

Impact of proposed law and policy changes on people in prison and access to justice

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Introduction and Overview

1. This paper sets out recent announcements on law and policy affecting when and how people in prison will be released in the future, with a view to assessing the implications for access to justice, both for people in prison and legal aid prison law providers. The authors have attempted to digest the information that is publicly available to the best of their ability and note that details on what the changes will mean in practice are yet to be published at the time of writing.¹
2. Taken together, the overall picture is that there will be a lot of change, not so much in the imposition and length of prison sentences (at least initially) but in terms of how they operate, how people will achieve release and how much time people will spend in prison.
3. The key proposed changes include:
 - (i) Changes to recall processes for fixed term sentences: including “FTR48” which will change practice for many fixed term sentences between 12 and 48 months in the near future; a proposed removal of parole board oversight for all recalls of people on fixed term sentences;
 - (ii) Changes to early release: despite the increase of Home Detention Curfew (HDC) on 3 June 2025 to a maximum of a year, it is proposed this will be abolished altogether and those on fixed term sentences will be able to earn early release after one third; and
 - (iii) Changes to parole processes: a system of referrals to the High Court to review release decisions in certain serious cases are due to be implemented, and further changes following the transparency review include more public hearings, more observed hearings and a phased replacement of parole board summaries of decisions with redacted decisions.
4. Despite the headlines fearing an adverse impact on public safety, there will be more individualised decision making, not less – although it is not at all clear who will be responsible for such decisions or how they will be made.
5. While the driving force for the changes around release in fixed term cases is the increase in the number of people in prison and the consequent pressure on the prison estate, in some instances, the earliest opportunity for **early release** will be later, not earlier: in some instances the earliest point of release will be delayed from the 20% mark in the sentence to one-third. This is because, as the Gauke Review acknowledges, some people are currently released on HDC after serving just 20%, but the proposal is to abolish this scheme.²

¹ This paper has been prepared by Laura Janes and Yasmin Karabasic, Chair and Committee member of the Association of Prison Lawyers (APL) respectively: it was prepared to accompany an online seminar held on 9 June 2025 hosted by APL and does not necessarily represent the views of members.

² See Gauke review, page 53

6. **Automatic release** points will either be later in many instances (from 40% to 50%), or be removed entirely with the Justice Secretary's announcement that she will not put an "upper limit" on the latest point at which someone can be released in their sentence. There is no proposal in the Review to maintain the automatic release point of 40% introduced by SDS40: all references in the Review to automatic release are to the halfway point for ordinary standard determinate sentences and two-thirds for the cohort of serious sexual and violent offences.
7. Let's take an example: a person on a ten-year sentence for a fraud offence:
 - At present, this person is eligible for release on HDC on tag at 3 years (with a presumption this will occur) and will be automatically released at 4 years and then liable to recall for any breach of their licence until the end of the ten-year sentence but will only be actively supervised until 6 years and 8 months in accordance with operation RESET.³ If recalled, it could either be for a fixed 28 day period or until the Parole Board agrees they are safe enough to be re-released, depending on the assessment of the risk they pose at the point of recall.
 - If the new proposals go through with the amendments suggested by the Justice Secretary, they will be able to "earn" release after 3 years 4 months and will be released automatically at 5 years or even later if they have been poorly behaved. Once released they will be actively supervised until the final third of the sentence, until when they could be recalled for a breach of any licence condition (subject to a tightened test for recall) and after which they will simply be at risk of recall for commission of a further offence. Any recall will be for a fixed period of 56 days (subject to some flexibility, although it is not clear on what basis) and will not be considered by the Parole Board at all.
8. While the Gauke review accepts the evidence that short sentences of under a year are ineffective, the review includes provisions that will maintain the use of short stays in prison. This is because the review only seeks to curb the use of sentences of under one year (they will still be available in exceptional circumstances) and the earned early release process could mean that any custodial sentence of three years or less will result in a year or less of time in prison. Further, the proposal for recall of those on standard determinate sentences to be restricted to a fixed term of 56 days will also amount to standardised short spells in custody (even though it is proposed recalls will be subject to a tighter test). These proposals are based on evidence that fixed term recalls of 14 and 28 days are ineffective in reducing or managing risk.⁴ Despite

³ Note that the new IMPACT policy, which has been in force since April 2025, mandates active supervision to end after 16 weeks on licence may apply, although until details of the policy are published it is unclear exactly which sentences it applies to. The policy was [announced in February 2025](#).

