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## Criminal Justice Committee

# Report on the Early Release of Prisoners and Prescribed Victim Supporters (Scotland) Regulations 2024 [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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# Committee Membership



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Scottish Conservative  
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**Katy Clark**  
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**Pauline McNeill**  
Scottish Labour

# Introduction

1. At this meetings on [5 June](#) and [12 June](#) 2024, the Criminal Justice Committee ("the Committee") took oral evidence and subsequently considered a motion to approve the following draft affirmative instrument-

[The Early Release of Prisoners and Prescribed Victim Supporters \(Scotland\) Regulations 2024](#)

2. This is a draft Scottish Statutory Instrument (SSI), which requires approval by resolution of the Parliament before it can become law.

# Draft Order

3. The [Policy Note](#) accompanying the instrument includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.
4. The purpose of this statutory instrument is two-fold according to the Scottish Government.
5. Firstly, to make provision using Scottish Ministers powers under 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.
6. The Scottish Government has stated that eligibility for release will be limited to those who are sentenced to less than four years and who, are due to be released within the 180 days following the date on which the regulations come into force. Release is to take place over four phases to provide certainty for those due to be released, to ensure reasonable planning can take place, to manage impact on services and to ensure release is put into effect swiftly to reduce the prison population. These will take place weekly, beginning on 26 June 2024 and ending on 18 July 2024. The latest release date under the regulations is 25 July 2024.
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. The Scottish Government has stated that 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 excludes 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](#). Individuals who are subject to a non-harassment order will also not be released under this power.
9. The Policy Note states that the early release of persons under these regulations are also subject to the prison governor's power to prevent release under section 3C(5)(b) of the 1993 Act.
10. According to ministers, the second purpose of these regulations is to prescribe victim support organisations (VSOs) for the purposes of section 14 of the 2023 Act. Section 14 makes provision so that victims can nominate a victim support organisation to receive information at the same time as the victim, or on their behalf, under either of the two statutory schemes of information for victims: the Victim Notification Scheme for victims of offenders sentenced to more than 18 months' imprisonment, or the short-term information scheme which enables victims of offenders sentenced to fewer than 18 months' imprisonment to receive more limited information.

## Scrutiny by other committees

11. The Delegated Powers and Law Reform (DPLR) Committee considered the instrument at its meeting on 4 June 2024 and reported on it in its [40th Report 2024 \(Session 6\): Delegated Powers and Law Reform Committee - Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 4 June 2024](#) (SP Paper 612).
12. The DPLR Committee had no points to raise on the instrument.
13. The DPLR Committee, however, agreed to draw to the attention of the Criminal Justice Committee that the draft instrument would have the following effects:
  - The Explanatory Note and Policy Note state that the first group of prisoners will be released between 26 and 27 June, but the draft instrument does not provide that 26 June is the earliest permitted release date. Therefore, under regulation 3(2) the first group of prisoners could, in theory, be released at any point from 13 June to 27 June;
  - The draft instrument has the effect that a prisoner who is sentenced on a date between 13 June and 16 July could, in certain circumstances, be released the next day, and the Scottish Government has indicated that this is in line with the policy intention; and
  - The ability for a victim to nominate a supporter (in section 16ZA of the [Criminal Justice \(Scotland\) Act 2003](#) and 27B of the [Victims and Witnesses \(Scotland\) Act 2014](#), as inserted by the [Bail and Release from Custody \(Scotland\) Act 2023](#)) only came into force on 26 May 2024; and regulation 4, which prescribes the victim support organisations which are to be able to receive information concerning the person who committed an offence against the victim, will only commence on 13 June 2024. This does not allow much time for the necessary administrative processes to be put in place before individuals begin to be released early.



# Scrutiny by the Committee

14. On Wednesday 5 June, the Committee took oral evidence from two panels of witnesses in advance of the session with the Cabinet Secretary for Justice and Home Affairs ('the Cabinet Secretary') the following week. The witnesses were as follows:

## Panel 1

- Professor Sarah Armstrong, Professor of Criminology, University of Glasgow,
- Kate Wallace, Chief Executive Officer, Victim Support Scotland,
- Lynsey Smith, Chair of the Justice Standing Committee, Social Work Scotland,

## Panel 2

- Wendy Sinclair-Gieben, HM Chief Inspector of Prisons for Scotland, HM Inspectorate of Prisons for Scotland,
- Phil Fairlie, Deputy General Secretary, Prison Officers Association Scotland,
- Paula Arnold, Governor, HMP and YOI Stirling, Vice Chair, Prison Governors Association (Scotland),
- Ian Bryce, Legal Vice Chair, Parole Board for Scotland.

15. In addition to oral evidence from the witnesses above, the Committee also received [written submissions](#) from:

- Families Outside,
- Howard League Scotland.

16. On Wednesday 12 June 2024, the Committee took oral evidence on the instrument from-

- Angela Constance MSP, Cabinet Secretary for Justice and Home Affairs,
- Jennifer Stoddart, Head of Parole, Release and Reintegration Unit, Scottish Government,
- Jamie MacQueen, Legal Directorate, Scottish Government,
- Teresa Medhurst, Chief Executive, Scottish Prison Service,
- Andy Hodge, Governor, HMP Perth, Scottish Prison Service.

17. The Cabinet Secretary set out the purpose of the instrument.

18. Following a debate on the SSI, the Cabinet Secretary moved Motion S6M-13500-

That the Criminal Justice Committee recommends that the Early Release of Prisoners and Prescribed Victim Supporters (Scotland) Regulations 2024

[draft] be approved.

19. The Committee agreed to the Motion by division: For 4 [Jackie Dunbar, Rona Mackay, Fulton MacGregor, Audrey Nicoll]; Against 4 [Katy Clark, Sharon Dowie, Russell Findlay, Pauline McNeill]; Abstentions 0. The Motion was agreed to on the casting vote of the Convener.

# Conclusion

20. **The Criminal Justice Committee recommends that the Early Release of Prisoners and Prescribed Victim Supporters (Scotland) Regulations 2024 [draft] be approved.**

