



The End of Custody Licence

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The End of Custody Licence (ECL), which has just been abolished by the Government with effect from 12 March 2010, was introduced in June 2007 as part of the Government's response to prison overcrowding. Under the scheme, eligible prisoners serving sentences of between four weeks and four years could be released under temporary licence up to 18 days before their automatic or conditional release date. The list of disqualifying offences was extended in March 2008 to include certain terrorism-related offences, following the early release of two convicted terrorists. Guidance on the scheme is contained in Prison Service Instruction 42/2007.

As at 31 January 2010, nearly 80,000 prisoners had been released on ECL, of whom 3% have allegedly reoffended during the period on the licence.

The Government have said that they intend the scheme to be a temporary one – indeed the Justice Secretary, Jack Straw said in February 2009 that it was “not satisfactory”, and would end as soon as the prison system had sufficient capacity. Then in February 2010, the government announced that it would be abolished. The Conservatives had pledged to abolish the scheme, and the Liberal Democrats had also criticised it.

The End of Custody Licence is just one form of early release from prison. Information on others can be found in Prison Service Order 6000, and in Library Standard Note SN/HA/5199, [Early Release of Prisoners: An Overview](#).

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1 The scheme's introduction

The End of Custody Licence was first announced by the then Lord Chancellor, Lord Falconer, in a statement on prison population, during which he announced an additional 1,500 prison places. Lord Falconer emphasised that this was a temporary measure:

In addition to the increased prison capacity, I have today authorised the issuing of guidance to prison governors to allow them to make wider use of the prison rules provisions to authorise release on licence for offenders who are coming to the end of their sentence. The guidance will authorise the release on licence, in accordance with existing prison rules, up to 18 days before their release date to those who have been sentenced to a determinate prison sentence of four years or less. This is a temporary measure.

Release on licence is not the same as executive release. Releasing people on licence means their sentence continues and will be granted only to those who meet the eligibility criteria, set out in the guidance which I will place in the Library of the House. The criteria exclude offenders convicted of serious sexual or violent crimes, those who have broken the terms of temporary licence in the past and foreign national prisoners who would be subject to deportation at the end of their sentence. It will apply only to those who are not released on home detention curfew. While on licence, the offender will remain the subject of his sentence and will be liable to recall.¹

The scheme started on 29 June 2007, following press reports that Lord Falconer had been “trying desperately to avoid ordering the early release” in the face of rising prison populations.² Just weeks before its introduction, the day before taking responsibility for prisons under the new Ministry of Justice, Lord Falconer had been reported as ruling out an

¹ [HL Deb 19 June 2007 c98](#)

² “Jailing fewer people 'is only way to solve overcrowding’”, *Times*, 31May 2007

early release scheme to Sky News.³ The scheme's introduction prompted a number of hostile press articles. For example, the *Daily Express* reported it as follows:

NEARLY 1,200 prisoners will spill out on to the streets of Britain today after being released early.

Jails across the country will open the door for burglars, drug dealers and other crooks.

They will be freed up to two and-a-half weeks early after officials decided against staggering the controversial measure.

It means hundreds of convicted criminals being let back in to our communities at once and, in an added insult, each will have up to £172 in cash to spend.⁴

2 How the scheme worked

ECL was a form of Release on Temporary Licence (ROTL) under the provisions of the Prison Rules⁵ and Young Offender Institution Rules.⁶ As with other forms of ROTL, there was no entitlement to ECL. Prisoners did not have to apply, but had to be considered if they are eligible.

Prisoners on fixed-term sentences, other than extended sentences, are generally released automatically on licence at the half-way point of their sentences. Under the ECL scheme, prisoners serving between 4 weeks and 4 years could be released for a period of up to 18 days at the end of their sentence. Release under the ECL was subject to meeting eligibility criteria. All prisoners released on ECL were liable to recall if they are reported to have misbehaved during the period of the licence. Certain prisoners, including those guilty of serious violent offences and those subject to the registration requirements of the Sex Offenders Act 1997 or the Sexual Offences Act 2003, were ineligible. Prisoners were subject to a risk assessment process. Full details are provided in [Prison Service Instruction 42/2007](#)

The violent offences which lead to disqualification were listed at Annex A of PSI 42/2007. They were added to in March 2008, after criticism following the early release of two convicted terrorists.⁷

Because prisoners on temporary release are not entitled to social security benefits,⁸ those on ECL were able to receive a weekly subsistence payment of £47.12 in addition to the discharge grant. In addition, at the Governor's discretion, prisoners were able to get a weekly rent payment (between £50 and £70, depending on the period of ECL and the area) payable to a genuine accommodation provider, and a further discretionary payment for a deposit.