⁴ Gauke review, page 66

this, just a week before the review was published, the Justice Secretary announced a more immediate measure introducing the routine use of 28 day recalls for all standard determinate sentences between 12 and 48 months (save for certain exclusions) (see §23 below). The latest data published by the Ministry of Justice shows that recalls have increased by 45% in the last year following a raft of changes to the recall and early release provisions.⁵

9. While much of the press coverage notes the Gauke review's proposals to use more electronic tagging, the review actually proposes abolishing HDC, just weeks before its use is to be expanded to a maximum of early release for a year on electronic tag.
10. As the Prison Reform Trust pointed out in its submission to the Gauke review, a feature of the current system is that that over half of people in prison currently do not have a certain release date due to being remanded, recalled or serving extended or indeterminate sentences.⁶ In the case of *R v Secretary of State for the Home Department, ex parte Read* (1987) 9 Cr App R (S), the Court of Appeal remarked:

"[t]he determination of a man's [release date] is something which should be beyond dispute. Parliament must have intended the provision whereby the determination is made to be easy to apply."

Under the new proposals, especially if implemented as envisaged by the Justice Secretary with no "upper limit" for release before the sentence end date, there will be even more uncertainty in respect of release dates for prisoners, victims and the agencies responsible for managing release from prison. With uncertainty comes a great deal of hopelessness, which in turn can create further problems, as has been seen in people with IPP sentences.

11. There is also a great deal of scope for unfairness, as under the system for earned release, liberty will become contingent on opportunities people are given to demonstrate progress. It is envisaged that as prison overcrowding eases, it will become harder to "earn" release, therefore limiting the impact of these changes. There is also a real risk that prospects of "earning" release will be affected by the discrimination that pervades the prison system.
12. Forthcoming changes to parole reviews, including the top-tier referrals to the High Court and increased transparency mark a further step towards Parole Board work becoming increasingly complex and drawn out.

⁵ <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-october-to-december-2024/offender-management-statistics-quarterly-october-to-december-2024#licence-recalls>

⁶ See PRT, <https://prisonreformtrust.org.uk/wp-content/uploads/2025/01/Prison-Reform-Trust-evidence-to-the-Independent-Sentencing-Review-2024-to-2025.pdf>, page 12

13. There is nothing in the review or the government announcements about arrangements to safeguard and support people in prison subject to these changes through legal advice and representation.
14. If these changes are to work fairly and effectively, it is essential that people in prison are afforded access to justice.

Context

15. The context to the announcements is the unmanageable and exponential increase in the prison population. The increase, and the reasons for it, is summarised in the first part of the Gauke review “Independent Sentencing Review: History and Trends in Sentencing.” The prison population has doubled since 1993 to 88,000 people and projected to be as high as 112,000 by 2032. The key drivers of the increase in the number of people in prison has been the increase in the use of prison sentences (the custody rate has increased by 16% since 1993) and the sentence lengths (the average custodial sentence has increased by 40% since 1993 and the average minimum term on life sentences has increased by 60% since 2000).
16. This has driven the proposed changes, as well as a number of other recent changes that have either taken effect or are due to shortly. Recent changes include:
 - (i) Fixed term recalls for sentences under 1 year – implemented in April 2024 by The Criminal Justice Act 2003 (Suitability for Fixed Term Recall) Order 2024;
 - (ii) SDS 40 implemented in September and October 2024 by The Criminal Justice Act 2003 (Requisite and Minimum Custodial Periods) Order 2024;
 - (iii) Expansion to eligibility for HDC for sentences over four years and extension of maximum possible period on HDC to 365 days from 3 June 2025 - The Home Detention Curfew and Requisite and Minimum Custodial Periods (Amendment) Order 2024;⁷
 - (iv) IPP termination changes introduced by s66 of the Victims and Prisoners Act 2024, implemented in November 2024 and February 2025, which have resulted in a reduction in the number of people on IPP sentences liable to recall (as a result of these changes, the Ministry of Justice has confirmed that by end of 2024, 2295 of the 8711 sentences originally imposed had been terminated).

⁷ When it was first introduced, the maximum period of HDC was 60 days. It was extended to a maximum of 90 days in October 2002, to 135 days in April 2003, and to 180 days in June 2023. In June 2024, HDC was made available to people serving sentences of four years or more. Many HDC dates were brought forward following the introduction of SDS40, which changed many people’s automatic release dates and therefore their requisite custodial period.

