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By email

22 April 2020

Dear Colleague,

I am writing to you regarding the powers in the Coronavirus (Scotland) Act 2020 which allow for the early release of certain prisoners. While I recently wrote to many of you in similar terms, I wanted to provide you with an update on the current position.

The Cabinet Secretary for Justice informed Parliament yesterday that the Scottish Government will be taking the necessary steps to use these powers. I can confirm that Regulations will be laid before Parliament so that a limited number of short-term sentenced individuals can be released on or after 30 April 2020. The scheme will be limited to those

sentenced to 18 months or less and who on 30 April have 90 days (three months) or less left of their time in custody.

Although there has been some reduction in the prison population over recent weeks, our prisons have also had to take steps to end visits and reduce time out of cell. A significant number of prison staff cannot work, due to ill health, a requirement to isolate or as a result of a need to take care of children and family members. Taken together with the changes to prison regimes, these factors make prisons an especially challenging environment at present for prisoners, prison officers, NHS staff and others who work in our prisons. We have also had recent confirmation of a further three weeks of lockdown so we need to make arrangements now with a view to the continued running of prisons over the following weeks.

Ministers consider a limited form of prison release to be a necessary and proportionate response to the current situation in our prisons and this action will help give the SPS improved capacity as they move towards single-cell occupancy, and as they continue to work to maintain a safe custodial environment. I am aware there are implications for a number of statutory and voluntary sector partners from this decision so I believe it would be helpful to set out further details for you here.

The legislation passed by Parliament already excludes any prisoner convicted of sexual or terrorism offences or imprisoned for life. The full range of statutory exclusions in the legislation can be found in Section 19 on the following page - <https://www.legislation.gov.uk/asp/2020/7/schedule/4/enacted> . The regulations will also exclude those imprisoned for domestic abuse, those with non-harassment orders or those convicted of certain Covid-19-related offences. In addition, a Prison Governor may veto someone from the scheme where they consider that the prisoner presents an immediate risk of harm to a specific individual.

Consequently, around 300-450 prisoners who fall within this category will be considered for early release and will be released across a four week period starting from 30 April 2020. The exact number is presented as a range as the prison population is dynamic and while this represents the best estimate of those likely to be considered for release after application of the eligibility criteria, we would expect the number may decrease as a result of any application of the Governor's veto. For context, there are typically 120-130 prison releases a week across Scotland. The releases brought forward will be phased over three distinct phases (two weeks, one week, one week). That would mean from 30 April:

- (a) prisoners with 1-30 days until EDL would be released within Days 1-14 of the 28 day period**
- (b) prisoners with 31-60 days remaining would be released within days 15-21 of the 28 day period.**
- (c) prisoners with 61-90 days remaining would be released within days 22-28 of the 28 day period.**

The Scottish Prison Service (SPS) currently provide lists to local authorities which set out all those individuals who are due to return to their area within the next 12 weeks. The criteria above will help identify those who may be affected by early release. An unknown at this stage will be those that Governor's may subsequently veto but SPS will endeavour to provide that information to local authorities as soon as it is known. Contact points for further details of these processes are set out in this letter. We have also set out some information (in Annex C) to help illustrate at an aggregate level the likely impact of early release across local authority areas, although I would stress this is an illustration and the exact numbers will depend on

those in custody as at 30 April. We are aware other partners including the Police already have their own information sharing arrangements with SPS so that they are notified in advance of those released.

I am aware that this decision will have an impact on a range of partners and Ministers put on record yesterday their thanks to those engaged in supporting this work. Local authorities and SPS already have processes in place to accommodate individuals upon liberation, the broad principles of which are set out in Sustainable Housing Upon Release for Everyone (SHORE) guidance. Revised SHORE guidance, reflecting on COVID-19 and how local authorities and SPS should work together was issued to prisons and local authorities on 1 April. This re-emphasised the importance of prisons and local authorities effectively working together to ensure individuals are liberated directly into accommodation upon their release. It recognises that local authorities as well as SPS will have been impacted by COVID-19 and the traditional processes and ways of working between both services will no longer be feasible and as such require reviewing. It also stresses the importance of continued multi-agency working; partnership working across the full range of public services remains vitally crucial to facilitate as seamless an approach to liberation as possible, and to support individuals with their physical, emotional and financial well-being for their transition into the community.

As partners will also be aware, people in prison are an extremely vulnerable population, experiencing multiple and complex health and social care needs. Continuity of care is a key consideration: Local authorities, health boards and integration joint boards will all continue to play a key role in ensuring that people released under these powers are able to access local services (general practice, mental health, alcohol and drug treatment, community pharmacy and social care) quickly to make certain that they remain safe on release. There will be a necessity to consider how services can be flexed to respond on the basis of need, and on an equitable basis, to those in the communities to which people are returning.

