

Data Protection Impact Assessment

Early Release of Prisoners and Prescribed Victim Supporters (Scotland) Regulations 2024

Version date: 4 June 2024

Review date: Ongoing (to be reviewed in light of any feedback from ICO)

The purpose of this document is to report on and assess against any potential data protection impact as a result of the Early Release of Prisoners and Prescribed Victim Supporters (Scotland) Regulations 2024 (the regulations).

A full DPIA was previously carried out in relation to the Bail and Release from Custody (Scotland) Act 2023 (the 2023 Act) prior to it being passed by the Scottish Parliament. This DPIA relates only to the regulations made in exercise of the powers introduced by sections 11 and 14 of the 2023 Act.

The regulations are being progressed on expedited timescales due to the urgency of the situation. It has not been possible to produce this DPIA on normal timescales, nor to complete the consultation process with the Information Commissioner's Office (ICO). The latter is ongoing. Any new information or issues arising, through consultation with the ICO or otherwise, will be taken into account. Any resulting changes to the DPIA will be made as soon as possible.

The text of the proposed legislation/amendment is attached at Annex A.

This Data Protection Impact Assessment (DPIA) works in conjunction with the [Article 36\(4\) ICO](#) consultation form submitted in advance of this, as the proposal requires consultation with the Information Commissioner's Office (ICO).

This DPIA is undertaken on behalf of the data controllers, who will be responsible for the operation of the Early Release of Prisoners and Prescribed Victim Supporters (Scotland) Regulations 2024, in compliance with UK General Data Protection Regulation (UKGDPR) Article 35(10).

1. Contact and schedule information

1.1	SG department	Justice Directorate, Community Justice, Parole, Release and Re-integration team.
1.2	Contact email	Graeme.MacMillan@gov.scot
1.3	Data protection support email Data protection officer	dpa@gov.scot dataprotectionofficer@gov.scot
1.4	Is your proposal primary legislation, secondary legislation or other form of statutory measure?	Secondary Legislation: Early Release of Prisoners and Prescribed Victim Supporters (Scotland) Regulations 2024

1.1	SG department	Justice Directorate, Community Justice, Parole, Release and Re-integration team.
1.5	What stage is the legislative process at? Please indicate any relevant timescales and deadlines.	Legislation is laid before parliament for their consideration.

2. Introductory information

	Questions	Comments
2.1	Summary of proposal	<p>The Bail and Release from Custody (Scotland) Act 2023 (the 2023 Act) introduced a number of provisions to ensure that greater focus is given to the rehabilitation and reintegration of individuals leaving custody. Section 11 of the 2023 Act comprises the enabling power for the regulations.</p> <p>The purpose of the regulations is two-fold: emergency release and the prescription of victim support organisations (VSOs).</p> <p>Emergency Release The first purpose is 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.</p> <p>The use of this power is considered necessary and proportionate, in order to ensure that the Scottish Prison Service (SPS) is able to maintain the safe operation of the prison system, in particular to protect (a) the security and good order of any prison to which the regulations relate, and (b) the health, safety or welfare of prisoners, or those working, in any such prison.</p> <p>The measures will enable the early release of certain prisoners, namely those serving short-term sentences (less than four years), who have 180 days or less left to serve. Statutory exclusions apply under the relevant primary legislation and specific exclusions have been added in the regulations.</p> <p>In addition, prison Governors can veto any release where they consider a prisoner who is otherwise eligible for release under the regulations presents an immediate risk of harm to an identified individual or group.</p> <p>Victim Support Organisations The second purpose is to prescribe VSOs for the purposes of the provisions introduced by section 14 of 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.</p>

