic might think that the fact that there is overcrowding in prisons where there is a lack of prison officers may be part of the motivation behind it. How do you convince us that that is not the case?

**Mr Smyth:** There are two ways. First, the numbers of people who are going to qualify for it are really quite small. We are talking about around the 35 mark between now and the end of June, in the initial bump. Thereafter, there will be about 50 prisoners left in the system who are in prison now, who will qualify for it. Others will come on stream as their sentences come into the system.

Secondly, as I said earlier, article 19 of the Order as drafted would give the Department quite extensive powers to release large numbers of prisoners if it was so minded, but we do not want to do that. We do not think that it is beneficial. We want to concentrate only on those low-risk prisoners who we think would benefit from getting back into society a little bit earlier.

**The Chairperson (Mr Ross):** We have had quite a bit of discussion in the last few weeks about the powers that the Department has. In terms of the powers that the Department has on this, what is the role for this Committee and the Assembly, or can the Minister go ahead and do it without any formal —

**Mr Smyth:** This Order came into place before devolution and has been on the statute book since 2008, which means that the Minister can commence articles of the Order as and when he sees fit. However, he wants to consult with the Committee before doing that and let it know —

**The Chairperson (Mr Ross):** But he could do it without the consent of the Committee or the Assembly?

**Mr Smyth:** That is possible.

**The Chairperson (Mr Ross):** In recent weeks we have heard from the Probation Board, which has highlighted that it does not have the staff numbers that it needs to monitor offenders living in the
community. If we were to release more offenders early into the community, and the Probation Board has already said that it does not have the required staff or resources, how can we be confident that there will be adequate monitoring of those who have been given early release?

**Mr Paul Doran (Northern Ireland Probation Board):** We have plenty of financial pressures, but I would emphasise that about 80% to 90% of those people would be coming out on licence to us anyway. It is just an earlier commencement of the licence period. As Alan said, they are low-risk offenders, and we anticipate that there will be a relatively low number of them. We are satisfied that we have the arrangements in place to safely manage them in the community.

**The Chairperson (Mr Ross):** You talked about early release to facilitate rehabilitation. I support rehabilitation as a sentence. Is there a mechanism whereby those who are given early release, rather than just being released to live their lives, albeit under some sort of curfew, could be given a community sentence under which they have to do some sort of work that pays their debt to the community in a different way, even for a short time? It strikes me that that might be a controlled way of transitioning them back into the general community. That might also reassure the public that, although they have been released from prison early, they are still repaying their debt to society in a more meaningful way.

**Mr Doran:** I can confirm that the prisoners who will be subject to licence will be eligible to undertake programmes to address offending behaviour. That can commence earlier, which is —

**The Chairperson (Mr Ross):** Will they be required to do it?

**Mr Doran:** If there are conditions on their licence, they will be required to do it. However, if there are no conditions, because they are still technically prisoners on early release, we cannot compel them to undertake a programme. They will be subject to curfew, as Alan said.

Our colleagues in the South have a scheme for undertaking reparative work. They have legislation there; Alan referred to community return. I met colleagues from the South last week, and it is a very impressive scheme, through which people get early release and undertake community service. We do not have the legislative authority to do that. It is something that PBNI would be keen to see at some stage in the future, but it is not available at the moment.

**Mr Smyth:** We considered putting such a scheme together, but, as Paul said, we do not have the authority or the legal power to do that.

**The Chairperson (Mr Ross):** It is something that I would be more comfortable with. It is a better way of dealing with it. If that means that we do not use the Order until we have that in place, maybe that is something that would be useful.

I want to make a couple of final points. When we talk about "unsuitable" individuals, I take it that we are talking about those who are in prison for terrorism charges or for violent or sexual offences and things like that?

**Mr Smyth:** Yes, exactly.

**The Chairperson (Mr Ross):** OK. How will victims of the people who are serving sentences for those types of offences be notified that a prisoner is being given early release as part of that process?

**Mr Smyth:** My sense is that, because we are dealing with the lower-end prisoners, there will not be very many people in that category. However, their victims will have the same rights as any other victim. They can make representations, and those will be taken into account when the licence conditions are being drawn up.