17. Set against this, there continues to be a drive towards punitive measures to stamp down on crime⁸ and additional oversight of Parole Board decisions (see §19 below).

Further changes in the pipeline – confirmed but yet to be implemented

18. There are further changes in the pipeline in the short- and medium-term future.

Top Tier referrals of release cases to the Parole Board

19. The creation of a new level of scrutiny by the High Court of release decisions by the Parole Board was legislated for by sections 61 and 62 the Victims and Prisoners Act 2024 but is yet to be implemented. At this stage, it is not known how representation for prisoners for such referrals will be funded.
20. The APL understands that there will be a stakeholder consultation on this with the LAA once a proposal has been formulated.
21. It is expected that these changes will be imminent.

Greater transparency in Parole Board reviews

22. The Parole Board published its Transparency Review on 5 June 2025. The Chief Executive of the Parole Board has already indicated an intention to implement the proposals, in consultation with others, with further details on the implementation to be published in Autumn 2025. The recommendations include proposals to move towards greater transparency, by advocating for a steady increase public parole hearings and hearings held in private but observed by victims, as well as phasing out decision summaries in favour of redacted full decisions. A number of procedural recommendations are proposed to ensure consistency and due process in the administration of these measures.

FTR48 – Fixed term recall of 28 days for sentences of between 12 months and 48 months

23. Temporary changes were announced by the Secretary of State for Justice on 14 May 2025 to recalls for people serving standard determinate sentences of more than one year and less than four years. The statement outlines the proposal as follows:

“The government will bring forward legislation in the coming weeks to make more use of fixed term recall, mandating it for

⁸ See, for example, the Crime and Policing Bill <https://bills.parliament.uk/bills/3938>

sentences of less than 4 years. We will exclude offenders recalled for committing a serious further offence and offenders who are subject to higher levels of risk management by Multi Agency Public Protection Arrangements."

24. A [draft statutory instrument](#) was laid on 9 June 2025, which outlines who the new policy will apply to.⁹ More information is available on the [Clinks website](#) which anticipates that this measure will result in 1400 fewer people in prison and states those who this will NOT apply to:
- *Are under 18 years old at the point of recall*
 - *Are managed on multi-agency management plans (MAPPA levels 2 and 3)*
 - *Have been charged with a serious further offence (defined as murder and any offence listed in Schedule 18 of the Sentencing Act 2020)*
 - *Have committed a serious offence while out of prison on licence*
 - *Are convicted of national security or counter terrorism crime*
25. Clinks say that implementation will be phased from early September to early November for those already currently in prison on recall.
26. This is likely to be a temporary measure, to be replaced by more permanent changes in Spring 2026, in light of the Gauke review.
27. It is not clear how many cases will be affected by these changes. A freedom of information act request has been made to identify how many people serving sentences of between 12 and 48 months have been recalled in the last 6 months, and, of them, how many are MAPPA level 2 or 3. However, as noted below, standard determinate recalls currently account for a significant proportion of the Parole Board's work. As the Gauke review notes, under one quarter of recalls are for further offences.¹⁰

Changes in response to the Independent Sentencing Review (the Gauke review)

28. The [Gauke review](#) was published on 22 May 2025. The [initial response to these proposals by the Secretary of State for Justice](#) indicates that some, but not all, of the proposals will be accepted.

⁹ See <https://www.legislation.gov.uk/ukdsi/2025/9780348272628>

¹⁰ See Gauke review, page 66

What are the key changes proposed by the Gauke review in relation to sentencing?

29. Although the first part of the Gauke review established that the key drivers of the increase in the number of people in prison was the increase of the use of custodial sentences and the length of such sentences, of the 48 recommendations less than half appear to relate directly to reducing the use or length of custody. In fact, the only recommendations that go towards that aim focus on:
- (i) **A presumption against the use of short sentences of under 12 months:** Note that short sentences will remain available in “exceptional circumstances”, and the use of such sentences has already halved since 2010 to just over 3000 in 2024¹¹;
 - (ii) **An increase in the imposition of community sentences:** With the exception of presumption against sentences of under one year, this proposal appears to be a general encouragement rather than a hard-edged requirement such as the recommendation by the Prison Reform Trust they should be used, for example, in all cases where otherwise custody of 3 years would be imposed;
 - (iii) **An increase in the use of deferred sentences:** This would allow sentences to be deferred for 12, rather than six months;
 - (iv) **An increase in the use of suspended sentences:** This would allow suspended sentences to be used in cases where a custodial sentence of up to three, rather than two, years might otherwise be imposed.
30. Various other recommendations are made that would complement these proposals, such as introducing a new **statutory purpose of sentencing** and increased resources for community sentences, as well as further research and an independent advisory oversight body.
31. However, there are no recommendations to slash sentence lengths or restrict the use of custody beyond the presumption against imposing 12-month sentences save in exceptional circumstances.