The national third sector throughcare services, New Routes PSP and Shine PSP, are continuing to offer support to short-sentence prisoners released from prison and assisting their reintegration after release. Given that current restrictions prevent their staff from entering prison or meeting service users in person on day of release or in the community, both services have adjusted to deliver support by phone and email. Both services are continuing to sign up prisoner as they become eligible, and will adjust arrangements to engage with individuals who are released early. As before, PSP staff will help signpost and advise individuals to engage with public services, according to their needs. Individuals may also be able to seek other throughcare assistance from their local authority.

A small number of prisoners are currently self-isolating as a precaution and work is underway to consider the medical care and supervision of any prisoners involved in this process who have COVID-19 symptoms or other medical conditions, to ensure they are managed appropriately. It will be important thought is given for any COVID-19 specific arrangements that need to be put in place dependent on the release destination. Close communication between prisons and community partners will be needed to ensure a continuity of care across all the areas we know can present challenges on release including accessing benefits, GP registration and continuity of prescriptions and substance use.

I understand all of this will be an additional impact on services at a challenging time, and I am aware of the profound impact that COVID-19 is having on the workforce in Scotland but I also know that Ministers are clear that this action is necessary. I welcome the way in which partners have responded to this to date, drawing on a strong record of collaborative working around prison release planning, in order to help ensure a continuity of services for all those in and returning to our communities.

I have attached further Q&A on these matters (in Annex B) and have listed several contact points below in case you have further questions.

Yours sincerely



Quentin Fisher

Deputy Director
Community Justice Division

Scottish Government

For queries in relation to the following policy areas, please contact:

Housing and Homelessness – Lynsey McKean (Lynsey.McKean@gov.scot)
Primary Care – Michael Taylor (Michael.Taylor@gov.scot)
Social Care – Rona Tatler (Rona.Tatler@gov.scot)
Reserved and Working Age Benefits - Callum Smith (Callum.Smith@gov.scot)
Police - Police Division Hub (police_division_hub_mailbox@gov.scot)
Alcohol & Drug Support – Nick Smith (Nicholas.Smith@gov.scot)
Community Justice – David Gallagher (david.gallagher@gov.scot)

Scottish Prison Service

Please contact the lead Governor for your local partnership or Rob Strachan (Robert.Strachan@sps.pnn.gov.uk) SPS Head of Strategy, Planning and Partnerships. The lead prison for each Council area is provided in the attached Annex A. Contact details for each prison are available on the SPS website here:
<https://www.sps.gov.uk/Corporate/Prisons/Prisons.aspx>

Place leadership for prisons: updated list of lead prisons for each local partnership and local authority area

Local Authority	Lead prison
Aberdeen City	Grampian
Aberdeenshire	Grampian
Angus	Castle Huntly
Argyll & Bute	Greenock
Clackmannanshire	Glenochil
Dumfries & Galloway	Dumfries
Dundee City	Perth
East Dunbartonshire	Low Moss
East Lothian	Edinburgh
East Renfrewshire	Low Moss
Edinburgh, City of	Edinburgh
Eilean Siar	Strategy & Stakeholder Engagement Directorate, HQ

Falkirk	Polmont
Fife	Perth
Glasgow City	Barlinnie
Highland	Inverness
Inverclyde	Greenock
Midlothian	Edinburgh
Moray	Inverness
North Lanarkshire	Shotts
Orkney Islands	Strategy & Stakeholder Engagement Directorate, HQ
Perth & Kinross	Perth
Renfrewshire	Low Moss
Scottish Borders	Edinburgh
Shetland Islands	Strategy & Stakeholder Engagement Directorate, HQ
South Lanarkshire	Shotts
Stirling	Glenochil
West Dunbartonshire	Greenock
West Lothian	Shotts

East Ayrshire/North Ayrshire/South Ayrshire

Dumfries



Further Question and Answer on Release

What is the effect of early release?

Prisoners are to be released as though they had been released as planned at the halfway stage of their sentence – so release will be handled as it would otherwise have been rather than this being a temporary arrangement.

Can prisoners be recalled under the Scottish scheme?

As we are only proposing the release of short-term prisoners who are already approaching early release at the halfway stage of their sentence, it is not intended that they return to prison. While there is no power of recall as there would be for those released on licence, an individual who is released can be returned to custody by a court if they were to commit a further offence during the period of their original sentence.

Will those released be electronically tagged?

No - prisoners who would normally be released at the halfway stage of the sentence are not subject to additional monitoring by tag or other supervision requirements. Separately from the early release process, we are continuing with use of electronically monitoring for those people who are released on forms of licence such as HDC, typically up to 6 months ahead of their final release date.

What offences have the individuals released committed?

We have set out the details of the exclusions related to offending in the statute – including those who have committed sexual offences or offences relating to domestic abuse or harassment. The prisoners who will be released are those serving short sentences of 18 months or less.

When will the first releases happen?

Releases under this process are scheduled to begin on 30 April.

Will victims be notified?