	Questions	Comments
		<p>Section 14 is intended to give victims greater choice in how an information scheme can work for them, as well as ensuring the schemes operate in a more trauma-informed and person-centred way that facilitates access to support. In recognition of the concerns victims and VSOs may have about use of the emergency power of release, VSOs are being prescribed in order to ensure that, if victims wish to receive information about an offender's release, they can nominate a VSO to support them in receiving that information.</p>
2.2	<p>Description of the personal data involved</p> <p>Please also specify if this personal data will be special category data, or relate to criminal convictions or offences</p>	<p>Special category data, criminal offence data & aggregated personal data.</p> <p>Delivery of the emergency release process will require information sharing, including to support decision making, between the Scottish Prison Service (SPS), the National Health Service (NHS), Local Authorities (LA's), Justice Social Work (JSW), Police Scotland, the Department of Work and Pensions, and third sector organisations (for example, Public Social Partnerships responsible for the provision of voluntary throughcare). Established Information Sharing Agreements (ISAs) are in place.</p> <p>It should be noted that the data that will be shared is not additional or new. It comprises information that would typically be shared between these agencies in the normal course of business. The main difference is that the information is being shared with less notice and in this case, to support Governor veto decision making. The format may differ due to the specific circumstances, for example some information is likely to be provided in list form, where it may otherwise have been provided on a case-by-case basis. This will take place via the relevant Information Sharing Agreements between the organisations involved. Depending on the nature of the information being shared, this may take place either as a single data share or in a set listing for each of the proposed release tranches.</p>
2.3	<p>Will the processing of personal data as a result of the proposal have an</p>	<p>Yes, in relation to:</p> <ul style="list-style-type: none"> • Eligibility for release (exclusion checks) • Governor veto decision making

	Questions	Comments
	<p>impact on decisions made about individuals, groups or categories of persons?</p> <p>If so, please explain the potential or actual impact. This may include, for example, a denial of an individual's rights, or use of social profiling to inform policy making.</p>	<ul style="list-style-type: none"> The refusal to share information with VSO's by the SPS (if/where applicable) <p>Emergency Release In order to determine eligibility, personal and criminal offence data will need to be gathered from prisoner records and other sources, analysed and presented by SPS staff. It will also be shared with relevant partners for the purposes set out below.</p> <p>As part of the Governor veto process, information sharing will be important to support decision making. A number of organisations and bodies (mentioned above) will share relevant case specific information to support Governor veto decision making.</p> <p>Victim Support Organisations Prescribed VSOs will be provided with information by SPS, related to the prisoner connected to a victim's case. This will be underpinned by an information-sharing agreement. However, in certain circumstances SPS can decide to refuse to share this information if they consider there are exceptional circumstances to justify doing so, or where they consider that there is an identified risk of harm to the offender, thus providing a safeguard for the prisoners whose data may be shared.</p>
2.4	<p>Necessity, proportionality and justification</p> <p>What issue/public need is the proposal seeking to address?</p> <p>What policy objective is the legislation trying to meet?</p> <p>Were less invasive or more privacy-friendly options considered, and if so why were these options rejected?</p>	<p>The Scottish Ministers consider the regulations to be necessary and proportionate, in order to ensure that the Scottish Prison Service (SPS) is able to maintain the safe operation of the prison system, in particular to protect (a) the security and good order of any prison to which the regulations relate, and (b) the health, safety or welfare of prisoners, or those working, in any such prison.</p> <p>Necessity</p> <p><u>Early release of prisoners</u> The sharing and processing of this data is necessary to determine eligibility, and to support Governor veto decision making, both of which are crucial for proper implementation of the regulations. It will also ensure that individuals released from custody have appropriate support in place from partners, including local authorities (where there is a statutory requirement to provide support if</p>

	Questions	Comments
	<p>Are there any potential unintended consequences with regards to the provisions e.g., would the provisions result in unintended surveillance or profiling?</p> <p>Have you considered whether the intended processing will have appropriate safeguards in place? If so briefly explain the nature of those safeguards and how any safeguards ensure the balance of any competing interests in relation to the processing.</p>	<p>requested) third sector organisations providing additional voluntary throughcare.</p> <p><u>Provision of information to VSOs</u> The processing of the data is necessary to ensure that victims who have chosen to receive information under the VNS or short-term information scheme can have a choice/agency in how they receive information, in a supportive and trauma-informed way. Ministers are also required to share this information under Criminal Justice (Scotland) Act 2003 (the 2003 Act) and the Victims and Witnesses (Scotland) Act 2014 (the 2014 Act).</p> <p>Proportionality</p> <p><u>Early release of prisoners</u> Data sharing and processing will be proportionate; only information required for the above purposes will be processed.</p> <p><u>Provision of information to VSOs</u> Data sharing and processing will be proportionate. Information shared is already available to victims under the two relevant schemes, which contributes to safety planning and support measures. This ensures a trauma informed approach is embedded in practice and supports individual choice for victims. There is also a statutory requirement on Ministers to share the information.</p> <p>Before releasing the information, SPS will consider if there are exceptional circumstances which apply or where they consider that there is an identified risk of harm to the offender which mean they should not share the information. This affords a safeguard to the prisoner in relation to the processing of their personal data.</p> <p>Justification</p> <p><u>For early release of prisoners</u> The processing of personal data is essential to inform the process of early release and ensure proper implementation, including key safeguards such as exclusions and Governor veto and facilitating the provision of support to help reduce recidivism. The processing will therefore have benefits for the public, those who are released and</p>

