

# Emergency Release 2025

**This document outlines the Scottish Prison Service Guidance in relation to Emergency Release**

Update: February 2026

Unlocking Potential – Transforming Lives

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## Abbreviations Guide

<b>CH</b>	Chief Executive
<b>CEO</b>	Chef Executive Office
<b>COPFS</b>	Crown Officer Procurator Fiscal Service
<b>DCE</b>	Deputy Chief Executive (SPS)
<b>DS</b>	Digital Service (SPS)
<b>ER</b>	Emergency Release
<b>ERG</b>	Emergency Response Group
<b>GIC</b>	Governor in Charge
<b>H&amp;S</b>	Health & Safety
<b>HQ</b>	Headquarters (SPS)
<b>JAS</b>	Justice Analytical Services (Scottish Government)
<b>NHS</b>	Natonal Health Service
<b>OCE</b>	Office of the Chief Executive
<b>OD</b>	Operations Directorate
<b>PD</b>	Policy Directorate
<b>PHS</b>	Public Health Scotland
<b>PMT</b>	Population Management Team
<b>SCTS</b>	Scottish Courts & Tribunal Service
<b>SG</b>	Scottish Government
<b>SPOC</b>	Single Point of Contact
<b>SPS</b>	Scottish Prison Service
<b>VFT</b>	Veto Framework Team
<b>VHT</b>	Veto Hub Team

## 1. Introduction

The purpose of this document is to provide guidance and direction for the implementation of The Bail and Release from Custody (Scotland) Act 2023, specifically Part 2 section 11: Power to Release Early (Emergency Release) (hereafter referred to as '2023 Act'). That section provides the Scottish Ministers with a new power to make regulations which will enable the Scottish Prison Service (SPS) to release defined groups of prisoners early from prison. The purpose of the regulations is to respond to an emergency situation by reducing the prison population by such numbers as will support the SPS protect the security and good order in our prisons and maintains the health, safety, and welfare of those who live and work in our prisons. This corporate guidance will be supported by Standard Operating Procedures (SOPs) appropriate to the prevailing criteria applicable at the time.

## 2. Background

Section 11 of the 2023 Act inserts new sections 3C to 3E into the Prisoners and Criminal Proceedings (Scotland) Act 1993 (hereafter referred to as "the 1993 Act"). New section 3C of the 1993 Act provides Scottish Ministers with the ability to release groups of prisoners if 'necessary and proportionate' to respond to an 'emergency situation' in order to protect the security and good order of prisons (or prison) or the health, safety and welfare of prisoners and prison staff.

The SPS are required to develop systems, guidance and criteria that ensures that once an emergency situation is defined and evidenced to Scottish Ministers, SPS can, on regulations being made, set out the prisoners who are eligible for the emergency release. The emergency release will take place over a period of no longer than 180 days. Section 3C of the 1993 Act provides that an 'emergency situation' can be one of three scenarios (see Section 3c of the 1993 Act for all three scenarios in detail). For this guidance that scenario is;

(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; and

(ii) the health, safety, or welfare of prisoners, or those working, in any such prison.

## 3. Ministerial Decision

The Scottish Ministers are responsible for deciding whether to make regulations to instigate an Emergency Release. Their decision will be informed by advice from SPS on the pressures which an emergency situation is placing on a prison or prisons generally. The decision to provide this advice lies with the SPS Chief Executive, or in their absence the Deputy Chief Executive. Once it has been deemed necessary, advice and supporting analysis must be provided to Scottish Ministers detailing which factors in the 1993 Act are relevant. The evidence provided should include: an appropriate explanation of the emergency situation; its impact; and the steps already taken to mitigate the situation and, if the decision instigate Emergency Release is taken, the predicted numbers of prisoners who may require to be released to address the emergency situation. The evidence will be submitted by the SPS via the Chief Executive Office where all parties including Legal Services & the Communications department will be made aware of the submission.

In the event of a public health emergency this will be made in consultation with Public Health Scotland. If enacted, the Emergency Release process will be the responsibility of the Operations Director and their team to take action in accordance with SPS Guidance aligned to SPS Policy & the terms of the legislation which sets out how the releases are processed via agreed Standard Operating Procedures (SOP). The CE/DCE will develop a team to manage the emergency. An HQ (SPS Headquarters) Emergency Response Group will be created. Members will include a Senior management representative from each Directorate & GICs of each establishment (as required or directed by OD Director).

## **4. The Prisoners and Criminal Proceedings (Scotland) Act 1993: Emergency Release**

### **4.1 Section 3C: Power to Release Early (as inserted by Section 11 of the 2023 Act)**

The Scottish Ministers can only decide to make regulations instigating an Emergency Release 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. The regulations will set out:

- 1) a description of the persons to be released from prison early,
- 2) the date on, or dates within, which that description of persons are to be released,
- 3) the last date on which persons can be released under the regulations,
- 4) If long term prisoners are to be released, that they are released on licence, and
- 5) the standard conditions of that licence.

Only short-term prisoners with 180 days or less left to serve on their sentence or long-term prisoners who have been recommended for release by the Parole Board are eligible for release under Emergency Release. There are further exclusions from eligibility for release in section 3C of the 1993 Act and governors are also given a veto power to prevent an eligible prisoner for release.

### **4.2 Statutory Exclusions**

The statutory exclusions for emergency early release (as noted in s3C of Criminal Proceedings (Scotland) Act 1993) automatically exclude a prisoner from eligibility if they are:

- (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.
- [Note:** this last item is superseded by the provision in the SSI Regulations which will limit eligibility to prisoners serving less than 4 years]

Additional exclusions have been included in the Early Release of Prisoners (Scotland) Regulations 2025, specifically to exclude those who:

- a) 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, the conviction for which is not spent for the purposes of the Rehabilitation of Offenders Act 1974
- b) have served, a sentence of imprisonment or detention for an offence under section 1(1) of the Domestic Abuse (Scotland) Act 201, the conviction for which is not spent for the purposes of the Rehabilitation of Offenders Act 1974;
- c) 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.

The Regulations exclude any prisoner serving a sentence of 4 years or more.

Under the 2025 Regulations, where a prisoner's sentence for an offence under section 1(1)(a) of the 2016 Act or 1(1) of the 2018 Act becomes spent during the period for emergency release, that prisoner is to be released as soon as reasonably practicable and no later than the latest release date (i.e. 30 April 2026).

