

Action to reduce the prison population: information sheet

May 2024

HEADLINES

Due to a rapid rise in the prison population, creating an unprecedented situation, similar to challenges faced across the UK, immediate action is needed to ensure the safety and wellbeing of SPS staff. We need to ensure prisons can function effectively, focus on those who pose the greatest risk of harm, and provide programmes that help reduce reoffending. Protecting victims and public safety remains an absolute priority, that is why our proposal for emergency early release has specific safeguards built in. It will only be available to those who are serving short sentences under 4 years and are due to be released within the coming months. In addition no one serving a sentence for sexual offences or domestic abuse will be released, and a veto can be applied by governors for anyone deemed a risk to a specific individual or group.

Key points

- The prison population has risen by around 400 over the last two months and around 13% since the beginning of 2023.
- This could not have been anticipated and it places us in an unprecedented situation.
- Action is required to ensure the safety and wellbeing of SPS staff and those in their care, to ensure that programmes that contribute to reducing reoffending and rehabilitation can take place, and to ensure prisons continue to function effectively and can accommodate those who pose the greatest risk of harm.
- Given the recent rate of increase and the associated risks, emergency early release must be considered in the immediate term.
- Ministers have the power to release prisoners in emergency situations under section 11 of the Bail and Release from Custody (Scotland) Act 2023. In this instance, Parliament's consent will be sought before a single prisoner is released.
- Protecting victims and public safety remains an absolute priority – that is why our proposal for emergency release has specific safeguards built in, including victim notification, exclusions for life sentence prisoners, those serving sentences for sexual offences or domestic abuse, and a veto that can be applied by the governor in charge.

EMERGENCY RELEASE

What does emergency release mean

Using powers in legislation, some prisoners serving sentences of less than four years with 180 days or less left to serve could be considered for emergency release.

Parliament would need to agree to use this power and specify for how long the emergency release powers would be in place and agree the start and end date for

the release process. No long-term prisoners - those serving over 4 years – will be part of this scheme.

Who will be released under emergency release powers

Protecting victims remains a key priority. No prisoner serving sentences for domestic abuse offences or sexual offences will be released.

A governor veto will also apply which will allow a governor to refuse the release of an otherwise eligible person if they consider they will pose an immediate risk to a specific individual or group of individuals. Governors will consider all relevant, available information to inform their application of the veto.

Notifying victims

Victims registered with the Victim Notification Scheme (where the prisoner in their case is sentenced to more than 18 months in prison) and the scheme of information for victims where the prisoner in their case is sentenced to under 18 months will apply to release under the emergency release scheme – as it does with other forms of release.

That means that victims registered with either scheme will be notified if the prisoner in their case is to be released under the emergency release scheme.

How many people will be released in this way?

There would be around 300-500 prisoners that may be released under these measures – less than 5% of the prison population and only people that were already due to be released within the next 6 months.

Prisoners would be released over a phased period of time to ensure effective release planning is in place, meaning there would be no large number of releases at one time. As the individuals would be released within the next 6 months, this is manageable for those involved in planning for prisoner release, for example local authorities, health boards and housing services.

The release process will be the same as it would have been had they been released at the scheduled date for their sentence within the next 6 months. For those sentenced to less than 4 years, that means they will not be subject to licence conditions or supervision on release. They will be able to access throughcare support - services available to all prisoners during and after serving sentences to assist prisoners to prepare for release and to help reintegration in community - from their local authority or third sector providers.

If an individual reoffends in the period between being released from custody and their sentence end date, they can be returned to prison.

How this compares to actions in the rest of the UK

Scotland's emergency release power matches existing powers in England and Wales

The UK Government have had an emergency release power in law since the early 1980s. That power is broader than the power Scottish Ministers have in the 2023 Act and provides that the Secretary of State can order the release of certain prisoners up to 6 months earlier if 'he is satisfied that it is necessary to do so in order to make best use of the places available for detention'.

The UK Government are using release mechanisms to manage their prison population. The UK government having been using their End of Custody Supervision Licence scheme to release certain prisoners early in England and Wales since October 2023. This allowed prisoners to be released 18 days early from October, and this was extended to 60 days in March 2024 and it is reported that it is due to be extended to 70 days.

AUTOMATIC EARLY RELEASE

Prior to 2016, all long-term prisoners – sentences of more than four years – were released automatically after serving two thirds of their sentence in custody unless released earlier by the Parole Board. The final third of their sentence was served in the community subject to supervision and licence conditions. A breach of those conditions could result in them being returned to custody for the remainder of their sentence.

The law was changed in 2015 which meant that most long-term prisoners sentenced after 1 February 2016 were released with 6 months left to serve unless released earlier by the Parole Board. The previous position still applies to prisoners sentenced before that change took effect. Individuals can still be returned to custody for the remainder of their sentence if they breach conditions imposed.

Structured testing and monitoring under community justice arrangements whilst serving subject to supervision and licence conditions can support successful reintegration into the community and reduce the risk of reoffending. For many people 6 months of supervision is too short to allow them to successfully resettle into communities.

In England and Wales some long term prisoners are automatically release at the half way point, others are automatically released at the two thirds point, which was the position in Scotland pre-2016.

What changes will be consulted on?

The Scottish Government plans to consult on changes to AER and how the release of long-term prisoners is managed. This was last examined in detail almost a decade ago when Parliament passed the Prisoners (Control of Release) (Scotland) act 2015.