	Questions	Comments
		<p>those who remain in prison (as the prison regime will be better placed to meet their needs and contribute to, and facilitate, their rehabilitation).</p> <p>The sharing of information for Governor veto decision making processes is also critical for fairness, consistency and mitigation of any immediate risks to an individual or a group.</p> <p><u>Provision of information to VSOs</u> There is a legal obligation for SPS to provide a VSO with data under the requirements of this provision. This ensures a trauma informed approach is embedded in practice and supports individual choice for victims. Before releasing the information, SPS will consider if there are exceptional circumstances which apply or where they consider that there is an identified risk of harm to the offender which mean they should not share the information. This affords a safeguard to the prisoner in relation to the processing of their personal data.</p> <p>In relation to implementing the emergency release process: the data will be shared with relevant partners (as mentioned above) to allow them to make suitable plans for the early release of individuals, including support for any identified needs on release, for example support to find suitable accommodation.</p> <p>The internal data processing in SPS will be to identify prisoners eligible for release, inform the governor veto decision making and to allow the production of aggregate data.</p> <p>The data received from other public bodies will also be processed in order to support Governor veto decision making.</p>
2.5	<p>Will the implementation be accompanied by guidance or by an associated Code of Conduct?</p> <p>If the latter, what will be the status of the Code of Conduct?</p>	<p>Associated guidance on the application of the Governor veto will be published along with the SPS operational guidance on the emergency release process.</p> <p>ISAs will be put in place between SPS and VSOs, which will clearly set out how data should be processed.</p>

	Questions	Comments
	(statutory or voluntary?)	

3. Data Controllers

Organisation	Scottish Prison Service (As Scottish Ministers)		
Activities	<p>Early Release of Prisoners – gathering, storing, analysing and presenting personal data to inform decisions on which prisoners are eligible for release and to inform governor veto decisions. Also producing aggregated data. Sharing personal data with public and third sector bodies to assist in suitable release planning. While this information is already shared regularly, the measures here will require specific information to be shared either in a group or tranches and in an expedited manner.</p> <p>VSO and victim information provision – will require SPS to share data with prescribed VSOs as part of statutory schemes of information for victims. The amount of data will depend on the number of victims who decide to nominate a VSO for the purposes of the statutory schemes. Scottish Ministers will also share offender name and release date data with victims entitled to receive the information and who have requested it, regardless of whether they have nominated a VSO.</p>		
Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?	Yes		
Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data	<u>6(1)(a) - the data subject has given consent to the processing of his or her personal data for one or more specific purposes – for the</u>	Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal convictions data Include condition from Schedule 1 or 2 of the Data Protection Act 2018	Processing data in relation to the emergency release will involve processing special category data under article 9 UK GDPR in order to determine health needs that

<p>– general processing.</p>	<p><u>provision of support from voluntary throughcare support services, where an individual due to be released is engaged with such support and has given their consent for information to be shared. Article 6(1)(e) – public task. The legal gateways in domestic law are provided by section 3C of the 1993 Act (decision by Ministers on necessity and proportionality of release, identifying eligible prisoners and exercise of governor veto), the regulations (identifies further exclusions to eligibility to be considered), section 1 of the Management of Offenders etc. (Scotland) Act 2005 and</u></p>		<p>a person may have on release.</p> <p>It will also involve processing criminal convictions and offences data under article 10 UK GDPR to determine eligibility for release and to inform governor veto].</p> <p>For special category data, the lawful basis is article 9(1)(g) (substantial public interest). The legal gateways for reliance on this lawful basis are <u>provided by section 3C of the 1993 Act (decision by Ministers on necessity and proportionality of release, identifying eligible prisoners and exercise of governor veto), the regulations (identifies further exclusions to eligibility to be considered), and section 1 of the Management of Offenders etc. (Scotland) Act 2005 and section 35 of the Community Justice (Scotland)</u></p>
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	<p><u>section 35 of the Community Justice (Scotland) Act 2016 (allowing data to be shared with other partners) and sections 16ZA of the 2003 Act and 27B of the 2014 Act (sharing information with VSOs).</u></p>		<p><u>Act 2016 (allowing data to be shared with other partners).</u></p> <p><u>The processing meets the condition in paragraph 6 of schedule 1 of the Data Protection Act 2018 (statutory and government purposes).</u></p> <p>The processing is done under the control of official authority (see above legal gateways for law providing authority together with section 3(1) of the Prisons (Scotland) Act 1989).</p>
<p>Law Enforcement – if any law enforcement processing will take place – lawful basis for processing under Part 3 of the Data Protection Act 2018</p>	<p>Section 35(2)(b) of the Data Protection Act 2018.</p> <p>Some sensitive processing may take place. This is permitted under section 35(3) and (5)(b). The processing meets the condition in paragraph 1 of schedule 8 of the 2018 Act (statutory etc.</p>	<p>Legal gateway for any sharing of personal data between organisations</p>	<p>Section 1 of the Management of Offenders etc. (Scotland) Act 2005, section 35 of the Community Justice (Scotland) Act 2016, section 16ZA of the Criminal Justice (Scotland) Act 2003 and section 27B of the Victims and Witnesses (Scotland) Act 2014.</p>