### **4.3 Governor's Veto**

Section 3C of the 1993 Act provides for a 'Governor's Veto', whereby the Governor can veto the release of an otherwise eligible prisoner in certain circumstances. Prison Rules will be changed to allow the Deputy Governor to fulfil this role if required. The Governor's Veto can only be applied in the following instances:

An individual is not to be released where the Governor of the prison where that individual is being held makes a determination that, if released, the individual would pose an immediate risk of harm (as described below) to an identified person.

The Governor of the prison within which the prisoner is detained considers that, if the person is released, they would pose an immediate risk of harm [as described below] to an identified group of people (e.g. Women, Children, members of certain communities etc...)

*The definition of 'immediate risk of harm' for the purposes of this guidance has two aspects:*

- *Firstly, that it is a risk that has been reasonably assessed to be credible, and that the individual has the intention and the ability to carry out the threat.*
- *Secondly, the risk should have the character of 'immediacy' - being 'right now' or 'very soon,'*

Scottish Government have provided guidance under section 3C of the 1993 Act of the terms of the Governor's Veto to support decision making. This is included in this guidance and can be found in [Annex H](#). When considering applying the Governor's Veto, Governors must have regard to that guidance.

## 5. Emergency Release Criteria

When the emergency release power is exercised it will enable SPS to release prisoners nearing the end of their time in custody who meet the specified criteria. The scheme is limited to those with a maximum of 180 days left to serve and there is **no** minimum time that requires to be served in custody prior to emergency release being considered. To identify individuals who meet the criteria, an initial report will be run by Digital Services Team (using Business Objects pre-drafted reported) which will extract data from PR2 detailing those individuals who meet the eligibility criteria are not subject to the following:

- a) a statutory exclusion covered by those specified in the legislation above (as detailed at section 5.2 above).
- b) Any other exclusions set out in the regulations implementing an early release process.

It is for the Scottish Ministers to decide what regulations instigating an Emergency Release will look like. The Regulations may allow differing number of tranches of release during the specified period, however, should this not be required or not be practically possible (in the event of building loss and loss of secure accommodation) then this may be reduced to one planned release, for all the total number of prisoners to which the regulations and the enactment of the regulations apply.

The number of tranches will be determined by the regulations, which will be informed by the evidence and modelling that SPS provides to Ministers. Implementing the regulations in more than one tranche mirrors the approach used during previous early releases and provides a phased approach. The consideration of each individual's Emergency Release and liberation must be completed for those identified in each tranche. The phased tranches approach ensures adequate community provision is available to support emergency release. The determination of which tranche an individual is in will be determined by the regulations.

**The number and frequency of tranches may be increased or decreased as deemed necessary and will form part of the initial advice and analysis to Scottish Ministers.**

The regulations will determine the periods between each tranche. The date of release within the tranches will be identified by the ERG (or other defined structure), however individuals must be liberated by their original EDL, or the dates identified in the tranche they are allocated to, whichever occurs first.

The Regulations implementing an early release process may provide some leeway on the date a prisoner is to be released on in case it is not possible to release the prisoner on the dates identified in the tranche they are allocated to. This may, for example, be to account for a prisoner who SPS are seeking further background information on to inform decisions on their eligibility for release or the application of the governor veto in their case.

## 6. Consultation with Key Partners - National Level

The SPS CE (or DCE in absence of CE) having deemed it necessary to provide advice and supporting analysis to Scottish Ministers will outline which factors in the Act are relevant to the emergency situation. In the evidence and analysis, it must be explicitly clear what: the nature of the emergency is, the impact this situation is having, the steps SPS has already taken to mitigate the situation, the impact on the estate if emergency release is not granted, the scale (estimated number to be released) and the criteria for selection must be defined within the advice and analysis provided to Scottish Ministers. If regulations are agreed to be made, initiation of the next steps can then take place. Whilst awaiting enactment the CEO will implement the following:

- HQ Emergency Response Group (ERG) (or similar command structure) will be created. Members will comprise, where appropriate, the following:
- CE and or Deputy CE.
- Senior management representatives from each directorate.
- A GIC from each establishment (or as required as directed by OD Director), together with relevant stakeholders and partnership agencies as appropriate depending on the reason for the emergency.
- Office of Chief Executive and Communications team representative.
- Scottish Government representative(s) as appropriate.
- SPS Health Lead (HQ).
- Trade union senior representative.
- Relevant stakeholders and partnership agencies as deemed appropriate depending on the reason for the emergency.

The ERG will work with the Scottish Government directly and in collaboration with partner agencies. The group will act as a conduit for information to and from GICs/establishments and will be responsible for the creation of the Emergency Plan, the proposal of tranche dates (where relevant) and ensuring critical information is shared with relevant internal and/or external departments.

In addition, for each emergency situation, a project team will be identified who will manage the SPS response to the emergency. The project team will track progress, updates, and monitor all actions taken during the management of the emergency. Timescales for actions and delivery will also be monitored by this team. They will provide oversight of the emergency response and liaise with SG and SPS ERG. An emergency response group will be formed to ensure consistent roll out and delivery across the estate, they will report directly to the ERG and in liaison with the project team.

If emergency release has been enacted in the event of a health/pandemic emergency release, arrangements will be provided in liaison with designated members of SG and Public Health Scotland. There is Operational Guidance that can be made available that covers this type of emergency release situation.

## 7. Emergency Release Process

Individuals eligible for emergency release will be identified through a Service Now report provided to the PMT. Here, initial vetting will take place which will comprise of ensuring all those contained within the list are eligible for release, removing those who are statutorily excluded. This will then be filtered by the Veto Framework Team (VFT) SPS HQ in preparation for distribution to each GIC, identifying eligible and veto considered individuals by establishment. Release will not commence prior to the first release date specified in the regulations made by the Scottish Ministers. The report will be shared with the identified SPOC in each establishment (GIC and nominated SPOC). All eligible individuals identified by SPS HQ VFT should be considered for early release at this stage.