Operational changes recommended by Gauke

32. The headlines have been dominated by proposals made by the Gauke review to change to how all determinate or fixed sentences operate - in terms of how and when a person is released, as well as changes in relation to recall and progression in prison. These include:

¹¹ See <https://assets.publishing.service.gov.uk/media/67c583a868a61757838d2196/independent-sentencing-review-part-1-report.pdf> at page 13

- (i) The abolition of HDC – release on an electronic tag.
 - (ii) New processes for release of standard determinate prisoners based on an ability to earn release prior to automatic release (only the first two of these appears to have been accepted by the Government):
 - i. Those serving ordinary standard sentences will have an opportunity to “earn” early release after one third of the sentence, automatic release at the half-way point, and active supervision by probation until the two-thirds point, with liability to recall in the final third being restricted to new offences only.
 - ii. Those serving sentences of four years or more for violent and sexual offences can “earn” release at the half-way point, automatic release at the two-thirds point and active supervision until the 80% point, with liability to recall in the final fifth being restricted to new offences only.
 - iii. Those serving extended sentences for public protection could “earn” release at the half way point at the discretion of the Parole Board, be considered as of right at the two thirds point by the Parole Board and then automatic release at the end of the custodial term, followed by supervision on licence until the sentence end date, UNLESS they become eligible through compliance in the post-custody supervision stage to have active supervision removed through “earning credits” and become liable to recall only for a further offence (it is not clear who would decide to suspend active supervision, although as noted above, it appears this proposal will not be accepted anyway).
 - (iii) Increasing the threshold for recall (there are no details what this would look like), and removing Parole Board oversight from the recall of standard determinate prisoners, replacing it with 56 day fixed term recalls (with flexibility to reduce or increase the 56 day period in exceptional circumstances).
 - (iv) Greater use of open conditions, including: (i) opportunities for long term prisoners to go to open earlier in their sentence and (ii) the creation of different types of open conditions for long and short term prisoners.
 - (v) Investment in ancillary services including probation, housing, mental health and the third sector to support rehabilitation on licence and the greater use of community sentences.
33. The devil will be in the detail and it is already clear that the Government will not accept the recommendations wholesale. They have already attracted a great deal of criticism including concerns that they will be detrimental to public protection. For example, a letter signed by senior members of the Metropolitan

Police, MI5 and the National Crime Agency that has garnered significant press attention states:

"On the basis of what we understand at the moment, we are concerned that the proposals could be of net detriment to public safety and certainty to public confidence in policing and the criminal justice system...We are not arguing for the status quo. But we have to ensure that out of court does not mean out of justice, and out of prison does not mean out of control."

Consequences of the Gauke recommendations/Government response

34. There are a number of potential consequences of the Gauke review recommendations and/or implementation that will affect people in prison and potentially increase the need for legal advice and support.

Earning release

35. The proposed release mechanism for all standard determinate sentences reflects the procedure in England and Wales in the 20th century whereby remission at a certain point was "earned" prior to automatic release at a certain point. Notably, it was abandoned due to the administrative burden on prison authorities.
36. The iteration proposed by the Gauke for determinate sentences involves¹²:
- (i) An opportunity to "earn" release,
 - (ii) Automatic release at a later point
 - (iii) A period on licence under active supervision,
 - (iv) A period "at risk" where recall can only be imposed if a further offence is "committed": there are no further details in the review about the proposals for recall in this period for further offences and whether they will relate to further convictions or allegations.¹³

¹² It is proposed that the points at which these stages occur will vary according to the sentence type and length. There are at least three variations in the Gauke proposals (see §32 (ii) above).

