

Cabinet Secretary for Justice and Home Affairs
Rùnaire a' Chaibineit airson Ceartas agus Cùisean na
Dùthcha

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Audrey Nicoll, MSP
Convener
Criminal Justice Committee
The Scottish Parliament
Edinburgh
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17 March 2026

Dear Convener

I attended the Criminal Justice Committee on 4 March 2026 to give evidence on the Prisoners (Early Release) (Miscellaneous Amendment and Transitional Provisions) (Scotland) Regulations 2026. During this session, I committed to providing the Committee with some additional information.

Impact of measures

The Emergency Early Release of certain short-term prisoners under the powers contained in section 3C of the Prisoners and Criminal Proceedings (Scotland) Act 1993 is an emergency measure designed to provide immediate, temporary relief. The Early Release of Prisoners (Scotland) Regulations 2025 enabled releases to commence in November 2025, and by 6 March 2026, a total of 502 prisoners had been released under these provisions. Modelling indicates that, without this intervention, the prison population would be between 130-230 prisoners higher.

Following implementation of the Prisoners (Early Release) (Scotland) Act 2025, which permanently amended the automatic early release point for most short-term prisoners from 50% to 40% of sentence, the short term prisoner population reduced by just over 8% between 17 February and 10 November 2025. Our modelling indicates that, without this legislative change, the overall prison population would be between 260-390 prisoners higher.

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Short term sentences

There is a longer-term trend away from the use of shorter sentences, and as outlined above, the action taken by the Scottish Government have further contributed to reducing the short term prisoner population below the level it would have otherwise reached.

However, a high number of short term sentences continue to be imposed, despite the presumption against their use. The Scottish Government's [Occasional paper: Long-term drivers of and changes in the prison population - gov.scot](#) (June 2025) highlights that, although the proportion has fallen over time, the majority of custodial sentences given are still under a year.

By way of example, on 09 February 2026 there were approximately 1,932 short term prisoners, 574 of whom are serving sentences of 12 months or less. Recently published Scottish Government analysis (<https://www.gov.scot/publications/short-custodial-disposals-from-court-and-the-prison-population/>) also shows that those receiving short sentences are a complex cohort, with a significant number of individuals moving through the prison system multiple times a year on short sentences. This cohort includes people who have been sentenced for previous offences, have spent time on remand and people who have outstanding offences which have yet to be tried. The effect of these factors is that people may not simply be serving short sentences in isolation, and that other considerations such as time spent on remand and existing sentences complicate this picture.

Data from 2023 shows that around only 20% of all custodial sentences of 12 months or less handed down by courts were given to people arriving to court from the community (meaning they were not on remand or already serving previous prison sentences). The remaining 80% were given to people who were already on remand or were serving previous custodial sentences.

The Sentencing and Penal Policy Commission published its final report on 6 February 2026 with a number of significant recommendations, including on use of short-term sentences and alternatives to custody, which the Scottish Government is considering in detail.

Home Detention Curfew

Section 3AA of the Prisoners and Criminal Proceedings (Scotland) Act 1993 provides the ability for certain prisoners to be released on Home Detention Curfew. Certain categories of prisoners, such as those subject to sexual offender notification requirements or those subject to a supervised release order, are excluded from release on HDC.

From October 2025, the eligibility for HDC was extended to prisoners who have served 15% of their custodial sentence, down from the previous 25%. Only individuals serving sentences of three months or more are eligible. The minimum period an individual can be released on HDC is 14 days and the maximum is 210 days. Specific monitoring and standard licence conditions apply in each case.

The changes proposed by the draft Regulations have no impact on HDC eligibility criteria.

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Release point calculations

Examples are provided below to illustrate the effect of the changes made by the Regulations. It should be noted that these are approximations only based on simplified examples. Release dates are calculated by the Scottish Prison Service and involve a level of complexity in considering the overall time spent in prison, including on remand.

However, broadly speaking:

- an individual sentenced to 1 year would be eligible for early release after 3.6 months in prison instead of 4.8 months under the current provisions;
- an individual sentenced to 2 years would be eligible for early release after 7.2 months in prison instead of 9.6 months under the current provisions; and
- an individual sentenced to 3 years would be eligible for early release after 10.8 months in prison instead of 14.4 months under the current provisions.

Planning for releases

The Scottish Prison Service ensures that all individuals released under emergency measures, or as a result of changes to their point of release, have a tailored pre-release plan in place. SPS officers meet with each person affected to assess their accommodation, welfare, travel, family contact, and throughcare support needs. Where consent is provided, referrals are made to the appropriate support services such as Housing Officers, Community Substance Support Services, Throughcare Providers and Social Security Scotland.

NHS teams supply 28 days of medication upon liberation and arrange any necessary follow-up appointments with specialist community services. Establishments also convene multiagency pre-release planning meetings, attended by representatives from Upside, NHS teams, local housing services, the Department for Work and Pensions, and other relevant specialist providers. These meetings provide an opportunity to review and agree the individual's pre-release plan ahead of their liberation date, supporting strong communication between agencies and ensuring coordinated delivery of support.

Managed release processes can support meaningful rehabilitation and reintegration into the community. Those leaving prison after a short-term sentence in Scotland are entitled to request throughcare support, which can be provided through their local authority, a third sector organisation or national voluntary service, Upside. These services provide flexible and personalised support before, during and after release, helping prisoners to access healthcare and support to find somewhere to stay or to find a job. The Scottish Government provides £5.3 million annually to support Upside and we are investing further £10 million in community justice services, bringing the overall budget for 2026/27 to £169 million.

I also recognise that delivery partners will require time to plan and prepare for people leaving custody. This is why the proposed changes, if approved by the Parliament, would not take effect until after the ongoing Emergency Early Release scheme ends in April, and those eligible for immediate release would be released in tranches to help manage the impact on community services. We are regularly engaging with the Scottish Prison Service and other delivery partners on this important matter and will continue to do so.

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I would also like to reiterate that protecting victims and public safety remains an absolute priority for me and the Scottish Government. We will work directly with victim support organisations to raise awareness of what the proposed changes mean and to encourage those eligible to sign up to the Victim Notification Scheme. All victims registered with the Scheme will be notified of the new release date in advance.

Capacity of prison estate

A range of steps have been taken to optimise the capacity of the existing prison estate. This included doubling up of single cells, purchase of additional places from the private estate, rationalisation of cohorts and reopening of disused cells across multiple establishments.

More specifically:

- accommodation at HMP Edinburgh was repurposed to allow more space for male population in the 'offence protection' category;
- full reopening of Cruden Hall in HMP Grampian; and
- re-evaluation of risk criteria in HMP & YOI Polmont.

The Scottish Government is also providing the Scottish Prison Service with capital funding of £355 million this year and £458.5 million next year, to continue construction of two new prisons, which will add 464 places.

Governor's veto

The Governor's veto is a specific public protection measure which was introduced only in relation to emergency early release. This was in cognisance of the fact that emergency powers are used at a short notice to release a specific cohort of prisoners earlier than their normal release point. It allows a governor to prevent a prisoner's release under emergency early release regulations where that individual's release is considered to pose an immediate risk of harm to a specific person or group.

The Governor's veto does not apply where a prisoner reaches their statutory automatic release point in the normal way, which is consistent with the existing position for most short-term prisoners who are generally released unconditionally at that point.

Additionally, the power under which these draft Regulations have been laid does not enable provision to create a power equivalent to the Governor's veto to be applied to prisoners being released at their automatic release point.

I hope that the Committee will find this additional information helpful.

Yours sincerely



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