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## **Criminal Justice Committee**

# **Report on the Management of Offenders (Scotland) Act 2019 and the Prisoners (Early Release) (Scotland) Act 2025 (Consequential Modifications) Regulations 2026 [draft]**

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# Criminal Justice Committee

To consider and report on matters relating to criminal justice falling within the responsibility of the Cabinet Secretary for Justice and Home Affairs, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.

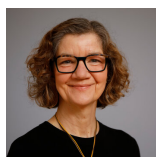


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**Deputy Convener**  
**Liam Kerr**  
Scottish Conservative  
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**Katy Clark**  
Scottish Labour



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and Unionist Party

**Jamie Hepburn**  
Scottish National Party



**Fulton MacGregor**  
Scottish National Party



**Rona Mackay**  
Scottish National Party



**Pauline McNeill**  
Scottish Labour

# Introduction

1. At its meeting on 26 November 2025, the Criminal Justice Committee considered the following affirmative instrument:
  - [The Management of Offenders \(Scotland\) Act 2019 and the Prisoners \(Early Release\) \(Scotland\) Act 2025 \(Consequential Modifications\) Regulations 2026 \[draft\]](#)

# **The Management of Offenders (Scotland) Act 2019 and the Prisoners (Early Release) (Scotland) Act 2025 (Consequential Modifications) Regulations 2026 [draft]**

2. The Management of Offenders (Scotland) Act 2019 and the Prisoners (Early Release) (Scotland) Act 2025 (Consequential Modifications) Regulations 2026 were laid before the Scottish Parliament on 7 November 2025 and referred to the Criminal Justice Committee.
3. The purpose of the instrument is to facilitate the earlier removal from prison of prisoners who are liable for removal from the United Kingdom, or have the settled intention of residing permanently outside the United Kingdom once removed from prison.
4. The instrument changes the release point from which early removal arrangements work backwards to align with the automatic early release point for short-term prisoners as changed by the [Prisoners \(Early Release\) \(Scotland\) Act 2025](#) (which amended section 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993).
5. It also adds to the existing order making power contained within the provisions to provide Scottish Ministers with a power to change the minimum period of sentence served before a prisoner can be removed by Order.
6. Victim Support Scotland provided a written submission to the Committee in relation to the instrument. This can be found in the annexe to this report.

# Consideration by the Delegated Powers and Law Reform Committee

7. The Delegated Powers and Law Reform Committee ('DPLR Committee') considered the instrument on 25 November 2025 and reported on it in its [86th Report, 2025](#). The report raised a number of issues in relation to the instrument and the DPLR Committee's conclusions are outlined below.
8. In [correspondence with the Scottish Government](#), the DPLR Committee noted that regulation 2(2)(c) would create a new delegated power, and that it is relatively unusual for new powers to legislate to be conferred by subordinate legislation.
9. The [Explanatory Note](#) for the instrument indicates that the enabling power being relied on for this new power is the ancillary power in section 62(1) of the Management of Offenders (Scotland) Act 2019 ('the 2019 Act'), and the [response the DPLR Committee received from the Scottish Government](#) confirmed this.
10. The DPLR Committee considered that the creation by subordinate legislation of a new power to make subordinate legislation is unusual, and is generally undesirable because the Parliament is unable to scrutinise and amend the proposal in the way it would if proposed in a bill.
11. The DPLR Committee considered that using an ancillary power to create a new power to make subordinate legislation is particularly unusual, and the DPLR Committee expects particular justification to be provided for this.
12. The report notes that, if the new power had been sought at the same time as the Home Detention Curfew ('HDC') power, this would have enabled it, and the Parliament, to consider whether they were content for the Parliament to confer a power to match the HDC periods, confer a different power, or confer no additional power, and to amend the Bill accordingly.
13. The DPLR Committee also noted the disparity between the level of parliamentary scrutiny that can be given to the proposed power now, in this instrument, compared to the scrutiny that could have been done had the proposed power been included, in the usual way, in the Bill at introduction.
14. The DPLR Committee also considers that the proposed power is potentially wider than is necessary to achieve the stated policy intention.
15. The DPLR Committee draws the instrument to the attention of the Parliament on reporting ground (g) in respect that the conferral by regulation 2(2)(c) of a new power to make subordinate legislation appears to be an unusual and unexpected use of the enabling power.