¹³ Is it unclear whether this proposal is intended to mirror the "at risk" provisions in s40 of the Criminal Justice Act 1991 regime that meant that, if you committed an offence during the currency of a licence the sentencing court, when sentencing you for the fresh offence could also order you to be returned to prison for a maximum period of that between the date of commission of the new offence and SED (this later replaced by s116 of the Powers of Criminal Court (Sentencing) Act 2000 before the Sentencing Act 2020 abolished it altogether. If not, it is unclear what will govern secretary of state decisions to recall for alleged offences and what the process will be if the matter is deemed suitable for no further action before the 56 days are up.

37. However, while the Secretary of State for Justice appears to have accepted this proposal in principle in relation to the ability to earn early release at the one-third or halfway point for standard determinate sentences, she has already rejected the proposal for automatic release at a later point. Instead, she has indicated there will be no “upper limit” to when a person will be released, suggesting that prisoners could spend their entire sentence in prison if they behave badly. This could in fact increase the time spent in custody, and in turn increase the prison population.
38. While the Review states that the “expectation” that “most” people on Standard Determinate Sentences would be released early, no presumption of early release is built in and it is clear that “earning” release is at the heart of the scheme. The criteria for earning early release proposed by the Gauke review is “compliance” which should include, but not be limited to, compliance with prison rules plus the expectation of engaging in purposeful activity, work, education and treatment where available. Conversely, “actions which violate prison rules” would mean release would be “pushed back” to the automatic release point. The Review envisages that: “As prison capacity eases and fuller regimes become possible, compliance requirements for earned release should become more demanding.”¹⁴ It is unclear who would precisely decide when a person would be automatically released and whether any safeguards are proposed to ensure those decisions are made fairly. The Justice Secretary has also stated that she will “ensure that the most serious offenders continue to be subject to strict conditions.” She has also rejected the earned release proposals for extended sentences and terror offences, stating:

“The Review also suggested that those serving Extended Determinate Sentences should also earn an earlier release. This we will not accept. Judges give extended sentences to those they consider dangerous, with parole board hearings happening no earlier than two-thirds of the way through the custodial sentence. I will not change that. Furthermore, I can also confirm that no sentences being served for terror offences will be eligible for earlier release from prison.”¹⁵

39. It is clear that the new mechanisms are far from straight-forward and it is envisaged that this will likely lead to sentence calculation errors that will need to be advised on and rectified. There are a number of practical issues, such as how the provisions will operate where there are concurrent sentences. Limited legal aid funding is available for sentence calculation work, and there are onerous requirements on providers to confirm that the client has tried to resolve the issue first through the complaints system, which often disadvantages vulnerable clients who are unable to formulate complaints and confirm they have done so.

¹⁴ Gauke review, page 57

¹⁵ See the Justice Secretary’s statement <https://questions-statements.parliament.uk/written-statements/detail/2025-05-22/hcws667>

40. The review acknowledges that in the current system, which is overcrowded and under resourced, there may be opportunities for a more rigorous approach to earning release in the future when a less stretched system has greater capacity to offer rehabilitative opportunities. Lessons from the children's secure estate would suggest that this is not realistic: the number of children in prison has reduced from around 3000 at any one time 20 years ago to less than 500 today. However, they are spending more time locked in their cells than ever with minimal opportunities to demonstrate risk reduction and engage in rehabilitative activities. Similarly, the introduction of "SDS40", the release of determinate sentenced prisoners at 40%, resulted in the release of over 16,000 people between September to December 2024;¹⁶ yet, there is no corresponding evidence of an increase in capacity in the prison estate to do rehabilitative work.
41. There is also a grave risk that the opportunities that arise will not be provided to minoritised prisoners and that decisions about liberty based on opportunities to participate will suffer from bias or the failure to make reasonable adjustments. A report by His Majesty's Inspectorate of Prisons in 2022 found a direct relationship between perceived risk and poor relationships between Black prisoners and staff:¹⁷

"Poor relationships between black prisoners and staff that were characterised by mutual suspicion were therefore likely to be contributing to escalation of perceived risk and the disproportionately high use of force that we found against black prisoners. A better understanding of how risk is ascribed to black prisoners and how it then affects their subsequent prison journey is an important challenge for prison leaders."
42. It is envisaged that offences against prison discipline will result in early release not being granted, meaning that all disciplinary procedures will have a greater impact on liberty. It is also unclear how additional days awarded at independent adjudications will be calculated, as at present additional days are added to the automatic release date, which may no longer be clear.
43. Thus, the new system is likely to give rise to the need for a greater level of legal advice and representation, to avoid injustice in decisions around liberty. Legal advice and representation ought to be available to ensure that decisions around early release, or decisions that will obviously impact on release decisions in due course, are made in a procedurally fair and non-discriminatory way. Funding will need to be available to ensure people in prison have an achievable sentence plan, are treated fairly in all disciplinary matters and not subjected to discriminatory treatment in prison that may impact on their liberty.

