Draft Regulations laid before the Scottish Parliament under section 3D(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2024 No.

PRISONS

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

Made - - - -	*2024*
Coming into force - -	*13th June 2024*

The Scottish Ministers make the following Regulations in exercise of the powers conferred on them by section 3C of the Prisoners and Criminal Proceedings (Scotland) Act 1993 ("the 1993 Act")(**a**), section 16ZA(2)(a) of the Criminal Justice (Scotland) Act 2003(**b**), section 27B(2)(a) of the Victims and Witnesses (Scotland) Act 2014(**c**) and all other powers enabling them to do so.

In accordance with section 3D(1) of the 1993 Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament(**d**).

The Scottish Ministers are satisfied that making these Regulations is necessary and proportionate, in response to the effects that an emergency situation is having, and is likely to have, on prisons generally, for the purposes of protecting (a) the security and good order of prisons, or (b) the health, safety and welfare of prisoners, or those working, in prisons.

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Early Release of Prisoners and Prescribed Victim Supporters (Scotland) Regulations 2024 and come into force on 13 June 2024.

(2) These Regulations apply to all prisons in Scotland.

(3) In these Regulations, any reference to a person being released under section 1(1) of the 1993 Act(**e**) includes a person who is released under that section as applied by section 6(1)(a)(iii) of that Act(**f**).

(**a**) 1993 c. 9. Section 3C was inserted by section 11(2) of the Bail and Release from Custody (Scotland) Act 2023 (asp 4).
(**b**) 2003 asp 7. Section 16ZA was inserted by section 14(2) of the Bail and Release from Custody (Scotland) Act 2023 (asp 4).
(**c**) 2014 asp 1. Section 27B was inserted by section 14(12) of the Bail and Release from Custody (Scotland) Act 2023 (asp 4).
(**d**) The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). These Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.
(**e**) Section 1(1) was amended by paragraph 98(1) of schedule 8 of the Crime and Disorder Act 1998 (c. 37) and section 15(2) of the Management of Offenders etc. (Scotland) Act 2005 (asp 14).
(**f**) Section 6(1)(a) was substituted by paragraph 52(12) of schedule 13 of the Counter Terrorism and Sentencing Act 2021 (c. 11).

(4) In these Regulations—

"the 1993 Act" means the Prisoners and Criminal Proceedings (Scotland) Act 1993,

"Glasgow City Council" means the local authority for the local government area of the City of Glasgow in terms of the Local Government etc. (Scotland) Act 1994(**a**),

"the latest release date" means 25 July 2024.

Description of persons specified to be released early from prison

2.—(1) A person who falls within the description of persons specified in paragraph (2) is to be released early from prison in accordance with regulation 3.

(2) The class of persons to be released early are any person who—

(a) falls within paragraph (3), and

(b) does not fall within paragraph (4).

(3) A person falls within this paragraph if the person—

(a) is serving a sentence of imprisonment or detention for a period of less than four years, and

(b) is due to be released under sections 1(1) or 7(1)(a)(**b**) of the 1993 Act within the 180 days following the date on which these Regulations come into force.

(4) A person falls within this paragraph if –

(a) the person has served a sentence of imprisonment or detention for an offence that was aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016(**c**) which was recorded as such under section 1(5)(b) of that Act and on the date which these Regulations come into force the conviction for which is not spent for the purposes of the Rehabilitation of Offenders Act 1974(**d**),

(b) the person has served a sentence of imprisonment or detention for an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018(**e**) which on the date these Regulations come into force the conviction for which is not spent for the purposes of the Rehabilitation of Offenders Act 1974,

(c) the person is the subject of a non-harassment order imposed under section 234A of the Criminal Procedure (Scotland) Act 1995(**f**) or section 8 or 8A of the Protection from Harassment Act 1997(**g**),

(d) the person has been sentenced to a term of imprisonment or detention on or after 17 July 2024.

Timing of release

3.—(1) A person who is to be released in accordance with regulation 2 must be released in accordance with this regulation.

