

POLICY NOTE

THE CORONAVIRUS (SCOTLAND) ACT 2020 (RELEASE OF PRISONERS) REGULATIONS 2020

SSI 2020/138

The above Regulation is made in exercise of the powers conferred on the Scottish Ministers by Paragraph 19(1) of Schedule 4 of the Coronavirus (Scotland) Act 2020.

These Regulations are made under the expedited procedure set out in paragraph 20(2) as the Scottish Ministers are satisfied that, for reasons of urgency, it is necessary to make these Regulations without them being subject to the affirmative procedure. These Regulations are being made as the Scottish Ministers are satisfied that the release of prisoners authorised by the Regulations is a necessary and proportionate response to the effects coronavirus is having, and is likely to have, on prisons generally, for the purpose of protecting: (a) the security and good order of prisons; and (b) the health, safety and welfare of prisoners and those working in prisons.

These Regulations make provision for a limited number of short-term sentenced prisoners to be considered for release on or after 4 May 2020. Eligibility for release will be limited to those who are sentenced to 18 months or less and who, on 4 May 2020, have 90 days or less left of their time in custody.

The legislation passed by Parliament already provides a number of statutory exclusions which specifically exclude from consideration any prisoner convicted of sexual or terrorism offences or imprisoned for life. The full range of statutory exclusions in the legislation can be found in Section 19 on the following page - <https://www.legislation.gov.uk/asp/2020/7/schedule/4/enacted>.

The regulations will also provide a number of further exclusions in relation to domestic abuse, harassment and Covid-19 related offending which are further explained below.

In addition, a Prison Governor may veto someone from the scheme where they consider that the prisoner presents an immediate risk of harm to an identified individual.

Policy objective

Although there has been some reduction in the prison population over recent weeks, our prisons have also had to take steps to end visits and reduce time out of cell. A significant number of prison staff cannot work, due to ill health, a requirement to isolate or as a result of a need to take care of children and family members. Taken together with the changes to prison regimes, these factors make prisons an especially challenging environment at present for prisoners, prison officers, NHS staff and others who work in our prisons.

Scottish Ministers consider a limited form of prison release to be a necessary and proportionate response to the current situation in our prisons and this action will help give the SPS improved

capacity as they move towards single-cell occupancy, and as they continue to work to maintain a safe custodial environment.

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 in accordance with paragraph 19(6) of Schedule 4 of the 2020 Act.

Regulation 1: Citation, commencement and interpretation

These Regulations come into force as soon as they are made on 4 May 2020 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 1(1) of the 1993 Act includes references to young offenders released under that section as applied by section 6 of the 1993 Act.

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

The Scottish Government and Scottish Prison Service have been in detailed discussion throughout recent weeks over the current and possible future impact that Coronavirus may have on the operation of our prisons, including the effect on staffing, and the conditions for prisoners. After careful assessment of the capacity of the prison estate, the additional flexibility required to properly respond to health concerns, and the necessary staffing levels to maintain safe and effective operations - it was agreed with the Chief Executive of the Scottish Prison Service that removing around 300-450 short-sentence prisoners will provide a significant improvement to operating conditions – whilst still being proportionate to the current situation

Regulation 2 specifies the class of persons who are to be released early from prison limiting the class to those sentenced to 18 months or less and who, on 4 May 2020, have 90 days or less to serve until their automatic release at the halfway stage of their sentence. Regulation 2 also carves out certain categories of prisoners from the specified class of eligible prisoners.

In order to specifically address concerns about domestic violence during the period of lockdown we propose to exclude from early release those who are serving or who have served a sentence for an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 and those serving or who have served a sentence for an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018. We also propose to exclude those subject to 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 order to prevent re-release of those recently convicted for Covid-19 offending we also propose to exclude those serving a sentence for an offence under regulation 8 of the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020.

Regulation 3: Calculation of the date of release

Regulation 3 makes provision for the calculation of the date of release in accordance with paragraph 19(6) of Schedule 4 of the 2020 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 for those involved so that services can be aligned with release and so there is not an unmanageable impact of multiple prisoners becoming eligible and having to be released over a very short timeframe. The initial phase is the longest for the purpose of providing additional time for making release arrangements in recognition of the shorter lead-in time for release planning for that eligible cohort.

The releases brought forward will be phased over three distinct phases (two weeks, one week, one week). That would mean from 4 May:

- (a) prisoners with 1-30 days until their release at the halfway stage of their sentence (the earliest date of liberation “EDL”) would be released no later than 18th May 2020;
- (b) prisoners with 31-60 days remaining until their EDL would be released no earlier than 19th May 2020 and no later than 25th May 2020; and
- (c) prisoners with 61-90 days remaining until their EDL would be released no earlier than 26th May 2020 and no later than 1st June 2020.

In recognition of the particular circumstances of emergency release, which is to be undertaken during a pandemic, the regulations also set out specific arrangements in relation to the health of prisoners. Release can be delayed on the advice of a healthcare professional for those likely to have coronavirus. Where release is delayed on those grounds the prisoner will not be released until a healthcare professional informs the Governor that the person is no longer likely to have coronavirus or they otherwise reach their original release date and there is no longer an ability to hold that person in custody.

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
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