

Criminal Justice Committee  
Wednesday 29 October 2025  
28th Meeting, 2025 (Session 6)

## Note by the Clerk on the Early Release of Prisoners (Scotland) Regulations 2025 [draft]

### Overview

1. At this meeting, the Committee will take evidence from the Cabinet Secretary for Justice and Home Affairs and officials on the Early Release of Prisoners (Scotland) Regulations 2025 [draft] before debating a motion in the name of the Cabinet Secretary (S6M-19222) inviting the Committee to recommend approval of the instrument.
2. This is a draft Scottish Statutory Instrument (SSI), which requires approval by resolution of the Parliament before it can become law. More information about the instrument is summarised below:

**Title of instrument:** [The Early Release of Prisoners \(Scotland\) Regulations 2025 \[draft\]](#)

**Laid under:** section 3C of the [Prisoners and Criminal Proceedings \(Scotland\) Act 1993](#)<sup>1</sup>

**Laid on:** 2 October 2025

**Procedure:** Affirmative

**Lead committee to report by:** 26 November 2025

**Commencement:** 10 November 2025

3. The Committee will also consider a related negative SSI, the [Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2025](#) (SSI 2025/277). Further information on this instrument can be found in **Paper 2**.

### Procedure

4. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament.
5. Once laid, the instrument is referred to:
  - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and

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<sup>1</sup> 1993 c. 9. Section 3C was inserted by section 11(2) of the Bail and Release from Custody (Scotland) Act 2023 (asp 4).

- a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
6. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.
  7. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee:
    - an evidence session with the Minister and officials, followed by
    - a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.
  8. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote. If the motion is agreed to, it is for the Chamber to decide, at a later date, whether to approve the instrument

## **Delegated Powers and Law Reform Committee consideration**

9. The DPLR Committee considered the instrument on 7 October 2025 and reported on it in its [72nd Report, 2025](#). The DPLR Committee made no recommendations in relation to the instrument.

## **Purpose of the instrument**

10. The purpose of this instrument is to make provision using the powers conferred on the Scottish Ministers by section 3C of the [Prisoners and Criminal Proceedings \(Scotland\) Act 1993](#) (“the 1993 Act”) (as introduced by Section 11 of the [Bail & Release from Custody \(Scotland\) Act 2023](#) (“the 2023 Act”)), to release certain categories of persons early from prison and young offenders institutions.
11. Eligibility for release will be limited to those who are sentenced to less than four years in prison custody, who are due to be released within 180 days of certain dates between November 2025 and April 2026, and who are not automatically excluded by the provisions listed below, or by the Governor veto process.
12. Releases will take place across a six month period, through an initial sequence of three fortnightly release tranches (11 to 13 and 25 to 27 November, and 9 to 11 December 2025), followed by monthly release tranches at the end of January, February, March and April 2026.
13. Section 3C(6) of the 1993 Act makes provision to exclude certain persons from early release under the Regulations, including but not limited to those serving a life sentence and those serving a sentence for a domestic abuse offence or subject to sexual offender notification requirements.

14. Additional criteria have been agreed as part of the Regulations in order to enhance public protection. Those additional criteria are in addition to the existing statutory exclusions set out in section 3C(6) and exclude individuals who have served a sentence for an offence aggravated under 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](#) from being released under this power. These exclusions will apply only where the associated conviction is not spent as per the [Rehabilitation of Offenders Act 1974](#) at the time they would otherwise have been eligible for release under the Regulations. Where an individual's conviction becomes spent during the release process, they will become eligible for release under it. Additionally, individuals who are subject to a non-harassment order will also be excluded.
15. The early release of a person under these Regulations is also subject to the prison governor's power to prevent release under section 3C(5)(b) of the 1993 Act, where the governor considers that the person would, if released, pose an immediate risk of harm to an identified person, or to an identified group of people.
16. The Cabinet Secretary for Justice and Home Affairs wrote to the Committee in relation to the instrument on 2 October 2025. A copy of the correspondence can be found in **Annexe A**.
17. The Policy Note accompanying the instrument is included in **Annexe B**. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.