(**a**) 1994 c. 39.

(**b**) Section 7(1)(a) was amended by paragraph 86(2) and (5) of schedule 4 of the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 c. 40.

(**c**) 2016 asp 22.

(**d**) 1974 c. 53.

(**e**) 2018 asp 5.

(**f**) 1995 c. 46. Section 234A was inserted by section 11 of the Protection from Harassment Act 1997 (c. 40) and was amended by schedule 3 of the Crime and Punishment (Scotland) Act 1997 (c. 48), section 49 of the Criminal Justice (Scotland) Act 2003 (asp 7), section 15 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), paragraph 3 of schedule 2 of the Criminal Justice (Scotland) Act 2016 (asp 1) and section 5 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (asp 22).

(**g**) 1997 c. 40. Section 8 was amended by schedule 2 of the Damages (Scotland) Act 2011 (asp 7) and section 1 of the Domestic Abuse (Scotland) Act 2011 (asp 13) ("the 2011 Act"). Section 8A was inserted by the 2011 Act.

(2) Where a person is due to be released under section 1(1) or 7(1)(a) of the 1993 Act within the 45 days following the date on which these Regulations come into force, that person is to be released from prison in accordance with these Regulations no later than 27 June 2024.

(3) Where a person is due to be released under section 1(1) or 7(1)(a) of the 1993 Act more than 45 days but within 90 days following the date on which these Regulations come into force, that person is to be released from prison in accordance with these Regulations—

(a) no earlier than 3 July 2024, and

(b) no later than 4 July 2024.

(4) Where a person is due to be released under section 1(1) or 7(1)(a) of the 1993 Act more than 90 days but within 135 days following the date on which these Regulations come into force, that person is to be released from prison in accordance with these Regulations—

(a) no earlier than 10 July 2024, and

(b) no later than 11 July 2024.

(5) Where a person is due to be released under section 1(1) or 7(1)(a) of the 1993 Act more than 135 days but within 180 days following the date on which these Regulations come into force, that person is to be released from prison in accordance with these Regulations—

(a) no earlier than 17 July 2024, and

(b) no later than the 18 July 2024.

(6) Where a person is to be released in accordance with paragraphs (2), (3), (4) or (5) but their release did not take place on the dates specified in those paragraphs, that person is to be released as soon as reasonably practicable, but no later than the latest release date.

Description of victim supporters entitled to information

4. The persons to which section 16ZA(2) of the Criminal Justice (Scotland) Act 2003(**a**) applies, and to which section 27B(2) of the Victims and Witnesses (Scotland) Act 2014(**b**) applies, (a "supporter") are prescribed as—

(a) the person described as Victim Support Scotland, registered in the Scottish Charity Register with charity number SC002138,

(b) the person described as Rape Crisis Scotland, registered in the Scottish Charity Register with charity number SC025642,

(c) the person described as ASSIST, a support and advocacy service provided by Glasgow City Council, and

(d) the person described as Children 1st, registered in the Scottish Charity Register with charity number SC016092.

Name
A member of the Scottish Government

St Andrew's House,
Edinburgh
Date

(**a**) 2003 asp 7. Section 16ZA was inserted by section 14(2) of the Bail and Release from Custody (Scotland) Act 2023 (asp 4).
(**b**) 2014 asp 1. Section 27B was inserted by section 14(12) of the Bail and Release from Custody (Scotland) Act 2023 (asp 4).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under powers contained in: section 3C of the Prisoners and Criminal Proceedings (Scotland) Act 1993 ("the 1993 Act"), section 16AZ(2) of the Criminal Justice (Scotland) Act 2003, ("the 2003 Act") and section 27B(2)(a) of the Victims and Witnesses (Scotland) Act 2014 ("the 2014 Act").

Regulation 2(1) provides that persons of a description set out in regulation 2(2) are to be released early from a prison or young offenders institution (the early release of persons under these regulations being subject to the prison governor's power to prevent release under section 3C(5)(b) of the 1993 Act and a number of exclusions in section 3C(6) of that Act).

