

Criminal Justice Committee
Wednesday 12 June 2024
24th Meeting, 2024 (Session 6)

Note by the Clerk on The Early Release of Prisoners and Prescribed Victim Supporters (Scotland) Regulations 2024 [draft]

Overview

1. At this meeting, the Committee will take oral evidence from Angela Constance MSP, Cabinet Secretary for Justice and Home Affairs (“the Cabinet Secretary”) and officials, as well as from Teresa Medhurst, Chief Executive of the Scottish Prison Service and Andy Hodge, Governor of HMP Perth on The Early Release of Prisoners and Prescribed Victim Supporters (Scotland) Regulations 2024.
2. Following this oral evidence session, the Committee will debate a motion in the name of the Cabinet Secretary for Justice and Home Affairs inviting the Committee to recommend approval of the instrument.
3. This is a draft Scottish Statutory Instrument (SSI), which requires approval by resolution of the Parliament before it can become law. More information about the instrument is summarised below:

Title of instrument: [The Early Release of Prisoners and Prescribed Victim Supporters \(Scotland\) Regulations 2024 \[draft\]](#)

Laid under: Section 3C of the [Prisoners and Criminal Proceedings \(Scotland\) Act 1993](#) (as introduced by Section 11 of the [Bail and Release from Custody \(Scotland\) Act 2023](#))

Laid on: Wednesday 29 May 2024

Procedure: Affirmative

Lead committee to report by: Wednesday 12 June 2024¹

Commencement: If approved, the instrument comes into force on Thursday 13 June 2024

Procedure

4. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament.
5. Once laid, the instrument is referred to:

¹ If approval is recommended, a short, factual report will be produced for publication after this meeting.

- the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
 - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
6. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.
 7. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee:
 - an evidence session with the Minister and officials, followed by
 - a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.
 8. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote. If the motion is agreed to, it is for the Chamber to decide, at a later date, whether to approve the instrument

Delegated Powers and Law Reform Committee consideration

9. The DPLR Committee considered the instrument on Tuesday 4 June 2024 and reported on it in its [40th Report, 2024 \(Session 6\): Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 4 June 2024.](#)
10. The DPLR Committee made no recommendations in relation to the instrument.
11. However, the Committee agreed to draw to the attention of the Criminal Justice Committee that the draft instrument would have the following effects.
 - The Explanatory Note and Policy Note state that the first group of prisoners will be released between 26 and 27 June, but the draft instrument does not provide that 26 June is the earliest permitted release date. Therefore, under regulation 3(2) the first group of prisoners could, in theory, be released at any point from 13 June to 27 June;
 - The draft instrument has the effect that a prisoner who is sentenced on a date between 13 June and 16 July could, in certain circumstances, be released the next day, and the Scottish Government has indicated that this is in line with the policy intention. (See the Committee's correspondence with the Scottish Government in this regard); and
 - The ability for a victim to nominate a supporter (in section 16ZA of the Criminal Justice (Scotland) Act 2003 and 27B of the Victims and Witnesses (Scotland) Act 2014, as inserted by the Bail and Release from Custody

(Scotland) Act 2023) only came into force on 26 May; and regulation 4, which prescribes the victim support organisations which are to be able to receive information concerning the person who committed an offence against the victim, will only commence on 13 June. This does not allow much time for the necessary administrative processes to be put in place before individuals begin to be released early.

Purpose of the instrument

12. The purpose of this statutory instrument is two-fold. Firstly, to make provision using Scottish Ministers powers under section 3C of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (the 1993 Act) (as introduced by Section 11 of the Bail & Release from Custody (Scotland) Act 2023 (the 2023 Act)), to release certain categories of persons early from prison.
13. Eligibility for release will be limited to those who are sentenced to less than four years and who, are due to be released within the 180 days following the date on which the Regulations come into force. Release is to take place over four phases to provide certainty for those due to be released, to ensure reasonable planning can take place, to manage impact on services and to ensure release is put into effect swiftly to reduce the prison population. These will take place weekly, beginning on 26 June 2024 and ending on 18 July 2024. The latest release date under the regulations is 25 July 2024.
14. Further details are provided below at 'Regulation 3'. Section 3C(6) of the 1993 Act makes provision to exclude certain persons from early release under the regulations, including but not limited to those serving a life sentence and those serving a sentence for a domestic abuse offence or subject to sexual offender notification requirements.
15. Additional criteria have been agreed as part of the regulations in order to enhance public protection. Those additional criteria are in addition to the existing statutory exclusions set out in section 3C(6) and excludes individuals who have served a sentence for an offence aggravated under section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, or who have served a sentence of imprisonment or detention for an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018 from being released under this power. These exclusions will apply only where the associated conviction is not spent as per the Rehabilitation of Offenders Act 1974. Individuals who are subject to a non-harassment order will also not be released under this power.
16. The early release of persons under these regulations are also subject to the prison governor's power to prevent release under section 3C(5)(b) of the 1993 Act.
17. The second purpose of these regulations is to prescribe victim support organisations (VSOs) for the purposes of section 14 of the 2023 Act. Section 14 makes provision so that victims can nominate a victim support organisation to receive information at the same time as the victim, or on their behalf, under either of the two statutory schemes of information for victims: the Victim Notification Scheme for victims of offenders sentenced to more than 18 months'