3 Numbers released on the scheme

As at 31 January 2010, a total of 78,628 prisoners had been released on ECL. The Ministry of Justice statistical publications, which contain details on releases and recalls, are available via the link below:

³ "Falconer denies report of early prisoner releases", *Guardian*, 7 May 2007

⁴ "1,200 prisoners let out early hit the streets today", *Daily Express*, 29 June 2008

⁵ Rule 9, *Prison Rules* SI 1999/728 as amended

⁶ Rule 5, *Young Offender Institution Rules* SI 2000/3371 as amended

⁷ "[Two terrorists released from prison early](#)", *Telegraph*, 29 March 2008

⁸ Regulation 14(2B)(c) and 85(4) *Jobseekers Allowance Regulations* SI 1996/207 as amended, and Regulation 21(3) and schedule 7 paragraph 8, *Income Support (General) Regulations* SI 1987/1967 as amended

4 Reoffending by prisoners

Around 3% of offenders have allegedly reoffended during their period on ECL.⁹ Cases of serious reoffending have from time to time given rise to hostile press coverage. For example, there was considerable controversy in December 2007, when Andrew Mournian pleaded guilty to murdering his partner whilst he was on ECL at the end of a prison sentence for battery.¹⁰ When this was raised by the then Conservative Justice spokesman Nick Herbert during Topical Questions, the Justice Secretary, Jack Straw, pointed to the Judge's comments that the attack would have been carried out whenever he had been released:

Nick Herbert (Arundel and South Downs) (Con): In June, Andrew Mournian was jailed for 20 weeks for battery after attacking his partner, Amanda Murphy. He had previous convictions for violence and assault. On 18 August, having been released from jail, Mr. Mournian again attacked Mrs. Murphy, but this time he brutally murdered her. He was convicted last week. It now transpires that Mr. Mournian had been released early from prison under the Government's end of custody licence scheme, and he killed Mrs. Murphy five days later, when he should have been behind bars. What does the Secretary of State have to say to Mrs. Murphy's relatives about the Government's decision to release such offenders early?

The Secretary of State for Justice and Lord Chancellor (Mr. Jack Straw): This was a shameful murder, and as with any murder, our heart goes out to the relatives and friends of the victim. But I hope, since the hon. Gentleman wishes to make something of this terrible incident, that he will take note of what the learned judge—a senior High Court judge, Mrs. Justice Swift—said in her sentencing remarks. When sentencing Mournian to life imprisonment and ordering that he serve a minimum tariff of 14 years, she said that she did not believe that the defendant's early release had led to Miss Murphy's death. She went on to say that the defendant would have carried out the attack whenever he was released.

It is a huge matter of regret that this happened at all, but it is extremely difficult, given what the learned judge who heard the details of the case said—and neither the hon. Gentleman nor I have done so—to say that his early release was a contributory factor to this murder.¹¹

The National Association of Probation Officers has expressed concern about domestic violence perpetrators being released early under ECL:

Harry Fletcher, Assistant General Secretary of Napo the probation union, said: "Napo does not oppose the End of Custody Licence policy. It is a means of alleviating prison overcrowding. Currently thousands of short-term prisoners are sharing cells designed for one person. Prison overcrowding undermines rehabilitation."

He added, however: "the scheme was introduced quickly and is clearly flawed. Men convicted of offences of domestic violence are being let out without any accommodation check and returning to their partner's addresses. In 19 of the cases the offence involved domestic violence and the prisoner was also deemed high risk. In 8 cases a further offence of domestic violence was alleged to have occurred during the period of licence. There is now clear evidence that further assaults are occurring and the men are either being charged with further offences or returned to prison. This is

⁹ MoJ, *End of Custody Licence releases and recalls January 2010 England and Wales*, 26 February 2010

¹⁰ See for example, "Outrage at the killer freed early", *Daily Express* 12 December 2007

¹¹ HC Deb 11 December cc156-7

clearly unacceptable. Twelve months ago Napo urged the Ministry of Justice to look again at its procedures to ensure that men were not let out early if probation was signalling that there was high risk of further violent offences. Once again the Ministry is being urged to review its procedures. Further violent offences against women are contrary to the government's victim strategy and are totally unacceptable".¹²

A series of answers to PQs on this subject have indicated that it is not possible to say how many domestic violence perpetrators have been released on ECL because domestic violence is not a specific offence. Offenders who commit domestic violence are charged with a generic offence of assault, and "it would not be possible to identify the number of prisoners convicted of domestic violence related offences without examining individual case files which would incur disproportionate cost".¹³

