

SCHEDULE 4 JUSTICE

PART 8

RELEASE OF PRISONERS

Early release of prisoners

- 19 (1) The Scottish Ministers may by regulations provide that a person who falls within a class of persons specified in the regulations is to be released from prison early.
- (2) The Scottish Ministers may make regulations under sub-paragraph (1) only if they are satisfied that the making of the regulations is necessary and proportionate, in response to the effects coronavirus is having or is likely to have on a prison or prisons generally, for the purpose of protecting—
- (a) the security and good order of any prison to which the regulations relate, or
 - (b) the health, safety or welfare of prisoners, or those working, in any such prison.
- (3) But a person is not to be released from prison by virtue of regulations under sub-paragraph (1) if—
- (a) the person falls within sub-paragraph (4), or
 - (b) the governor of the prison within which the person is detained for the time being considers that, if released, the person would pose an immediate risk of harm to an identified person.
- (4) A person falls within this sub-paragraph if the person is—
- (a) a life prisoner,
 - (b) an untried prisoner,
 - (c) a terrorist prisoner within the meaning of section 1AB of the 1993 Act,
 - (d) liable to removal from the United Kingdom for the purposes of section 9 of that Act,
 - (e) subject to a supervised release order under section 209 of the 1995 Act,
 - (f) serving a sentence imposed under section 210A of that Act (extended sentences for sex, violent and terrorist offenders),
 - (g) the subject of proceedings under the Extradition Act 2003, or
 - (h) subject to the notification requirements of Part 2 of the Sexual Offences Act 2003.
- (5) In sub-paragraph (4)—
- (a) “life prisoner” means a person who is—
 - (i) serving a sentence of imprisonment for life,
 - (ii) detained without limit of time or detained for life, or
 - (iii) subject to an order for lifelong restriction made under section 201F of the 1995 Act,
 - (b) “untried prisoner” means a person who, whether or not in prison for any other reason, is in prison—
 - (i) having been committed for examination or trial on any criminal charge,

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- (ii) by virtue of remand in custody under the Extradition Act 2003,
 - (iii) by virtue of detention under schedule 2 or 3 of the Immigration Act 1971, or
 - (iv) following conviction but awaiting sentence.
- (6) Regulations under sub-paragraph (1) must—
- (a) specify the date on which a person is to be released from prison under the regulations, or
 - (b) make provision about how that date is to be calculated.
- (7) Where a person released from prison by virtue of regulations under sub-paragraph (1) is, immediately before release—
- (a) a short-term prisoner, the person is to be treated for all purposes as if the person had been released under section 1(1) of the 1993 Act,
 - (b) a long-term prisoner, the person is to be treated for all purposes as if the person had been released under section 1(3) of the 1993 Act,
 - (c) serving a sentence of detention for a period of less than 4 years imposed under section 207(2) of the 1995 Act, the person is to be treated for all purposes as if the person had been released under section 1(1) of the 1993 Act (as applied by section 6 of that Act),
 - (d) serving a sentence of detention for a period of 4 years or more imposed under section 207(2) of the 1995 Act, the person is to be treated for all purposes as if the person had been released under section 1(3) of the 1993 Act (as applied by section 6 of that Act),
 - (e) serving a sentence of detention imposed under section 208(1) of the 1995 Act, the person is to be treated for all purposes as if the person had been released under section 7(2) of the 1993 Act.
- (8) Regulations under sub-paragraph (1) may make different provision for—
- (a) different classes of person,
 - (b) different prisons or classes of prison, or parts of a prison,
 - (c) other different purposes.
- (9) In this paragraph—
- “the 1993 Act” means the Prisoners and Criminal Proceedings (Scotland) Act 1993,
 - “the 1995 Act” means the Criminal Procedure (Scotland) Act 1995,
 - “long-term prisoner” and “short-term prisoner” have the meanings given by section 27 of the 1993 Act,
 - “prison” means—
- (a) a prison within the meaning of section 43 of the Prisons (Scotland) Act 1989,
 - (b) a young offenders institution within the meaning of section 19(1)(b) of that Act.

Regulations under paragraph 19: procedure and expiry

- 20 (1) Regulations under paragraph 19(1) are subject to the affirmative procedure unless they fall within sub-paragraph (2).
- (2) Regulations fall within this sub-paragraph if they—

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- (a) do not provide for the release of any person more than 180 days earlier than the person would otherwise be released, and
 - (b) contain a declaration that the Scottish Ministers are of the opinion that, by reason of urgency, it is necessary to make the regulations without them being subject to the affirmative procedure.
- (3) Regulations which fall within sub-paragraph (2)—
 - (a) must be laid before the Scottish Parliament as soon as practicable after they are made, and
 - (b) cease to have effect at the end of the period of 28 days beginning with the day on which they are made unless, during that period, they are approved by resolution of the Scottish Parliament.
- (4) In calculating the period of 28 days, no account is to be taken of any period during which the Scottish Parliament is—
 - (a) in recess for more than 4 days, or
 - (b) dissolved.
- (5) If regulations cease to have effect as a result of sub-paragraph (3)(b), that does not—
 - (a) affect anything previously done under the regulations,
 - (b) prevent the making of new regulations.
- (6) Subject to sub-paragraph (3)(b), regulations under paragraph 19(1) cease to have effect at the end of the period of 180 days beginning with the day on which they are made.
- (7) Nothing in sub-paragraph (6) prevents the Scottish Ministers—
 - (a) revoking regulations under paragraph 19(1) before the end of the period mentioned in sub-paragraph (6),
 - (b) making further regulations under paragraph 19(1).