imprisonment, or the short-term information scheme which enables victims of offenders sentenced to fewer than 18 months' imprisonment to receive more limited information.

18. The Policy Note accompanying the instrument is included at **Annex A**. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects. The Policy Note and Final Impact Assessment are available [online](#).

Evidence received

19. The Cabinet Secretary wrote to the Committee on [16 May](#) following her statement to the Parliament on the need to address the rising prisoners population. She wrote again on [29 May](#), setting out the criteria and timescales by which prisoners would be released.
20. At its meeting on 5 June 2024, the Committee took evidence on the subject of this instrument from Professor Sarah Armstrong of University of Glasgow, Victim Support Scotland, Social Work Scotland, HM Chief Inspector of Prisons in Scotland, the Prison Officers Association Scotland, the Prison Governors' Association (Scotland) and the Parole Board for Scotland.
21. The Official Report of that meeting will be [available online](#) before today's meeting.
22. The Committee also received written submissions from Families Outside, Howard League Scotland and Prison Officers Association Scotland.²

Other information

23. **Annex B** contains more information on prisoner numbers in recent weeks.
24. **Annex C** contains further information and prison population data collated by SPICe relating to Scottish prisons and prisoner numbers.
25. **Annex D** contains information on the capacity of individual prisons included in the Audit Scotland report [The 2022/23 Audit of the Scottish Prison Service](#), published in December 2023.

Key issues emerging

26. At the meeting of 5 June and from the written evidence received to date, the following issues have emerged which the Members may wish to raise with the Cabinet Secretary and the Scottish Prisons Service at today's meeting:
 - Expected numbers of prisoners to be released and details on their offences, geographic location of those to be released etc

² Written submissions are available in the Annex to [Paper CJ/S6/24/23/1](#) which was contained in the meeting papers for the Committee's meeting on Wednesday 5 June 2024. Prison Officers Association Scotland (pages 13 – 14; Families Outside pages 14 – 17 and the Howard League Scotland (pages 17 – 21).

- Expected levels of re-offending and plans for any activity/support to minimise the risk of this
- Role of the governors' veto and how it will function in practice
- State of preparedness within the SPS, local authorities, health boards, social work, housing services, police for any imminent early release in tranche 1
- Adequacy of the information currently provided to victims' supporters organisations on the plans
- Information provision to victims and if this should be pro-active or only reactive to requests
- Status of remand prisoners. Remand prisoners may not be covered by this legislation due to their differing legal status compared to sentenced prisoners
- Definition of an "emergency situation" in the Bail and Release from Custody Act 2023 and whether the current situation could have been reasonably foreseen
- Reasons for the waiting lists (e.g. for access to required rehabilitation courses and pre-release external community visits) in relation to the probation process for prisoners serving longer sentences
- Impact of the current levels of population on the functioning of prisons and the care of prisoners and staff, including health provision, levels of violence, access to purposeful activity etc
- Plans for other action to address the population in Scottish prisons over the medium and longer terms given the views expressed to the Committee that the early release measure provides short-term "breathing space" only

Report

27. Following today's proceedings, a draft report will be prepared by the clerks.
28. **As the reporting deadline falls before the Committee's next meeting, the Committee is invited to delegate to the Convener and clerks responsibility for drafting a report and finalising it for publication.**

**Clerks to the Committee
June 2024**

ANNEX A: Scottish Government Policy Note

THE EARLY RELEASE OF PRISONERS AND PRESCRIBED VICTIM SUPPORTERS (SCOTLAND) REGULATIONS 2024 SSI 2024/XXX

The above Regulation is made in exercise of the powers conferred on the Scottish Ministers by Section 3C of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (as introduced by Section 11 of the Bail & Release from Custody (Scotland) Act 2023 (the 2023 Act)), Section 16ZA of the Criminal Justice (Scotland) Act 2003 and section 27B(2)(a) of the Victims and Witnesses (Scotland) Act 2014 (as introduced by Section 14 of the 2023 Act).

