



Bail and Release from Custody (Scotland) Act 2023

2023 asp 4

PART 2

RELEASE FROM CUSTODY

PROSPECTIVE

11 Power to release early

- (1) The 1993 Act is amended as follows.
- (2) After section 3B (review of decisions as to determinate sentences) insert—

“3C Power to release early

- (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 section only if they are satisfied that making the regulations is necessary and proportionate, in response to the effects an emergency situation 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.

Status: This version of this provision is prospective.

Changes to legislation: There are currently no known outstanding effects for the Bail and Release from Custody (Scotland) Act 2023, Section 11. (See end of Document for details)

- (3) Regulations under this section may—
- (a) provide that long term prisoners released by virtue of those regulations are released on licence,
 - (b) specify standard conditions which must be included in any licence granted by virtue of [paragraph \(a\)](#).
- (4) A person is not to be released from prison by virtue of regulations under this section more than 180 days earlier than the Scottish Ministers would otherwise be required to release the person.
- (5) A person is not to be released from prison by virtue of regulations under this section if—
- (a) the person falls within [subsection \(6\)](#), 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—
 - (i) to an identified person, or
 - (ii) to an identified group of people.
- (6) A person falls within this subsection if the person is—
- (a) a life prisoner,
 - (b) an untried prisoner,
 - (c) a terrorist prisoner within the meaning of section 1AB,
 - (d) due to serve a terrorism sentence within the meaning of section 1B 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,
 - (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),
 - (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,
 - (j) serving a sentence of imprisonment or detention for an offence—
 - (i) that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016,
 - (ii) under section 1(1) of the Domestic Abuse (Scotland) Act 2018,
 - (iii) under section 7(1) or 17(1) of the Domestic Abuse (Protection) (Scotland) Act 2021,
 - (k) a long-term prisoner, unless that prisoner has been recommended for release by the Parole Board at the date on which the regulations are made.
- (7) The Scottish Ministers must, no later than one year after the date on which this section comes into force and in such manner as they consider appropriate, publish guidance about the application of subsection (5)(b).

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- (8) The Scottish Ministers may from time to time revise the guidance published under subsection (7) and subsection (9) applies to any revised guidance.
- (9) The governor of a prison must have regard to guidance published under subsection (7) in considering the application of subsection (5)(b) in relation to regulations made under this section.
- (10) Regulations under this section may make different provision for different purposes.
- (11) In this section—
- “emergency situation” means—
- (a) the incidence or spread of infection, contamination or the source of contamination which presents or could present significant harm to human health in Scotland (whether from risks originating there or elsewhere),
 - (b) an event or situation which has resulted in any prison (or part of a prison) to which the regulations would relate being unusable,
 - (c) any other event or situation which is reasonably considered by the Scottish Ministers to place at significant risk—
 - (i) the security and good order of a prison or prisons generally,
 - (ii) the health, safety, and welfare of prisoners, or those working, in any such prison,
- “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,
- “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.

3D Parliamentary scrutiny of regulations made under [section 3C](#)

- (1) Regulations under [section 3C](#) are subject to the affirmative procedure, unless [subsection \(2\)](#) applies to them.
- (2) This subsection 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.

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- (3) Where [subsection \(2\)](#) 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,
 - (c) 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, and
 - (d) 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 [subsection \(3\)\(d\)](#), 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 [subsection \(3\)\(d\)](#) neither—
- (a) affects anything done under the regulations before they ceased to have effect, nor
 - (b) prevents new regulations being made under [section 3C](#).

3E Effect of early release from prison or young offenders institution by virtue of regulations

- (1) A person described in the first column of the table below who is released from custody by virtue of regulations under [section 3C](#) is deemed to have been released by virtue of the provision of this Act mentioned in the corresponding entry in the second column.

<i>Status of person immediately before release</i>	<i>Provision of this Act by virtue of which the person is deemed to have been released</i>
A short-term prisoner	section 1(1)
A long-term prisoner	section 1(3)
A person serving a term of imprisonment or detention imposed on a basis mentioned in section 5(1)(a) or (b) (fine defaulters and persons in contempt of court) and who is, for any purpose, to be treated as a short-term prisoner by virtue of that section	section 1(1), construed as required by section 5(2)
A person serving a term of imprisonment or detention imposed on a basis mentioned in section 5(1)(a) or (b) and who is, for any purpose, to be treated	section 1(3), construed as required by section 5(2)

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<i>Status of person immediately before release</i>	<i>Provision of this Act by virtue of which the person is deemed to have been released</i>
as a long-term prisoner by virtue of that section	
A person detained—	section 7(2)
(a) under section 208 of the Criminal Procedure (Scotland) Act 1995 (detention of children convicted on indictment), or	
(b) in pursuance of an order under section 7(3) (children detained in solemn proceedings)	
(2) In this section, “short-term prisoner” and “long-term prisoner” include a person treated, for any purpose, as a short-term prisoner or (as the case may be) a long term prisoner by virtue of section 6(1)(a) or 16(5)(a).”.	
(3) In section 12 (conditions in licence), after subsection (3) insert—	
“(3A) Subsection (3)(b) does not apply in relation to a standard condition in a licence granted by virtue of regulations under section 3C(3) .”.	
(4) After that section insert—	
“12ZA Conditions for persons released on licence under section 3C(3)	
(1) Standard conditions specified by the Scottish Ministers in regulations under section 3C(3) remain in force (unless they are cancelled) in relation to a released person until the date on which the released person would, but for release by virtue of the regulations, fall to be released under section 1(3).	
(2) Standard conditions specified by the Scottish Ministers in regulations under section 3C(3) may include a curfew condition complying with section 12AB.”.	

Commencement Information

11 S. 11 not in force at Royal Assent, see [s. 18\(2\)](#)

Status:

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Changes to legislation:

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