## Evidence received

18. Victim Support Scotland and Families Outside have provided written submissions. These can be found in **Annexe C**.

## Report

19. Following today's proceedings, a draft report will be prepared by the clerks.
20. **The Committee is invited to delegate to the Convener and clerks responsibility for drafting a report and finalising it for publication.**

**Clerks to the Committee  
October 2025**

## Annexe A: Correspondence from the Scottish Government

2 October 2025

Dear Convener

As you will be aware, there has been a significant increase in the prison population over recent months, with the current population at 8363 as of 2 October. Scotland is not alone in the UK in facing challenges with a high prison population. Despite the continuing action taken the recent increases in the prison population are placing significant and unsustainable pressure on the prison estate.

I am writing to you to set out the immediate actions the Scottish Government intends to take to respond to these unsustainable prison population levels.

As I have set out in a statement to Parliament today, Thursday 2 October 2025, I have laid draft regulations seeking Parliamentary approval to use the emergency release powers in section 3C of the Prisoners and Criminal Proceedings (Scotland) Act 1993.

I consider that an emergency early release is necessary and proportionate to ensure the prison service can maintain the security and good order of prisons and the health, safety and welfare of prisoners and prison staff.

I am acutely aware that using emergency early release is a significant step and this is not a decision which has been taken lightly. The Scottish Prison Service and Scottish Government have already undertaken measures to optimise use of the prison estate and work towards achieving sustainable population levels. However, the increasing number of prisoners in custody is now at a level where immediate action is needed to protect the safety and security of those living and working in prisons.

The regulations which have been laid today set out the criteria and timescales for the proposed release processes, and I wanted to provide you with some more detail on those points.

Firstly, regarding the **criteria for release**, the regulations provide that only short-term prisoners would be released under this power, should Parliament approve the regulations. That means that only individuals serving less than four years will be released.

Furthermore, only those who are due to be released within 180 days of the regulations coming into force can be considered for release under the emergency release power.

The following groups of prisoners would not be eligible for release under this legislation:

- Life sentenced prisoners (including Order of Lifelong Restrictions)
- Remand prisoners

- Terrorist prisoners
- Individuals serving extended sentences
- Individuals subject to supervised release orders
- Individuals subject to the sex offender notification requirements
- Individuals liable for removal from the UK or subject to extradition
- Individuals subject to non-harassment orders
- Anyone sentenced on or after 28 March 2026
- Individuals serving sentences following conviction under relevant sections of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (2016 Act), Domestic Abuse (Scotland) Act 2018 (2018 Act), or the Domestic Abuse (protection) (Scotland) Act 2021 (the 2021 Act).
- Individuals who have served a sentence for an offence under those offences, the conviction for which is not spent (for the purposes of the Rehabilitation of Offenders Act 1974)

In addition, a governor veto process will also apply which allows a prison Governor - in-Charge or Deputy Governor to stop the release of an eligible prisoner if they consider they would pose an immediate risk of harm to a specific individual or group of individuals if released.

Secondly, regarding **timescales**, if Parliament approves the regulations, release will take place in seven separate tranches.

The releases are staged in this way to make sure that not all prisoners are released at once. This will ensure pre-release planning between SPS and community partners can take place, allow for people registered with the VNS to be notified of a change to a prisoner's release date and help to provide greater certainty for those who are eligible to be released.

Releases would begin on 11 November 2025, and the process will run until 30 April 2026.

The tranches proposed are as follows:

**First three tranches: 11-13 November 2025; 25-27 November 2025; 9-11 December 2025** – those who have been serving their sentence on 20 October 2025 and are due to be released within 180 days (at point of regs coming into force).

**Fourth tranche: 27-29 January 2026** – those who have been serving their sentence on 15 December 2025 and are due to be released within 180 days (following 26 January 2026).

**Fifth tranche: 24-26 February 2026** - those who have been serving their sentence on 30 January 2026 and are due to be released within 180 days (following 23 February 2026).

**Sixth tranche: 24-26 March 2026** - those who have been serving their sentence on 27 February 2026 and are due to be released within 180 days (following 23 March 2026).

**Seventh tranche: 27-30 April 2026** - those who have been serving their sentence on 27 March 2026 and are due to be released within 180 days (following 27 April 2026).

The regulations also include a provision that will allow for any eligible prisoner whose release is not completed within the appropriate tranche, for example due to illness, to be released as soon afterwards as is practicable, but no later than the final release date of 30 April 2026.

Victims who are registered on the Victim Notification Scheme will be notified by SPS of the change of release date in advance of the prisoner's release from custody.

