

POLICY NOTE

THE EARLY RELEASE OF PRISONERS AND PRESCRIBED VICTIM SUPPORTERS (SCOTLAND) REGULATIONS 2024

SSI 2024/XXX

The above Regulation is made in exercise of the powers conferred on the Scottish Ministers by Section 3C of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (as introduced by Section 11 of the Bail & Release from Custody (Scotland) Act 2023 (the 2023 Act)), Section 16ZA of the Criminal Justice (Scotland) Act 2003 and section 27B(2)(a) of the Victims and Witnesses (Scotland) Act 2014 (as introduced by Section 14 of the 2023 Act).

These Regulations are made under the affirmative procedure subject to an expedited process as agreed by Parliament. These Regulations are being made as the Scottish Ministers are satisfied that the early release of prisoners authorised by these regulations is necessary and proportionate for the purpose of protecting: (a) The security and good order of any prison to which the regulations would relate; and (b) the health, safety or welfare of prisoners, or those working, in any such prison.

Summary Box

The purpose of this statutory instrument is two-fold.

Firstly, to make provision using Scottish Ministers powers under section 3C of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (the 1993 Act) (as introduced by Section 11 of the Bail & Release from Custody (Scotland) Act 2023 (the 2023 Act)), to release certain categories of persons early from prison.

Eligibility for release will be limited to those who are sentenced to less than four years and who, are due to be released within the 180 days following the date on which the Regulations come into force. Release is to take place over four phases to provide certainty for those due to be released, to ensure reasonable planning can take place, to manage impact on services and to ensure release is put into effect swiftly to reduce the prison population. These will take place weekly, beginning on 26 June 2024 and ending on 18 July 2024. The latest release date under the regulations is 25 July 2024.

Further details are provided below at 'Regulation 3'.

Section 3C(6) of the 1993 Act makes provision to exclude certain persons from early release under the regulations, including but not limited to those serving a life sentence and those serving a sentence for a domestic abuse offence or subject to sexual offender notification requirements.

Additional criteria have been agreed as part of the regulations in order to enhance public protection. Those additional criteria are in addition to the existing statutory exclusions set out in section 3C(6) and excludes individuals who have served a sentence for an offence aggravated under section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, or who have served a sentence of imprisonment or detention for an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018 from being released under this power. These exclusions will apply only where the associated conviction is not spent

as per the Rehabilitation of Offenders Act 1974. Individuals who are subject to a non-harassment order will also not be released under this power.

The early release of persons under these regulations are also subject to the prison governor's power to prevent release under section 3C(5)(b) of the 1993 Act.

The second purpose of these regulations is to prescribe victim support organisations (VSOs) for the purposes of section 14 of the 2023 Act. Section 14 makes provision so that victims can nominate a victim support organisation to receive information at the same time as the victim, or on their behalf, under either of the two statutory schemes of information for victims: the Victim Notification Scheme for victims of offenders sentenced to more than 18 months' imprisonment, or the short-term information scheme which enables victims of offenders sentenced to fewer than 18 months' imprisonment to receive more limited information.

Policy Objectives

The policy intent underpinning this SSI is, firstly, to set out regulations for the emergency release of a group of prisoners under section 3C of the 1993 Act.

Ministers consider this to be a necessary and proportionate action in response to risks that are arising across the prison estate as a result of the recent, sharp and unanticipated increases in the prison population. This includes difficulty in maintaining the prison regime, proper access to appropriate activities and rehabilitative programmes, and the operation of prisoner visits. There is also risk to the delivery of healthcare, the maintenance of good order amongst prisoners, and acceptable operating conditions for staff.

SPS are continuing to take measures to maximise capacity across the estate, but several prisons are reporting "red" risk conditions, and the prison estate would have little to no capacity to respond to any further increases in population.

As such, it is Ministers' view that these circumstances satisfy the conditions set out in section 3C of the 1993 Act (as introduced in s11 of the 2023 Act) for Ministers to instruct the early release of prisoners. Specifically, that the recent, sharp and unanticipated increases in the prison population are resulting in an emergency situation across the prison estate which places at significant risk (i) the security and good order of a prison or prisons generally and (ii) the health, safety and welfare of prisoners or those working in any such prison.

This order sets out the eligibility criteria which will define the cohort of prisoners who will be eligible for release (alongside the statutory exclusions already set out in section 3C(6) of the 1993 Act).

It also sets out the structure and timing for the release process, with a staged process of releases to take place between 26 June 2024 and 18 July 2024. The latest release date under the regulations is 25 July 2024.

The Regulations are structured as follows:

Regulation 1 provides for the commencement and interpretation of these Regulations;

Regulation 2 specifies the class of persons who are to be released early from prison; and

Regulation 3 makes provision for the calculation of the date of release.