**Mr Douglas:** You have answered a couple of questions that I was going to ask. One of my concerns — I have spoken to the Chairperson about it this week — is around a protest at Stormont this week on behalf of a young man called Neil Nabney, who has major pain in his mouth. He has only a few months of his sentence remaining, but he was refused any medical treatment, even though a doctor and a consultant recommended it. His family and others were looking for early release for him. From what I know, he was arrested during the flag protests. How do you square things up for someone such as him? I know that you cannot delve into cases like that, but those situations will cause people
like me major problems if we release others. I see that as a genuine case. In fact, I gave a letter to the Minister from Neil Nabney's family.

Mr Smyth: I cannot talk about individual cases, but somebody like that could qualify for release under article 19. If his situation deteriorated and was exacerbated, article 20, which I talked about, deals with compassionate release. There is also a possibility that that could be used to release people who the South Eastern Trust reckons cannot be looked after, or who need intensive 24-hour care that cannot be provided, in a prison environment.

Mr Douglas: That is a good point, Chairman. If that will be the case, I would be very keen to support this for that type of person.

Mr McCartney: I think that you have addressed the concern that I raised the last time. If you fit the criteria, you should be released. Is that what you are saying?

Mr Smyth: Yes, if you meet all the criteria. It is quite a high bar to get over.

Mr McCartney: I know. I saw the criteria, and that is fine. It will not be some sort of thing where, say, we release 10 every month, and if there is 12 —

Mr Smyth: No.

Mr McCartney: That was my concern.

Mr Smyth: I know that that was your concern. That is why I specifically mentioned it.

Mr McCartney: And it is across the whole prison estate.

Mr Smyth: Yes.

Mr McCartney: Young offenders as well.

Mr Smyth: Yes. Over-18s.

Mr McCartney: As regards article 20, I was just reading that, currently, only life sentence prisoners can be released.

Mr Smyth: Yes. There is an anomaly or a lacuna in the law, whereby, under article 7 of the Life Sentences (Northern Ireland) Order 2001, life sentence prisoners can be released on compassionate grounds. We have used that provision twice since 2001. I think that we discussed that the last time.

This is a positive step for the Prison Service. Along with our healthcare partners, we can take steps to licence and release all the other categories of prisoners on compassionate grounds if they get to the stage that they are nearing death or need 24-hour intensive care that cannot be provided in the prison environment.

Mr McCartney: Is there no provision for that? Is there a way that the Minister can intervene, say —

Mr Smyth: At the minute, a non-lifer in that position would be released under rule 27. He would remain a prisoner and would not have that release.

Mr McCartney: OK. This would give him that definite —

Mr Smyth: Yes, this will address that.

Mr Poots: What happens with the victim of the crime if a prisoner is released at an earlier point than anticipated? Say someone has been involved in an assault and has been badly hurt. The offender will have gone through the whole process, and the victim will know that they have gone to jail and will anticipate that they will be in jail; however, they could walk down the street and bump into him. Will they be informed if that person is released at an earlier point?
Mr Smyth: Victims will be informed in the way that they are informed now. As I said earlier, because of the high bar that we are setting, the sort of people you are talking about are very unlikely to benefit from the early release scheme. Therefore, my sense is that there will be very few registered victims of the low-risk, well-behaved, model prisoners that we are talking about. If that were to happen, victims would be informed in exactly the same way as they are at the end of the custodial period.

The Chairperson (Mr Ross): No other member has indicated that they want to ask a question. I want to offer a personal view. I understand that those people may be involved in crimes such as fraud, but I still think that there is a public expectation that they repay their debt to society. I would perhaps wish to write to the Minister about the legislation in the Republic of Ireland and ask whether there is an intention to introduce something like that here and whether it would require prisoners to be given an early release. I am comfortable with that if they are still repaying their debt to society in a more meaningfully way. If colleagues are content, we might write to the Minister to see if there is any intention. Thank you for that. It was informative and useful.

Mr Smyth: Thanks very much.