Further press hostility was expressed when a Parliamentary Answer in June 2008¹⁴ indicated that four offenders had allegedly committed six sexual offences while they were subject to the end of custody licence, of which one was rape. The *Independent* carried the story, quoting a number of critical commentators.¹⁵ Then a PQ in October 2008, which revealed that 181 prisoners released on ECL had allegedly committed violent offences during their period of ECL, including three murders,¹⁶ resulted in further hostile coverage.¹⁷

5 Conservative policy

The Conservatives made it clear at the time of their 2007 party conference that they would abolish the End of Custody Licence:¹⁸ and this was reiterated in their 2008 policy document, *Prisons with a Purpose*:

The End of Custody Licence scheme (ECL), was introduced in June 2007 as an emergency measure to ease prison overcrowding. This policy grants prisoners serving sentences of less than four years a further 18 days off the length of their sentence, on top of automatic 50 per cent remission and any time spent on remand. Prisoners eligible for ECL are not individually risk-assessed. ECL will see the early release of more than 25,000 prisoners a year in order to free up 1,200 places. This policy risks public safety, sends the wrong message to criminals and further undermines confidence in sentencing. So far one murder and more than 300 other alleged offences have been committed in the 18-day period when prisoners would otherwise have been incarcerated.¹⁹ ECL was an executive decision that resulted from inadequate prison capacity and Conservatives have consistently called for it to be scrapped. As new prison places come on stream, the Government have pledged to end the 'temporary' ECL scheme by June 2008 – and the consequent increase in the prison population is already built into the Government's projections.¹⁹

6 Liberal Democrat policy

The Liberal Democrat Justice spokesman made the following comments in July 2008:

¹² NAPO press release, *Domestic Violence and End of Custody Licence – the problems continue*, 27 June 2008

¹³ See for example HC Deb 10 July 2008 cc1789-91W

¹⁴ [HC Deb 23 June 2008 c61-2W](#)

¹⁵ "Early release prisoner committed rape, says Straw", *Independent*, 27 June 2008

¹⁶ HC Deb 27 Oct 2008, cc749-50W

¹⁷ See for example "Prisoners freed early accused of three murders", *Telegraph*, 29 October 2008

¹⁸ See for example "We will stop early prisoner release, says Cameron", *Independent* 2 October 2007

¹⁹ Conservative Party, *Prisons with a Purpose*, March 2008, p101

Commenting on the news that more than 31,500 prisoners have been released early in the first year of the Government's End of Custody Licence scheme, nearly a quarter more than it predicted, Liberal Democrat Justice Spokesperson, David Howarth said:

"The Government's obsession with sounding tough has led to a prison overcrowding crisis completely of its own making.

"In desperation they have released over 31,500 criminals early, yet our prisons remain full to bursting.

"Instead of releasing dangerous offenders early, ministers must look at more effective forms of sentencing, such as restorative justice."²⁰

7 The end of the scheme

On 22 February 2010, the Justice Secretary, Jack Straw, announced that the scheme would be brought to an end on 12 March 2010:

With permission, Mr Speaker, I should like to make a statement on the release of prisoners under the early release scheme, which is known as the end-of-custody licence. The scheme will be brought to an end on 12 March this year. All prisoners who are eligible for release on ECL on or before 12 March will be so released. Prisoners who have, as of today, been formally notified, under form ECL3, of release dates under the scheme up to and including 9 April, will also be released. No prisoners will be released on ECL from and including 10 April.²¹

The shadow Justice Secretary, Dominic Grieve, questioned whether there would be sufficient capacity in the prison system:²²

Mr. Dominic Grieve (Beaconsfield) (Con): I thank the Justice Secretary for allowing me advance sight of his statement.

Conservative Members have been calling for an end to the Government's reckless early release scheme for some time. In principle, therefore, the statement is welcome, but, as always with this Government, it is necessary to check the fine print. The House will recall that the introduction of the early release scheme was a direct result of the present Prime Minister's failure. As Chancellor, he choked funding for the prison cells for which the Home Secretary had asked to provide the capacity that was required to meet official projections for the prison population. The consequence of that failure has been stark. Eighty thousand criminals were let out of jail early, including 15,000 violent offenders and two terrorists, and those released went on to commit 1,500 crimes, including several rape and murder offences.

Given that record, it is vital to bring the scheme to a close by providing the cells that are needed to house the prisoners and protect the public; yet, over the past six months, the Justice Secretary has shelved plans for a prison in north Wales and, more recently, for one in Dagenham. That leaves a gaping hole in the Government's plans. Can the Justice Secretary confirm that, according to the Government's own projections-taking account of planned increases in capacity-the prison population will still exceed operational capacity by July 2011? Those are his Department's projections. Can he please confirm them?

