

SPS Operational Guidance – Emergency Release

Scottish Prison Service

Policy Directorate

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Unlocking Potential Transforming Lives

Guidance Content

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1. Abbreviations Guide

| | |
|----------------|----------------------------------------------------------|
| SPS | Scottish Prison Service |
| SG | Scottish Government |
| ERG | Emergency Response Group |
| OD | Operations Directorate |
| PMT | Population Management Team |
| JAS | Justice Analytical Services (Scottish Government) |
| H&S | Health & Safety |
| PD | Policy Directorate |
| OCE | Office of Chief Executive |
| ER | Emergency Release |
| CE | Chief Executive (SPS) |
| DCE | Deputy Chief Executive (SPS) |
| GIC | Governor in Charge |
| NHS | National Health Service |
| PHS | Public Health Scotland |
| SCTS | Scottish Courts & Tribunal Service |
| COPFS | Crown Office Procurator Fiscal Service |
| DS | Digital Services (SPS) |
| HQ | SPS Headquarters |
| CEO | Chief Executive Office |
| SPOC | Single Point of Contact |
| OWG | Operational Working Group |

2. 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.

3. 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' means:

:

- (a) The incidence or spread of infection, contamination or the source of contamination which presents or could present significant harm to human health in Scotland (whether from risks originating there or elsewhere),
- (b) An event or situation which has resulted in any prison (or part of a prison) to which the regulations would relate being unusable,
- (c) Any other event or situation which is reasonably considered by the Scottish Ministers to place at significant risk:
 - (i) the security and good order of a prison or prisons generally; and
 - (ii) the health, safety, or welfare of prisoners, or those working, in any such prison.

4. 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 2023 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).

5. The Prisoners and Criminal Proceedings (Scotland) Act 1993: Emergency Release

5.1 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.

5.2 Statutory Exclusions

Section 3C of the 1993 Act excludes the following categories of prisoners from being considered for emergency release:

- a life (including Order of Lifelong Restriction) prisoner:
- an untried prisoner:
- a terrorist prisoner within the meaning of section 1AB:
- a prisoner due to serve a terrorism sentence within the meaning of section 1B but, by virtue of that section, is not yet serving it:
- a prisoner liable to removal from the United Kingdom for the purposes of section 9:
- a prisoner subject to a supervised release order under section 209 of the Criminal Procedure (Scotland) Act 1995:
- a prisoner serving a sentence passed under section 210A of that Act (extended sentences for sex, violent and terrorist offenders):
- a prisoner who is the subject of proceedings under the Extradition Act 2003:
- a prisoner subject to the notification requirements of Part 2 of the Sexual Offences Act 2003
- a prisoner serving 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
 - under section 1(1) of the Domestic Abuse (Scotland) Act 2018:
 - under section 7(1) or 17(1) of the Domestic Abuse (Protection) (Scotland) Act 2021: and
- 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.

5.3 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. The Governor's Veto can only be applied in the following instances:

- i) 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.
- ii) 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.

6. 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 COVID-19 Emergency Release 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.

7. 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 operational working 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. This will be the responsibility of an SPS ERG (membership as above). This national group will be responsible for the creation of the epi/pandemic plan and will act as the conduit between SG/Public Health Scotland and the GIC of each establishment, ensuring any planned emergency release of individuals in SPS custody is in accordance with the emergency legislation and guidelines specified by Public Health Scotland. At each stage of the process of emergency release, consideration must be given to the following:

- Ensuring each liberation is in accordance with the health/pandemic plan & national guidelines.
- Should a person become infected during the process of emergency release whether release should be suspended, as appropriate to the public health crisis, until such time that the individual is no longer infectious.
- Ensuring that any available SG guidance is followed on the transportation of individuals across local authorities.
- Any reasonable adjustments that may need to be made with the individual is undertaken with community partners, this must align to SG guidelines if available.
- Public Health Scotland/local NHS leads direction and latest guidelines/health care advice.

- Appropriate issue of Personal Protection Equipment in accordance with SG guidelines and advice from Public Health Scotland.

When the emergency release is on the grounds of:

- An event or situation which has resulted in any prison or part of a prison becoming unusable or,
- An 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/or (ii) the health, safety, or welfare of prisoners, or those working in prisons.

A centralised SPS identified group based at HQ (ERG) as mentioned above will provide oversight and direction whilst acting as a conduit between SG members, the media, and our establishments. A Project Team will also manage the SPS response to the emergency and track delivery and actions throughout the lifespan of the emergency.