If an individual is registered with Victim Notification Scheme then they will be notified. We are modifying both the full VNS and the abbreviated VNS to ensure that victims who are registered are notified of the release of an individual under the regulations. (The full VNS arrangements only apply to victims of individuals who sentenced to 18 months or more, with the abbreviated VNS applying to the victims of individuals sentenced to less than 18 months.

What public protection safeguards are in place?

A range of statutory offences (including sexual offending and terrorism) are excluded in the 2020 Act, and additional exclusions for domestic violence and harassment have been placed in the Regulations. We also legislated for an additional check, to create the opportunity for the Prison Governor to veto an individual's early release where there is an immediate risk of harm for an identified individual.

When will the Regulations stop having an effect?

The Regulations will be laid to prior to the process beginning, and will be scheduled to allow release to begin on 30 April. Current planning is that we would seek to have the regulations automatically expire after 28 days.

What will happen if Parliament doesn't approve the Regulations?

The Regulations will be laid under the expedited procedure provided for in the Coronavirus (Scotland) Act 2020. Regulations made under this procedure will remain in force for 28 days, but if they are not approved by Parliament during that period they will cease to have effect after 28 days. However, the release of prisoners undertaken during that period will still remain valid – prisoners released under the regulations will not be recalled if the regulations cease to have effect. If the regulations are approved by Parliament during the 28 days period they will remain in force for a period of 180 days unless revoked by the Scottish Ministers.



Attached below is an illustration of the impact of emergency release for planning purposes. For details of the specific individuals involved partners should still consult release lists. This information is correct as at 22 April. **This is necessarily illustrative as the prison population is dynamic and those in custody and eligible when release starts from 30 April may be subject to change.**

- Emergency release will be undertaken over three distinct phases, set out over four weeks (two weeks, one week, one week).
- This information shows that at present there would be 453 people considered for Early Release.
- To note, we have shown separately 44 people who are scheduled for release on week one who would technically meet the eligibility criteria (so could have been moved into the second part of that first phase) but where the starting assumption is that their release dates will be kept to that first week to reflect release planning work done to date.
- We anticipate that the Governor veto will continue to bring the number of people who will be released early down although that exact number cannot be confirmed until each case has been considered on an individual basis.

Early Release numbers by Local Authority (indicative figures as of 22 April 2020)

Release 1 (Week
1) 30/04/2020

Release 1 (Week 2)
07/05/2020

Local Authority	No. of Libs	Local Authority	No. of Libs
Aberdeen City	4	Aberdeen City	10
Angus	3	Aberdeenshire	6
City Of Edinburgh	3	Angus	5
Dundee City	1	Argyll And Bute	3
East Ayrshire	2	City Of Edinburgh	12
East Lothian	2	Clackmannanshire	2
Fife	3	Dundee City	11
Glasgow City	7	East Ayrshire	3
Inverclyde	2	East Renfrewshire	4
North Ayrshire	2	Falkirk	5
North Lanarkshire	4	Fife	21
Perth And Kinross	1	Glasgow City	21
Scottish Borders	1	Highland	4
South Ayrshire	2	Inverclyde	5
South Lanarkshire	4	Na H-Eileanan Siar	1
Stirling	1	North Ayrshire	8
Unknown	1	North Lanarkshire	11
West Lothian	1	Orkney Islands	1
Grand Total	44	Outwith Scotland	8
		Perth And Kinross	4
		Renfrewshire	2
		Scottish Borders	2
		Shetland Islands	2
		South Ayrshire	8
		South Lanarkshire	11
		Unknown	2
		West Dunbartonshire	6
		West Lothian	2
		Grand Total	180

Release 3 (Week 3)
14/05/2020

Local Authority	No. of Libs
Aberdeen City	7
Aberdeenshire	3
Angus	2
Argyll And Bute	3
City Of Edinburgh	6
Clackmannanshire	2
Dumfries And Galloway	2
Dundee City	6
East Ayrshire	9
East Dunbartonshire	1
East Lothian	1
East Renfrewshire	1
Falkirk	11
Fife	12
Glasgow City	31
Highland	3
Inverclyde	8
Midlothian	3
North Ayrshire	3
North Lanarkshire	5
Outwith Scotland	3
Perth And Kinross	7
Renfrewshire	4
South Ayrshire	4
South Lanarkshire	6
Stirling	5
Unknown	1
West Dunbartonshire	4
West Lothian	3
Grand Total	156

Release 4 (Week 4)
21/05/2020

Local Authority	No. of Libs
Aberdeen City	5
Aberdeenshire	1
Angus	3
City Of Edinburgh	5
Clackmannanshire	5
Dumfries And Galloway	3
Dundee City	7
East Ayrshire	3
East Renfrewshire	1
Falkirk	6
Fife	4
Glasgow City	14
Highland	4
Inverclyde	3
Midlothian	1
North Ayrshire	3
North Lanarkshire	8
Outwith Scotland	4
Perth And Kinross	1
Renfrewshire	5
Shetland Islands	1
South Ayrshire	4
South Lanarkshire	7
Stirling	3
West Dunbartonshire	3
West Lothian	3
Grand Total	107