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Dear Convener,

I know the Committee is aware and concerned about the critical pressures facing the prison service and will have noted the measures I set out in my statement on 16 May to address this.

As I set out in my statement, one of those measures is to bring forward regulations to use the emergency release power provided for under section 11 of the Bail and Release from Custody Act 2023 (the 2023 Act).

I am acutely aware that using emergency release is a significant step and this is not a decision I have taken lightly. I am clear that situation in our prisons is so serious that emergency action is needed to keep people safe, and to protect the security and good order of prisons.

I am also clear that, for a decision of this magnitude, it is critical that Parliament have a role in scrutinising and debating the issues. That is why, in this instance, I have brought forward regulations using the affirmative procedure. I am grateful to Parliament, and to the DPLRC and Criminal Justice Committee, in agreeing to an expedited process.

I have laid the emergency regulations in draft today. Those regulations set out the criteria and timescales for release and provide for further information sharing with victims organisations and I wanted to provide some more detail on those points.

Turning firstly to the **criteria for release**. The regulations provide that only short-term prisoners would be released under this power – should Parliament approve the regulations.

That means that only individuals serving less than four years will be released. As you are aware, short-term prisoners (unless they are serving sentences for sexual or terrorist offences) are released automatically and unconditionally at the halfway point of their sentence. They are not subject to conditions or supervision on release.

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Furthermore, only those who are due to be released within 180 days of the regulations coming into force can be considered for release under the emergency release power.

Therefore, the cohort of prisoners who would be released under this power would be individuals scheduled for release in the coming weeks.

A number of automatic exclusions apply to emergency release and the following groups of prisoners will not be released:

- Life sentenced prisoners (including Order of Lifelong Restrictions)
- Remand prisoners
- Terrorist prisoners
- Individuals serving extended sentences
- Individuals subject to supervised release orders
- Individuals subject to the sex offenders notification requirements
- Individuals liable for removal from the UK or subject to extradition
- Prisoners serving sentences following conviction under Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (2016 Act), Domestic Abuse (Scotland) Act 2018 (2018 Act), or the Domestic Abuse (protection) (Scotland) Act 2021 (the 2021 Act)

As you will see from the regulations, I have added additional criteria which are intended as further safeguards.

In addition to the above exclusions, anyone who *has previously served* a sentence of imprisonment following conviction under the 2018 Act or an offence aggravated under the 2016 Act will also be automatically prevented from being released, provided their conviction is not spent. Prisoners who are subject to a non-harassment order will also not be released as part of the emergency release process.

A Governor veto will also apply which allows prison governors to prevent the release of an otherwise eligible prisoner if they think that they would pose an immediate risk of harm to a specified individual or group of individuals if released.

Turning now to **timescales**. If Parliament approve the regulations, release will take place in 4 separate tranches. Releasing in this phased way is intended to mitigate the impact on community services, allowing for improved access to support.

Releases will begin on 26 June and the process will run until 25 July. No further releases will take place after that date.

The tranches are as follows:

Tranche 1 – those with less than 45 days left to serve (at point of regs coming into force) are to be released on 26- 27 June

Tranche 2 – those with 45-89 days left to serve (at point of regs coming into force) are to be released on 3-4 July.

Tranche 3 – those with 90-134 days left to serve (at point of regs coming into force) are to be released on 10-11 July

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Tranche 4 – those with 135-180 days left to serve (at point of regs coming into force) are to be released on 17 July -18 July.

The regulations also include a provision that will allow for any eligible prisoner whose release is not completed within the appropriate tranche to be released as soon afterwards as is practicable, but no later than the process end date of 25 July

I also wanted to highlight a very important addition to the regulations which relates to the **provision of information to victim support organisations** about the release of prisoners under this power.

I am clear that it is essential that victims are provided with the information they are entitled to in relation to the prisoner in their case.

As you will recall from your scrutiny of the 2023 Act, section 14 of that Act provides the ability for victims to nominate a victim support organisation (VSO) to receive certain information about the prisoner in their case at the same time as them, or on their behalf. Section 14 also provides that a VSO can ask for certain information about a prisoner to inform the support they are providing to the victim in the case. This allows for a more trauma informed approach. Section 14 was brought into force at the same time as section 11 on 26 May.

In order for VSOs to receive the information I have described, they must be named in regulations. That is an important data protection safeguard.

That is why I have also prescribed four VSOs within the emergency release regulations. That will enable the named organisations to be provided with information about the release of a prisoner if the victim intimates that they wish the VSO to receive this information and provides their consent.

Those VSOs are Victim Support Scotland, Rape Crisis Scotland, ASSIST and Children 1st .

Information Sharing Agreements between the named VSOs and SPS are currently in development to allow the proportionate sharing of information about the release of prisoners under this emergency release process.

My officials are also working with the Crown Office and Scottish Prison Service to streamline the registration process for the Victim Notification and Victim Information Schemes for the purposes of this emergency release process. That will enable victims who are not currently registered with either scheme to receive information about the release date of the prisoner in their case, if they are released as part of this emergency process.

I hope this provides some additional context and I would be very happy to attend the Criminal Justice Committee to discuss these regulations in more detail.

Yours sincerely,



ANGELA CONSTANCE

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