	purposes) as it is necessary for the exercise of functions conferred on the Scottish Ministers (see the legal gateways noted in relation to article 6(1)(e) above).		
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Organisation		Police Scotland	
Activities		Early Release of Prisoners – Processing of specific criminal offence data to inform decisions on which prisoners are eligible for release and to inform governor veto decisions. While this information is already shared regularly, the measures here will require specific information to be shared either in a group or tranches and in an expedited manner.	
Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?		Yes	
Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data – general processing.	Article 6(1)(e) – public task. The legal gateways in domestic law are provided by section 32 of the Police and Fire Reform (Scotland) Act 2012, <u>section 1 of the Management of Offenders etc. (Scotland) Act 2005</u> and <u>section 35 of the Community Justice (Scotland) Act 2016</u> in relation to sharing	Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal convictions data Include condition from	Processing data in relation to the emergency release will involve processing criminal convictions and offences data under article 10 UK GDPR to determine eligibility for release and to inform the governor veto. For special category data, the lawful basis

	information for the exercise of governor veto.	Schedule 1 or 2 of the Data Protection Act 2018	<p>is article 9(1)(g) (substantial public interest). The legal gateways for reliance on this lawful basis are <u>provided by section 32 of the Police and Fire Reform (Scotland) Act 2012, section 1 of the Management of Offenders etc. (Scotland) Act 2005 and section 35 of the Community Justice (Scotland) Act 2016</u> in relation to sharing information for the exercise of governor veto.</p> <p><u>The processing meets the condition in paragraph 6 of schedule 1 of the Data Protection Act 2018 (statutory and government purposes).</u></p> <p>The processing is done under the control of official authority (see above legal gateways for law providing authority).</p>
Law Enforcement – if any law enforcement processing will take place – lawful basis for processing under Part 3 of the Data Protection Act 2018	<p>Section 35(2)(b) of the Data Protection Act 2018.</p> <p>Some sensitive processing may take place. This is permitted under section 35(3) and (5)(b). The processing meets the condition in</p>	Legal gateway for any sharing of personal data between organisations	<p><u>Section 32 of the Police and Fire Reform (Scotland) Act 2012, section 1 of the Management of Offenders etc. (Scotland) Act 2005, section 35 of the Community Justice (Scotland) Act 2016.</u></p>

	paragraph 1 of schedule 8 of the 2018 Act (statutory etc. purposes) as it is necessary for the exercise of functions conferred on the Scottish Ministers (see the legal gateways noted in relation to article 6(1)(e) above).		
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Organisation	National Health Service (including individual health boards)		
Activities	Early Release of Prisoners – Processing of relevant health data to inform release planning and Governor veto decisions. Relevant health data can be shared regularly as part of routine release processes, however the measures here will require specific information to be shared in an expedited manner to inform decision making and release planning/support arrangements.		
Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?	Yes		
Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data – general processing.	Article 6(1)(e) (public task). The legal gateways in domestic law are provided by section 35 of the Community Justice (Scotland) Act 2016	Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal convictions data Include condition from Schedule 1 or 2 of the Data	Processing data in relation to the emergency release will involve processing special category data under article 9 UK GDPR in order to determine health needs that a person may have on release. For special category data, the lawful basis is article 9(1)(g) (substantial public

