

# Equality Impact Assessment for The Early Release of Prisoners and Prescribed Victim Supporters (Scotland) Regulations 2024

**Title of policy:** The Early Release of Prisoners and Prescribed Victim Supporters (Scotland) Regulations 2024

**Summary of aims and desired outcomes of Policy:**

The measures contained within the regulations:

- 1) Are designed to respond to a recent sharp and unanticipated rise in the prison population by providing regulations that authorise the early release of certain groups of prisoners. This is considered necessary and proportionate to respond to an emergency situation that Ministers consider is placing, or is likely to place, the security and good order of prisons or the health, safety or welfare of prisoners and prison staff, at significant risk; and
- 2) Make provision so that victims can nominate a victim support organisation to receive information at the same time as the victim, or on their behalf, regarding the release of the linked individual in their case. This relates to two statutory schemes for the provision of information for victims.

**Directorate:** Justice Directorate

**Division:** Community Justice Division

**Team:** Parole, Release and Reintegration Unit

## **Executive summary**

An Equalities Impact Assessment (EQIA) was undertaken in connection with the Bail and Release from Custody (Scotland) Bill in 2021 to consider the potential impacts across the protected characteristics of the provisions included in the Bill.

The purpose of the regulations is two-fold.

Firstly, to make provision for the early release of certain prisoners, in response to an emergency situation, brought on by a recent sharp and unanticipated rise in the prison population.

The second purpose is to prescribe victim support organisations (VSOs) for the purposes of the provisions introduced by section 14 of The Bail and Release from Custody (Scotland) Act 2023 (the 2023 Act). Section 14 makes provision so that

victims can nominate a VSO to receive information at the same time as they do, or on their behalf. This relates to two statutory schemes for the provision of information for victims: the Victim Notification Scheme (VNS) 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. Only VSOs that have been prescribed by regulations made by the Scottish Ministers can be nominated by victims to receive information or to request the information themselves.

These policies have the potential to impact on many individuals who come into contact with the criminal justice system, including those being released from a short-term custodial sentence, their families, victims of crime and the wider communities to which the prisoners will be released. This EQIA utilised multiple sources and evidence gathered from stakeholders to inform the potential impacts the SSI may have on people who possess none, one or more protected characteristics.

In developing the EQIA for these policies, the Scottish Government (SG) is mindful of the three needs of the Public Sector Equality Duty (PSED): eliminate unlawful discrimination, harassment and victimisation; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not. Where any negative impacts have been identified, we have sought to mitigate/eliminate these.

The EQIA is an ongoing process, and therefore will continually be amended as new evidence comes to light. We will continue to engage with stakeholders and will regularly review the EQIA following any additional information received.

The policies may have a positive impact on individuals who possess protected characteristics. However, there may also be a disproportionate impact on any partners and family members in the community who may be affected by the release of the eligible individuals. The effect may be negative, positive, or a combination of both. The potential for a negative effect will be mitigated by the regulation excluding individuals serving or having previously served sentences for domestic abuse, abusive behaviour, sexual harm, or harassment offences, where the conviction is not spent, from the emergency release process.

As outlined above, prison Governors will also be able to veto the release of an otherwise eligible individual, where they consider that the prisoner presents an immediate risk of harm to an identified individual or group, were they to be released at that time.

Conversely, the release of other individuals under this process may provide a benefit to some households, in terms of capacity for assistance with childcare and caring responsibilities within the household, work and earning potential, security, and emotional support.

While the time to prepare a substantial proportion of individuals for release will be constrained compared to usual processes, arrangements are being made to expedite the consideration of prisoners' individual circumstances (pre-release planning) and the sharing of information between public bodies and with community-based services (e.g. housing, healthcare, benefits). It should also be noted that some prisoners within the cohort will already be close to their scheduled release date and release planning will have already begun.

SG recognises the effect early release powers may have on victims. Section 14 of the 2023 Act provides victims with a greater agency to ensure that the victim information schemes work in a way that suits them, as well as functioning in a more trauma-informed and person-centred way, so as to facilitate greater access to support.

The Victim Notification Scheme (VNS) applies where an offender has been sentenced to 18 months' imprisonment. The short-term information scheme applies where an offender is sentenced to fewer than 18 months' imprisonment. In either case, a victim, if they wish to do so, can receive information about the offender's release from prison.

SG has worked closely with VSOs to explore the implications of emergency release for victims and VSOs themselves. Prescribing VSOs for the purposes of nomination by a victim demonstrates SG's recognition of the potential implications of emergency release for victims and the importance of delivering victim information in a trauma-informed and supportive way. SG will continue to work with VSOs to ensure that routes to obtaining information and support are clearly signposted for victims.

## **Background**

The 2023 Act introduced a number of reforms intended to refocus how imprisonment in Scotland is used. They were intended to ensure that, as much as possible, the use of custody for remand is a last resort for the court when a risk of serious harm arises, and to give a greater focus to the rehabilitation and reintegration of individuals leaving custody.

The regulations draw on two enabling powers introduced by the 2023 Act:

### Power to Release Early (section 11)

The regulations detail the power to release prisoners early, as introduced by the 2023 Act. These regulations make provision for a limited number of short-term prisoners (i.e. those serving less than 4 years) to be considered for release. Eligibility for release will be limited to those who have 180 days or less left to serve from the date the regulations come into force.

The 2023 Act provides a number of statutory exclusions which specifically exclude from consideration any prisoner serving a life sentence or serving a sentence for domestic abuse or sexual offences.

In addition, exclusions will also be applied to those who have served a sentence for abusive behaviour and sexual harm, as described in 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. These additional exclusions will apply only where the associated conviction is not spent as per the Rehabilitation of Offenders Act 1974.