As per the previous emergency release process that was delivered in June/July 2024, victims will also be able to nominate a specific victim support organisation (VSO) to receive certain information about the prisoner in their case on their behalf. There are four VSOs who are prescribed to receive this information on behalf of a victim (as set out in Section 14 of the Bail and Release from Custody (Scotland) Act). Those organisations are [Victim Support Scotland](#), [ASSIST](#), [Rape Crisis Scotland](#) and [Children First](#).

I hope this provides some additional context and I look forward to discussing these regulations with the Criminal Justice Committee in due course.

Yours sincerely,

**ANGELA CONSTANCE**

## **Annexe B: Scottish Government Policy Note**

### **The Early Release of Prisoners (Scotland) Regulations 2025**

#### **SSI 2025/XXX**

The above Regulations are made in exercise of the powers conferred on the Scottish Ministers by section 3C of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (as introduced by section 11 of the Bail & Release from Custody (Scotland) Act 2023).

These Regulations are made under the affirmative procedure and are subject to an expedited process, as agreed by Parliament. These Regulations are being made as the Scottish Ministers are satisfied that the early release of prisoners authorised by these Regulations is necessary and proportionate, for the purpose of protecting: (a) the security and good order of prisons; and (b) the health, safety or welfare of prisoners, or those working, in any prison.

#### **Summary Box**

The purpose of this statutory instrument is to make provision using the powers conferred on the Scottish Ministers by section 3C of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) (as introduced by Section 11 of the Bail & Release from Custody (Scotland) Act 2023 (“the 2023 Act”)), to release certain categories of persons early from prison and young offenders institutions.

Eligibility for release will be limited to those who are sentenced to less than four years in prison custody, who are due to be released within 180 days of certain dates between November 2025 and April 2026, and who are not automatically excluded by the provisions listed below, or by the Governor veto process.

Releases will take place across a six month period, through an initial sequence of three fortnightly release tranches (11 to 13 and 25 to 27 November, and 9 to 11 December 2025), followed by monthly release tranches at the end of January, February, March and April 2026.

Further details are provided below at ‘Regulation 3’.

Section 3C(6) of the 1993 Act makes provision to exclude certain persons from early release under the Regulations, including but not limited to those serving a life sentence and those serving a sentence for a domestic abuse offence or subject to sexual offender notification requirements.

Additional criteria have been agreed as part of the Regulations in order to enhance public protection. Those additional criteria are in addition to the existing statutory exclusions set out in section 3C(6) and exclude individuals who have served a sentence for an offence aggravated under 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 from being released under this power. These exclusions will apply only where the associated conviction is not spent as per the Rehabilitation of Offenders Act 1974 at the time they would otherwise have been eligible for release under the Regulations. Where an individual's conviction becomes spent during the release process, they will become eligible for release under it.

Additionally, individuals who are subject to a non-harassment order will also be excluded. The early release of a person under these Regulations is also subject to the prison governor's power to prevent release under section 3C(5)(b) of the 1993 Act, where the governor considers that the person would, if released, pose an immediate risk of harm to an identified person, or to an identified group of people.

## Policy Objectives

The policy intent underpinning this SSI is to set out regulations for the emergency release of a group of prisoners under section 3C of the 1993 Act.

Ministers consider this action to be necessary and proportionate in response to the immediate risks across the prison estate as a result of the high prison population. These risks are exacerbated by the increasingly complex population, as a result of the growing number of prisoners with links to serious and organised crime, sex offenders, and prisoners with additional needs who require particular support or accommodation.

The Scottish Prison Service (SPS) has reported that up to ten prisons have been operating in active 'red' status across a sustained period of time, due to these concerns. This means the majority of prisons are not able to provide a fully functioning regime, with increased risks to the safe operation of the prison estate, and the SPS' ability to provide a safe environment for those living and working in Scottish prisons.

This includes challenges in providing proper access to appropriate activities and rehabilitative programmes, and the operation of key prison functions, like prisoner visits. There is also increased risk to the appropriate delivery of healthcare services, the maintenance of good order amongst those held in custody, and a decline in the acceptable working conditions for staff within prisons.

Since the previous use of the emergency early release powers in June and July 2024 (and the introduction of the Prisoner (Early Release) (Scotland) Act 2025), SPS has undertaken measures to maximise capacity across the prison estate. However, in the light of the continuing increase in the prison population, the prison estate is now significantly overcrowded, and has extremely limited capacity to respond to any further increases in population, or any resilience capacity to respond to larger scale, or more complex, operational emergencies.