¹⁶ <https://www.gov.uk/government/publications/standard-determinate-sentence-sds40-release-data>

¹⁷ <https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/19/2024/02/The-experiences-of-adult-black-male-prisoners-and-black-prison-staff-web-2022-1.pdf>, page 3

44. A joint paper by APL and LAPG paper was prepared for the review highlighting the need for proper legal representation for those subject to the possibility of earned release; it is disappointing that the Gauke review is silent on this.

Abolishing oversight of standard recalls by the Parole Board completely

45. The Gauke review proposal to abolish Parole Board oversight of standard determinate recalls and replace it with 56 day fixed term recalls has been accepted “in principle” although “though the precise details will be placed before the House when we legislate”. This is a major change.
46. At present, determinate cases account for a significant amount of Parole Board work, representing just under half of all work and just under 40% of oral hearings. The vast majority relate to recall matters.¹⁸
47. Communications issued by the Parole Board states:

It is then expected that from Spring 2026 the above measures will no longer apply and will be replaced by legislation enacting the Sentencing Review recommendation that all standard recalls for prisoners sentenced to a standard determinate sentence will be substituted with a fixed term recall of 56 days. Other than for sentences being served for terrorism offences, we understand that there are currently no proposed exemptions, but the detail is being worked through.

As a result of these changes and from Spring 2026, it is anticipated that the Parole Board will no longer play a role in the risk assessment of SDS sentenced prisoners after their recall. We will work with partners on the detail, including whether submissions on exemptions for high-risk offenders can be made, and how the recommendations can be implemented in a way that ensures the public and victims are protected. As these changes require primary and secondary legislation, it may be that amendments are made during their Parliamentary passage.

48. This will significantly change the nature of Parole Board work, and that was the intention of the Gauke review which states:

“This will enable the Parole Board to focus resources and speed up the review of cases with a Parole Eligibility Date where the risk to the public is higher, and their approval is required for release.”

¹⁸ Freedom of Information Act response from the Parole Board dated 6 June 2025.

Parole Board Transparency

49. The transparency proposals are likely to have a significant impact on the way in which Parole Board reviews are conducted, representing a further leap in the complexity and intensity of this work.
50. An increase in public and observed hearings is expected, which in turn will increase the procedural layers that people in prison and their lawyers will have to navigate to ensure fairness, appropriate confidentiality, managing logistics and witness preparation. The report envisages additional case management hearings, dealing with potential media involvement and additional legal submissions in respect of disclosure and other procedural matters.
51. The proposed transition from summaries of decisions to full but redacted versions will require prisoners and their lawyers to engage in an additional layer of scrutiny and representations to ensure that these do not result in the disclosure of inappropriate or harmful information.

Further changes and unintended consequences

52. In addition to the proposals in the Gauke review, there are a number of additional changes, some proposed by the Government and others that may be unintended. These include changes to how exclusion zones operate, as well as more uncertainty around release dates from prison and a possible increase in the use of extended sentences by judges.

Exclusion zones

53. The Government has indicated that it intends to “go further” than the Gauke review in relation to protecting victim’s rights when it comes to the use of exclusion zones.

“Again, I want to go further than the Review recommends to better support victims. Exclusion zones are an important protective tool, preventing offenders from entering areas where victims might be, but these can place greater limits on victims than they do offenders. I want to change this: locking offenders down to specific areas so that victims know that they are safe wherever else they want to go.”

54. At present, the law is premised on the basis that offenders can only be excluded from certain areas on the grounds of necessity and proportionality: this would present a reversal of that requirement, which may not be compliant with the current legal framework.