8. Emergency Release Process

Individuals eligible for emergency release will be identified through a Business Objects report provided by Digital Services team to OD Population Managers (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 in order of establishment in preparation for distribution to each GIC as a report, identifying eligible 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 by HQ Operations Directorate Policy & Population Managers who will be appointed single point of contact (SPOC) for HQ OD with the identified SPOC in each establishment (GIC and nominated SPOC). All individuals identified by SPS HQ report should be considered eligible for early release at this stage.

Governor's Veto

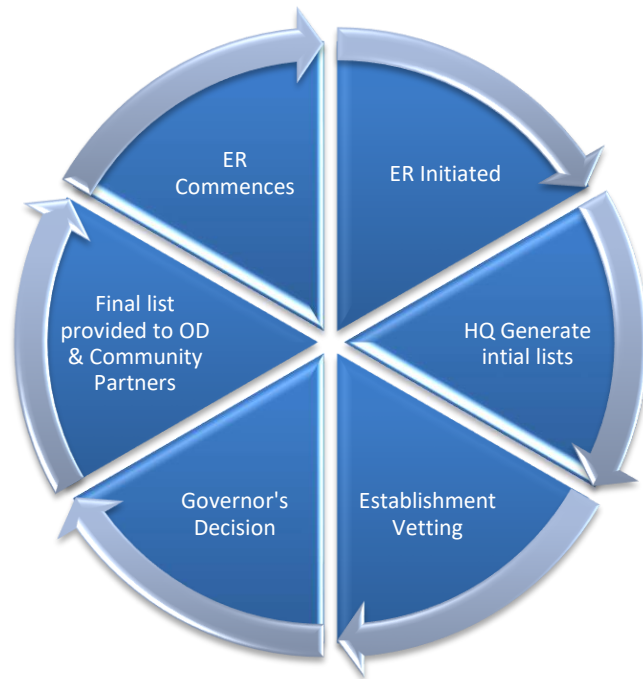
The list of eligible prisoners identified in the report will now be vetted by the GIC to ensure that there are no grounds on which to apply a Governor's Veto. The governor must determine whether they consider that the individual would pose an immediate risk of harm to an identified person or identified group if released early. 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). Initial screening by the establishment should consist of the following:

- Engagement with SPS HQ Emergency Response Group in conjunction with the Operational working Group.

- Liaison with local establishment Intelligence Management Unit (in turn SPS Public Protection Unit and Police Scotland) to ascertain if any information is held that would preclude an applicant from qualification for Emergency Release.
- Review 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 being considered, including those individuals on Talk2Me or Rule 41 via liaison with local NHS lead.
- Reviewing whether the individual is expected to be managed as a MAPPA Cat. 3 Extension; or previously managed under MAPPA.
- Undertaking a manual check of each prisoner's warrant file; and
- Engagement with Prison Based Social Work (PBSW) to ensure the individual is not subject to any of the disqualifying criteria.

Where the Governor decides to apply the veto in relation to a prisoner they will be duly notified as per Annex C pro forma and recorded on PR2 within the Community Integration Plan, Progression domain. The Annex C pro forma should then be uploaded to the Risk Assessment function and relevant SharePoint site. In cases where no ICM value is set, this must be updated to reflect Standard or Enhanced in order to activate this function on PR2 thus enabling storage of relevant documents. Once the final list of those to be released has been produced, liaison with community service providers should take place. This will be done via each establishment's link centre/community hub and in consultation with SSE Integration team. The final list must be shared with HQ OD Policy and Population Managers who will disseminate internally to all identified teams accordingly, this will include:

- Emergency Response Group – Created when the emergency situation was declared.
- Data & Analysis Team –will continue to analyse the data.
- Stakeholder Engagement – will act as the conduit for community engagement.
- Digital Services Team – will monitor the systems and processes used and their effectiveness.
- Reports on overall figures including breakdown by establishment will be provided to GICs.
- PPU – will liaise with Police Scotland; and
- Information will be provided to Scottish Government Ministers via the Office of Chief Executive (including Comms).