²⁰ Liberal Democrat Press Release, *Prisons still full despite releasing dangerous criminals - Howarth*, 31 July 2008

²¹ HC Deb 22 February 2010 cc27-28

²² Ibid cc 29-30

Not only do we have the Department's projections; I have personally received a letter complaining that the Justice Secretary has been warned by his own officials that the prison population will continue to rise without adequate capacity, and that that will create a crisis of overcrowding within two years. The Justice Secretary has a track record of ignoring Government legal advice. Can he say categorically that he has not received any official advice warning that ending early release cannot be sustained for more than a temporary period?

Today, the Minister of State, Ministry of Justice, the hon. Member for Liverpool, Garston (Maria Eagle) has also released a written statement to the House, announcing a new contract that will promote the use of home detention curfews. The Minister is explicit. She says that the Government want

"courts and prison governors to make greater use of conditional bail and early release on Home Detention Curfew".

It seems that the Justice Secretary gives with one hand and takes with the other, or perhaps his right hand does not know what his left hand is doing. Can he confirm what that means and whether we will in fact have more early release under another label? Let there be no doubt that this party wants an end to early release, but it would compound the recklessness of the scheme to end it if that can only be done temporarily, or to reintroduce it under another name.

On 9 February, I asked the Minister of State whether the Government had plans to end early release. She denied such plans, stating that the Government would end early release "as soon as practically possible".-[Official Report, 9 February 2010; Vol. 505, c. 742.]

In less than two weeks, what has rendered possible what was then practically impossible? The timing of the end of the scheme, just weeks before an election is called,

only increases our fears that the Government are acting out of political desperation and not in the national interest. Is the Justice Secretary talking tough on crime before the election because he certainly does not care a bit if the result is tough on us after it?

The Liberal Democrat shadow justice spokesman, David Howarth, also questioned whether there would be sufficient spaces, calling for greater use of non-custodial sentences:

David Howarth (Cambridge) (LD): I also thank the Secretary of State for early sight of his statement. However, I notice from the statement that he is still trying to claim that crime has fallen under this Government because of their prison expansion policy. The truth is that crime started to fall in 1995, not 1997, and that it has fallen in all western European countries apart from Belgium, whether or not they have gone in for a massive prison-building programme. Will he not concede that although the chances of becoming a victim of crime have fallen substantially, as he said, the chances of becoming a victim of crime in this country are still far higher than the European average, and higher than in all western European countries except one? That is not a successful policy; it is an expensive failure.

I welcome the end of the early release scheme, but the problem with the Secretary of State's statement is that he confirmed that the Government's policy is still to increase the prison population towards 100,000. An extra 10,000 prison places will mean about £400 million a year in running costs. We all know that some offenders have to be in prison, but we also know that there are non-custodial sentences-restorative justice is the best example-that are better at reducing reoffending. The cost of restorative justice for the whole country would be only about £60 million. Why can the Secretary of State

not accept the conclusion of the Shapland review, which is that restorative justice would be better value for money? In an interview with *The Times* on becoming Secretary of State, the right hon. Gentleman said:

"we cannot...build our way out of prison overcrowding".

He was right then. What has changed now, apart from the looming election?

Let me take the Secretary of State through the detail of the figures. He said that the figures would allow headroom for a number of years, but they do not seem to fit with the figures that the Ministry of Justice gave the Prison Reform Trust last year. The prison population then was 111 per cent. of certified normal accommodation. Where, precisely, have the extra places come from? Is the Secretary of State just allowing more doubling up in cells, which is just another form of overcrowding?

I do not agree with the hon. and learned Member for Beaconsfield (Mr. Grieve) that the end of the scheme will reduce crime by very much, because the crimes committed in those 18 days would probably be committed anyway, 18 days later. However, I accept that the end of the scheme will reduce risks, because it means that fewer prisoners will be released without proper supervision. However, is not the real problem the reoffending rate of all prisoners? Two thirds of prisoners are reconvicted within two years of release, while 75 per cent. of young prisoners are reconvicted in that time. Does the Secretary of State not accept that the real problem is not earlier or later release, but the fact that too many offenders reoffend in the first place, regardless of whether prisoners are released early?²³

8 Other forms of early release for prisoners

The End of Custody licence is only one of a number of early release schemes for prisoners. Details of other schemes can be found in Prison Service Order 6000, [Parole, Release and Recall](#).

²³ Ibid, c 31-2