These Regulations are made under the affirmative procedure subject to an expedited process as agreed by Parliament. These Regulations are being made as the Scottish Ministers are satisfied that the early release of prisoners authorised by these regulations is necessary and proportionate for the purpose of protecting: (a) The security and good order of any prison to which the regulations would relate; and (b) the health, safety or welfare of prisoners, or those working, in any such prison.

Policy Objectives

The policy intent underpinning this SSI is, firstly, to set out regulations for the emergency release of a group of prisoners under section 3C of the 1993 Act.

Ministers consider this to be a necessary and proportionate action in response to risks that are arising across the prison estate as a result of the recent, sharp and unanticipated increases in the prison population. This includes difficulty in maintaining the prison regime, proper access to appropriate activities and rehabilitative programmes, and the operation of prisoner visits. There is also risk to the delivery of healthcare, the maintenance of good order amongst prisoners, and acceptable operating conditions for staff. SPS are continuing to take measures to maximise capacity across the estate, but several prisons are reporting “red” risk conditions, and the prison estate would have little to no capacity to respond to any further increases in population.

As such, it is Ministers’ view that these circumstances satisfy the conditions set out in section 3C of the 1993 Act (as introduced in s11 of the 2023 Act) for Ministers to instruct the early release of prisoners. Specifically, that the recent, sharp and unanticipated increases in the prison population are resulting in an emergency situation across the prison estate which places at significant risk (i) the security and good order of a prison or prisons generally and (ii) the health, safety and welfare of prisoners or those working in any such prison.

This order sets out the eligibility criteria which will define the cohort of prisoners who will be eligible for release (alongside the statutory exclusions already set out in section 3C(6) of the 1993 Act).

It also sets out the structure and timing for the release process, with a staged process of releases to take place between 26 June 2024 and 18 July 2024. The latest release date under the regulations is 25 July 2024.

The Regulations are structured as follows:

Regulation 1 provides for the commencement and interpretation of these Regulations;

Regulation 2 specifies the class of persons who are to be released early from prison; and

Regulation 3 makes provision for the calculation of the date of release.

Regulation 4 makes provision for the description of victim supporters entitled to receive information as well as or on behalf of, victims.

Regulation 1: Citation, commencement and interpretation

These Regulations come into force as soon as they are commenced on 20 June 2024, subject to Parliamentary approval and will remain in place until 25 July 2024, in order to maximise the period during which the eligible prisoners can be released.

The Regulations will apply to all prisons including contracted out prisons and young offenders institutions. Accordingly, regulation 1 clarifies that references to early release under section 3C of the 1993 Act includes references to young offenders released under that section.

Regulation 2: Class of persons who are to be released early

Regulation 2 specifies the class of persons who are to be released early from prison limiting the class to those sentenced to less than four years imprisonment or detention and who, on the date on which these regulations come into force have 180 days or less to serve until their automatic release at the halfway stage of their sentence (Earliest Date of Liberation (EDL)). However, the early release of persons under these regulations are subject to the prison governor's power to prevent release under section 3C(5)(b) of the 1993 Act and a number of exclusions in section 3C(6) of that Act.

Section 3C(6) provides that the following persons are excluded from release under regulations made under section 3C:

- (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, 4
 - (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.

Additional exclusions have been introduced as part of these regulations, specifically to exclude those who:

- (i) have served, a sentence of imprisonment or detention for an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016;
- (ii) have served, a sentence of imprisonment or detention for an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018;
- (iii) are the subject of a non-harassment order imposed under section 234A of the Criminal Procedure (Scotland) Act 1995 or section 8 or 8A of the Protection from Harassment Act 1997.

In relation to (i) and (ii), only previous sentences of imprisonment or detention which are not spent for the purposes of the Rehabilitation of Offenders Act 1974 are excluded.

Regulation 3: Calculation of the date of release

Regulation 3 makes provision for the calculation of the date of release in accordance with paragraphs 3 and 4 of Section 11 of the 2023 Act.

Release is provided for in phases in order to provide certainty for those due to be released and in order to ensure release is put into effect swiftly in recognition of the policy aim of reducing the prison population.

Furthermore, phasing in this way provides a reasonable period for release planning to take place for those involved so that services can be aligned with release, and so there is not an unmanageable number of prisoners becoming eligible and having to be released over a very short timeframe.