### Governor's Veto

The list of eligible prisoners identified in the report will now be vetted by the VFT to identify if there is any relevant information the Governor should consider. The VFT will highlight any such information (ie that the individual would pose an immediate risk of harm to an identified person or identified group if released early) and will submit this to the Governor. It is important to remember that when considering risk of harm to a known person, this includes the individual being considered for early release (i.e. the risk to themselves). The HQ Veto Framework Team (VFT) will collate the required information for each eligible case and will provide a summary document to the relevant GiC for their consideration of Veto application (see Annex C - A) Initial considerations of the Veto Framework Team should consist of the following:

- Engagement with SPS HQ Emergency Response Group.
- Any relevant intelligence (Public Protection Unit will also check this)
- Information from Police Scotland
- Information from the Court Portal regarding any outstanding warrants
- A review of all available information held on PR2 which would indicate a known risk of harm to an identified person or group.
- Consideration of vulnerability of the individual themselves, including those with a history of Talk2Me, Rule 41, Rule 95 and management under the MORs process
- Reviewing whether the individual is expected to be managed under MAPPA supervision on release, or has been previously
- Information provided by NHS regarding relevant health information and release planning requirements
- Information from Establishment teams who have undertaken a manual check of eligible peoples warrant files; and
- Information collated by Prison Based Social Work (PBSW) and Criminal Justice Social Work (CJSW) to identify any potential challenges to eligibility, or information relevant to a consideration of Veto

## Veto Annex Forms

The Annex form:

1. Annex C - A: Veto Consideration.

When all relevant information has been collated by the VFT the team will complete Annex C – A and send to the relevant GiC for their consideration, along with the original source of information (e.g. Police Pro Forma). The Governor must consider this and decide if they wish to apply the veto, or not. Should they wish for further information they should contact the VFT directly. The Governor should complete the relevant pages of the Annex based on their decision, sign and return this to the VFT for processing.

The VFT will store the completed Annex C - A centrally, and these should not be uploaded to PR2.

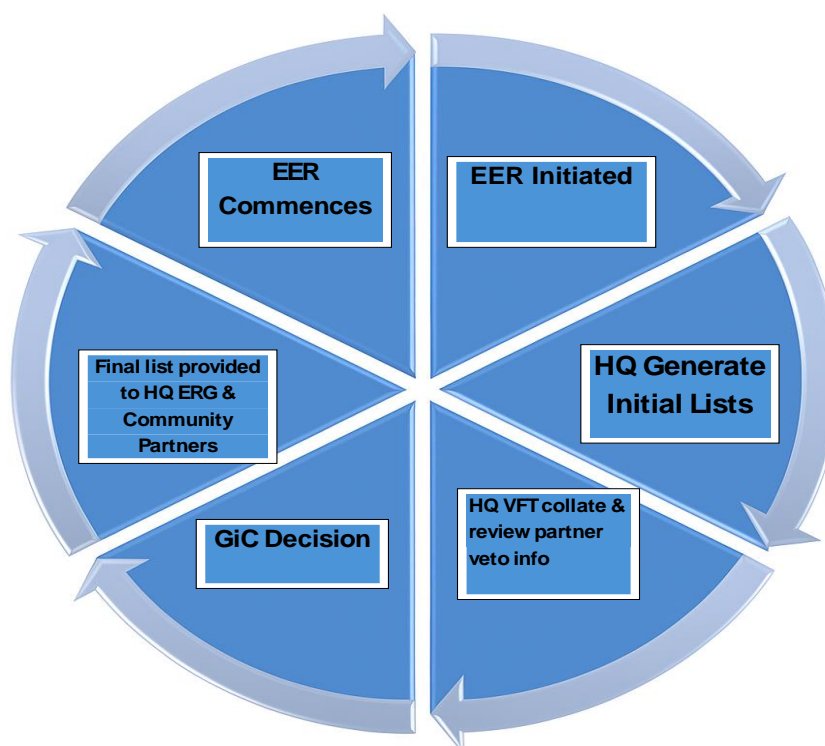
If new information or events come to light between the initial veto consideration and the tranche release date, the Annex should be completed and resubmitted to allow the Governor to consider this. If an individual is subject to a veto during one tranche of emergency release, they will be reconsidered in the following tranche's.

Once the final list of those to be released has been issued centrally, liaison with community service providers should take place. Establishments should ensure they have completed pre-release consideration of needs documents for all individuals being released early and information captured should be discussed with relevant community partners at Pre Release Planning Meetings. The final list will be shared centrally with:

- Emergency Response Group – Created when the emergency situation was declared.
- GiC's and SPOCs;
- Police Scotland;
- Local Authority Justice Social Work;
- The Home Office;
- Prison Health Centre Teams;
- Upside Throughcare Service;
- DWP and Social Security Scotland; and
- Local Authority Housing Teams.

Establishments should share the final lists with local agencies who attend the prerelease planning groups and must ensure there is a Partnership Agreement and Information Sharing Agreement in place with each.

Information will be provided to Scottish Government Ministers via the Office of the Chief Executive:



## 8. Guidance for SPS Checks and Veto

Given that operational pressures will exist to invoke the need for emergency release, it is imperative that in order to ensure the successful implementation of the early release process, each establishment must appoint an individual to co-ordinate and manage the process as a SPOC. The collation and presentation of information will be managed by the central VFT who will ensure all cases are provided to the relevant GiC and SPOC timeously. The final decision on whether to apply the governor veto will be made by the Governor in Charge or Deputy Governor of the establishment the individual is in, and for private contracted prisons the decision must be taken by the Director. This is a form of permanent release which means that individuals released from custody will be treated as if they had been released as per their original EDL.

Short-term prisoners are to be released unconditionally. Young offenders detained in a Young Offenders Institution (YOI) under section 208(1) of the Criminal Procedure (Scotland) Act 1995 are to be released on licence under section 7(2) of the 1993 Act. If the regulations permit a long-term prisoner to be released, they can be made subject to a licence which contains standard conditions set out in regulations made by the Scottish Ministers. No regulations are currently in place which state what standard conditions apply to a release under an emergency release process. The standard conditions would apply to the individual until their parole licence took effect.

### ***An individual is not to be released from prison where:***

- they fall within the statutory exclusions listed at section 5.2 above.
- they fall out with the eligibility criteria in the regulations, or
- the Governor or Deputy Governor of the prison within which the individual is detained considers that, if released, the individual would pose an immediate risk of harm to an identified person or group.

***If it is identified that the individual would pose an immediate risk of harm to an identified person or group, the governor veto must be applied.***

While each case should be treated on its individual merits, with dynamic factors being considered, it is important to ensure decisions are consistent with legislative requirements and defensible if challenged. The checks on eligibility and any decision by the Governor or Deputy Governor on application of the Governor veto should be recorded on the form provided at Annex C-A which, in turn, must be returned to the VFT for storage.

Further information regarding sources of information used to form part of the early decision-making process for the identified lists of individuals, are explored in more detail below and a checklist will be provided to GiC's.

