

# ***National Objectives for Social Work Services in the Criminal Justice System: Standards - Throughcare***

## **CHAPTER 1: INTRODUCTION AND LEGISLATIVE BACKGROUND**

### **INTRODUCTION**

1. The following Standards relate to the prison based components of throughcare services supplied to the Scottish Prison Service by local authority social work departments and to the community based components of throughcare services provided by local authority social work departments in collaboration with other agencies. The term "throughcare" is used to denote the provision of a range of social work and associated services to prisoners and their families from the point of sentence or remand, during the period of imprisonment and following release into the community. These services are primarily concerned to assist prisoners to prepare for release, and to help them to resettle in the community, within the law, whether required by statute as part of a licence or because the prisoner seeks such a service.

2. Although these Standards focus separately on the prison and community based components of throughcare, they must be seen within an overall framework which recognises the shared responsibilities of local authorities and the prison service.

3. These Standards seek to ensure that a consistently good quality of service is provided across the country. Throughcare comprises 2 main elements - work in the prison and in the community. Clearly the safety of the public must be the prime concern of those responsible for the oversight of former prisoners released on supervision and this must be reflected in the exercise of supervisory responsibilities. At the same time, however, the successful resettlement of an offender within the community is probably the best guarantee against offending. This requires the prison service and social workers to assist offenders to deal with any problems which place them at risk of reoffending, commencing whenever possible during the period of imprisonment. (See also the Supplement to National Objectives and Standards, "Social Work Supervision - Towards Effective policy and Practice", issued by Social Work Services Group in 1991.)

4. In this section, as with other sections of the document, the term "Standard" is used to establish benchmarks against which the service provided can be tested and assessed, and to indicate the importance which is attached to the attainment of these benchmarks. Standards should promote and encourage the development and application of professional skills in management and practice and, except where clearly identified, the term does not imply the rigid application of rules and procedures. In common with other Standards, the National Standards for Throughcare will be reviewed and may be revised in the light of experience or legislative change.

### **LEGISLATIVE BACKGROUND**

#### **Statutory Supervision**

5. Local authority social work departments exercise responsibilities on behalf of the Secretary of State in respect of prisoners eligible for release on licence. The legislative basis for such release is contained in the following statutory provisions.

## **Parole**

6. Section 22 of the Prisons (Scotland) Act 1989 (the 1989 Act) empowers the Secretary of State to release on licence a prisoner who has served one third of the sentence or 12 months whichever is greater. This provision applies to all prisoners sentenced before 1 October 1993. Section 1(3) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (the 1993 Act) enables the Secretary of State to release on licence a long term prisoner after he has served half his sentence. A long term prisoner is defined as one serving 4 or more years in aggregate. This provision applies to prisoners sentenced on or after 1 October 1993. Both forms of discretionary release require a recommendation from the Parole Board for Scotland. These provisions apply equally to young offenders and to prisoners. A licence issued under either of these sections is referred to as a "parole licence".

### **Non-Parole Licence - Offenders serving 4 or more years**

7. Section 1(2) of the 1993 Act provides that as soon as a long term prisoner has served two thirds of his sentence, the Secretary of State shall release him on licence. A licence issued under this section is referred to as a "non-parole" licence.

### **Life Licence**

8. Under section 26(1) of the 1989 Act or section 1(4) of the 1993 Act the Secretary of State may release on licence a mandatory life prisoner (i.e. anyone convicted of murder) on the recommendation of the Parole Board and after consultation with the judiciary.

9. Under section 2(4) of the 1993 Act the Secretary of State must release on licence a discretionary life prisoner at the direction of the Parole Board, which shall make such a direction if it is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined. NB if the Board directs the release of such a prisoner the prisoner must be released on life licence immediately.