# Consideration by the Criminal Justice Committee

16. Motion S6M-19681 was lodged proposing that the Committee recommends approval of the instrument. The Committee took oral evidence from Angela Constance MSP, Cabinet Secretary for Justice and Home Affairs and Scottish Government officials at its meeting on 26 November 2025.
17. During the evidence session, the Cabinet Secretary outlined the purpose of the Regulations to the Committee.
18. Members raised a number of concerns in relation to the points raised by the DPLR Committee in its [report on the instrument](#), particularly around the creation by subordinate legislation of a new power to make subordinate legislation and on the level of parliamentary scrutiny that can be undertaken in using such an approach.
19. In response, the Cabinet Secretary told the Committee that while it was technically still possible, to make the changes through primary legislation in the remaining period of this parliamentary session, she was concerned about the time this would take and the delay it would cause. The Cabinet Secretary stated that the approach taken is a pragmatic one and the most efficient and effective way to enable the early removal of foreign national offenders from Scottish prisons as soon as possible.
20. Hannah Hutchison, Legal Directorate, Scottish Government went on to advise that the approach taken to the drafting of the instrument mirrors what was done for the HDC provisions, in connection with the changes under the 2019 act and that if further changes were made to the HDC provisions to alter the minimum period of sentence, the same could be done for the foreign national provisions.
21. In response to further questions from Members, the Cabinet Secretary advised that there are currently 723 foreign nationals in Scottish prisons. However, not all are eligible for the early removal scheme, as it applies only to those serving sentences of less than four years. The number of those those in the short-term population, who may be eligible, is approximately 119.
22. With regards to the assessment process for the removal of foreign nationals, David Doris, Prison Policy, Community Justice Division, explained that there will be an exchange of information between the Scottish Prison Service and Home Office immigration enforcement officials. The scheme is currently based on consent and individuals initially have to agree that they want to be removed, after which that engagement would take place.
23. In response to questions on the Victim Notification Scheme ('VNS'), the Cabinet Secretary confirmed that under the VNS, victims can be notified about the release of prisoners but would not be notified of the actual removal from the country as removal from the UK is a reserved matter. However, the Cabinet Secretary was hopeful that following amendments to the VNS, in the Victims, Witnesses, and Justice Reform (Scotland) Act 2025, it will better allow those responsible for removal to work with the Scottish Government to help victims receive more information.

24. Finally, Members questioned the Cabinet Secretary on the DPLR Committee's view that the drafting of the instrument is potentially wider than the policy intent. In response, Hannah Hutchison told the Committee that the Scottish Government mirrored the position that is in section 3AA of the Prisoners and Criminal Proceedings (Scotland) Act 1993, to provide the same order-making power.
  25. Following the evidence session, Members considered deferring consideration of the motion to a future meeting but expressed a preference to continue. The Cabinet Secretary moved the motion:
    - S6M-19681 —That the Criminal Justice Committee recommends that the Management of Offenders (Scotland) Act 2019 and the Prisoners (Early Release) (Scotland) Act 2025 (Consequential Modifications) Regulations 2026 [draft] be approved.
  26. The motion was agreed to without debate or dissent.
27. **The Criminal Justice Committee recommends to the Scottish Parliament that it approve the Management of Offenders (Scotland) Act 2019 and the Prisoners (Early Release) (Scotland) Act 2025 (Consequential Modifications) Regulations 2026 [draft].**

# Annexe

## Written submission from Victim Support Scotland

Victim Support Scotland's main focus with Early Release legislation is ensuring that victims of crime make an informed choice about being notified in advance of the prisoner in their case being released.

VSS is asking the Committee to consider the following questions:

Will prisoners in these cases be included in the VNS?

1. If so, what information will be available to eligible victims?
2. What support will be offered to victims who are impacted?
3. What modelling is being done to assess future prison estate requirements?

### 1. Inclusion in the VNS

Victim Support Scotland understands that this instrument intends to align release of prisoners who are:

- a) liable for removal from the UK, or
- b) have the settled intention of residing permanently outside the UK following removal from prison

This is to align with other aspects of early release legislation already in place to help mitigate high prison population.

We acknowledge that removing some offenders from the UK early may assist with safety planning and reduce concerns for victims in these cases. However, we must also highlight our ongoing concerns with early release legislation and the available safeguards for victims and families in this process.

### **Key ask:**

In relation to this SSI, Victim Support Scotland seeks clarity on whether prisoners who are released early and are to be removed from the United Kingdom will be included in the VNS. The VNS is a crucial tool in helping victims of crime and their families to feel safer, feel more prepared, and feel more in control following the crime committed against them.

### 2. Information available to victims

Additionally, Victim Support Scotland would also like clarity on whether victims will be notified if the offender in their case

- has been removed from the UK following an early release
- attempts to re-enter the UK – whether successfully or otherwise.

Prisoners who are liable for removal from the UK are not eligible to be considered under Section 3AA of the Prisoners and Criminal Proceedings (Scotland) Act 1993, which

provides for early release on licence (HDC).