		Protection Act 2018	<p>interest). The legal gateways for reliance on this lawful basis are <u>provided by section 35 of the Community Justice (Scotland) Act 2016 (allowing data to be shared with other partners).</u></p> <p><u>The processing meets the condition in paragraph 6 of schedule 1 of the Data Protection Act 2018 (statutory and government purposes).</u></p> <p>The processing is done under the control of official authority (see above legal gateways for law providing authority).</p>
Law Enforcement – if any law enforcement processing will take place – lawful basis for processing under Part 3 of the Data Protection Act 2018	N/a	Legal gateway for any sharing of personal data between organisations	Section 35 of the Community Justice (Scotland) Act 2016.

Organisation	Local Authorities (Justice Social Work and Housing specifically)
Activities	Early Release of Prisoners – Provision of relevant data to inform release planning and Governor veto decisions. Relevant data can be shared regularly as part of routine release processes, however the measures here will require specific information to be

		shared in an expedited manner to inform decision making and release planning/support arrangements.	
Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?		Yes	
Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data – general processing.	Article 6(1)(e) – public task. The legal gateways in domestic law are provided by section 1 of the Management of Offenders etc. (Scotland) Act 2005 and section 35 of the Community Justice (Scotland) Act 2016.	Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal convictions data Include condition from Schedule 1 or 2 of the Data Protection Act 2018	Processing data in relation to the emergency release will involve processing criminal convictions and offences data under article 10 UK GDPR to determine eligibility for release and to inform governor veto. For special category data, the lawful basis is article 9(1)(g) (substantial public interest). The legal gateways for reliance on this lawful basis are <u>provided by section 1 of the Management of Offenders etc. (Scotland) Act 2005 and section 35 of the Community Justice (Scotland) Act 2016 (allowing data to be shared with other partners).</u> <u>The processing meets the condition in paragraph 6 of schedule 1 of the Data Protection Act 2018 (statutory and</u>

			<u>government purposes).</u> The processing is done under the control of official authority (see above legal gateways for law providing authority).
Law Enforcement – if any law enforcement processing will take place – lawful basis for processing under Part 3 of the Data Protection Act 2018	Section 35(2)(b) of the Data Protection Act 2018. Some sensitive processing may take place. This is permitted under section 35(3) and (5)(b). The processing meets the condition in paragraph 1 of schedule 8 of the 2018 Act (statutory etc. purposes) as cooperation is required under section 1 of the Management of Offenders etc. (Scotland) Act 2005 and section 35 of the Community Justice (Scotland) Act 2016.	Legal gateway for any sharing of personal data between organisations	Section 1 of the Management of Offenders etc. (Scotland) Act 2005, section 35 of the Community Justice (Scotland) Act 2016.

4. Consultation

	Questions	Comments
4.1	Have you consulted with the ICO using the Article 36(4) form? (please provide a link to it) If the ICO has provided feedback, please include this.	The Scottish Government provided the Article 36(4) form to the ICO on 23 May.
4.2	Do you need to hold a public consultation and if so has this taken place? What was the result?	No

	Questions	Comments
4.3	Were there any Comments/feedback from the public consultation about privacy, information or data protection?	The regulations are being progressed on expedited timescales due to the urgency of the situation. It has not been possible to produce this DPIA on normal timescales, nor to complete the consultation process with the Information Commissioner's Office (ICO). The latter is ongoing. Any new information or issues arising, through consultation with the ICO or otherwise, will be taken into account. Any resulting changes to the DPIA will be made as soon as possible.

5. Further assessment and risk identification

	Question	Comments
5.1	Will the proposal require the creation of new identifiers, or require the use of existing ones?	No
5.2	Will the proposal require regulation of: <ul style="list-style-type: none"> • technology relating to processing • behaviour of individuals using technology • technology suppliers • technology infrastructure • information security 	The information that will be shared as part of these regulations will be the same information that would be shared with the named data processors/controllers under normal release processes. Therefore, the same GDPR assurance processes will be followed by all parties. The only adjustments required are where the emergency process requires an expedited approach.
5.3	Will the proposal require establishing or change to operation of an established public register (e.g. Accountancy in Bankruptcy, Land Register etc.) or other online service/s?	No
5.4	Please provide details of whether the proposal will involve the collection or storage of data to be used as evidence or use of investigatory powers (e.g.in relation to fraud, identify theft, misuse of public funds, any possible criminal activity, witness information, victim information or	The regulations involve the processing of criminal data for eligibility checks, the processing of wider data sets to inform Governor veto decisions (regarding any immediate risk to an individual or group should an individual be released during this process), processing of data with wider partners regards early release for planning purposes, and the sharing of release information with Victims (where