The releases brought forward will be phased over 4 distinct phases across a 4-week period (1 week, 1 week, 1 week, and 1 week). That would mean from 26 June 2024:

(a) prisoners with 1-45 days until their release at the halfway stage of their sentence (the earliest date of liberation “EDL”) would be released no earlier than 26 June 2024 and no later than 27 June 2024;

(b) prisoners with 46-90 days remaining until their EDL would be released no earlier than 3 July 2024 and no later than 4 July 2024; and

(c) prisoners with 91-135 days remaining until their EDL would be released no earlier than 10 July 2024 and no later than 11 July 2024.

(d) prisoners with 136-180 days remaining until their EDL would be released no earlier than 17 July 2024 and no later than 18 July 2024.

In recognition of the particular circumstances of emergency release, which is to be undertaken during an emergency set of circumstances, the regulations also provide that where a person was to be released on the aforementioned dates, but that release did not take place when it ought to, then that person is to be released as soon as reasonably practicable, but no later than the latest release date. The latest release date being 25 July 2024.

Regulation 4: Description of victim supporters entitled to information

The second intention of this instrument is to prescribe persons of a particular description who are able to receive certain information concerning the person who committed an offence against the victim. There are existing information entitlements for victims under section 16 of the Criminal Justice (Scotland) Act 2003 and section 27A of the Victims and Witnesses (Scotland) Act 2014. These provisions presently allow victims to intimate that they want to receive certain information about a person who has been convicted of committing an offence against them, including information about release (see section 16(3)(a) of the 2003 Act and section 27A(1)(a)). Section 14 of the 2023 Act amended those Acts to make provision to allow a “supporter” to be provided with that information at the same time as a victim, or on behalf of a victim. A “supporter” is a person of a description prescribed by the Scottish Ministers by regulations.

Regulation 4 prescribes certain organisations as “supporters” for the purposes of those provisions.

The purpose of section 14 of the 2023 Act is to embed greater choice for victims in how the VNS or short-term information scheme operates for them, and to ensure a

more trauma-informed, supported and person-centred approach to information provision for victims.

The use of the emergency power of release in section 3C of the 1993 Act foregrounds the importance of the victim notification and information schemes. We recognise that both victims and VSO have concerns about the implications of emergency release, and the benefits of ensuring that victims can exercise agency in how the information schemes operate for them. Victims will be able to decide themselves if they wish to nominate a VSO.

The VSOs which are being prescribed are:

- Victim Support Scotland (VSS)
- Rape Crisis Scotland
- Children 1st
- ASSIST

EU Alignment Consideration

The emergency release aspect of this instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Enabling victims to nominate VSOs to receive information on their behalf, or as well as a victim, will ensure ongoing alignment with Directive 2012/29/EU (Victims Rights Directive)³, which strengthened victims' rights to information, support and protection. This includes at Article 6(5) an obligation on Member States to ensure that victims are offered the opportunity to be notified, amongst other things, of an offender's release.

Consultation

To comply with the requirements of the standard parliamentary approach to introducing new legislation in Scotland a detailed public consultation was undertaken in the development of the Bail and Release from Custody (Scotland) Act 2023. This involved consultation with a range of public bodies, key stakeholders and various partners across the third sector landscape who have an interest on the operation of the sections within the Act.

A full list of those consulted, including on the sections pertaining to this policy note – are set out in the public consultation in 2021⁴ and the SG's formal response in 2022⁵. As a result of this consultation process the following general themes and specific objections were highlighted during the passage of the Act.

In respect of the laying of this SSI and the regulations outlined therein, engagement has been ongoing with a number of operational delivery partners to support the planning and delivery of an emergency release process, should Parliament approve it.

³ [Directive - 2012/29 - EN - EUR-Lex \(europa.eu\)](#)

⁴ <https://www.gov.scot/publications/consultation-bail-release-custody-arrangements-scotland/>

⁵ <https://consult.gov.scot/justice/bailandreleasefromcustody/#:~:text=The%20consultation%20seeks%20views%20on,custody%20is%20used>

That development work includes liaison with public and third sector stakeholders whose activities include support for prison leavers, to examine how an emergency release process would impact on their activities, and how they could adjust to provide the necessary support.

It also involves engagement with VSOs on operationalisation of section 14 of the 2023 Act, to ensure that the victim notification and information schemes function in a more-trauma informed matter, and also to ensure that Government was considering the impact on victims and VSOs of the decision to use the emergency release power, and adapting implementation plans to better ensure the needs of these groups were met.