Under the Custodial Sentences and Weapons (Scotland) Act 2007 – Where a removed offender re-enters the United Kingdom at any time before the date on which they would have completed their full sentence, the person is liable to be detained in pursuance of the person's sentence until the earlier of the following:

- a) the date of the expiry of the outstanding custodial period,
- b) the date on which the person would have served the person's sentence in full (but for the person's removal from prison under section 9B).

Critically, it was reported in July 2025 that some prisoners who are removed from the UK following release from prison are returning to the UK and are being returned to prison to serve the remainder of their sentence creating a revolving door. More data is required to ascertain whether this may also be the case for the Emergency Early Release schemes.

Conditions of release help to bring a degree of security for victims and their families – it is essential that victims voices are heard and listened to in the early release of prisoners who are liable for removal from the UK when determining any conditions that may be placed on these offenders.

VSS would therefore seek clarity on what conditions upon release are placed on prisoners who are removed from the UK and what steps the Scottish Government is taking to ensure victims are informed and supported.

### **3. Support offered to victims**

Running parallel to this, it is vital that support from organisations such as Victim Support Scotland is signposted at every step to all victims – whether the offender in their case will be removed from the UK or not.

#### *Supplementary / Supporting Information*

Victim Support Scotland voiced its concerns over the Prisoners (Early Release) (Scotland) Act 2025 and was disappointed it passed with no amendments to better protect victims of crime and safeguard the wider public.

- *CEO Kate Wallace stated "Legislation like this erodes confidence in the justice system. Victims are very clear with us that they want to be confident that the justice system protects them and prevents others from going through what they have experienced."*
- Emergency Release during COVID
- Emergency Early Release in June 2024 and November 2025 to March 2026
- Prisoner Early Release (Scotland) Act 2024
- Amending the eligibility for Home Detention Curfew to 15% of the original sentence.

### **Confidence in Scotland's Criminal Justice System**

Public confidence in Scotland's criminal justice system is falling with early release measures. Passing of the Prisoner (Early Release) Scotland Act which reduced sentences

to be served from 50% to 40% was intended to be a more sustainable initiative. One year later and Scotland has begun its second round of Emergency Early Release.

#### **4. Modelling to assess future requirements of the prison system**

##### ***Prison Population***

VSS recognises the challenges around Scotland's prison population. The prison population reached a record high of 8,441 on 11th November 2025. Parallel to this, VSS has noted a growing narrative over recent years highlighting a view that Scotland imprisons too many people, and that people are imprisoned for minor crimes, which does not reflect our experience. What we see is a growing incidence in Scotland of sexual crime, violent offences, as well as domestic abuse, and custodial sentences for non-recent sexual abuse. The most recent figures can viewed here: [Scottish Prison Population Statistics 2024-25 - gov.scot](https://www.gov.scot/statistics/2024-25-scottish-prison-population)

##### ***Measures to reduce prison population***

The following measures have been taken to uphold the rights and safety of prisoners and staff within the prison estate:

VSS feels strongly that more needs to be done to balance the rights of prisoners, people working within the prison estate, with rights of victims as set out in legislation.

##### ***Measures to support victims***

The Victim Notification Scheme is crucial to informing victims about the release of the prisoner in their case. Recommendations to improve the scheme remain outstanding, and numbers of victims subscribed to the scheme is both low in real terms and proportionally – although it has a recent upturn. Significant activity is required to implement changes, encourage explanation and benefits of the scheme, and ultimately numbers of victims subscribed. VSS continues to be committed to raising awareness of this scheme.

We were glad to hear the Cabinet Secretary reaffirm the ongoing body of work in relation to the VNS through the Victims, Witnesses and Justice Reform Bill (now Act) and the Victims Taskforce when she gave evidence to the Criminal Justice Committee in October 2025 on the Emergency Early Release scheme.

- Additionally, we are pleased to see an increase in numbers signed up to the Victim Notification Scheme - Scottish Prison Service (SPS) data shows there were 3,104 victims registered to the Victim Notification Scheme as of March – an increase of 428 compared to the previous year. That number is understood to have increased further since then with more prisoners eligible for emergency early release.
- sufficiently model the current and future requirements of the prison estate,
- taking into account the trend in rising offences that are more serious and therefore, require a prison sentence of more than four years, for public and
- individual safety reasons.

We are however cautious about this increase; it is our position that the VNS in its current form still falls behind the standard it needs to be at in order to sufficiently support victims.

##### **Additional actions**

**Criminal Justice Committee**

Report on the Management of Offenders (Scotland) Act 2019 and the Prisoners (Early Release) (Scotland) Act 2025 (Consequential Modifications) Regulations 2026 [draft] , 11th Report, 2025 (Session 6)

Concurrent to our views on Emergency Early Release presented to the committee last month, VSS is asking the Scottish Government to:

The size and extent of the prison estate must be based on these requirements, rather than the prison population being adjusted to suit available space.