## **8.1 Checks and application of Veto Decision Making**

When considering each identified individual provided by SPS OD PMT the following sources must be checked. The sources are as follows:

### **8.1.1 Required Sources of Information**

The following are **required** sources of information that should be accessed to a) inform the eligibility of an individual after initial checks and b) to inform a Governor decision on application of the veto.

#### **Prisoner Records System (PR2)**

Review of all community integration planning information that is available. This involves checking the domains on PR2 and using relevant information and any recorded outcomes of assessment to inform the eligibility of an individual after VFT initial checks and to inform a decision on application of the veto. Checks should also be undertaken to identify whether there are any new warrants/orders that make the individual statutorily excluded from emergency release and for any relevant intelligence.

#### **Police Scotland**

Police Scotland must be consulted to ascertain if any information or charges exist which would render the individual ineligible, or which would otherwise be relevant to a decision on whether to apply the governor veto.

#### **Scottish Courts**

Scottish courts will give details on individuals have a current in force Non-Harassment Order either criminal or civil. This would remove an individual from the eligible list.

#### **PPU**

A request should be made to the PPU to check if there is any information held which would indicate the individual would pose an immediate risk of harm to an identified person or group if released early.

#### **Manual Check of Warrant File**

There should be a check of the physical warrant file to ensure that there is no relevant information held there which is not recorded on PR2. There may also be copies of assessments completed for court within the file, which should be shared with the VFT to take into consideration. There must also be a check for any untried warrants held within the file, which may not have been recorded on PR2.

#### **Victim Notification System**

The VFT must check VNS status on PR2 and if required alert the VNS team of any live markers immediately and any subsequent decision on whether to release the prisoner: [SPSVictimNotificationScheme@prisons.gov.scot](mailto:SPSVictimNotificationScheme@prisons.gov.scot).

### **Justice Social Work (JSW)**

JSW must be consulted to ascertain if any information or charges exist which would render the individual ineligible, or which would otherwise be relevant to a decision on whether to apply the governor veto. PBSW can also establish any community concerns or any considerations for voluntary throughcare support and community service provision needs. Information provided should be provided directly to the VFT for inclusion in the Governor's Veto consideration (Annex C-A).

### **8.1.2 Potential Other Sources**

The following are sources of information that, *if relevant*, should be **considered** to a) inform the eligibility of an individual after initial eligibility checks and b) to inform a Governor decision on application of the veto.:

#### **Talk2Me (TTM)**

Consideration should be given to the individual's vulnerability if they are currently or have recently been managed under the Talk2Me process. Before release, consideration should be given to any potential risk the individual is to themselves when deciding whether to apply the Governor's veto and how to pre-release plan effectively

#### **Previous Risk Assessments**

It may be possible to access a prior formal risk assessment relating to the individual. This may provide information regarding an immediate risk of harm to an identified person or a group if the individual is released early. If such assessments are available, they should be sent to the VFT for inclusion in Annex C - A

#### **Multi-Agency Public Protection Arrangements (MAPPA)**

Consideration must be given to whether an individual has been identified as an offender managed under the Extension of Multi-Agency Public Protection Arrangements (MAPPA) for Category 3 offenders, i.e. other offenders, who by nature of their offence pose a serious risk of harm to the public or whose conviction would put them at risk upon release. As MAPPA Category 3 are individuals who are deemed to pose an identified risk of harm and that this is imminent (right now) or will happen at any time (very soon), the Governor must pay specific attention to the circumstances to inform a Governor decision on application of the veto.

#### **NHS**

Consultation with local NHS leads is required to ensure that any mental health issues or requirements for a community care plan are identified. This may inform a decision on application of the Governor's veto. Depending on the emergency situation and the terms of the early release process set out in the regulation, also the timing of their potential release NHS liaison and consultation will identify any specific healthcare arrangements that need to be put in place for release purposes.

### **8.2 Emergency Release**

A decision on application of the Governor's veto must be taken by the Governor in Charge or the Deputy Governor of the establishment in which the individual is being held. For private contracted prisons, the decision on application of the Governor's veto can be taken by the Director or the Deputy Director. The Prison Rules have been changed to allow the Governor to delegate the Veto decision to the Deputy Governor during periods of operational necessity.

Consideration should be given to the information collected as part of the eligibility check in deciding whether the individual would pose an immediate risk of harm to a known person or group if released early as part of the information to be considered in the application of the veto. Once complete, Annex C-A should be returned to the VFT for actioning. As this

document may contain sensitive information it **should not be uploaded to PR2**, and will be securely store by the VFT.

It is important to ensure decisions are consistent with legislative requirements and defensible if challenged. Once the eligibility checks and decision on application of the veto have been made, the individual should be informed of the outcome. There are standard template letters at Annexes D-F for those considered for Emergency Release for ease of use.

They are as follows:

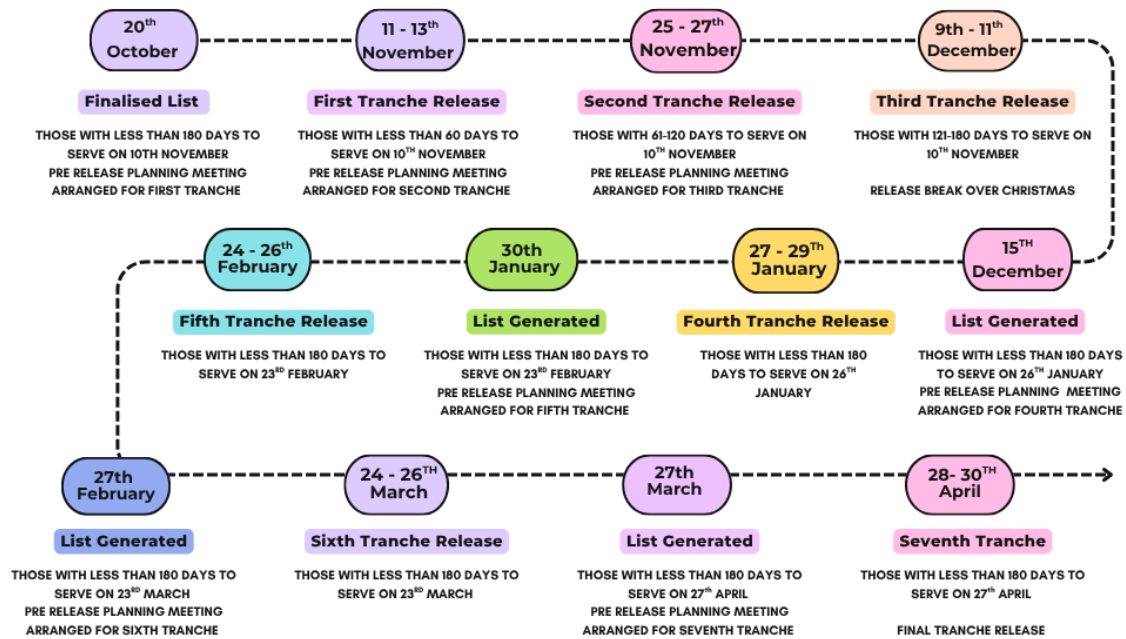
- Annex C - A Veto Information Received Checklist
- Annex D Template letter informing the individual of their release under Emergency Release.
- Annex E Letter informing the individual of the decision to apply the Governor's Veto in relation to them.
- Annex F Template 'delayed release' letter for individuals eligible for emergency release. Delays due to the need for appropriate community provision to be put in place for the individual case prior to their release.
- Annex G Pre-Release Consideration of Needs Template.
- Annex H SG Guidance on the definition of Governors Veto