	Question	Comments
	other monitoring of online behaviour)	they have either registered with either VNS approach, or have asked for a VSO to receive information on their behalf).
5.5	Would the proposal have an impact on a specific group of persons e.g. children, vulnerable individuals, disabled persons, persons with health issues, persons with financial difficulties, elderly people? (Please specify) In what way?	The regulations are based on specific identifiers like sentence left to serve at the time of the regulations coming into force, original sentence length, previous unspent convictions and any immediate risk to an identified individual or group. They are therefore unlikely to create any specific impact on such individual characteristics.
5.6	<p>Is there anything potentially controversial or of significant public interest in the policy proposal as it relates to processing of data? For example, is the public likely to view the measures as intrusive or onerous?</p> <p>Are there any potential unintended consequences with regards to the provisions e.g. would the provisions result in unintended surveillance or profiling.</p> <p>Have you considered whether the intended processing will have appropriate safeguards in place? If so briefly explain the nature of those safeguards and how any safeguards ensure the balance of any competing interests in relation to the processing.</p>	<p>No.</p> <p>Whilst public interest in emergency release from prison will generally be high, there is no immediate public interest concerns in how this routine data will be processed as part of the regulations as outlined above.</p> <p>All partners will operate within their already agreed GDPR operating practices, information sharing agreements are already in place. New information sharing agreements with the named VSO's are in development between the SPS and those VSO's and will be in place prior to releases taking place.</p>
5.7	Are there consequential changes in other legislation that need to be considered as a result of the proposal or the need to make further subordinate legislation to achieve the aim?	No.
5.8	Will this proposal necessitate an associated code of conduct? If so, what will be the status of the code of conduct (statutory, voluntary etc.)?	No.

	Question	Comments
5.9	<p>Have you considered whether the intended processing will have appropriate safeguards in place, for example in relation to data security, limitation of storage time, anonymisation? If so briefly explain the nature of those safeguards</p> <p>Please indicate how any safeguards ensure the balance of any competing interests in relation to the processing.</p>	<p>The appropriate safeguards already exist in standard operating practice and information sharing agreements that already exist. As detailed above, the release process will take place earlier, but each specific release planning element will take place as it would have during normal release processes.</p> <p>Victim notification ISA's are already in development between the SPS and the VSO's named in the regulations.</p> <p>For the Governor veto process the SPS will process the data using the same overarching assurance and storage processes they use for all other elements of data control within their area of GDPR responsibility. Each of the other public bodies named above will also follow their respective assurance and storage processes in line with their respective GDPR responsibilities.</p>
5.10	<p>Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups or categories of persons? If so, please explain the potential or actual impact. This may include, for example, a denial of an individual's rights or use of social profiling to inform policy making.</p>	<p>Yes.</p> <p>The data utilised as part of these regulations will support the identification of those excluded from being considered, those who meet the threshold for a prison Governor to deny their release (on the basis of an immediate risk to an individual or group), or where a specific concern is highlighted (like a health specific concern) an individual's release may be delayed.</p>
5.11	<p>Will the proposal include automated decision making/profiling of individuals using their personal data?</p>	<p>Yes.</p> <p>Automated offence exclusions will apply – as detailed above in section 1.</p>
5.12	<p>Will the proposal require the transfer of personal data to a 'third country'? (Under UK GDPR this is defined as country outside the UK.)</p>	<p>No.</p>

6. Risk Assessment

<add extra rows to the table as necessary>

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
<p>6.1.1 Risk to individual rights</p> <ul style="list-style-type: none"> • right to be informed • right of access • right to rectification • right to erasure • right to restrict processing • right to data portability • right to object • rights in relation to automated decision making and profiling <p>Will this initiative result in any detriment if individuals do not want their personal data to be processed? This is particularly relevant if special category data is being processed</p>	<p>The Scottish Prison Service state on their website that individuals can request data that is held about them. Their website also advises of the uses of data held relating to individuals who are or have been held in their custody.</p> <p>The Scottish Prison Service invite the rectification of personal data if a data subject believes the personal data, they hold is incorrect or incomplete.</p>	<p>Low</p>	<p>Green</p>	<p>Mitigated</p>
<p>6.2.1 Privacy risks</p> <p>Purpose limitation</p>	<p>Early release of prisoners: No new purposes identified – individual data is already shared with the identified</p>	<p>Low</p>	<p>Green</p>	<p>Mitigated</p>

