POLICY NOTE

THE PRISONERS (EARLY RELEASE) (MISCELLANEOUS AMENDMENT AND TRANSITIONAL PROVISIONS) (SCOTLAND) REGULATIONS 2026

SSI 2026/168

The above instrument was made in exercise of the powers conferred by section 27A(1) and (2) of the Prisoners and Criminal Proceedings (Scotland) Act 1993. The instrument is subject to the affirmative procedure.

Summary Box

The purpose of the Prisoners (Early Release) (Miscellaneous Amendment and Transitional Provisions) (Scotland) Regulations 2026 is to change the point at which certain short-term prisoners are released from prison. Short-term prisoners are those serving sentences of less than four years. Following the commencement of the Prisoners (Early Release) (Scotland) Act 2025 ("the 2025 Act"), most short-term prisoners are released after they have served 40% of their sentence (previously, 50%).

The regulations will change that release point so that those eligible are released after serving 30% of their sentence. The change will also apply to the release of children detained following conviction in summary and solemn proceedings, and to persons serving a sentence for fine default or contempt of court.

The change will not apply to those serving sentences as a whole or in part for a domestic abuse offence (including those serving a sentence with a domestic abuse statutory aggravator), or sexual offences who will continue to be released after serving 50% of their sentence.

The change will apply to those serving a short-term sentence when the legislation comes into force and those sentenced to short-term sentences in the future. Those who become immediately eligible for release on commencement of the legislation will be released in tranches.

Policy Objectives

Policy context

The Prisoners (Early Release) (Miscellaneous Amendment and Transitional Provisions) (Scotland) Regulations 2026 change the release point for certain short-term prisoners so they are released after serving 30% of their sentence instead of 40%. The aim of bringing forward the point of release for certain short-term prisoners is to achieve a sustained reduction in the prison population as part of a range of actions designed to ensure the prison service functions safely and effectively.

The Scottish Government has taken a range of action to alleviate the sustained pressure experienced by those who live and work in our prisons due to a high prison population over

an extended period of time. [1] This includes optimising the existing prison estate and investing in new prisons HMP Highland and HMP Glasgow; an increase in the use of bail supervision; the roll out of electronically monitored bail across the country; expansion of Home Detention Curfew; and increased investment in community justice. The Sentencing and Penal Policy Commission also published its report on 6 February 2026 which will inform the longer-term strategy for establishing a sustainable prison population.[2]

Section 27A of the Prisoners and Criminal Proceeding (Scotland) Act 1993 ("the 1993 Act") provides Scottish Ministers with the power, via subordinate legislation, to amend the point at which a prisoner (or, as the case may be a child) is released from prison (or detention). Section 27A does not allow amendments to be made to section 1AA of the 1993 Act (concerning the release of certain sexual offenders) or section 1AB (release of terrorist prisoners). This power enables any changes made to the release point to be kept under active review and provides flexibility to respond to changing circumstances, including if the circumstances around the prison population change.

Despite the action undertaken by the Scottish Government and delivery partners the prison population remains stubbornly high. The Scottish Prison Service has reported that eight prisons are showing red risk status. This increases the risks to the safe operation of the prison estate, impacts on availability of rehabilitative services; ability to respond to a major incident; increased risk of disorder; and risk to the safety and welfare of staff and prisoners. Given this, the Scottish Government considers that a further change to the release point for short-term prisoners is now required to mitigate the risks of the rising prison population and to deliver a sustained reduction as soon as possible.

Victim and public safety is a priority for the Scottish Government and we remain committed to ensuring that we take the impact on victims into account in the delivery of this change. Victims have a right to get information about the release of a prisoner. The Scottish Prison Service will contact those registered with the Victim Notification Scheme if there is a change to the release date of a prisoner involved in their case. If eligible, victims can also request this information directly from the Scottish Prison Service.

Release of short-term prisoners

The regulations make relevant amendments to the 1993 Act to change the point at which some people serving short-term custodial sentences are released from prison. It requires those eligible to be released after they have served 30% of their sentence instead of 40%. The regulations make no change to the release point for short-term prisoners serving custodial sentences for domestic abuse[3] or sexual offences,[4] who will continue to be released after serving 50% of their sentence. The Scottish Government considers this to be a proportionate approach to the risks faced by the rising prison population, which balances mitigating the risks arising within the prison estate and ensuring that individuals still serve a proportion of their sentence in custody.

---

[1] https://www.gov.scot/publications/scottish-prison-population-projections-october-2025/

[2] https://www.gov.scot/publications/justice-works-report-scottish-sentencing-penal-policy-commission/

[3] A "domestic abuse offence" means an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 or an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018.

[4] A "sexual offence" in this context means an offence listed in paragraphs 36 to 60 of schedule 3 of the Sexual Offences Act 2003.

This will result in both an immediate and sustained impact on the prison population. Once fully implemented, it is estimated that the sentenced prison population will have a sustained reduction of between 239-312 people compared to what the prison population would otherwise have been if the change had not been made. The actual reduction to the population will depend on the composition of the prison population when the change comes into effect.

The regulations cannot be used to change the way prisoners are released. There is generally no statutory requirement for supervision for most short-term prisoners, subject to any supervised release order or extended sentence. Those leaving prison can access voluntary throughcare services. They can request throughcare support from their local authority, which has a statutory duty to provide this if requested. They can also access this support from a range of third sector organisations, including the newly established voluntary throughcare service, Upside.