Following all eligibility checks and a decision not to apply the Governor's veto has been taken, a revised EDL needs to be established, a new movement must be created on PR2 to liberate the individual. **The EDL critical date recorded on PR2 must NOT be altered.** A new classification of movement has been created on PR2 to record these individuals. This process is described in the SOP. The prisoner must be allocated an ICM type either Standard or Enhanced, if this is not already done so, and a copy of the template letter (Annex D) should be uploaded into the Risk Assessment Domain. A note of release requires to be annotated in the 'Progression' domain. Liberation on PR2 should be listed under 'Movements' and select 'Emergency Release' (note this function will only be activated when an application for emergency release has been granted by Scottish Ministers and only active during the designated period of release). Early release dates will be allocated centrally in line with the SSI requirements.

### **8.3 Veto Emergency Release Application / Delay in Release or Return to Custody**

For those for whom the veto has been applied, there is a delay in release or that have returned to custody following release the relevant template letter (annex E-F) should be uploaded to PR2 to the same risk assessment domain and a note recorded. In the unlikely event that a person does not wish to be released early under emergency release then this information should be recorded on PR2, in the risk assessment section, however they will still be liberated on their allocated emergency early release date

# EER 2025 Timeline



## 9. Release of Prisoners under Emergency Release: Liberation Protocol

In order to ensure a safe release, it is crucial that SPS works closely with community partners as soon as possible after eligibility checks and a decision on the Governor's veto. Each case will have different needs and so a person-centred approach must be taken. A smooth prison release requires preparation and co-ordination across services so that those leaving our care receive the holistic and joined-up care they need. For example, ensuring that people leaving prison have access to housing, health, and financial support and that they have a realistic and safe means of making the journey home are all key to successful outcomes. All release planning should be annotated in the pre-release consideration of needs form and confirmed with partners during Release Planning Meetings. Prior to liberation, notification of release should be made to the following external partners:

### 9.1.1 Police Scotland and other Forces

Police Scotland must be informed of all prisoners who will be released under the emergency release process. Notification of the lists identified will be handled centrally and these should be emailed from the HQ VFT to [NIB@scotland.pnn.police.uk](mailto:NIB@scotland.pnn.police.uk).

Police Scotland will disseminate this information to other Police Forces as required. All other liberations should continue to be notified to the relevant Police Forces in accordance with the current process.

### 9.1.2 NHS Partners

Once emergency release eligibility is ascertained through all checks, and a decision not to apply the Governor's veto is made, the VFT will inform local NHS teams of this outcome who will in turn liaise with community NHS teams. It is imperative that as much notice as possible is given to NHS teams to ensure the continuation of health care provision in the community. If emergency release is as the result of a public health emergency, then the Local NHS lead should liaise with community NHS teams, Public Health Scotland and the SPS Emergency Response Group to ensure that national guidelines and pandemic plans are being followed.

### 9.1.3 Community Based Partners

When eligibility is ascertained through all checks, and a decision not to apply the Governor's veto is made, the central team will share finalised lists with:

- Emergency Response Group – Created when the emergency situation was declared;
- GiCs and SPOCs;
- Police Scotland;
- Local Authority Justice Social Work;
- The Home Office;
- Prison Health Centre Teams;
- Upside Throughcare Service;
- DWP and Social Security Scotland;
- Local Authority Housing Teams.

Establishments should ensure they have the required data sharing agreements in place to allow them to share release lists with:

- Local Substance Use Support Services
- Local Third-Sector Partners
- Any other attendees at the Pre Release Planning Meetings

Further information on the process can be found within the SPS SOP.

## 9.2 Pre-Release Planning

Where the outcome on an individual, through eligibility checks and the decision on application of the Governor's veto, has led to that individual being identified for early release, consideration must be given to pre-release preparation.

Rule 130 of the Prison and Young Offenders Institutions (Scotland) Rules 2011 states that:

***'At an appropriate time before an individual is released from prison the Governor shall discuss, or arrange with some other person to discuss, with that individual the immediate needs or welfare issues of that individual upon release.'***

Considering the extraordinary circumstances in which individuals will be released, it is unlikely that there would have been sufficient time for the normal pre-release preparation processes to take place in full. As such, it will be of **critical importance** that appropriate Pre-release Support Officer(s), often those who carry out this role in establishment links centres, are identified in order to support individuals to prepare for their release and re-integration to the community at short notice.

The 'Pre-release consideration of Needs' document (Annex G) will be utilised to identify any key areas where support is required. Support required thereafter will primarily be done through facilitation of community partners visits, telephone calls to family and community services, Teams calls to local services and supports, signposting to relevant external services and by completion of applications prior to liberation. Where relevant this should include, as a minimum, referrals to Local Authority Housing, Department of Work and Pensions, Social Security Scotland, Throughcare Mentoring and Support Services, assistance with completion of a Scottish Welfare Fund application and GP registration form. The use of Peer Supporters to help prepare an individual for release should also be considered if there is adequate time. Plans should be confirmed by partners at Release Planning Meetings. Further guidance on this can be found within the SOP.

Where release is as result of a Public Health Emergency, then adherence to national guidelines must be followed. This may vary depending on which local authority the individual is to be released to, and consultation with the SPS National Incident Management Team will ensure that SG & Public Health guidelines are met and are in accordance with the relevant SPS Pandemic Plan.

### **9.3 Liberation Process**

The local establishment's standard liberation process should be followed for those individuals released through emergency release. The SPOC must work with partners in the community to ensure that all supports are in place for liberation including travel arrangements.