As such, it is Ministers' view that these circumstances satisfy the conditions set out in section 3C of the 1993 Act for Ministers to instruct the early release of prisoners. Specifically, that the continued high prison population is resulting in an emergency situation across the prison estate which places at significant risk (i) the security and



good order of a prison or prisons generally and (ii) the health, safety and welfare of prisoners or those working in any such prison.

Releases have been scheduled into tranches (three fortnightly tranches in November- December, followed by monthly tranches in January-April) in order to: provide certainty for those due to be released; to ensure reasonable pre-release planning can take place between the Scottish Prison Service and community partners; to mitigate the impacts of the release process on community and public services; to facilitate the notification of any individual registered with the Victim Notification Scheme in relation to a prisoner whose release date is changed; and to ensure releases happen timeously to reduce the prison population.

Operating the emergency early release process for six months will maintain the planned reduction in prison population – and with that, improved conditions for prisoners and prison staff – for as long as is permitted under legislation. This reflects Ministers' views that the emergency situation will last at least that long, based on prison population projections.

Maintaining the process will also give SPS management greater flexibility to plan and deliver any changes to prison estate or the distribution of prisoners which could improve conditions, where practicable.

These Regulations set out the eligibility criteria which will define the cohort of prisoners who will be eligible for release (alongside the statutory exclusions already set out in section 3C(6) of the 1993 Act).

It also sets out the structure and timing for the release process, with a staged process of releases to take place between November 2025 and April 2026. The latest release date under the regulations is 30 April 2026.

**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;

**Regulation 3** makes provision for the calculation of the date of release; and

**Regulation 4** makes provision in relation to prisoners whose previous conviction for certain domestic abuse offences (which made them ineligible for release) becomes spent during the release process.

### **Regulation 1: Citation, commencement and interpretation**

These Regulations come into force on 10 November 2025, subject to Parliamentary approval.

The Regulations will apply to all prisons, including contracted out prisons, and young offenders institutions.

These Regulations will not apply to any institutions which are not part of the Scottish prison estate. This is because the emergency is being experienced in the prison estate and cannot therefore include any wider institutions which are not part of the Scottish Prison estate.

Individuals who have been released from prison on a Home Detention Curfew licence (HDC) at the point that these Regulations come into force, will be required to complete the agreed period on HDC they have begun (and will not be considered for emergency early release). Given that the basic eligibility criteria for HDC is similar to that of the EER process, it is to be expected that fewer individuals will apply for and be granted HDC whilst the EER process is operating.

The latest date that a person can be released under the Regulations is set out in regulation 1 as 30 April 2026.

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

Regulation 2 specifies the class of persons who are to be released early from prison. Only individuals sentenced to less than four years imprisonment or detention will be eligible for release under the Regulations.

To be eligible for release in the tranches in November and December 2025, an individual must have been serving their sentence on 20 October 2025 and be due to be released within the 180 days following the date on which these Regulations come into force.

To be eligible for release in the tranche in January 2026, an individual must have been serving their sentence on 15 December 2025 and be due to be released within the 180 days following 26 January 2026.

To be eligible for release in the tranche in February 2026, an individual must have been serving their sentence on 30 January 2026 and be due to be released within the 180 days following 23 February 2026.

To be eligible for release in the tranche in March 2026, an individual must have been serving their sentence on 27 February 2026 and be due to be released within the 180 days following 23 March 2026.

To be eligible for release in the tranche in April 2026, an individual must have been serving their sentence on 27 March 2026 and be due to be released with the 180 days following 27 April 2026.

The early release of persons under these Regulations is subject to the prison governor's power to prevent release under section 3C(5)(b) of the 1993 Act where there would be a known risk to an identified individual or group, were the individual to be released early under this process. This may include a potential risk to the

individual themselves, for example due to a temporary physical or mental health issue.