Increased uncertainty

55. If implemented as currently envisaged, nobody in prison will have a certain release date. The current system has long-stop automatic release points for all those on determinate sentences prior to their sentence end date. For most standard determinate sentenced prisoners (depending on their offence), they will be able to enjoy a presumption of release on electronic curfew at an earlier stage. That presumption will be replaced with an opportunity to “earn” release at an early stage, which is a great deal less certain. Further, the automatic release date will no longer be certain given the Justice Secretary’s decision to remove the “upper limit” on release dates. This is not only difficult for people in prison and those who have to manage their anxiety around release, but also makes planning more difficult for statutory agencies. It also increases uncertainty for victims – a point raised by Andy Slaughter, Chair of the Justice Committee on 3 June 2025.¹⁹

Increase in the use of Extended Determinate Sentences

56. There is a real risk that these changes will result in an increase extended sentences as a result of judges not wanting to deliver sentences in serious cases that will result in early release and lack of Parole Board oversight on recalls.
57. The increase in extended sentences in recent years has been exponential (they already account for around 10% of people in prison), a matter which has been raised as a concern by the Prison Reform Trust.

Impact on access to justice

58. Prison law legal aid has been underfunded for many years, resulting in a huge drop in the number of lawyers willing to do this work, which has also become more complex and traumatic due to needs of the clients and the problems they face.²⁰ Added to that, practitioners have recently found that a change in the way the Legal Aid Agency assesses complex and long-running cases (escape fee cases) has resulted in reductions in income for providers and further anxiety that this area of work will not be sustainable. The impact of these changes on legal aid providers, and therefore access to justice for people in prison, needs to be considered as part and parcel of the changes to law and policy.
59. If implemented, in full or in part, there will inevitably be a focus on Parole Board work being concentrated on the more complex and serious cases. A

¹⁹ <https://hansard.parliament.uk/Commons/2025-06-03/debates/756EDF25-6671-447C-B5BB-9BD4FA5F22A9/ViolentOffendersEarlyRelease#contribution-61D2A586-34B5-4463-AED7-C698431267B3>

²⁰ https://www.associationofprisonlawyers.co.uk/wp-content/uploads/2023/08/APL_SUSTAINABILITY_REPORT_7_AUGUST_2023.pdf

recent government consultation has proposed a 24% increase in funding rates based on the current model, which, if implemented, will bring legal aid funding to around two-thirds of the rate it would have been in 2011, taking into account inflation.²¹

60. However, the model was based on a mixture of complex and simpler cases, which has not applied for some time and will hardly apply at all if these changes are implemented. It will therefore be necessary to revisit the funding model to ensure a sustainable system.
61. In addition, there may be an increased call for other types of more traditional prison law work. As the joint APL and LAPG paper notes, the rationale for scope cuts in prison law was the relationship between legal support and liberty.²²
62. The thrust of the Gauke proposals squarely reaffirm the relationship between behaviour, progress and liberty, as well as injecting a great deal of uncertainty about when people will be released, which would require legal aid funding to be made available to ensure that opportunities for release are fairly available to all and clear. This will mean that sentence planning work and advice in respect of disciplinary measures, as well as possibly the application of the incentive and rewards scheme and categorisation processes, other than open conditions, will require legal aid support to be made available.
63. Options that will need to be considered include:
 - (i) Increasing the scope of prison law legal aid to ensure that people in prison are not unfairly denied the opportunity to be released from prison at the earliest possible stage: this may include legal advice being readily available for sentence calculations, all types of adjudications, sentence planning, representations in relation to earning release and challenging fixed term recalls.
 - (ii) Changing the current fee scheme to consider options including: (i) reviving “pay as you go” models for prison law work, (ii) moderating all current fee schemes to set the thresholds at 1.5 of the standard or fixed fee (iii) separate fee structures for High Court referrals and reconsideration applications which are akin to judicial review work. Fees will need to recognise the increased complexity of this work, as well as the increased length of time cases will take to conclude.

²¹ <https://www.gov.uk/government/consultations/criminal-legal-aid-proposals-for-solicitor-fee-scheme-reform/criminal-legal-aid-proposals-for-solicitor-fee-scheme-reform>

²² <https://www.associationofprisonlawyers.co.uk/joint-apl-and-lapg-submission-to-the-gauke-review-on-sentencing/>

64. In the short term, it is essential that all assessments of escape fees are carried out in a fair and transparent way, according to guidance that is published and fit for purpose.

Next steps

65. A great deal of change is on the horizon and it is important that people affected by these changes, including prison lawyers, are part of an informed discussion with all concerned.

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