In the event of release during a public health emergency, liberation must align to SG & Public Health Scotland guidelines, together with adherence to the terms laid out in the relevant SPS Pandemic Plan. Should the individual test positive for an infectious disease (akin to the public health emergency) then measures must be put in place to ensure that release is postponed until the individual no longer tests positive or provisions are in place to manage the individual accordingly in the community.

Third Sector partners may be able to provide mobile phones if the individual does not have one to maintain contact with services following release. In the event of any restrictions due to a public health crisis then the local establishment SPOC must ensure that these have been communicated to individuals in accordance with their home area prior to their release.

A 28-day supply of medication is to be provided for individuals, if required, on the day of liberation. The local establishment SPOC will liaise with Local NHS teams to make sure this is provided immediately prior to the individual's release.

Public Transport arrangements should be made in accordance with the current release policy. Should there be possible difficulties with availability, contingency arrangements are described in the SOP.

EDL information on PR2 will **not** be amended. An updated movement should be created in line with the SOP.

### **9.4 Liberation Packs**

A liberation pack will be issued to all individuals subject to emergency release prior to liberation where possible so that they can read and familiarise themselves with the documentation which includes useful information to support community reintegration.

The following information will be included in these liberation packs to support community integration:

- A liberation letter as proof of ID;
- Details on how to claim benefits on release;
- Key contact details for the local authority area they are returning to;
- GP Registration card;
- A list of appointments arranged for the individual;
- Naloxone; and
- If required, a mobile phone supplied by Upside with their contact details.

Where the individual has not completed a Scottish Welfare Fund form or GP Registration then these forms should also be included in the liberation pack.

### **9.5 Return to Custody**

In order to improve policy and practice it is important for SPS to monitor the number of individuals who return to custody prior to their original EDL. The project team will manage this process and SPS will publish this information in line with the SSI reporting requirements.

Annex C - A: Veto Information Received Checklist

<b>First Name</b>		<b>Last Name</b>	
<b>Prisoner No.</b>		<b>Establishment</b>	

Sources	Check Completed	Evidence to indicate possible Veto	Additional Information
PR2 Check	Yes / No	Yes / No	
PPU Check Completed	Yes / No	Yes / No	
VNS Marker	Yes / No	Yes / No	
Talk to Me History	Yes / No	Yes / No	
Unspent Custodial Domestic Convictions	Yes / No	Yes / No	
Non harassment Order Check	Yes / No	Yes / No	
Outstanding Police Warrant	Yes / No	Yes / No	
Subject To MAPPA 3 Extension	Yes / No	Yes / No	
CJSW Pro Forma Reviewed	Yes / No	Yes / No	
Police Pro Forma Reviewed	Yes / No	Yes / No	
NHS Pro Forma Reviewed	Yes / No	Yes / No	
Manual Warrant Check	Yes / No	Yes / No	Establishment
Remand Warrants Held	Yes / No	Yes / No	Establishment
Appeals in progress	Yes / No	Yes / No	Establishment

<b>VHT</b>		<b>Sent to relevant GiC</b>	Yes / No
<b>Signature</b>		<b>Date</b>	



GiC Veto Decision

<b>First Name</b>		<b>Last Name</b>	
<b>Prisoner No.</b>		<b>Establishment</b>	

**For GiC Completion:**

**If you are applying the Veto, please complete the following:**

Please ensure you consult the Guidance on the application of the Governor's veto here: [ER Governor's Veto.docx](#)

<b>Reason for decision to Veto:</b>
<i>As the decision maker on whether a Veto is appropriate in this case based on the information presented, I have decided to Veto, reasons for my decision are detailed below.....</i>
<b>Source(s) of Evidence used:</b>
<b>Is the identified Immediate Risk of Harm to an individual or a group?</b>

**I am applying a veto to prevent this otherwise eligible individual from being released early for the reasons outlined above.**

<b>Governors Name</b>		<b>Signature</b>	
<b>Date</b>		<b>Establishment</b>	

**If you are not applying the Veto, please complete the following:**

Please ensure you consult the Guidance on the application of the Governor's veto here: [ER Governor's Veto.docx](#)

<b>Reason for decision not to Veto:</b>
<i>As the decision maker on whether a Veto is appropriate in this case based on the information presented, I have decided not to Veto reasons for my decision are detailed below.....</i>
<b>Source(s) of Evidence used:</b>

I have considered the information provided and I will not be applying a veto for the reason/s outlined above.

<b>Governors Name</b>		<b>Signature</b>	
<b>Date</b>		<b>Establishment</b>	

On completion, please let the HQ Veto Hub know: [HQVetoHub@prisons.gov.scot](mailto:HQVetoHub@prisons.gov.scot)

**For completion by the Veto Team:**

<b>VHT</b>	
<b>Assign Tranche:</b>	Yes / No
<b>Monthly Review required (Update Database):</b>	Yes / No

## Annex D: Template Letter (Emergency Release)



{Establishment Name}  
{Address Line 1}  
{Address Line 2}  
{Address Line 3}  
{Postcode}

{Date}

{Prisoner Name}  
{Prisoner Number}  
{Prisoner Location}

Dear {Prisoner Name}

### **The Prisoners and Criminal Proceedings (Scotland) Act 1993 Emergency Release**

You have been identified as eligible for Emergency Release under the above Regulations.

You will be released under the above Regulations on {Insert date of Liberation}.

Before release a member of my team will talk to you about any needs you may have prior to the above date and you will be signposted to services in the community and provide contact details for further support if required.

Yours sincerely

**{GIC NAME}**  
Governor in Charge

## Annex E: Template Letter (Governor's Veto Applied)



{Establishment Name}  
{Address Line 1}  
{Address Line 2}  
{Address Line 3}  
{Postcode}

{Date}

{Prisoner Name}  
{Prisoner Number}  
{Prisoner Location}

Dear {Prisoner Name}

### **The Prisoners and Criminal Proceedings (Scotland) Act 1993 Emergency Release**

You have been considered for Emergency Release under the above Regulations.

After careful consideration of the information, I have decided to apply my power of veto as provided by the Prisoners and Criminal Proceedings (Scotland) Act 1993 and you will not be released under the Regulations.

I appreciate that this may not be the news that you were expecting, however your liberation date remains unchanged.

Please speak with your personal officer about any needs you may have prior to release. They will be able to signpost you to services and community partners who may be able to support you.