Regulation 2(2) provides that a person is to be released only if they fall within the description of a person as set out in regulation 2(3), but they are not to be released if, notwithstanding their inclusion in such a description, they also fall within the description of a person as set out in Regulation 2(4).

Regulation 2(3) describes persons serving a sentence of imprisonment or detention for a period of less than four years who are to be released unconditionally under section 1(1), or conditionally under section 7(1)(a), of the 1993 Act within the 180 days following the coming into force of the Regulations. (Regulation 1(3) clarifies that any reference to release under section 1(1) of the 1993 Act includes the release of a young offender under that section as applied by section 6(1)(a) of the 1993 Act).

Regulation 2(4) describes persons who have previously served a sentence of imprisonment or detention for an offence of domestic abuse, or for an offence aggravated by domestic abuse where the conviction for such an offence has not become spent. Regulation 2(4) further describes persons who are subject to 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(4) further prescribes persons who have been sentenced to a term of imprisonment or detention on or after 17 July 2024. Persons as described in regulation 2(4) are thus excluded from early release by virtue of these regulations, even where they fall within the description of persons set out regulation 2(3).

Regulation 3 makes provision for determining the date of early release. Those who are to be released under section 1(1) or 7(1)(a) of the 1993 Act within the 45 days following the day on which the Regulations come into force are to be released between 26 and 27 June 2024. Those who are to be released under section 1(1) or 7(1)(a) of the 1993 Act between 45 and 90 days following the day on which the Regulations come into force are to be released between 3 and 4 July 2024. Those who are to be released under section 1(1) or 7(1)(a) of the 1993 Act between 91 and 135 days following the day on which the Regulations come into force are to be released between 10 July 2024 and 11 July 2024. Those who are to be released under section 1(1) or 7(1)(a) of the 1993 Act between 135 days and 180 days following the day on which the Regulations come into force are to be released between 17 July 2024 and the 18 July 2024.

Regulation 3(6) provides that where a person is to be released in accordance with paragraphs (2), (3), (4) or (5) but their release did not take place on the dates specified in those paragraphs, that person is to be released as soon as reasonably practicable, but no later than the latest release date. The latest release date is 25 July 2024.

Regulation 4 prescribes persons of a particular description who are able to receive certain information concerning the person who committed an offence against the victim.

For sentences of imprisonment or detention of 18 months or more in length, a victim can already intimate to the Scottish Ministers that they wish to receive the information set out in section 16(3) of the 2003 Act as that relates to a person convicted of committing an offence against them. Section 16ZA of the 2003 Act allows a "supporter" to be provided with that information instead of, or together with the victim, where either the victim has requested this or the organisation itself has done so and the Scottish Ministers are satisfied that the victim consents to the organisation

being given the information. A "supporter" is a person of a description prescribed by the Scottish Ministers by regulations made under section 16ZA(2)(a) who provides support services to a victim of crime ("support services" is defined in section 16ZA(5)).

For sentences of imprisonment or detention of less than 18 months in length, a victim can already intimate to the Scottish Ministers that they wish to receive the information set out in section 27A(1) of the 2014 Act as that relates to a person convicted of committing an offence against them. Section 27B of the 2014 Act allows a "supporter" to be provided with that information instead of, or together with the victim, where either the victim has requested this or the organisation itself has done so and the Scottish Ministers are satisfied that the victim consents to the organisation being given the information. A "supporter" is a person of a description prescribed by the Scottish Ministers by regulations made under section 27B(2)(a) who provides support services to a victim of crime ("support services" has the same meaning as that set out in section 16ZA(5) of the 2003 Act).

Regulation 4 specifies the description of persons for the purposes of section 16ZA of the 2003 Act and 27B of the 2014 Act as the Scottish Registered Charities: Victim Support Scotland, Rape Crisis Scotland and Children 1st. Regulation 4 also prescribes the description of persons as ASSIST, a support and advocacy service provided by Glasgow City Council.

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