Regulation 4 makes provision for the description of victim supporters entitled to receive information as well as or on behalf of, victims.

Regulation 1: Citation, commencement and interpretation

These Regulations come into force as soon as they are commenced on 20 June 2024, subject to Parliamentary approval and will remain in place until 25 July 2024, in order to maximise the period during which the eligible prisoners can be released.

The Regulations will apply to all prisons including contracted out prisons and young offenders institutions. Accordingly, regulation 1 clarifies that references to early release under section 3C of the 1993 Act includes references to young offenders released under that section.

Regulation 2: Class of persons who are to be released early

Regulation 2 specifies the class of persons who are to be released early from prison limiting the class to those sentenced to less than four years imprisonment or detention and who, on the date on which these regulations come into force have 180 days or less to serve until their automatic release at the halfway stage of their sentence (Earliest Date of Liberation (EDL)). However, the early release of persons under these regulations are subject to the prison governor's power to prevent release under section 3C(5)(b) of the 1993 Act and a number of exclusions in section 3C(6) of that Act.

Section 3C(6) provides that the following persons are excluded from release under regulations made under section 3C:

- (a) a life prisoner,
- (b) an untried prisoner,
- (c) a terrorist prisoner within the meaning of section 1AB,
- (d) due to serve a terrorism sentence within the meaning of section 1B but, by virtue of that section, is not yet serving it,
- (e) liable to removal from the United Kingdom for the purposes of section 9,
- (f) subject to a supervised release order under section 209 of the Criminal Procedure (Scotland) Act 1995,
- (g) serving a sentence passed under section 210A of that Act (extended sentences for sex, violent and terrorist offenders),
- (h) the subject of proceedings under the Extradition Act 2003,
- (i) subject to the notification requirements of Part 2 of the Sexual Offences Act 2003,
- (j) serving a sentence of imprisonment or detention for an offence -
 - (i) that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016,

- (ii) under section 1(1) of the Domestic Abuse (Scotland) Act 2018,
- (iii) under section 7(1) or 17(1) of the Domestic Abuse (Protection) (Scotland) Act 2021,
- (k) a long-term prisoner, unless that prisoner has been recommended for release by the Parole Board at the date on which the regulations are made.

Additional exclusions have been introduced as part of these regulations, specifically to exclude those who:

- (i) have served, a sentence of imprisonment or detention for an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016;
- (ii) have served, a sentence of imprisonment or detention for an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018;
- (iii) are the subject of a non-harassment order imposed under section 234A of the Criminal Procedure (Scotland) Act 1995 or section 8 or 8A of the Protection from Harassment Act 1997.

In relation to (i) and (ii), only previous sentences of imprisonment or detention which are not spent for the purposes of the Rehabilitation of Offenders Act 1974 are excluded .

Regulation 3: Calculation of the date of release

Regulation 3 makes provision for the calculation of the date of release in accordance with paragraphs 3 and 4 of Section 11 of the 2023 Act.

Release is provided for in phases in order to provide certainty for those due to be released and in order to ensure release is put into effect swiftly in recognition of the policy aim of reducing the prison population.

Furthermore, phasing in this way provides a reasonable period for release planning to take place for those involved so that services can be aligned with release, and so there is not an unmanageable number of prisoners becoming eligible and having to be released over a very short timeframe.

The releases brought forward will be phased over 4 distinct phases across a 4-week period (1 week, 1 week, 1 week, and 1 week). That would mean from 26 June 2024:

- (a) prisoners with 1-45 days until their release at the halfway stage of their sentence (the earliest date of liberation “EDL”) would be released no earlier than 26 June 2024 and no later than 27 June 2024;
- (b) prisoners with 46-90 days remaining until their EDL would be released no earlier than 3 July 2024 and no later than 4 July 2024; and
- (c) prisoners with 91-135 days remaining until their EDL would be released no earlier than 10 July 2024 and no later than 11 July 2024.
- (d) prisoners with 136-180 days remaining until their EDL would be released no earlier than 17 July 2024 and no later than 18 July 2024.

In recognition of the particular circumstances of emergency release, which is to be undertaken during an emergency set of circumstances, the regulations also provide that where a person was to be released on the aforementioned dates but that release did not take place when it ought to, then that person is to be released as soon as reasonably practicable, but no later than the latest release date. The latest release date being 25 July 2024.

Regulation 4: Description of victim supporters entitled to information

The second intention of this instrument is to prescribe persons of a particular description who are able to receive certain information concerning the person who committed an offence against the victim. There are existing information entitlements for victims under section 16 of the Criminal Justice (Scotland) Act 2003 and section 27A of the Victims and Witnesses (Scotland) Act 2014. These provisions presently allow victims to intimate that they want to receive certain information about a person who has been convicted of committing an offence against them, including information about release (see section 16(3)(a) of the 2003 Act and section 27A(1)(a)). Section 14 of the 2023 Act amended those Acts to make provision to allow a “supporter” to be provided with that information at the same time as a victim, or on behalf of a victim. A “supporter” is a person of a description prescribed by the Scottish Ministers by regulations.