### **Release on Licence from Psychiatric Hospital**

10. Where a prisoner has been transferred to hospital under section 71 of the Mental Health (Scotland) Act 1984 and made subject to special restrictions under section 72 of that Act (the 1984 Act) the Secretary of State may release the person on licence direct from hospital. Under section 4(1) of the 1993 Act, all legislation concerning prisoners in Part I of that Act applies to persons who have been transferred notwithstanding the transfer. This applies only to prisoners sentenced on or after 1 October 1993.

11. Section 4(3) of the 1993 Act replaces sections 74 and 75 of the 1984 Act with a new section which provides, in particular, where a person who would otherwise have been in custody reaches the date on which he/she would have been due for release under a "non-parole" licence, the person will be released on licence from hospital unless the Responsible Medical Officer has within the previous 28 days furnished reports seeking authority for the person's continued detention. If a person is detained beyond the expiry of their full sentence, and is subsequently discharged from a psychiatric hospital they will not be subject to a non-parole licence.

12. Under section 4 of the 1993 Act and the revised section 74 of the 1984 Act, release on a parole licence direct from hospital is a possibility in certain rare circumstances. This would require a positive recommendation by the Parole Board.

### **Licence Duration and Recall**

13. The duration of a parole licence under the 1989 Act is until the two thirds point in sentence. The duration of parole and non-parole licences under the 1993 Act is until the sentence expiry date, but under section 17(6) of the 1993 Act a licence, other than a life licence, may be revoked early by the Secretary of State cancelling all the conditions in it. A life licence lasts for the whole of the person's natural life.

14. Any licensee may be recalled to custody by the Secretary of State under section 28 of the 1989 Act or section 17 of the 1993 Act either on the recommendation of the Parole Board or in an emergency without such a recommendation. The person is entitled to make representations against recall and these must be referred to the Board, as must the case of any person recalled without the Board's recommendation. On consideration of such a reference the Board may direct the person's immediate re-release.

### **Compassionate Release**

15. Under section 3 of the 1993 Act, the Secretary of State may release a prisoner on licence if he is satisfied that there are compassionate grounds for doing so. If the prisoner is a long term prisoner the Secretary of State must first consult the Board, unless the circumstances are such as to render such consultation impracticable. The licence lasts until half sentence in the case of a short term prisoner and until the sentence expiry date in the case of a long term prisoner.

### **Release on Licence of Certain Short Term Prisoners**

16. Under section 16 of the 1993 Act a person who has been released is at risk of being returned to custody by order of court if he/she is convicted of a further offence punishable by imprisonment during the currency of the original sentence. The period of return is subject to a maximum of the outstanding period of sentence at the time the offence was committed (or if the person appeals, the Appeal Court may return the person to custody for the whole outstanding period from the date of release). The period of return is treated as a further sentence of imprisonment. If, however, the person was on licence at the time of the return, he/she is re-released on licence even if the return period combined with any sentence for the new offence is **between 6 months and 4 years**, under section 16(7). This is referred to in these Standards as a "short sentence licence".

### **Licence Conditions**

17. Section 12 of the 1993 Act deals with licence conditions. The standard conditions of a licence, and also any conditions applying in particular cases, are a matter for the Secretary of State. However the Secretary of State must consult the Board about the standard conditions, and also about any specific conditions to be applied in a particular case. In the case of discretionary life prisoners the Secretary of State is bound by the recommendations of the Board as to licence conditions.

18. Section 12(2) stipulates that all licences shall include from the outset a condition requiring the person subject to the licence:

18.1 to be under the supervision of a relevant officer of such local authority as may be specified in the licence; and

18.2 to comply with such requirements as that officer may specify for the purposes of supervision.

19. Licence conditions may be subsequently inserted, varied or cancelled by the Secretary of State after consultation with the Board. Early termination of the supervision conditions is possible. In addition under section 17(6) of the 1993 Act, the Secretary of State may revoke a licence by cancelling all the conditions in it, and if he does so, the person will be treated as having been released unconditionally.