Impact Assessments

Impact assessments were conducted prior to the passage of the Bail and Release from Custody (Scotland) Act 2023 and are kept under review:

- Business and Regulatory Impact Assessment (BRIA)
- Child Rights and Wellbeing Impact Assessment (CRWIA)
- Equality Impact Assessment (EIA)
- Data Protection Impact Assessment (DPIA)
- Fairer Scotland Duty Assessment (FSD)
- Island Communities Impact Assessment (ICIA)
- Strategic Environmental Assessment (pre-screening notification – not published) (SEA)

For the laying of this SSI the following impact assessment have been undertaken:

- Business and Regulatory Impact Assessment
- Equalities Impact Assessment (EQIA)
- Data Protection Impact Assessment (DPIA)
- Children’s Rights and Wellbeing Impact Assessment (CRWIA)
- Island Communities Impact Assessment (ICIA)

Financial Effects

The financial effects of this policy were set out under the financial memorandum which accompanied the Bill for the 2023 Act.

While this release process will bring forward release dates of individuals who would be released within the coming weeks/months, it is recognised that there is likely to be an increase in demand for community services during the period of the emergency release process.

As noted above, releasing prisoners in 4 tranches is intended to alleviate that impact to a degree. And there will be a corresponding reduction in demand due to a reduction in liberations for a period once the emergency release process is over.

CJ/S6/24/24/1

The Scottish Government will continue to work closely with delivery partners to understand any resource implications.

This will include ongoing collaboration with VSOs to understand the implications for them of enabling victims to nominate a VSO to receive information as well as, or on behalf of the victim under the VNS or short-term information scheme.

Scottish Government Justice Directorate
29 May 2024

ANNEX B - Prison population (recent figures)

	15-Mar-24	22-Mar-24	29-Mar-24	05-Apr-24	12-Apr-24	19-Apr-24	26-Apr-24	03-May-24	10-May-24	17-May-24	24-May-24
Population in custody	7,948	7,980	7,977	8,042	8,107	8,174	8,198	8,203	8,277	8,294	8,250
Untried (including persons awaiting deportation)	1,837	1,838	1,852	1,903	1,920	1,918	1,897	1,933	1,984	2,011	1,990
Convicted awaiting sentence	259	274	263	263	275	276	295	292	295	285	269
Sentenced (including recalled lifers and civil prisoners)	5,852	5,868	5,862	5,876	5,912	5,980	6,006	5,978	5,998	5,998	5,991
Women	322	321	306	318	331	340	344	337	339	345	353
Untried (including persons awaiting deportation)	100	97	89	94	103	107	109	102	103	107	110
Convicted awaiting sentence	20	24	23	30	37	35	35	27	25	25	25
Sentenced (including recalled lifers and civil prisoners)	202	200	194	194	191	198	200	208	211	213	218
Men	7,626	7,659	7,671	7,724	7,776	7,834	7,854	7,866	7,938	7,949	7,897
Untried (including persons awaiting deportation)	1,737	1,741	1,763	1,809	1,817	1,811	1,788	1,831	1,881	1,904	1,880
Convicted awaiting sentence	239	250	240	233	238	241	260	265	270	260	244
Sentenced (including recalled lifers and civil prisoners)	5,650	5,668	5,668	5,682	5,721	5,782	5,806	5,770	5,787	5,785	5,773
Under 16 (total)	0	0	0	0	0	0	0	0	0	0	0
16-17	5	5	7	8	7	6	7	7	7	9	9
Untried (including persons awaiting deportation)	3	2	3	3	4	3	4	4	4	4	4
Convicted awaiting sentence	0	0	1	2	1	1	1	1	1	3	3
Sentenced (including recalled lifers and civil prisoners)	2	3	3	3	2	2	2	2	2	2	2
18-20	170	170	175	179	186	184	189	184	190	191	189
Untried	63	64	66	68	67	63	70	67	76	78	69
Convicted awaiting sentence	13	11	14	16	22	22	17	17	13	11	14
Sentenced (including recalled lifers and civil prisoners)	94	95	95	95	97	99	102	100	101	102	106
21 and over	7,773	7,805	7,795	7,855	7,914	7,984	8,002	8,012	8,080	8,094	8,052
Untried (including persons awaiting deportation)	1771	1772	1783	1832	1849	1852	1823	1862	1904	1,929	1917
Convicted awaiting sentence	246	263	248	245	252	253	277	274	281	271	252
Sentenced (including recalled lifers and civil prisoners)	5756	5770	5764	5778	5813	5879	5902	5876	5895	5,894	5883
Population on home detention curfew	72	73	79	85	87	90	89	96	95	91	95
Women	10	10	10	10	10	10	9	11	12	10	11
Men	62	63	69	75	77	80	80	85	83	81	84

Notes

1. The population in custody excludes prisoners released on home detention curfew.
2. The daily population can show substantial variation in the short and medium term due to seasonal effects and a range of other factors. Changes over time in the daily population counts should therefore be treated with caution to avoid misleading comparisons.