Regulation 4 prescribes certain organisations as “supporters” for the purposes of those provisions.

The purpose of section 14 of the 2023 Act is to embed greater choice for victims in how the VNS or short term information scheme operates for them, and to ensure a more trauma-informed, supported and person-centred approach to information provision for victims.

The use of the emergency power of release in section 3C of the 1993 Act foregrounds the importance of the victim notification and information schemes. We recognise that both victims and VSO have concerns about the implications of emergency release, and the benefits of ensuring that victims can exercise agency in how the information schemes operate for them. Victims will be able to decide themselves if they wish to nominate a VSO.

The VSOs which are being prescribed are:

- Victim Support Scotland (VSS)
- Rape Crisis Scotland
- Children 1st
- ASSIST

EU Alignment Consideration

The emergency release aspect of this instrument is not relevant to the Scottish Government’s policy to maintain alignment with the EU.

Enabling victims to nominate VSOs to receive information on their behalf, or as well as a victim, will ensure ongoing alignment with Directive 2012/29/EU (Victims Rights Directive)¹, which strengthened victims’ rights to information, support and protection. This includes at Article 6(5) an obligation on Member States to ensure that victims are offered the opportunity to be notified, amongst other things, of an offender’s release.

¹ [Directive - 2012/29 - EN - EUR-Lex \(europa.eu\)](#)

Consultation

To comply with the requirements of the standard parliamentary approach to introducing new legislation in Scotland a detailed public consultation was undertaken in the development of the Bail and Release from Custody (Scotland) Act 2023. This involved consultation with a range of public bodies, key stakeholders and various partners across the third sector landscape who have an interest on the operation of the sections within the Act.

A full list of those consulted, including on the sections pertaining to this policy note – are set out in the [public consultation in 2021](#)² and the SG's [formal response in 2022](#)³. As a result of this consultation process the following general themes and specific objections were highlighted during the passage of the Act.

In respect of the laying of this SSI and the regulations outlined therein, engagement has been ongoing with a number of operational delivery partners to support the planning and delivery of an emergency release process, should Parliament approve it.

That development work includes liaison with public and third sector stakeholders whose activities include support for prison leavers, to examine how an emergency release process would impact on their activities, and how they could adjust to provide the necessary support.

It also involves engagement with VSOs on operationalisation of section 14 of the 2023 Act, to ensure that the victim notification and information schemes function in a more-trauma informed matter, and also to ensure that Government was considering the impact on victims and VSOs of the decision to use the emergency release power, and adapting implementation plans to better ensure the needs of these groups were met.

Impact Assessments

Impact assessments were conducted prior to the passage of the Bail and Release from Custody (Scotland) Act 2023 and are kept under review:

- Business and Regulatory Impact Assessment (BRIA)
- Child Rights and Wellbeing Impact Assessment (CRWIA)
- Equality Impact Assessment (EIA)
- Data Protection Impact Assessment (DPIA)
- Fairer Scotland Duty Assessment (FSD)
- Island Communities Impact Assessment (ICIA)
- Strategic Environmental Assessment (pre-screening notification – not published) (SEA)

For the laying of this SSI the following impact assessment have been undertaken:

- Business and Regulatory Impact Assessment
- Equalities Impact Assessment (EQIA)

² <https://www.gov.scot/publications/consultation-bail-release-custody-arrangements-scotland/>

³ <https://consult.gov.scot/justice/bailandreleasefromcustody/#:~:text=The%20consultation%20seeks%20views%20on,custody%20is%20used%20in%20Scotland.>

- Data Protection Impact Assessment (DPIA)
- Children’s Rights and Wellbeing Impact Assessment (CRWIA)
- Island Communities Impact Assessment (ICIA)

Financial Effects

The financial effects of this policy were set out under the financial memorandum which accompanied the Bill for the 2023 Act.

While this release process will bring forward release dates of individuals who would be released within the coming weeks/months, it is recognised that there is likely to be an increase in demand for community services during the period of the emergency release process.

As noted above, releasing prisoners in 4 tranches is intended to alleviate that impact to a degree. And there will be a corresponding reduction in demand due to a reduction in liberations for a period once the emergency release process is over.

The Scottish Government will continue to work closely with delivery partners to understand any resource implications.

This will include ongoing collaboration with VSOs to understand the implications for them of enabling victims to nominate a VSO to receive information as well as, or on behalf of the victim under the VNS or short-term information scheme.

Scottish Government
Justice Directorate

29 May 2024