9. 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. However, the final decision on whether to apply the governor veto will be made by the Governor and for private contracted prisons the decision can be taken by the Director, **(the decision cannot be deputised)**. This is a form of permanent release which means that individuals released from custody will be treated as if they had been released in accordance with Part 1 of the Prisoner and Criminal Proceedings Act 1993 (“the 1993 Act”). 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 a long-term prisoner is 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:

- a) they fall within the statutory exclusions listed at section 5.2 above.
- b) they fall outwith the eligibility criteria in the regulations, or

- c) the 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 on application of the Governor veto should be recorded on the form provided at Annex C which, in turn, must be uploaded to PR2 and identified SharePoint site.

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.

9.1 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:

9.1.1 Required Sources of Information

The following are **required** sources of information that should be accessed to a) inform the eligibility of an individual after OD's 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 OD's 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.

- **Intelligence Management Unit (IMU)**

A request should be made to the local IMU Manager to check if there is any information held. This must include information that has been disseminated from other sources, which would indicate the individual would pose an immediate risk of harm to an identified person or group if released early. This should be done in consultation with Police Scotland.

- **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 taken 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**

Should a prisoner be subject to VNS this can be checked manually via PR2 and gain confirmation from SPS HQ Mailbox: SPSVictimNotificationScheme@prisons.gov.scot

- **Prison Based Social Work**

PBSW 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. This should be done in collaboration with CBSW who will be able to provide information from community partners and services. PBSW can also establish any community concerns or any considerations for voluntary throughcare support and community service provision needs. This should be done prior to release and in conjunction with relevant partners.

9.1.2 Potential Other Sources

The following are sources of information that, *if relevant*, should be *considered* to a) inform the eligibility of an individual after OD's initial 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 the potential risk the individual is to themselves when deciding whether to apply the Governor's veto.

- **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.

- **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. This can be identified by a 'blue' MAPPA Marker on the individuals PR2 record.

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.

9.2 Emergency Release

A decision on application of the Governor's veto must be taken by the Governor in Charge 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. This can not be deputised. Statutory responsibility for this sits with the Governor in Charge or the Director.

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. 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 has been made, the individual should be informed of the outcome. There are standard template letters at Annexes A-F for those considered for Emergency Release for ease of use. They are as follows:

- ***Annex A - The information sources used to do a) eligibility checks and b) the Governor decision on application of the veto that will be signed off by the Governor.***
- ***Annex B - Template letter informing the individual of their release under Emergency Release.***

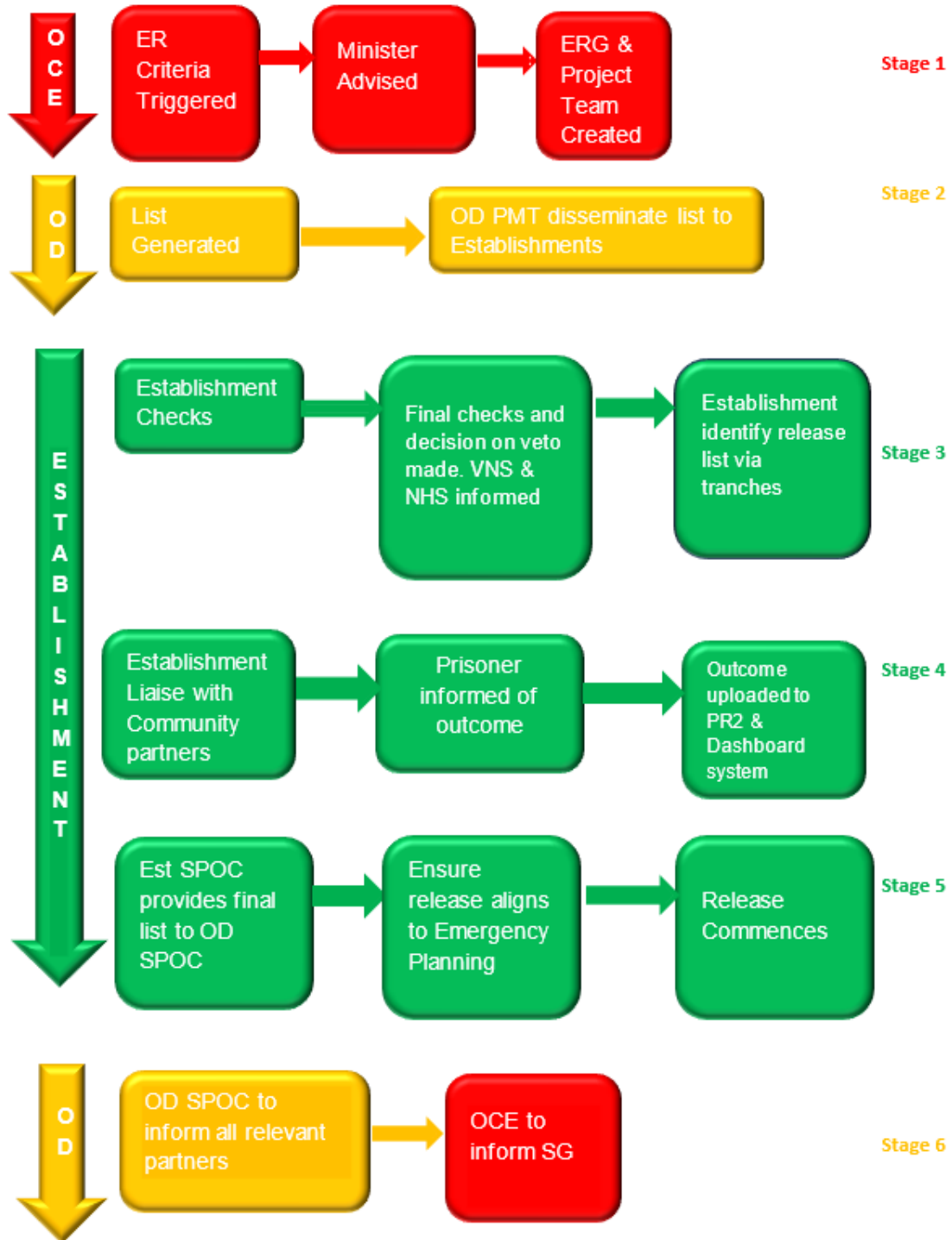
- ***Annex C - Letter informing the individual of the decision to apply the Governor's Veto in relation to them.***
- ***Annex D - Template 'delayed release' letter for individuals eligible for emergency release. Delays due to need for appropriate community provision to be put in place for the individual case prior to their release.***
- ***Annex E – Emergency Release Consideration of Needs Template.***
- ***Annex F – Return to Custody (within EDL period) interview template.***