Section 3C(6) provides that the following persons are excluded from release under regulations made under section 3C:

- (a) a life prisoner,
- (b) an untried prisoner,
- (c) a terrorist prisoner within the meaning of section 1AB,
- (d) due to serve a terrorism sentence within the meaning of section 1B but, by virtue of that section, is not yet serving it,
- (e) liable to removal from the United Kingdom for the purposes of section 9,
- (f) subject to a supervised release order under section 209 of the Criminal Procedure (Scotland) Act 1995,
- (g) serving a sentence passed under section 210A of that Act (extended sentences for sex, violent and terrorist offenders),
- (h) the subject of proceedings under the Extradition Act 2003,
- (i) subject to the notification requirements of Part 2 of the Sexual Offences Act 2003,
- (j) serving a sentence of imprisonment or detention for an offence—
  - (i) that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016,
  - (ii) under section 1(1) of the Domestic Abuse (Scotland) Act 2018,
  - (iii) under section 7(1) or 17(1) of the Domestic Abuse (Protection) (Scotland) Act 2021,
- (k) a long-term prisoner, unless that prisoner has been recommended for release by the Parole Board at the date on which the regulations are made.

Additional exclusions have been introduced as part of these Regulations, specifically to exclude those who:

- (i) have served, a sentence of imprisonment or detention for an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, the conviction for which is not spent for the purposes of the Rehabilitation of Offenders Act 1974;
- (ii) have served, a sentence of imprisonment or detention for an offence under section 1(1) of the Domestic Abuse (Scotland) Act 201, the conviction for which is not spent for the purposes of the Rehabilitation of Offenders Act 1974;
- (iii) are the subject of 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.

Regulation 2 also makes provision that anyone who is sentenced to a term of imprisonment or detention on or after 28 March 2026 is not eligible to be released as part of the release process under these Regulations.

### **Regulation 3: Calculation of the date of release**

Regulation 3 makes provision for the calculation of an eligible individual's date of release under these Regulations.

Release is provided for in phases in order to provide certainty for those due to be released, to provide a reasonable period for release planning to take place for those involved so that services can be aligned with release, to facilitate the notification of individuals (led by SPS) who are registered with the Victim Notification Scheme, and so there is not an unmanageable number of prisoners becoming eligible and having to be released over a very short timeframe.

The proposed timescale for the release process is for releases to be made in two stages, with an initial sequence of three fortnightly release tranches. These will take place on 11 to 13 and 25 to 27 November, and 9 to 11 December 2025. Eligibility for release in these tranches is set by regulation 2 (described above).

This will be followed by monthly release tranches lasting for three days each at the end of January, February, March and April 2026. Eligibility for release in these tranches is set by regulation 2 (described above).

The eligible cohort for each tranche will be fixed in advance of the actual release tranche, in order to allow a sufficient lead time for SPS to complete the assessment for the governor veto, and then to notify the individuals, notify relevant external services and victims registered with the Victim Notification Scheme or Victim Information Scheme (together "VNS"), and conduct pre-release planning wherever practicable.

SPS will decide which day within the relevant three-day period an eligible individual will be released, in order to safely manage the overall release process, and to support the needs of the individual wherever practicable.

Where an individual was due to be released within a particular release tranche but that release did not take place, then that person is to be released as soon as reasonably practicable. This would be intended to be the next available release tranche or, if earlier, at the date that their sentence was otherwise due to come to an end. If released under the release process in these Regulations, that individual must be released no later than the last release date set out in regulation 1 as 30 April 2026.

### **Regulation 4: prisoners whose previous conviction for certain domestic abuse offences (which made them ineligible for release) becomes spent during the release process**

Regulation 2 excludes individuals from eligibility for release under this release process if they have an unspent conviction for a domestic abuse offence. Regulation 4 provides that if that unspent conviction becomes spent during the release process, they become eligible for release under the process. Regulation 4 provides that they are to be released as soon as reasonably practicable and no later than the latest

release date. It is expected that any individual to whom this applies would be released in the next available release tranche.

## **UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility**

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Early Release of Prisoners (Scotland) Regulations 2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

## **EU Alignment Consideration**

The emergency release aspect of this instrument is not relevant to the Scottish Government's policy approach to maintain alignment with the EU.

Informing victims registered with the VNS of a change in an individual's date of release will ensure ongoing alignment with Directive 2012/29/EU (Victims Rights Directive)<sup>2</sup>, which strengthened victims' rights to information, support and protection. This includes at Article 6(5) an obligation on Member States to ensure that victims are offered the opportunity to be notified, amongst other things, of an offender's release.