ANNEX C – Prison population data – SPICe briefing

Introduction

The following information is based on:

- [weekly updated prison population figures](#) published by the Scottish Prison Service (SPS)
- [prison population statistical reports](#) published by the Scottish Government.

SPS figures provide more up-to-date information but are only broken down by custody type (e.g. sentenced or remand), sex and age group.

Scottish Government reports include figures broken down by other factors (e.g. offence type and length of sentence) but the [latest report](#), published in December 2023, only provide figures up to 2022-23.

The importance of up-to-date figures is emphasised by the fact that the Scottish Government has highlighted a recent increase in the prison population when setting out plans for the emergency release of prisoners. For example, a [position paper](#) states that:

“On Thursday 16 May the prison population was 8,348 – a rise of around 400 over the last two months. That rate of increase is significant and could not have been anticipated. It comes in the context of a rise of around 10% since this time last year. A continued rise in the immediate term is plausible.”

Information on custody type, offence and length of sentence is important given the restrictions on which prisoners can be released. For example:

- the regulation making power allowing for the emergency release of prisoners (introduced by [section 11](#) of the Bail and Release from Custody (Scotland) Act 2023) does not allow for the release of untried remand prisoners, life sentence prisoners, or those serving a sentence for domestic abuse or subject to sexual offender notification requirements
- the [draft SSI](#) setting out who would be eligible for release in the current situation sets out additional restrictions, including that it would only apply to those serving a custodial sentence of less than four years.

COVID-19

In looking at figures for the past few years, the impact of the COVID-19 pandemic is apparent. There was a significant fall in the average total prison population in 2020-21. This was linked to temporary measures taken in response to the pandemic:

- additional powers to release prisoners before the end of their sentence – directly aimed at supporting the safe management of prisons by reducing the prison population during the pandemic
- restrictions on the carrying out of criminal court business – aimed at the safe running of the courts during the pandemic but limiting the level of business concluded and thus the number of custodial sentences imposed.

The reduction in 2020-21 was in the sentenced population only. The remand population increased. Although delays in concluding cases during the pandemic meant fewer people receiving custodial sentences, such delays also made it more difficult to keep periods of remand within normal statutory time limits. This was reflected in the temporary extension of those limits by COVID-related legislation.

Average daily prison population

The following charts use annual figures to show how the average daily prison population has changed over the period 1999-00 to 2023-24. As well as plotting the total population, they break this down into sentenced and remand prisoners.

The first chart includes both male and female prisoners – those under 21 as well as those aged 21 and over. Most of the prison population consists of men aged 21 and over.

The other two charts plot data for female and under-21 prisoners (different scales are used).

