

Regulations made by the Scottish Ministers and laid before the Scottish Parliament under paragraph 20(3) of schedule 4 of the Coronavirus (Scotland) Act 2020 for approval by resolution of the Scottish Parliament within 28 days beginning with the day on which the Regulations were made, not taking into account any period of dissolution or recess for more than 4 days.

SCOTTISH STATUTORY INSTRUMENTS

2020 No. 138

PRISONS

**The Release of Prisoners (Coronavirus)
(Scotland) Regulations 2020**

Made - - - - at 10.15 a.m. on 4th
May 2020
Laid before the Scottish at 12.15 p.m. on 4th
Parliament - - - - *May 2020*
Coming into force in accordance with regulation 1(1)

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 19(1) of schedule 4 of the Coronavirus (Scotland) Act 2020⁽¹⁾ (“the Act”) and all other powers enabling them to do so.

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

In accordance with paragraph 20(2) and (3) of schedule 4 of the Act, the Scottish Ministers are of the opinion that, by reason of urgency, it is necessary to make these Regulations without them being subject to the affirmative procedure.

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Release of Prisoners (Coronavirus) (Scotland) Regulations 2020 and come into force immediately after they are made.

(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⁽²⁾ includes a person who is released under that section as applied by section 6(1)(a) of that Act⁽³⁾.

⁽¹⁾ 2020 asp 7; paragraph 19(9) of schedule 4 is modified by S.S.I. 2020/137.

⁽²⁾ 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).

(4) In these Regulations—

“the governor’s veto” means the power of the governor of a prison, under paragraph 19(3)(b) of schedule 4 of the Coronavirus (Scotland) Act 2020, to prevent the early release of a person from that prison under these Regulations,

“health care professional” has the same meaning as it is given in section 17CA of the National Health Service (Scotland) Act 1978(4).

Specified class of persons to be released from prison early

2.—(1) Subject to the governor’s veto, a person who falls within the class 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 from prison is 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 18 months or less, and
- (b) is to be released under section 1(1) or 7(1)(a) of the 1993 Act(5) within the 90 days following the date on which these Regulations come into force.

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

- (a) is serving, or has served, a sentence of imprisonment or detention for an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016(6) and has been recorded as such under section 1(5) of that Act,
- (b) is serving, or has served, a sentence of imprisonment or detention for an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018(7),
- (c) is serving a sentence of imprisonment or detention for an offence under regulation 8 of the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020(8), or
- (d) is the subject of a non-harassment order imposed under section 234A of the Criminal Procedure (Scotland) Act 1995(9) or section 8 or 8A of the Protection from Harassment Act 1997(10).

Timing of release

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

(2) Subject to paragraph (5), where a person is to be released under section 1(1) or 7(1)(a) of the 1993 Act within the 30 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 18 May 2020.

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- (3) Section 6(1)(a) was amended by paragraph 86 of schedule 4 of the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40).
 - (4) 1978 c.29; section 17CA was inserted by section 38 of the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3).
 - (5) Section 7(1)(a) was amended by paragraph 86 of schedule 4 of the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40).
 - (6) 2016 asp 22.
 - (7) 2018 asp 5.
 - (8) S.S.I. 2020/103.
 - (9) 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, 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).
 - (10) 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.

(3) Subject to paragraph (5), where a person is to be released under section 1(1) or 7(1)(a) of the 1993 Act within the 60 days following the date on which these Regulations come into force, and paragraph (2) does not apply to that person, that person is to be released from prison under these Regulations—

- (a) no earlier than 19 May 2020, and
- (b) no later than 25 May 2020.

(4) Subject to paragraph (5), where a person is to be released under section 1(1) or 7(1)(a) of the 1993 Act within the 90 days following the date on which these Regulations come into force, and paragraphs (2) and (3) do not apply to that person, that person is to be released from prison under these Regulations—

- (a) no earlier than 26 May 2020, and
- (b) no later than 1 June 2020.

(5) Paragraph (6) applies where, on or before the day on which a person is to be released under these Regulations, a health care professional has informed the governor of the prison within which the person is detained for the time being that, in the health care professional's opinion, the person has or is likely to have coronavirus.

(6) Where this paragraph applies, the person must not be released from prison in accordance with paragraphs (2), (3) or (4) and must be released instead on the earlier of—

- (a) the date on which the person is to be released under section 1(1) or 7(1)(a) of the 1993 Act, and
- (b) the date on which a health care professional informs the governor of the prison within which the person is detained for the time being that the person no longer has, or is no longer likely to have, coronavirus.

St Andrew's House,
Edinburgh
At 10.15 a.m. on 4th May 2020

H YOUSAF
A member of the Scottish Government

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under powers contained in paragraph 19(1) of schedule 4 of the Coronavirus (Scotland) Act 2020 (“the 2020 Act”) and specify a class of persons who are to be released early from prison. The early release of persons from prison is subject to the prison governor’s power to prevent release under paragraph 19(3)(b) of schedule 4 of that Act.

Regulation 2 specifies a class of persons who are to be released early from prison. Regulation 2(3) provides that a person is to be released only if they are serving a sentence of imprisonment or detention for a period of 18 months or less and are to be released unconditionally under section 1(1), or conditionally under section 7(1)(a), of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) within the 90 days following the coming into force of the Regulations. Regulation 1(4) 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) provides that a person is excluded from early release under these Regulations if they are serving, or have served, a sentence of imprisonment or detention for domestic abuse under the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 or the Domestic Abuse (Scotland) Act 2018. Also excluded from early release under these Regulations are those prisoners serving a sentence of imprisonment or detention for an offence under regulation 8 of the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 and those 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 3 makes provision for the calculation of the date of release in accordance with paragraph 19(6) of schedule 4 of the 2020 Act. Those who are to be released under section 1(1) or 7(1)(a) of the 1993 Act within the 30 days following the day on which the Regulations come into force are to be released during the period running from the commencement of the Regulations up to and including 18 May 2020. Those who are to be released under section 1(1) or 7(1)(a) of the 1993 Act between 31 and 60 days following the day on which the Regulations come into force are to be released between 19 and 25 May 2020. Those who are to be released under section 1(1) or 7(1)(a) of the 1993 Act between 61 and 90 days following the day on which the Regulations come into force are to be released between 26 May and 1 June 2020. These Regulations will not delay the release of a prisoner under section 1(1) or 7(1)(a) of the 1993 Act.

Regulation 3 also makes separate provision for calculating the release date of a person who, on the date they would otherwise have been released under these Regulations, and in the opinion of a health care professional, has or is likely to have coronavirus. If the health care professional has informed the governor of this fact, the person is not to be released under paragraphs (2), (3) or (4) of regulation 3 and must instead be released in accordance with paragraph (6) of regulation 3. Paragraph (6) provides that a prisoner in these circumstances must be released on the earlier of: the date on which the prisoner would otherwise be released automatically under the 1993 Act; and the date on which a health care professional informs the prison governor that the person no longer has, or is no longer likely to have, coronavirus.