## **Consultation**

To comply with the requirements of the standard parliamentary approach to introducing new legislation in Scotland a detailed public consultation was undertaken in the development of the Bail and Release from Custody (Scotland) Act 2023. This involved consultation with a range of public bodies, key stakeholders and various partners across the third sector landscape who have an interest on the operation of the sections within the Act.

A full list of those consulted, including on the sections pertaining to this policy note – are set out in the public consultation in 2021<sup>3</sup> and the SG's formal response in 2022<sup>4</sup>.

In respect of the laying of this SSI and the Regulations outlined therein, engagement has been ongoing with a number of key operational delivery partners to support the planning and delivery of an emergency release process, should Parliament approve it.

This development work will include liaison with public and third sector stakeholders whose activities include support for prison leavers, to examine how an emergency release process would impact on their activities, and how they could adjust to provide the necessary support.

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<sup>2</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1421925131614&uri=CELEX:32012L0029>

<sup>3</sup> <https://www.gov.scot/publications/consultation-bail-release-custody-arrangements-scotland/>

<sup>4</sup> <https://consult.gov.scot/justice/bailandreleasefromcustody/#:~:text=The%20consultation%20seeks%20views%20on,custody%20is%20used%20in%20Scotland.>

It will also involve engagement with VSOs, to ensure that the victim notification and information schemes function in a -trauma informed matter, and also to ensure that the Government considers the impact on victims and VSOs in implementation plans to better ensure the needs of these groups were met.

### **Impact Assessments**

Impact assessments were conducted prior to the passage of the Bail and Release from Custody (Scotland) Act 2023 and are kept under review:

- Business and Regulatory Impact Assessment (BRIA)
- Child Rights and Wellbeing Impact Assessment (CRWIA)
- Equality Impact Assessment (EIA)
- Data Protection Impact Assessment (DPIA)
- Fairer Scotland Duty Assessment (FSD)
- Island Communities Impact Assessment (ICIA)
- Strategic Environmental Assessment (pre-screening notification – not published) (SEA)

For the laying of this SSI the following impact assessments have been undertaken:

- [Business and Regulatory Impact Assessment \(BRIA\)](#)
- [Equalities Impact Assessment \(EQIA\)](#)
- Data Protection Impact Assessment (DPIA)
- [Children's Rights and Wellbeing Impact Assessment \(CRWIA\)](#)
- [Island Communities Impact Assessment \(ICIA\)](#)
- [Fairer Scotland Duty Assessment \(FSD\)](#)

### **Financial Effects**

The financial effects of this policy were set out under the financial memorandum which accompanied the Bill for the 2023 Act.

While this release process will bring forward release dates of individuals who would be released within the coming weeks/months, it is recognised that there is likely to be an increase in demand for community services during the period of the emergency release process.

As noted above, releasing prisoners in fortnightly, and then monthly tranches, is intended to alleviate that impact to a degree, and there will be a corresponding reduction in demand due to a reduction in liberations for a period once the emergency release process is complete and the regulations cease to have effect.

The Scottish Government will continue to work closely with delivery partners to understand any resource implications.

Scottish Government  
Justice Directorate  
October 2025

## **Annexe C: written submissions received**

### **Victim Support Scotland**

Response to:

- Early Release of Prisoners (Scotland) Regulations 2025 (SSI 2025/Draft) – affirmative

[Legislation.gov.uk](https://legislation.gov.uk)

- Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2025 (SSI 2025/277) – negative

[The Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2025](#)

#### **Victim Support Scotland raises significant and repeated concerns regarding the early release of prisoners.**

VSS welcomes the opportunity to contribute to this ongoing debate.

Prisoner early release is part of a broader context of how Scotland manages offending behaviour, and anticipates demand for services for both offenders as well as victims. As part of 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. Latest Scottish Government figures are available here: [Sexual crimes - Recorded Crime in Scotland, 2024-25 - gov.scot](#)

#### **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:

- Emergency Release during COVID
- Emergency Early Release in June 2024
- Prisoner Early Release (Scotland) Act 2024
- Amending the eligibility for Home Detention Curfew to 15% of the original sentence.

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.

#### **Impact of release measures on victims**

Measures in the current early release scheme have improved the provisions to contribute to the safety of victims, such as:

- Application of a Governor's veto
- Crimes that are excluded from early release

VSS seeks clarity on whether prisoners released in previous schemes and who subsequently returned to custody will be considered in future emergency release schemes.