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
	<p>organisations in this DPIA, however, the power of early release will mean data will be shared within shorter timescales than is normally the case. The purpose of the data sharing and usage will remain the same. Governor veto process will include the available information sources already shared between organisations as part of release planning.</p> <p>Provision of information to VSOs: this information can only be shared for the purposes set out in the provisions inserted by section 14 of the 2023 Act. Individual data is already shared with victims who wish to receive it. Enabling VSOs to be nominated will enable victims to receive information in a more trauma-informed and supported way, but that information will be the same</p>			

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
	at that already available to victims.			
<p>6.2.2 Privacy risks</p> <p>Transparency – data subjects may not be informed about the purposes and lawful basis for the processing, and their rights</p>	<p>Legal Obligation.</p> <p>Scottish Ministers will publish general release information pertaining to the emergency release process, this will cover basic release information such as the overall number of individuals released, and the dates the releases took place. This type of published information will not divulge personal information that can be connected to any specific individual released.</p> <p>These published documents will be accessible via the Scottish Government and SPS websites. It has not yet been confirmed how this will be presented or when it will become available to the public. Work on determining</p>	Low	Green	Mitigated

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
	<p>this aspect continues in consultation with key stakeholders.</p> <p>Stakeholders who control and process data as a result of the power of emergency release will do so lawfully, fairly and in a transparent manner in relation to individuals, and complies with the requirements of Part 3 of the Data Protection Act 2018.</p> <ul style="list-style-type: none"> • Section 6(1)(a) - the data subject has given consent to the processing of his or her personal data for one or more specific purposes – for the provision of support from voluntary throughcare support services, where an individual due to be released is engaged with such support and has given their consent for information to be shared. 			

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
	<ul style="list-style-type: none"> • Section 35 (2)(b): The processing is necessary for the performance of a task carried out for a law enforcement purpose by a competent authority. • Section 35 (5): The processing is strictly necessary for a law enforcement purpose, the processing meets at least one of the conditions in Schedule 8 and the controller has an appropriate policy document in place. • Schedule 8 (1) Statutory etc. purposes - The processing is necessary for the exercise of a function conferred on a person by an enactment or rule of law, and is necessary for reasons of substantial public interest. • Schedule 8 (3): This condition is met if the processing is necessary to protect the vital interests 			

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
	<p>of the data subject or of another individual.</p> <p>Article 8 of the European Convention on Human Rights states that everyone has the right to respect for their private life, home and correspondence. Parties who are processing information comply with the requirements of the Human Rights Act 1998 in that the sharing of personal data is proportionate and in accordance with the ECHR, Article 8(2)</p> <p>Privacy notices will not need to be amended as the same information will be processed in the same way as it is currently, however, there will be more information at a time sent from SPS to partners as a result of more individuals being released from custody.</p>			

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
<p>6.2.3 Privacy risks</p> <p>Minimisation and necessity</p>	<p>Early release of prisoners: As described above, this data is already shared between SPS and the data processors. There is no additional use of the data and no additional information collected. Therefore, the information remains good enough quality for the purpose it is used for, and all personal data is required to ensure adequate support is available for individuals leaving custody.</p> <p>Provision of information to VSOs: As explained above, offender data is already available to victims via the VNS or short-term information schemes. The information available to VSOs under the provisions inserted by section 14 of the 2023 Act will be the same, and VSOs will have in place ISAs which set out how the data they receive is to be processed.</p>	Low	Green	Mitigated

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
<p>6.2.4 Privacy risks</p> <p>Accuracy of personal data</p>	<p>Early release of prisoners and provision of information to VSOs: The Scottish Prison Service invite the rectification of personal data if a data subject believes the personal data, they hold is incorrect or incomplete.</p> <p>While a data subject has the right to ask for personal data to be erased or to restrict the processing of that data, SPS have a legal obligation to process certain data held on individuals held in custody.</p>	Low	Green	Mitigated
<p>6.3.1 Security risks</p> <p>Keeping data securely Retention</p>	<p>Early release of prisoners and provision of information to VSOs: The Scottish Prison Service data is managed in a secure manner, and only SPS employees or partners working with SPS with a need</p>	Low	Green	Mitigated