Individuals subject to non-harassment orders will also not be released under this power.

There is also a provision allowing prison Governors to veto the release of an otherwise eligible individual where they consider that the prisoner presents an immediate risk of harm to an identified individual or group, were they to be released.

#### Provision of information to VSOs (section 14)

The SSI also prescribes the VSOs for the purpose of section 14 of the 2023 Act. This provision will enable victims, where they have consented, to nominate a prescribed VSO to receive information on their behalf under one of two statutory schemes of information for victims. Information about the release of an offender is available under both schemes. Prescribing VSOs will help to deliver a more trauma-informed pathway to receiving information, if a victim wishes to use it.

## **The Scope of the EQIA**

The EQIA assesses the impact of the regulations on individuals, looking at the following protected characteristics:

- Age
- Disability
- Sex
- Pregnancy and maternity
- Gender reassignment
- Sexual Orientation
- Race
- Religion/Belief

A variety of sources were used to gather evidence for the completion of this EQIA, including the findings from the public consultation, which was carried out in advance of the 2023 Act's passage through Parliament. This involved consultation with a range of public bodies, key stakeholders and various partners across the third sector.

Recent engagement has been ongoing with a number of operational delivery partners to support the planning and delivery of the emergency release process, should this be approved by Parliament. That development work includes liaison with public and third sector stakeholders whose activities include support for prison leavers, to examine how an emergency process would impact 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 schemes function in a more trauma-informed manner, and adapting implementation plans regarding the emergency release process in order to better ensure that the needs of these groups, and the victims they support, are met.

## **Key Findings**

The regulations have the potential to impact many of those who come into contact with the criminal justice system, particularly those being released from custody and victims of crime.

The eligibility criteria and release process set out in the regulations is blind to the protected characteristics of gender reassignment, marriage/civil partnership, race, religion/belief or sexual orientation. A disproportionate impact on people with these characteristics is not considered likely.

There is some evidence that the prison estate is not always suitable for the needs of older or disabled prisoners. As such, there may be a potential positive impact for individuals with these characteristics who are eligible to be released early under the emergency release process. If these individuals are released between 45 and 180 days early, they may be able to access support in the community that is more appropriately suited to their needs and can be accessed for a longer duration.

Women are more likely to receive a short sentence than men, and would therefore be proportionally more likely to be released under the emergency release process, although it is expected that due to the higher numbers of males in custody generally, the larger proportion of those being released will be male.

The early release of a partner may assist with childcare requirements and household finances, as well as caring duties, wellbeing and emotional support that would have otherwise been unavailable.

Parental imprisonment is considered an Adverse Childhood Experience (ACE), and the release of a mother or father could help benefit any dependent children. Similarly, the early release of a pregnant prisoner could allow for the development of a better connection with the community and early access to local healthcare support. The release of an expectant parent could also provide support to their partner and allow engagement with the parenting process at an earlier opportunity.

There may be a disproportionate impact on any partners and family members who may be negatively affected by the release and return of the eligible prisoner. The potential negative effect will be mitigated by the exclusion of individuals serving or having previously served sentences for domestic abuse offences (where those convictions are not spent) and individuals subject to non-harassment orders. Additional mitigations are also built into the Governor veto process, whereby an otherwise eligible individual can have their proposed release vetoed where they are deemed to pose an immediate risk to an identified individual or group.

In terms of the potential impact on victims, there are links between the likelihood of experiencing crime, or specific types of crime, and protected characteristics, including sex, age, disability, race, gender identity and sexual orientation. Sex has a particular impact on the way violent crime is experienced. Women are much more likely than men to have experienced sexual victimisation and partner abuse, while men are more likely to have experienced serious non-sexual violence. Younger people are more likely than older people to have experienced crime, and disabled people are more likely than non-disabled people to have experienced both crime in general and sexual crime.

As detailed above, the 2023 Act excludes individuals who are serving sentences for domestic abuse or sexual offences from consideration for release. These prohibitions will mitigate the impact of the regulations on the victims of these offences, the majority of whom are women. The regulations will also exclude from release individuals who have served a sentence for abusive behaviour, sexual harm, or harassment offences. These additional exclusions will apply only where the associated conviction is not spent as per the Rehabilitation of Offenders Act 1974. Again, this will mitigate the impact on victims of these offences. Moreover, the regulations prescribe a range of VSOs in order to ensure that victims, if they wish to do, so can nominate a VSO which can support their particular need.

In addition, the presence of the Governor veto will ensure that any individual who is considered to pose an immediate threat to an individual or group of individuals (including on the basis of sex, race, religion or belief) will not be included within the emergency release process.

## **Recommendations and Conclusion**

The evidence collected over the course of the EQIA process has highlighted known inequalities in terms of those being released from custody and victims of crime. However, the EQIA has shown the potential for an overall positive impact on the groups identified in the legislation, with appropriate mitigations built into the early release process, via statutory and additional exclusions, as well as the application of the Governor veto process.

Relevant stakeholders (including justice delivery partners and Victim Support Organisations) were engaged with during the development of the regulations. We have taken on board their views and will continue to engage with them during further

development of the policies to ensure we gather, analyse and review all available data and evidence concerning equality impacts of this legislation. The EQIA process will be ongoing, and the associated documents will be kept up to date with any new evidence.

## **Declaration and Publication**

I have read the Equality Impact Assessment, and I am satisfied that it represents a fair and reasonable view of the expected equality impact of the Regulations.

**Signed:** Alex Doig, Deputy Director, Prisons, Community Justice

**Date:** 04/06/2024