Chart 1: all prisoners

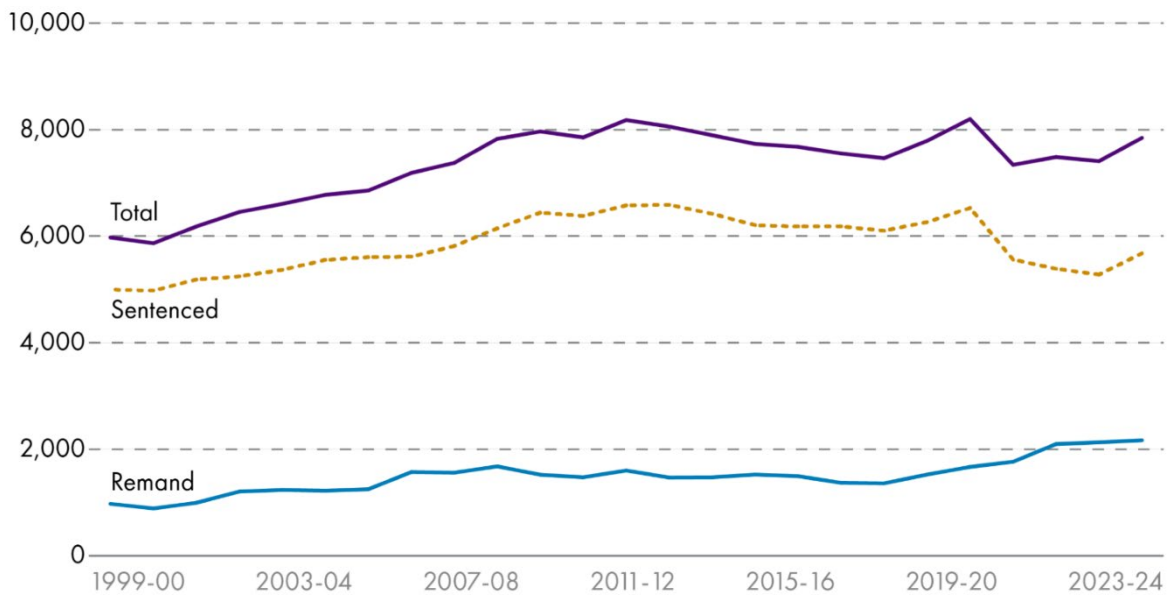


Chart 2: female prisoners

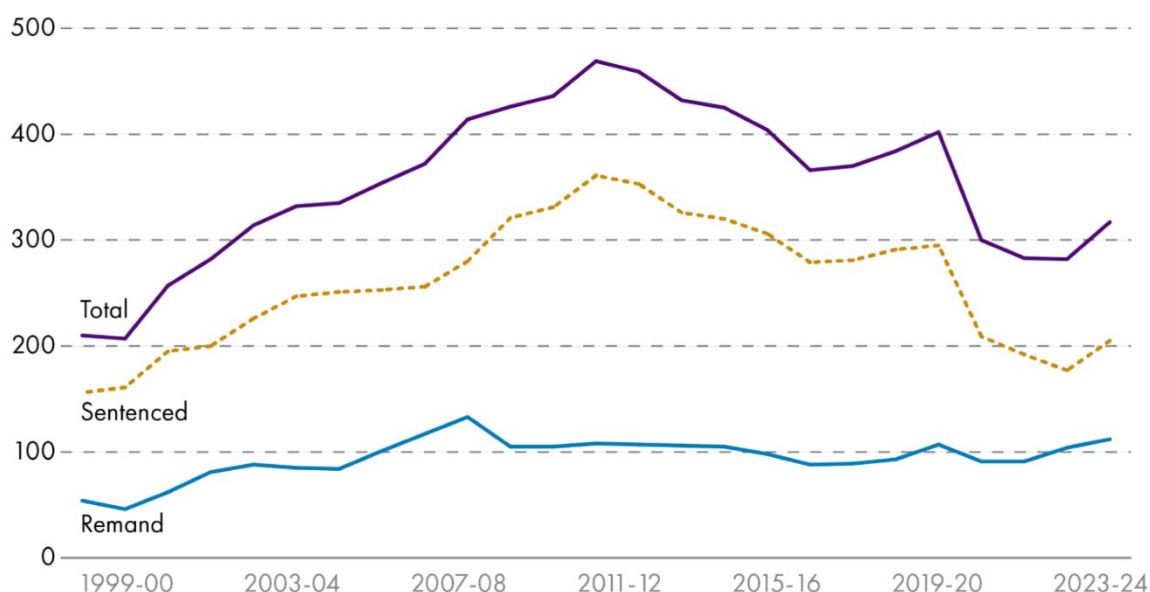
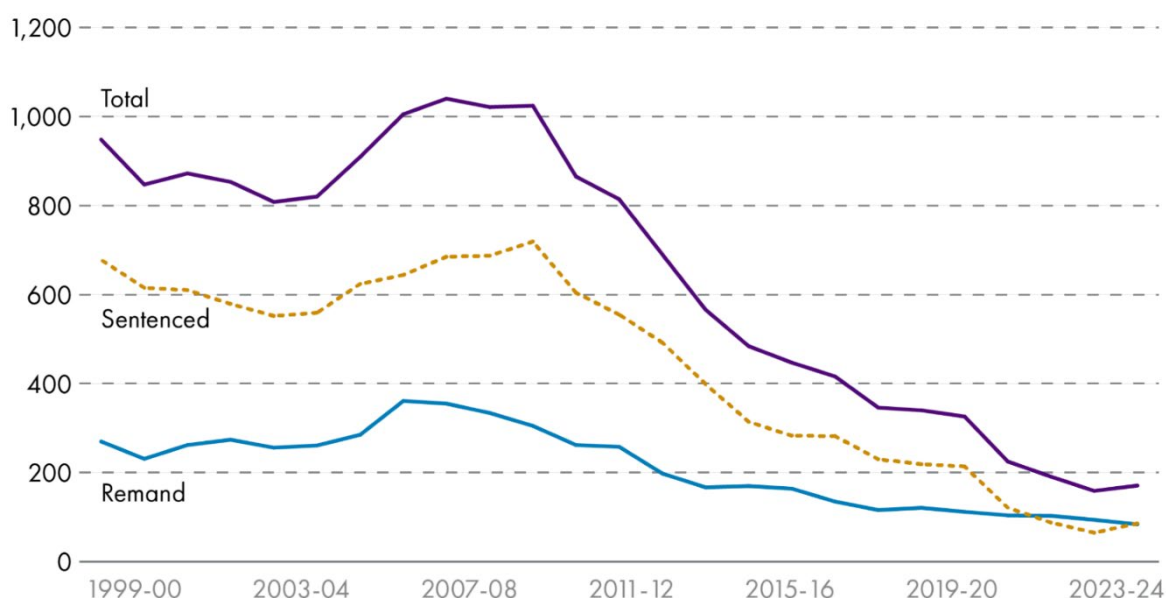


