

POLICY NOTE

THE CRIMINAL JUSTICE (MISCELLANEOUS TEMPORARY MODIFICATIONS) (SCOTLAND) REGULATIONS 2020

SSI 2020/137

The above Regulations are made in exercise of the powers conferred by section 16 of the Coronavirus (Scotland) Act 2020.

The above instrument is subject to negative procedure

The practical effect of these modifications is that—

- victims who are registered on one of the two victim notification schemes can be informed that the relevant offender has been released from prison under regulations made under paragraph 19 of Schedule 4 to the 2020 Act; and
- the Director of a contracted out prison can exercise the power to prevent the release of a prisoner which is conferred on a Governor of a prison under paragraph 19(3)(b) of schedule 4 of the 2020 Act.

Policy objective

These regulations make changes to the Victim Notification Scheme (VNS) to ensure that victims who have registered with the VNS can receive information about an offender's release from prison under the emergency release arrangements.

Specifically, these regulations modify section 16 of the Criminal Justice (Scotland) Act 2003 and section 27A of the Victims and Witnesses (Scotland) Act 2014 for the period during which the Coronavirus (Scotland) Act 2020 is in force.

The practical effect of these modifications is that victims, who have requested such information through the VNS, can be informed that the relevant offender is released from prison under regulations made under paragraph 19 of Schedule 4 to the 2020 Act.

Section 16 of the 2003 Act and section 27A of the 2014 Act both make provision for victims to be notified (through the VNS) in the event of the relevant offender's release from prison. Section 16 of the 2003 Act applies where the offender has received a sentence of 18 months or more and section 27A of the 2014 Act applies where the offender has received a sentence of less than 18 months.

Without these modifications, neither section 16 of the 2003 Act nor section 27A of the 2014 Act would apply where an offender is released under regulations made under the 2020 Act. This would prevent Scottish Ministers from informing a victim where the relevant offender is released from prison. These regulations remedy this issue.

These Regulations also modify paragraph 19(9) of schedule 4 of the 2020 Act to clarify the term "governor" as used in paragraph 19(3)(b) of schedule 4. The provisions on early release from prison in paragraph 19 of schedule 4 apply to all prisons including contracted-out prisons and young offenders institutions. The power to prevent a person's release on grounds that they

pose an immediate risk of harm to an identified individual is conferred on the governor of the prison. However, contracted-out prisons do not have a governor as that role is carried out by a director appointed by the contractor.

These Regulations modify paragraph 19(9) to clarify that the reference to governor in paragraph 19(3)(b) includes a reference to the director of a contracted-out prison. Without this modification, a director of a contracted-out prison would be unable to exercise the power in paragraph 19(3)(b) to prevent the release of a person on grounds of risk and would instead be duty bound to release every prisoner falling within the class specified in regulations made under paragraph 19(1).

Consultation

There is no statutory requirement to consult on these Regulations and no formal consultation has been carried out, however a number of partners (including Social Work Scotland, COSLA and Victim Support Scotland) have been included in relevant discussions.

Business and Regulatory Impact Assessment

No Business and Regulatory Impact Assessment has been carried out on the Regulations.

Financial Implications

There will be additional impact on public services in Scotland by these measures, however, because to the nature of the current emergency situation, detailed financial modelling has not been possible.

Directorate for Justice
Scottish Government
May 2020