### **Supervised Release Orders**

20. **Under section 209 of the Criminal Procedure (Scotland) Act 1995** (the 1995 Act) a court, when passing a sentence of at least one and less than 4 years on a person, may make a supervised release order (SRO) requiring the person to be under the supervision of an authority designated by the Secretary of State on release from custody. The duration of the supervision cannot exceed 12 months, nor can it extend beyond the date on which the full term of imprisonment has elapsed. A person who breaches the requirements of a supervised release order must be dealt with by the court which made it. Fuller details of the provisions for SROs are contained in Chapter 12.

### **Supervision of Child Detainees**

21. **Under section 208 of the 1995 Act**, where a child is convicted on indictment of an offence, the court may order the child to be detained in such place and on such conditions as the Secretary of State may direct. Under section 7 of the 1993 Act (and Schedule 6 paragraph 4 in transitional cases) such a child must be released on licence at half sentence if the sentence is less than 4 years and at two thirds if the sentence is 4 years or more. The Secretary of State may release such a child at an earlier stage if recommended to do so by the Parole Board. The licence duration is until the sentence expiry date. Circular HHD 26/1993 (of 5 October 1993) requires the supervision of such licensees to be informed by the principles and practice set out in these Standards. However the Standards, and the associated funding arrangements, apply formally only to those detainees who are released after reaching the age of 16.

### **Statutory Aftercare for Young Offenders**

22. Section 32 of the 1989 Act enables the Secretary of State to impose a notice of supervision on any young offender who has been released from a young offenders institution. Following enactment of the 1993 Act this now applies only to young offenders sentenced before 1 October 1993 to a period of 2 or more years. This form of supervision will be phased out as the number of young offenders sentenced before 1 October 1993 reduces.

### **Home Background Reports**

23. Under the Parole Board (Scotland) Rules 1993 and 1995 (SI 1993 No. 2225 (S.235) and 1995 No. 1273 (S.99)) a home background report must be included in every dossier relating to a case referred to the Board.

## **Document Disclosure**

24. Under the Parole Board (Scotland) Rules 1993 and 1995 there is a requirement on the Secretary of State to disclose to the prisoner the dossier which he refers to the Board. This is subject to exclusions. Fuller details are to be found in Chapter 10 on Disclosure.

## **Fine defaulters and Those Sentenced for Contempt of Court**

25. Under section 5 of the 1993 Act a person who has been sentenced for fine default or contempt of court must be released unconditionally on reaching half sentence if the term is less than 4 years and at two thirds if the term is four years or more. There is no possibility of release on licence for such a person. As release is unconditional, such a prisoner would be eligible only for voluntary social work support.

## **Voluntary Assistance**

26. Section 27(1)(c) of the Social Work (Scotland) Act 1968, inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, places a duty upon local authorities to make available "advice, guidance and assistance" to people who request such a service within 12 months of release from custody including those released following an appeal against conviction and/or sentence.

## **Cross-Border Transfer**

27. Provision for transfer of licences and orders is contained in the Criminal Justice Act 1991 (England to Scotland) and the Prisoners & Criminal Proceedings (Scotland) Act 1993 (Scotland to England). The provisions are described in more detail in Chapter 9.

## **Social Work in Prisons**

28. There is no specific statutory basis for the provision of social work services in prisons. Social work departments do have a general responsibility to "promote social welfare" (section 12 of the Social Work (Scotland) Act 1968): these services are provided by authority of the Secretary of State and in recognition of the fact that prisoners may continue to exercise those civil rights which are not expressly removed by virtue of imprisonment (eg the right to vote). The Secretary of State has an interest in the provision of efficient and effective throughcare services to serving and released prisoners. This requires collaboration between all service providers to ensure the development of an integrated approach and continuity of service provision between prison and community-based services. Social work services in prisons provide the critical link between these services. In addition, social workers in prisons are required to undertake a number of mandatory responsibilities and duties (for example, in relation to the release of offenders convicted of offences against children and in relation to Parole Board consideration of the discretionary release of prisoners), imposed by the Secretary of State and issued in the form of Circulars from The Scottish Office.