Chart 3: prisoners under 21



More recent prison population data

At the time of writing, information published by the SPS provides [weekly updated figures](#) up to 24 May 2024. Figures for that date include:

- all prisoners – total 8,250; sentenced 5,991; remand 2,259
- male prisoners – total 7,897; sentenced 5,773, remand 2,124
- female prisoners – total 353; sentenced 218; remand 135
- prisoners under 21 – total 198; sentenced 90; remand 108.

Offence and sentence data

As noted above, prison population statistical reports published by the Scottish Government include prisoner figures broken down by offence type and length of sentence.

The [latest report](#), published in December 2023, includes the following figures for 2022-23.

Looking just at the sentenced prison population (i.e. excluding remand prisoners) for that year, the average daily population consisted of the following number of people serving sentences for the following index offences:

- | | |
|--|-------|
| • Non-sexual crimes of violence (e.g. homicide or assault) | 2,530 |
| • Sexual crimes (e.g. rape or sexual assault) | 1,225 |
| • Crimes of dishonesty (e.g. housebreaking or shoplifting) | 304 |
| • Damage and reckless behaviour (e.g. fire-raising) | 80 |
| • Crimes against society (e.g. drugs supply) | 743 |
| • Antisocial offences (e.g. threatening and abusive behaviour) | 238 |
| • Miscellaneous offences (e.g. licensing offences) | 118 |
| • Road traffic offences (e.g. dangerous and careless driving) | 85. |


The above figures add up to around 260 less than the total figure for all sentenced prisoners in that year. This is due to offence data being missing from some published figures.

Turning to the length of custodial sentences being served, the average daily sentenced population during 2022-23 included 2,397 people with index sentences (the longest sentence an individual is serving) of less than four years. The current proposals for emergency release would only apply to those serving a custodial sentence of less than four years.

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SPICe

ANNEXE D

Table in Audit Scotland report on 2022/23 audit of the Scottish Prison Service on prison capacity and population

	Design Capacity	Extended Operating Capacity	Target Operating Capacity	Population				
				2018/19		2022/23		13/11/2023
				Av.	Max.	Av.	Max.	-
Addiewell	702	725	725	700	705	720	726	722
Barlinnie	987	1500	1300	1,322	1,460	1,235	1,301	1,406
Bella Centre*	16	16	16	-	-	7	9	12
Castle Huntly (open estate)	284	190	184	178	200	120	147	161
Cornton Vale***	-	-	-	88	115	47	66	-
Dumfries	176	195	185	177	195	189	196	189
Edinburgh	867	929	900	889	938	862	900	930
Glenochil	668	750	750	681	743	726	746	736
Grampian	552	474	474	460	450	430	450	443
Greenock	224	252	257	229	240	192	217	227
Inverness	93	120	110	117	139	109	125	114
Kilmarnock	501	596	596	504	580	541	551	580
Lilias Centre*	24	24	24	-	-	8	14	14
Low Moss	784	884	784	773	789	787	849	809
Perth	631	700	660	676	724	634	658	651
Polmont	758	482	404	463	522	289	361	326
Shotts	538	538	538	534	545	541	548	538
Stirling**	100	100	100	-	-	-	-	90
Totals	7,905	8,475	8,007					7,948

Note. *Opened 2022/23 **Opened 2023/24 ***Closed 2023/24