Following all eligibility checks and a decision not to apply the Governor's veto has been taken, their 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 B) 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). Local establishments should look to plan the release of approved individuals throughout the release period. This will be done in conjunction with community partners to ensure that early releases do not overwhelm community services.

9.3 Decision to 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 C-E) should be uploaded to PR2 to the same risk assessment domain and a note recorded. In the unlikely event that a prisoner refuses to be released early under emergency release then this information should be recorded on PR2, in the risk assessment section, however release will still commence.

9.4 ER Process Map



10. 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. Prior to liberation, notification of release should be made to the following external partners:

10.1.1 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 home establishment to 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.

10.1.2 NHS Partners

Once emergency release eligibility is ascertained through all checks, and a decision not to apply the Governor's veto is made, it is vitally important for each establishment to inform their 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.

10.1.3 Community Based Partners

When eligibility is ascertained through all checks, and a decision not to apply the Governor's veto is made, PBSW and SPS SPOCs must share this information with:

- The appropriate Local Authority (Housing and Community Based Social Work).
- Department of Work and Pensions (Prison Work Coach).
- Social Security Scotland.

- Police Scotland (as above).
- Relevant Health and Addiction Services (where appropriate); and or
- Relevant Third-Sector Partners. (e.g. throughcare and mentoring services where appropriate).

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

10.2 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.'

In light of 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 F) 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 (where there is time and it is appropriate to do so), telephone calls to family and community services, signposting to relevant external services and support, 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, and 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. 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. For individuals who are due to be liberated but test positive or are considered to be in close proximity to an individual who has tested positive for the disease for which the pandemic has been declared, then a temporary period of suspension will be

applied. This ensures that the individual is still identified for emergency release. In this instance the individual will be duly informed (Annex E) that they have met the terms of emergency release, but their release must be delayed until such time that the risk is minimised, or the individual is no longer considered to be contagious.

10.3 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.

10.4 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; and
- A list of appointments arranged for the individual.

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.

10.5 Return to Custody

In order to improve policy and practice it is important that we ascertain the reasons for a return to custody following emergency release. Establishments should complete a Return to Custody form for all those returning within their EDL. This information will be gathered to develop lessons learned to better inform any improvements necessary to support future releases under similar schemes. The details of the return to custody will be gathered via interview with the individual by the holding establishment and recorded on a 'Return to custody interview form' (Annex G). These interviews should be conducted as soon as is practicable after the individual's return to custody and forwarded to the Data & Analysis Team in S&SE.

