

SCHEDULE TEMPORARY JUSTICE MEASURES

PART 7

PRISONS AND YOUNG OFFENDERS INSTITUTIONS

Power to release early

- 25 (1) The Scottish Ministers may by regulations provide that a person of a description specified in the regulations is to be released from prison early on a date that is—
- (a) either—
 - (i) specified in the regulations, or
 - (ii) determined in accordance with provision made in the regulations, and
 - (b) not later than the regulations' latest release date.
- (2) The Scottish Ministers may make regulations under [this paragraph](#) only if they are satisfied that making the regulations is necessary and proportionate, in response to the effects that 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 would relate, or
 - (b) the health, safety or welfare of prisoners, or those working, in any such prison.
- (3) A person is not to be released from prison by virtue of regulations under this paragraph more than 180 days earlier than the Scottish Ministers would otherwise be required to release the person.
- (4) A person is not to be released from prison by virtue of regulations under [this paragraph](#) if—
- (a) the person falls within [sub-paragraph \(5\)](#), or
 - (b) the governor of the prison within which the person is detained considers that the person would, if released, pose an immediate risk of harm to an identified person.
- (5) 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 Prisoners and Criminal Proceedings (Scotland) Act 1993,
 - (d) due to serve a terrorism sentence within the meaning of section 1B of that Act but, by virtue of that section, is not yet serving it,
 - (e) liable to removal from the United Kingdom for the purposes of section 9 of that Act,
 - (f) subject to a supervised release order under section 209 of the Criminal Procedure (Scotland) Act 1995,
 - (g) serving a sentence passed under section 210A of that Act (extended sentences for sex, violent and terrorist offenders),

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- (h) the subject of proceedings under the Extradition Act 2003,
 - (i) subject to the notification requirements of Part 2 of the Sexual Offences Act 2003, or
 - (j) serving a sentence of imprisonment or detention for—
 - (i) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018,
 - (ii) an offence under section 7(1) or 17(1) of the Domestic Abuse (Protection) (Scotland) Act 2021,
 - (iii) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.
- (6) Regulations under [this paragraph](#) may make different provision for different purposes.
- (7) In [this paragraph](#)—
- “coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2),
- “governor”, in relation to a prison, means—
- (a) the governor appointed for the prison under section 3(1A) of the Prisons (Scotland) Act 1989, or
 - (b) in the case of a contracted out prison, the director appointed for the prison under section 107(1)(a) of the Criminal Justice and Public Order Act 1994,
- “latest release date” means a date specified in the regulations in question, which must be a date within the period of 180 days beginning with the day that the regulations are made,
- “life prisoner” means a person—
- (a) who is serving a sentence of imprisonment for life,
 - (b) who is detained without limit of time or detained for life,
 - (c) who is subject to an order for lifelong restriction made under section 210F of the Criminal Procedure (Scotland) Act 1995,
 - (d) to whom section 1A(2) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 applies,
- “prison” means—
- (a) a prison within the meaning of section 43 of the Prisons (Scotland) Act 1989, and
 - (b) a young offenders institution within the meaning of section 19(1)(b) of that Act,
- “untried prisoner” means a person who, whether or not in prison for any other reason, is in prison—
- (a) having been committed for examination or trial on a criminal charge,
 - (b) by virtue of remand in custody under the Extradition Act 2003,
 - (c) by virtue of detention under schedule 2 or 3 of the Immigration Act 1971, or
 - (d) following conviction and awaiting sentence.

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Parliamentary scrutiny of regulations under [paragraph 25](#)

- 26 (1) Regulations under [paragraph 25](#) are subject to the affirmative procedure, unless [sub-paragraph \(2\)](#) applies to them.
- (2) [This sub-paragraph](#) applies to regulations if the Scottish statutory instrument containing the regulations includes a declaration that the Scottish Ministers are of the opinion that, by reason of urgency, it is necessary to make the regulations without their being subject to the affirmative procedure.
- (3) Where [sub-paragraph \(2\)](#) applies to regulations—
- (a) section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 does not apply to the regulations,
 - (b) the Scottish statutory instrument containing the regulations must be laid before the Scottish Parliament as soon as practicable after they are made, and
 - (c) the regulations 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, the Scottish statutory instrument containing them is approved by resolution of the Parliament.
- (4) In calculating the period of 28 days mentioned in [sub-paragraph \(3\)\(c\)](#), no account is to be taken of any time during which the Scottish Parliament is—
- (a) in recess for more than 4 days, or
 - (b) dissolved.
- (5) Regulations ceasing to have effect by virtue of [sub-paragraph \(3\)\(c\)](#) neither—
- (a) affects anything done under the regulations before they ceased to have effect, nor
 - (b) prevents new regulations being made under [paragraph 25](#).
- (6) Where [sub-paragraph \(2\)](#) applies to regulations, the Scottish Ministers must explain why they are of the opinion that, by reason of urgency, it is necessary to make the regulations without their being subject to the affirmative procedure.