

CORONAVIRUS (SCOTLAND) ACT 2020

EXPLANATORY NOTES

DETAIL ABOUT PROVISIONS

Schedule 4 – Justice

Part 8 – Release of prisoners

Early release of prisoners

174. Paragraph 19(1) of schedule 4 provides the Scottish Ministers with the power to release prisoners who fall within a class of prisoners specified within regulations. Subparagraph (6) provides further information on what these regulations must contain. Subparagraph (8) provides the Scottish Ministers with the flexibility to make different provision for different purposes including differentiating between classes of person or classes of prison or parts of a prison.
175. Subparagraph (2) restricts the Scottish Ministers power to make regulations under subparagraph (1), providing that regulations can be made only if the Scottish Ministers are satisfied that the regulations are a necessary and proportionate response to the effects of coronavirus on a prison or prisons. The regulations must be for the purpose of protecting the security and good order of a prison or prisons or protecting the health, safety and welfare of those accommodated or working in a prison.
176. Subparagraph (3) prevents the release of a prisoner who falls within any of the categories specified in subparagraph (4) or where the Governor of the prison concerned considers that the prisoner poses an immediate risk of harm to an identified person.
177. Subparagraph (4) lists the persons who are excluded from being released via regulations made under subparagraph (1) and subparagraph (5) clarifies the terms “life prisoner” and “untried prisoner” for the purposes of subparagraph (4).
178. Subparagraph (7) details how a prisoner released via regulations made under subparagraph (1) is to be treated following release. Prisoners released will be treated as if they had been released in accordance with Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993. Short-term prisoners are to be released unconditionally while long-term prisoners are to be released on licence. Those sentenced to detention will be treated as if they are released in accordance with the relevant provisions in sections 6 or 7 of the 1993 Act as appropriate.

Regulations under paragraph 19: procedure and expiry

179. Paragraph 20 makes provision for the procedure to be followed when making regulations under paragraph 20 and for the expiry of those regulations. Subparagraph (1) provides that regulations are subject to the affirmative procedure unless they are caught by the expedited procedure in subsection (2) to (5).
180. Subparagraph (2) clarifies that the regulations can be made under the expedited procedure only if certain conditions are met. These are: that the order does not provide

*These notes relate to the Coronavirus (Scotland) Act
2020 (asp 7) which received Royal Assent on 6 April 2020*

for the release of prisoners for a period greater than 180 days before they would otherwise have been released; and it is declared by the Scottish Ministers that by reason of urgency it is necessary to make the order without a draft having been approved by the Scottish Parliament.

181. Subparagraph (3) provides that regulations made under the expedited procedure must be laid before the Scottish Parliament and cease to have effect after 28 days unless approved by the Scottish Parliament during that period. Subparagraph (4) further clarifies how that 28 day period is to be calculated. Subparagraph (5) preserves anything done under regulations prior to their cessation and clarifies that the cessation of the regulations does not prevent further regulations being made.
182. Subparagraph (6) provides that regulations made under the affirmative procedure (including those initially made under the expedited procedure and subsequently approved by the Parliament) expire after 180 days. Subparagraph (7) clarifies that regulations can be revoked and further regulations can be made despite these time-limits.