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
	<p>to see the information have access to it.</p> <p>Government Security Classifications All emails used to share Personal Data under the terms of this Agreement will be marked OFFICIAL - SENSITIVE or OFFICIAL - SENSITIVE: PERSONAL and will only be sent by SPS via secure email to the identified secure email address within Local Authorities and other partners.</p> <p>Breaches of security, confidentiality and other violations of this Agreement will be reported in line with each Party's incident reporting procedures.</p> <p>All Parties will use the Government Security Classifications and will mark Sensitive Personal Data as defined in this Agreement as</p>			

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
	<p>OFFICIAL - SENSITIVE at a minimum.</p> <p>Electronic Storage</p> <p>The most effective method of storing documents (in respect of this Agreement) will be digital. Protectively marked documents must be stored securely, i.e. in a password protected secure IT system. The use of removable / portable storage devices is to be discouraged but where this is unavoidable this must be on encrypted devices or media which must be securely disposed of when no longer required.</p> <p>Disposal</p> <p>Once physical documents containing Personal Data are no longer required, they must be shredded (using a cross-cut shredder) or disposed of using the agency approved confidential waste procedure.</p>			

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
	<p>Electronic data that is no longer required must be deleted, including any which has been stored on portable electronic media.</p> <p>Deletion must involve secure deletion and over-writing and not simply use the default delete command.</p> <p>Provision of information to VSOs: VSOs who are being prescribed for the purposes of receiving information will require to have an ISA in place with SPS. This will cover storage and disposal, and other critical data management and security points.</p> <p>Retention of Personal Data: Data Protection Law does not set out any specific minimum or maximum periods for retaining Personal Data. However, it requires that Personal Data shall not be</p>			

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
	<p>kept for longer than is necessary for the purposes for which the Personal Data are processed.</p> <p>For the purpose of sharing Personal Data under this Agreement, the Parties will:</p> <ul style="list-style-type: none"> • consider the purposes they hold the Personal Data for in deciding how long to retain it; • securely delete Personal Data that is no longer needed for these purposes; and • update, archive or securely delete Personal Data, if it goes out of date. <p>Each Party will have a policy document which outlines their approach to retention, storage and disposal of records, in line with the Public Records (Scotland) Act 2011 and Data Protection Law,</p>			

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
	<p>including the minimum retention schedules</p> <p>For provision of information to VSOs, the ISAs to be put in place will set out for how long data received about an offender can be retained, in line with the principles set out above.</p>			
<p>6.3.2 Security risks</p> <p>Transfer – data may be lost in transit</p>	<p>Data will be shared electronically using the information sharing processes outlined above at 6.3.1</p>	Low	Green	Mitigated
<p>6.4.1 Other risks</p> <p>Impact on children</p>	<p>While this will not specifically deal with children’s data, it is possible that released individuals may include people who are under the age of 21. As with all individuals, the sharing of information relating to data subjects under the age of 18 (in accordance with the UN Convention on the Rights of the Child, which defines a child as everyone under 18</p>	Low	Green	Mitigated

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
	<p>unless) will be conducted in the best interests of the child.</p> <p>Additionally, the sharing of information in advance of release will ensure the correct support can be in place.</p> <p>The Governors veto decision making process will also consider any children and families impact should the individual be released within the overall process.</p> <p>For the purposes of provision of information to VSOs, the VNS does not enable information about an offender to be released where the offender is under 16 years old at the time of release. SPS can also refuse to provide the information about a prisoner that the VSO (or victim) is entitled to if it considers there are exceptional circumstances which justify it doing so, or where they</p>			

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
	consider that there is an identified risk of harm to the offender			

Data Protection Officer (DPO)

The DPO may give additional advice, please indicate how this has been actioned.

Advice from DPO	Action
N/A	N/A

I confirm that the Early Release of Prisoners and Prescribed Victim Supporters (Scotland) Regulations 2024 has been sufficiently assessed in compliance with the requirements of the UKGDPR and Data Protection Act 2018

Name and job title of a IAO or equivalent	Date each version authorised
N/A	N/A

Legislation: [The Early Release of Prisoners and Prescribed Victim Supporters](#)

[\(Scotland\) Regulations 2024 \(legislation.gov.uk\)](#)

Annex B – Data flow map