Yours sincerely

**{GIC NAME}**  
Governor in Charge

## Annex F: Template Letter (Delayed Release)



{Establishment Name}  
{Address Line 1}  
{Address Line 2}  
{Address Line 3}  
{Postcode}

{Date}

{Prisoner Name}  
{Prisoner Number}  
{Prisoner Location}

Dear {Prisoner Name}

### **The Early Release of Prisoners (Scotland) Regulations 2025 Emergency Release**

You have been identified as qualifying for Emergency Release under the above Regulations.

You will be released early under the above Regulations, however, *\* a release date has not yet been set / As you have currently tested positive for (insert infectious disease) (\* delete as applicable)*. An update will be provided to you in relation to your early release as soon as practicable.

Before liberation a member of my team will talk to you regarding any additional needs that you may have and can sign-post accordingly.

Yours sincerely

**{GIC NAME}**  
Governor in Charge

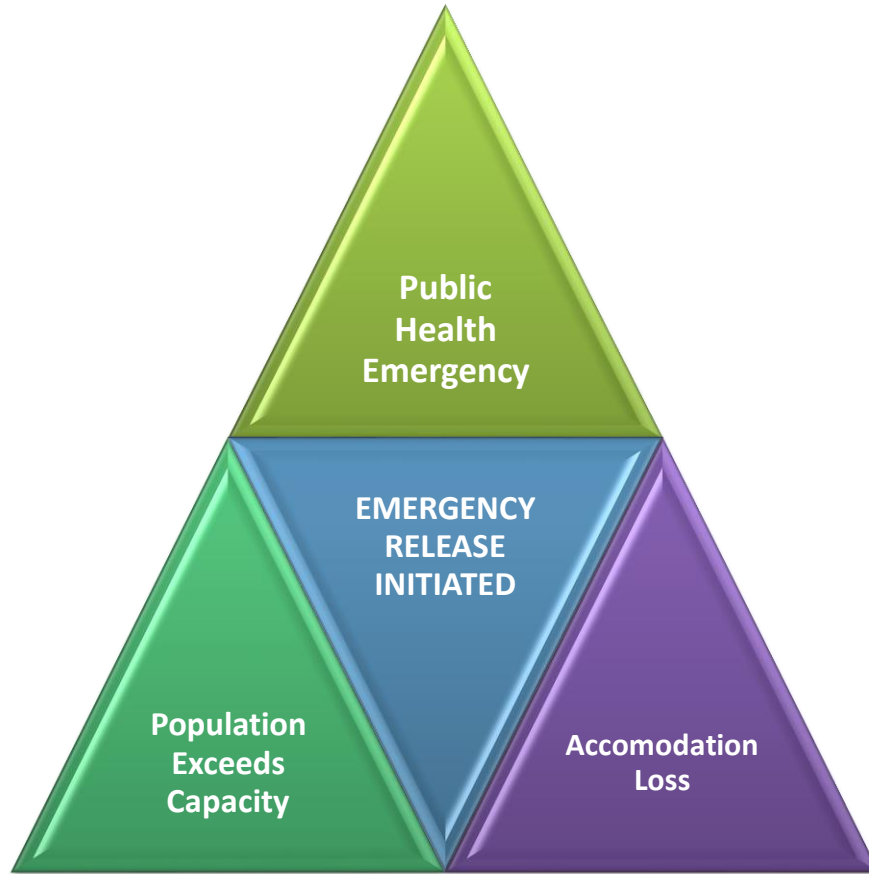


Pre-Release Consideration of Needs:  
Emergency Early Release

<b>First Name</b>		<b>Last Name</b>	
<b>Prisoner No.</b>		<b>Establishment</b>	
<b>Local Authority to which the individual wants to return</b>			
<b>Accommodation:</b>			
<b>Will the individual have somewhere to stay on release?</b>			Yes / No
<b>If YES, please tick type of accommodation and address so partners can make checks:</b>			<input type="checkbox"/> Council <input type="checkbox"/> Private Rented Sector <input type="checkbox"/> Owner Occupier <input type="checkbox"/> c/o Family or Friends
<b>Action Taken:</b>			
<b>Benefits</b>			
<b>Does the individual require support in accessing the Scottish Welfare Fund, DWP benefits or Social Security Scotland Payments?</b>			Yes / No
<b>Action Taken:</b>			

<b>Support Services:</b>			
<b>Does the individual currently engage with Upside, Social Work Voluntary Throughcare or another throughcare service</b>		Yes / No	
<b>Name of Throughcare Mentor:</b>			
<b>If not, do they wish to be referred to any of the above services?</b>		Yes / No	
<b>Would the individual like help to discuss their release with their family?</b>		Yes / No	
<b>Action Taken:</b>			
<b>Travel Arrangements:</b>			
<b>Does the individual have suitable arrangement to travel to their home address?</b>		Yes / No	
<b>Action Taken:</b>			
<b>Health and Social Care:</b>			
<b>Has the NHS confirmed all necessary health and social care throughcare support is in place?</b>		Yes / No	
<b>Action Taken:</b>			
<b>Staff Name</b>		<b>Role</b>	
<b>Staff Signature</b>		<b>Date</b>	
<b>Prisoner Name</b>		<b>Date</b>	
<b>Prisoner Signature</b>		<b>Date</b>	

# EER



## Annex H: Guidance on the application of the Governor's Veto

### Purpose

1. This guidance is intended to support Governors in Charge (GICs) in their application of the Governor veto, in the event of an emergency release process being conducted – as provided for at section 3C (5) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (as inserted by section 11 of the Bail and Release from Custody (Scotland) Act 2023)<sup>1</sup>. This guidance has been developed under section 3C (7) of the 1993 Act.
2. As provided for at section 3C (9) of the 1993 Act, GICs '*must have regard to*' this guidance in considering the application of the Governor veto.
3. This guidance should be read in conjunction with the current Scottish Prison Service Operational Guidance: "Emergency Release, The Release of Prisoners (Scotland) Regulations 2023".

### Background – legislative position and context

4. Section 11 of the Bail & Release from Custody (Scotland) Act 2023 inserted section 3C into the 1993 Act. That provision gives the Scottish Ministers the power to instruct the early release of groups of prisoners, where they consider it necessary and proportionate to do so in response to an emergency situation, in order to support the safe operations of prisons, and protect the health, safety and welfare of prisoners and prison staff.
5. Section 3C (5) of the 1993 Act also provides for a Governor veto which could be applied in any early release process operated under this power. This veto allows the GIC of the prison where an eligible prisoner is located to veto their early release if they consider 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 definition of harm and examples of identified individuals and identified groups is provided at Annex C-A to aid this process.
7. The application of a Governor veto is also important to support the protection of a number of rights under the European Convention on Human Rights. Articles 2, 3 and 8 together protect individuals' right to life and their physical integrity. The use of the Governor veto helps to ensure that where the GIC is aware that a prisoner eligible for the emergency release presents an immediate risk of such harm to an identified individual or group of individuals (including the prisoner themselves), that those rights can be protected.