Scottish Prison Service
June 2024

11. Supporting Documents

Annex A – Emergency Release Form



| | | | |
|--------------|--|---------------|--|
| Last Name | | First Name(s) | |
| Prisoner No. | | Establishment | |

Information Checklist:

| Sources Used: | YES | NO | Additional Information |
|------------------------------------------|-----|----|------------------------|
| PR2 Check (Inc. CIP & Risk & Conditions) | | | |
| IMU Check Completed | | | |
| VNS Marker | | | |
| Talk to Me History (this sentence) | | | |
| Manual Warrant Check | | | |
| Remand Warrants Held | | | |
| Appeals in progress | | | |
| Subject To MAPPA 3 Extension Checks | | | |
| PBSW | | | |
| NHS | | | |
| IMU/PPU | | | |

Sources check completed by:

Date:

Governor's check on Eligibility and Decision on application of Veto

| | |
|------------------|-----------------------------------------|
| Decision: | <i>Please tick to indicate decision</i> |
|------------------|-----------------------------------------|

| | | |
|---------------------------------|--|--|
| Eligible for Emergency Release: | | |
| Date of Released, if eligible: | | |
| Emergency Release Refused | | |
| Governor's Veto Applied: | | |

| | | | |
|-----------|--|----------|--|
| Name | | Job Role | |
| Signature | | Date | |

GOVERNOR'S VETO

Information Considered: (which would indicate, if released the individuals would pose an immediate risk of harm to a named person or group. Please refer to Section 4 of the guidance document.)

Please provide rationale for your decision:

Annex B – Template Letter – Emergency Release



<Establishment Name>
<Address line 1>
<Address line 2>
<Address Line 3>
<Postcode>

Date:

<Prisoner Name>
<Prisoner Number>
<Prison Location>

Dear <Prisoner Name>

The Early Release of Prisoners and Prescribed Victim Supporters (Scotland) Regulations 2024– Emergency Release

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

You will be liberated under the above Regulations on <insert date of liberation>.

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

Yours sincerely

Governor/Director Name
Governor in Charge/ /Director
Establishment Name

Annex C – Template Letter – Governor’s Veto Applied



<Establishment Name>
<Address line 1>
<Address line 2>
<Address Line 3>
<Postcode>

Date:

<Prisoner Name>
<Prisoner Number>
<Prison Location>

Dear <Prisoner Name>

The Early Release of Prisoners and Prescribed Victim Supporters (Scotland) Regulations 2024 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

Governor/Director Name
Governor in Charge/ Director
Establishment Name

Annex D – Template Letter – Delayed Release



<Establishment Name>
<Address line 1>
<Address line 2>
<Address Line 3>
<Postcode>

Date:

<Prisoner Name>
<Prisoner Number>
<Prison Location>

Dear <Prisoner Name>

The Early Release of Prisoners and Prescribed Victim Supporters (Scotland) Regulations 2024 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.

For clarity, your positive status for **insert infection disease** will not affect your Earliest Date of Liberation if you remain contagious up until that date.

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

Governor/Director Name
Governor in Charge /Director
Establishment Name

Annex E – Pre-Release Consideration of Needs



| | | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------------|--|
| Last Name | | First Name(s) | |
| Prisoner No. | | Establishment | |
| Accommodation: | | | |
| Will the individual have somewhere to stay on release? | | Yes / No | |
| Action taken: | | | |
| Benefits: | | | |
| Does the individual require support in accessing the Scottish Welfare Fund and DWP benefits, or Social Security Scotland payments? | | Yes / No | |
| Action taken: | | | |
| Throughcare Services: | | | |
| Does the individual currently engage with New Routes, Shine, Action for Children, Apex, Social Work Voluntary Throughcare or another throughcare service | | Yes / No | |
| If not, do they wish to be referred to any of the above services? | | Yes / No/ NA | |
| Action taken: | | | |
| Travel Arrangements: | | | |
| Does the individual have suitable arrangement to travel to their home address? | | Yes / No | |
| Action taken: | | | |

| | | | |
|--------------------|--|------|--|
| Staff Name | | Role | |
| Staff Signature | | Date | |
| Prisoner Name | | Date | |
| Prisoner Signature | | | |

