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Criminal Justice Committee

Report on the Early Release of Prisoners (Scotland) Regulations 2025 [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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Introduction

1. At its meeting on 29 October 2025, the Criminal Justice Committee considered the following affirmative instrument:
 - [The Early Release of Prisoners \(Scotland\) Regulations 2025 \[draft\]](#)
2. The Committee also considered the [Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2025 \(SSI 2025/277\)](#). This is a negative instrument related to the Early Release of Prisoners (Scotland) Regulations 2025 [draft].

The Early Release of Prisoners (Scotland) Regulations 2025 [draft]

3. The Early Release of Prisoners (Scotland) Regulations 2025 [draft] were laid before the Scottish Parliament on 2 October 2025 and referred to the Criminal Justice Committee.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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.
11. Victim Support Scotland and Families Outside provided written submissions to the

Committee in relation to the instrument. These submissions can be found in Annex B.

Consideration by the Delegated Powers and Law Reform Committee

12. The Delegated Powers and Law Reform Committee ("DPLR Committee") considered the Regulations at its meeting on on 7 October 2025 and reported on it in its [72nd Report, 2025](#). The DPLR Committee made no recommendations in relation to the instrument.

Consideration by the Criminal Justice Committee

13. Motion S6M-19222 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 ("the Cabinet Secretary"), Teresa Medhurst, Chief Executive, Scottish Prison Service and Scottish Government officials at its meeting on Wednesday 29 October 2025.
14. During the evidence session, the Cabinet Secretary outlined the purpose of the Regulations to the Committee.
15. Following questions from Members, the Cabinet Secretary moved the motion:
 - S6M-19222—That the Criminal Justice Committee recommends that the Early Release of Prisoners (Scotland) Regulations 2025 [draft] be approved.
16. Following a debate on the SSI, the Committee agreed to motion S6M-19222 by division: For 4 [Jamie Hepburn, Rona Mackay, Fulton MacGregor and Audrey Nicoll]; Against 3 [Sharon Dowey, Liam Kerr and Pauline McNeill]; Abstentions 0.
17. The Committee also considered the [Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2025](#) (SSI 2025/277) and had no comments to make in relation to the instrument.
18. **The Criminal Justice Committee recommends to the Scottish Parliament that it approve the Early Release of Prisoners (Scotland) Regulations 2025 [draft].**

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

Written Submission from 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) – negativ [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	61 (13%)* <i>Figure as of December 2024</i>
2 (3 or 4 July)	136	
3 (10 or 11 July)	110	
4 (17 or 18 July)	125	
Total	477	

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	17 (5%)
2 (4-6 March 2025)	90	
3 (18-20 March 2025)	140	
Total:	311**	

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**

Written Submission from 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.