However, the various early release schemes and amendments for Home Detention Curfew (reducing the eligibility for HDC from 25% at least 15% of their original sentence), alongside growth in usage of Presumption Against Short Sentences, and Community Payback Orders are challenging for victims and Scotland's communities to accept.

Public confidence in Scotland's criminal justice system is being eroded with these 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. Just 11 months later, and this latest Early Release scheme has been introduced for a second time.

### **Actions that can be taken**

Given the short time span of these ineffective measures, VSS is asking the Scottish Government to:

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.

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.

### **Available data**

Based on the information available, it would appear that these schemes are not effective in reducing the prison population in the medium or longer term.

VSS has previously highlighted the reoffending rates from the release of prisoners during COVID, which sat at 40%. Available figures for subsequent releases are in Appendices 1 and 2, but it is challenging to compare figures due to potential differences in time period, category of offences, etc.

The data that is available indicates a welcome reduction in numbers of perpetrators being returned to custody after early release. However, these 17 individuals have committed crimes that will have created more victims, and likely had an impact on the communities they returned to.

If there is to be continued releasing of prisoners, then it is crucial that we understand whether measures are reaching their intended purpose, the impact of such schemes on victims, and that learning is implemented. Clear data and analysis are required to understand the true impact of early release measures

- Comparisons between recidivism rates for prisoners who have been released early and the current baseline of recidivism rates



- Percentage of released prisoners returned to custody beyond their EDL
- Impact of release measures on communities
- Prevalence of exercising of a Governor's veto
- Proportion of victims informed about the release of the prisoner in their case including consideration of people who are signed up to the Victim Notification Scheme, in addition to people who are not.

### **Support available**

Prison is an important part of the justice system and sometimes, for people who pose a risk, it is an important consideration in keeping victims and the public safe.

One of VSS's key drivers is for there to be no more victims by reducing crime and reducing re-offending. Any release of prisoners has to be supported by:

- Sufficiently funded rehabilitation programmes
- Sufficiently resourced preparation pre- and post-release
- Sufficiently resourced community and social support post-release

### **Impact on victims**

Throughout these measures, the focus has been firmly on the welfare of prisoners and people within the prison estate. However, Victim Support Scotland has a right and duty to highlight the impact on victims. Trust and confidence in the criminal justice system is declining year on year, with measures such as these contributing to that.

Part of the solution also depends on timing. Early release schemes are going ahead before many of the long-awaited and anticipated safeguards are in place. These include:

- Implementation of recommendations to improve the Victim Notification Scheme, made over three years ago, albeit which are part of the Victims, Witnesses, and Justice Reform Act, but yet to be implemented.
- Pilot of Home Detention Curfew using GPS

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. 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.

In relation specifically to Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2025 (SSI 2025/277), VSS seeks assurances that the Deputy Governor with delegated powers has access to exactly the same information as the Governor on which to make this decision. This should include all information available from previous risk assessments that show specific concerns for people or groups who would be at immediate risk from the prisoner if they were released.

## Appendix 1

### Summer 2024 Emergency Early Release Statistics

Tranches	Number of Releases	Returned to Custody (prior to their 'original' Earliest Date of Liberation (EDL))
1 (26 or 27 June)	106	
2 (3 or 4 July)	136	
3 (10 or 11 July)	110	
4 (17 or 18 July)	125	
<b>Total</b>	<b>477</b>	<b>61 (13%)</b> <i>*Figure as of December 2024</i>

**Source:** [Returns to custody - Emergency Release Feb 2025.pdf](#)

Individuals returning to custody prior to their original EDL remained in the community for between 2 and 126 days, with an average time in the community of 30 days.

- 0-10 days: 12 offenders
- 11-20 days: 21 offenders
- 21-30 days: 7 offenders
- 31-40 days: 6 offenders
- 41+ days: 15 offenders

## Appendix 2

### Winter / Spring 2025 Emergency Early Release Statistics

Tranches	Number of Releases	Returned to Custody (prior to their 'original' Earliest Date of Liberation (EDL))
1 (18-20 February 2025)	82	
2 (4-6 March 2025)	90	
3 (18-20 March 2025)	140	
<b>Total:</b>	<b>311**</b>	<b>17 (5%)</b>

**Source:** [Prisoners \(Early Release\) \(Scotland\) Act 2025 data publication.pdf](#)

\*\* previously a total of 312 people released in this period, as a result of Early Release. Further analysis showed that only 311 of those released during this period were as a result of the change in legislation