Release of detained children

The regulations amend section 7 of the 1993 Act so that children detained in solemn proceedings, where the sentence is less than four years, are released on licence following 30% of their sentence. The regulations also amend section 44 of the Criminal Procedure (Scotland) Act 1995 Act so that children detained in summary proceedings will be released after serving no more than 30% of their sentence. These changes are not applied to any child serving a sentence in whole or in part in relation to a domestic abuse or sexual offence.

This approach provides certainty regarding the release date of the person sentenced and avoids a situation where co-accused who receive the same sentence are released at different times by virtue of their ages when the offence was committed.

Additionally, it is the Scottish Government's view that amending the point of automatic release for children is in line with the principles of Article 37 of the UNCRC (the right not to be punished in a cruel or harmful way), which provides that the detention or imprisonment of children must be only as a measure of last resort and for the shortest appropriate period of time.

Fine default and contempt of court

The regulations make similar amendment to section 5 of the 1993 Act so that those serving a short period (less than four years) of imprisonment for non-payment of a fine or for contempt of court are released after serving 30% of their sentence. This is to ensure the changes being made in section 1 of the 1993 Act will apply consistently to those imprisoned for those offences.

Applicability of new release point

The change will not apply to those serving sentences in whole or in part for domestic abuse or sexual offences or those with a domestic abuse statutory aggravator, who will continue to be released after serving 50% of their sentence.

The Scottish Government considers that there are specific issues in relation to domestic abuse and sexual offences that are not necessarily as prevalent in relation to other offences. For

example, there is evidence of particular barriers to reporting sexual and domestic abuse offences[5] and the progress which has been made in recent years in ensuring that victims can have confidence in the justice system when coming forward.[6] Reducing barriers to reporting of sexual and domestic abuse offences, and maintaining the confidence to do so, is vital to the success of the Scottish Government's commitment to reduce violence against women and girls, as supported by the Equally Safe strategy.[7]

While we recognise that all types of offence can be traumatising, we know that victims of these categories of offence may be particularly concerned about the release of a prisoner. We understand that they may wish to ensure that they have support and safety plans in place at the point in time the release occurs, and establishing certainty around that date will help facilitate such planning. Victims have a right to get information about the release of a prisoner. The Scottish Prison Service will contact those registered with the Victim Notification Scheme if there is a change to the release date of a prisoner involved in their case. If eligible, victims can also request this information directly from the Scottish Prison Service.

Transitional provision

The changes made will apply retrospectively, meaning that subject to transitional provision, they apply to those serving a short-term sentence when the legislation comes into force on 12 May 2026 and those sentenced to short-term sentences in the future.

If the relevant provisions were commenced fully on 12 May 2026, this would necessitate the immediate release of all eligible short-term prisoners who have already served 30% or more of their sentence. There could be a risk that community services could be overwhelmed, individuals may not be suitably prepared for their release and victims who wish to be may not be informed about the new release date of the prisoner in their case.

In order to mitigate against those risks, the changes are subject to transitional provision meaning those who become immediately eligible will be released in tranches. Following commencement on 12 May 2026, there will be three tranches of release, with a tranche of release taking place every two weeks. The first tranche will begin on the second Tuesday following commencement. Those eligible will be released within each tranche based on how much of their sentence has been served.

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

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, the Prisoners (Early Release) (Miscellaneous Amendment and Transitional Provisions) (Scotland) Regulations 2026 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

---

[5] https://safelives.org.uk/research-policy-library/whole-lives-scotland-survivor-survey/

[6] https://www.gov.scot/publications/domestic-abuse-statistics-recorded-police-scotland-2023-24/pages/overview/

[7] https://www.gov.scot/publications/equally-safe-scotlands-strategy-preventing-eradicating-violence-against-women-girls/

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

To comply with the requirements of section 27A(5) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 the following bodies have been consulted:

- the Care Inspectorate
- Community Justice Scotland,
- each health board,
- each integration joint board
- each local authority,
- the chief constable of Police Scotland,
- the Risk Management Authority,
- victim support organisations,

alongside other national organisations and delivery partners. There was, in general, a recognition of the negative impact and risks of a high prison population. Some respondents felt the proposals were necessary as urgent action is required to mitigate those impacts, others wanted the focus to be on longer term reform to address underlying drivers of the prison population alongside an analysis of measures undertaken to date. Most respondents who expressed a view supported the exclusions for those serving sentences for domestic abuse and sexual offences recognising the impact for victims of those offences. Some respondents felt that a more risk-based approach should be taken rather than offence-based exclusions, whereas others noted that other offences should also be excluded. Some respondents also suggested there was a need for clearer information on release arrangements, both for victims and the wider public. Many respondents highlighted the impact of the anticipated increase in demand for services in the community and consequently the impact this could have on outcomes for those being released.

Impact Assessments

In addition to the impact assessments completed for the 2025 Act, the following impact assessments have been completed on this specific policy:

- Business and Regulatory Impact Assessment
- Child Rights and Wellbeing Impact Assessment
- Equality Impact Assessment
- Fairer Scotland Duty Impact Assessment
- Island Communities Impact Assessment

Financial Effects

A Financial Memorandum was completed for the 2025 Act[8] which changed the automatic early release point for certain short-term prisoners, and the regulations are likely to have a similar impact. The regulations do not create any new approach to the delivery of services within prison and the community. The individuals being released are also not additional but are being released earlier. However, it is recognised that the changes would impact the delivery of, and increase demand for, some services during the transition to the new release point. While this has been mitigated to an extent by the transitional provision provided for in the regulations, we will continue to assess with delivery partners, the cost and resource implications.

Scottish Government
Justice Directorate

12 February 2026

[8] https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/prisoners-early-release-scotland-bill/introduced/financial-memorandum-accessible.pdf