### Approach to Governor Veto

8. It is important that the process for applying the Governor veto is fair, efficient, consistent and evidence based. The Governor veto is expected to be deployed appropriately by the SPS in every case, and in the specific terms defined in the SPS operational guidance on emergency release.
9. The Governor's veto process has been established to enable GICs to draw upon all relevant and reliable information that is available to them, at the time of an emergency release being conducted, to support their decision on whether or not to apply the veto.

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<sup>1</sup> [Bail and Release from Custody \(Scotland\) Act 2023 \(legislation.gov.uk\)](https://legislation.gov.uk)

10. Therefore, decisions on the application of the governor veto should be made on the basis of information drawn from the list of information sources set out in the SPS operational guidance. This list includes but is not limited to, the individuals prison record, prison or police intelligence records, social work records, relevant health information, and any other available and relevant information. This approach should also take account of the reliability and recency of the available information in each case.
11. As set out in the SPS guidance, in the event of the use of these emergency release powers, SPS Headquarters will produce a list of all prisoners in each establishment who are considered statutorily eligible for early release. That list will take account of the statutory exclusions set out in the 1993 Act, and any additional specific release criteria which may have been set out in the regulations which instruct the emergency release process.
12. GICs will be required to consider the list of individuals for their specific establishment and decide whether or not to apply their Governor's veto power in regard to each individual. The specific operational approach undertaken when applying the veto will be detailed within the SPS operational guidance (for example, what agencies will be involved and how cases are to be assessed).

### **Decision-making and recording decisions.**

13. A decision to veto any otherwise eligible prisoner from the emergency release process should be proportionate to the evidence obtained from the available information sources during the vetting of cases, as it relates to any immediate risks of harm to either an individual, or an identified group, if the individual were to be released under the process.
14. The reason(s) for a decision to apply the Governor veto must be recorded, along with details of the relevant sources of evidence, using the relevant Annex of the SPS Operational Guidance, and the information should be retained by the SPS.
15. Where evidence of any potential risk has been identified, but the final decision is that it is not proportionate to apply the Governor veto, the GIC should record the reason(s) for that decision, with details of the relevant sources of evidence, via the appropriate recording process outlined within the SPS Operational Guidance.

## **Definition of Harm**

For this purpose, "harm" is to be understood as physical or psychological harm, and "psychological harm" will include fear, alarm, and distress.

As such, the potential "harm" does not necessarily have to be physically violent in order to justify the use of veto but could be interpreted more broadly depending on the nature of the potential action which the GIC is aware the individual eligible for release may take upon release.

## **Identified Individual**

Whilst it remains important to have an identified individual or group to apply the Governor's veto, there is not a requirement for that identified individual or group to be clearly identified by name in the information being considered.

The GIC should utilise an evidence-based approach in considering the nature of any particular risk, comment, or threat. This includes any available information from previous risk assessments that highlight specific concerns around individuals or groups who might be at immediate risk from the individual if they were released.

The identified 'individual' considered to be at risk may also be the prisoner themselves. For example, in cases where an individual is managed under the SPS Talk to Me strategy, or the SPS Management of an Offender at Risk due to any Substance (MORS) policy, it may be relevant to consider these circumstances when considering the application of the veto. Other significant health and welfare concerns which would be negatively impacted by an earlier release (rather than the scheduled release) may also require consideration. As with veto decisions, a decision to veto the prisoners release on such grounds must be proportionate to the circumstances.

## **Examples of 'Identified Group'**

It is not possible to provide a definitive definition of what should be interpreted as "a group", or to provide a comprehensive list of applicable groups. Again, the GIC should use their professional judgement in considering the nature of any particular risk, comment, or threat. This includes any available information from previous risk assessments that highlight specific concerns around individuals or groups who might be at immediate risk from the individual if they were released under the emergency release.

For the purpose of this work, a "group" may be considered as one of the following lists of examples, but this list is not exclusive or exhaustive:

- Members of a family, friendship group, or other social grouping (including places of work, event attendees, supporters of sports teams etc).
- People of specific racial, ethnic, or religious groups.
- People in other protected characteristics (gender, sexual orientation, age, disability)
- Members of specific gender (especially in terms of violence or sexual offences). This can be interpreted as significant risk to women generally (not only to an identified woman).
- Individuals connected to a criminal enterprise or Serious & Organised Crime Group.
- Participants in legal processes (police, lawyers, court officials, witnesses, jury members etc)

Where there is information about the prisoner that indicates a threat or intention to act – even if the target of that threat is not tightly defined – this should also be considered within the Governor veto process and judged in line with the wider information available to GIC's at the time of each case review during the emergency release process.

**SCOTTISH GOVERNMENT**

May 2024

### **Further Information:**

The SPS recognises that from time-to-time employees may have questions or concerns relating to the Early Release Policy & Guidance.

The SPS wishes to encourage open discussion with employees to ensure that questions and problems can be resolved as quickly as possible. Employees are encouraged to seek clarification on any issues with the appropriate Line Manager in the first instance.

### **Equality Statement**

The SPS is an equal opportunities employer where all employees are treated with dignity and respect. We are fully committed to equality, diversity, and human rights and to ensuring our culture, working environment, policies, processes, and practices are free from bias. This policy applies to all employees regardless of protected characteristics or any other criteria such as: length of service, grade, working pattern or operational status.

### **Inclusive Communications**

It is our ambition to ensure that SPS documents are readable, accessible, and engaging for staff. In formatting this document, good practice principles around engagement and inclusive communications have been adhered to. If you require this document in an alternative format, please contact Human Resources.

## **Sustainability**

Improving our environmental performance and doing things in a more sustainable way should be seen as integral to our core business practices.

In line with the SPS Sustainable Policy and to demonstrate compliance with the Scottish Government's commitment to improving environmental and sustainable development performance, please be mindful if printing this document – keeping paper usage to a minimum (print only version), printing on both sides, and recycling.

## **Review and Monitoring**

This policy will be regularly reviewed where applicable to reflect changing business and legislative requirements.