## Families Outside

Families Outside welcomes the Cabinet Secretary's continued commitment to achieving a sustainable prison population. In particular, we welcome the continued commitment to increasing the availability of community justice interventions in recognition of the evidence that "alternatives to custody can, where appropriate, be more effective in reducing reoffending". However, it is extremely concerning and disappointing that we find ourselves once again being presented with a crisis-response to managing the prison population, in the form of emergency early release. Whilst we recognise the pressing need for such action to be taken, the need for a package of measures that encompass the evidence-based, radical approaches required to achieve longer-term changes to how we deliver justice effectively, including prevention, has never been more urgent. We recognise the importance of the forthcoming report of the independent Sentencing and Penal Policy Commission in informing further action as part of the longer-term strategy for establishing a sustainable prison population, and we call upon the Scottish Government to act swiftly and decisively upon conclusion of the Commission's work to ensure all efforts are directed to delivering a more preventative approach to tackle prison overcrowding thus reducing a continued reliance on crisis responses.

Furthermore, at a broad level, we would draw attention to the collective concerns raised by members of the Criminal Justice Voluntary Sector Forum regarding prison overcrowding and voice our support for the following calls: meaningful engagement with the third sector at a national level around the crisis response; embedding of lived experience involvement in line with good practice at all stages of the policy and practice cycle; whole system accountability and co-design; utilise international guidance and evidence-based practice to reduce prison over-crowding and invest in a more preventative model; implementation of third sector "Fairer Funding" actions; and bring section 12 of the Bail and Release (Scotland) Act 2023 in to force to enable and support multi-agency planning arrangements.

More specifically, as with previous proposals for emergency early release, our key aim is to ensure that due attention is given to the impacts of the proposals for families, and to the vital role they can play in supporting their successful implementation.

Considering first the role families can play in supporting successful implementation of the proposals: a wealth of research demonstrates the role families play in supporting desistance from offending, with the [Social Exclusion Unit in 2002](#) reporting that people in prison are up to six times less likely to reoffend if they maintain family contact during imprisonment. In addition, [Lord Farmer's Review](#) in 2017 described families as the 'golden thread' that should run through the prison system, highlighting that relationships are fundamental if people are to change. This evidence illustrates the importance of ensuring that families are recognised and meaningfully involved in the decisions relating to the support their loved one receives both whilst in prison and upon release. Whilst recognising the necessary time pressures and constraints of emergency early release processes, we are firm in our view that the valuable role of families must still be recognised. Based on previous experience of emergency early release we are clear that there is a need to ensure improved communication and information sharing with families as well as affording

them opportunities to share information and be listened to in decision-making processes about arrangements and support for their family member upon release. Alongside recognition of the role families can play in reducing reoffending and supporting the successful implementation of early release, it is crucial that families are considered, and supported, in their own right and not simply as a tool to support rehabilitation and resettlement. Imprisonment, even for short periods, fractures families. It unleashes a host of damaging impacts including issues with housing, financial hardship, family dynamics, lack of information, physical and mental health difficulties, victimisation, media intrusion, and stigma. Families are often left to deal with these challenges with little or no support. These issues do not simply end upon release. Indeed, release can bring with it a host of other issues, particularly where families are the primary, or sole, source of support - emotional, practical, and financial - for their loved one. It is vital, therefore, that the direct impacts for families of emergency early release are considered and their needs supported. Such consideration has unfortunately not been built into previous emergency release procedures with the provision of support for families impacted falling largely to Families Outside as the only national organisation working exclusively on behalf of families affected by imprisonment.

Ultimately, it is essential that families impacted by emergency early release are not considered only as an afterthought or a peripheral consideration – they must be front and centre as these measures take effect. Not only do families play a critical role in supporting individuals involved in the criminal justice system and therefore a critical role in ensuring the successful implementation of emergency early release, but the damaging impacts they endure associated with imprisonment also mean they both require and deserve support in their own right to navigate the impacts of these measures. Moreover, it must be noted that consideration of the impacts and views of children impacted by imprisonment is not simply a matter of good practice but rather a legal requirement in accordance with the [UNCRC \(Incorporation\) \(Scotland\) Act 2024](#). It is imperative therefore that the rights of children are recognised and upheld at all stages of emergency early release from development to implementation.