Annex F – Return to Custody (prior to EDL) Interview Template

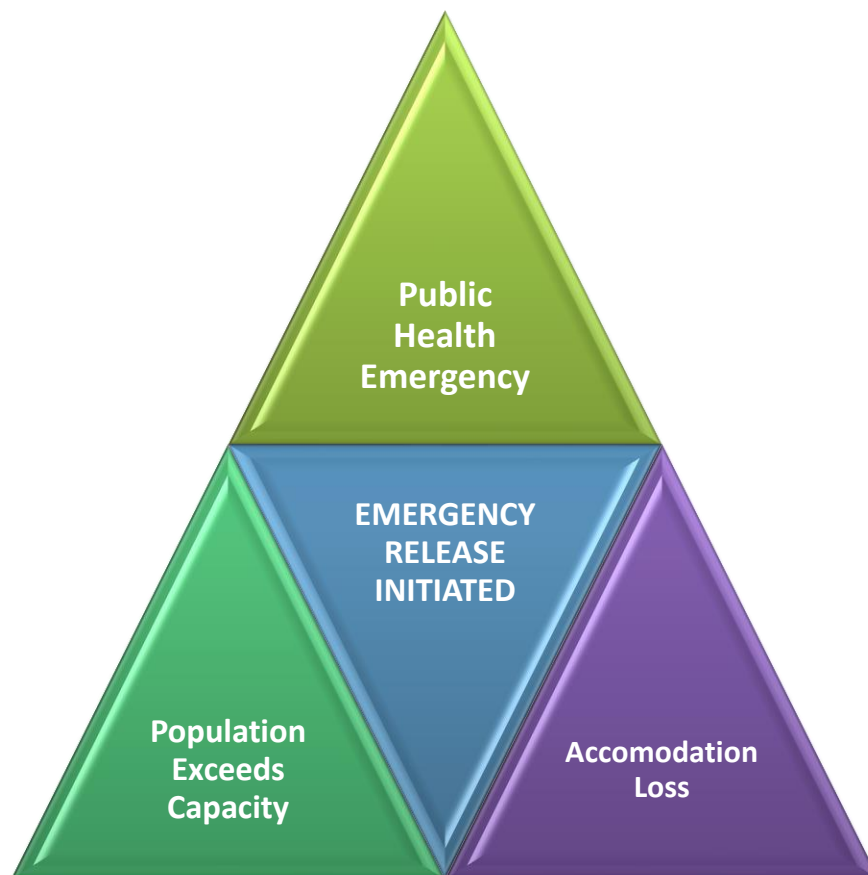
RETURN TO CUSTODY FORM

| | | | | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|----------------------------------------|-------------------|------------------------|--|
| Name: | | | | | |
| Prison Number: | | | | | |
| Date returned to custody | | Number of previous convictions | | | |
| Date released from custody | | Length of time in the community | | | |
| Did you have any form of throughcare/community support during and after your previous custodial period? If so, who provided the support? | | | | | |
| AGENCY | NAMED CONTACT | RELATED NEED | CONTACT NO | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| Your views on why you have returned to custody? Please tick all that apply | | | | | |
| Addictions | | Benefits / Debt | | Physical Health issues | |
| Mental Health | | Homelessness | | Unsuitable Housing | |
| Relationships – Breakdown / non-supportive | | Unemployment | | Peer pressure | |
| Lack of support from agencies | | Other (please describe below) | | | |
| Comments | | | | | |
| | | | | | |

Annex G – Scenario Planning

The following three scenarios have been explored to consider the practical application of the Emergency Release process and any measures/adaptations required in order to inform the management of an emergency situation, (where there is a requirement to reduce the prison population) whilst ensuring the operational functionality of our prisons is not compromised and the release of individuals in an emergency situation is not impeded by any unforeseen circumstances. The scenarios are as follows:

- i) **In the interest of public health due to public health emergency (pandemic/epidemic/significant health emergency)'**
- ii) **In the interest of health, safety, and wellbeing due to operational emergency - population exceeds capacity, operational stability H&S and or Human Rights Act significantly compromised.**
- iii) **In the interest of health, safety, and wellbeing of others due to operational emergency – significant loss of accommodation/facilities.**



Scenario i) Emergency Release in the interests of Public Health. Pandemic/Epidemic/Significant Health Emergency.

A new public health emergency has been declared. An identified virus has been deemed highly contagious and potentially fatal. In order to contain the spread of the virus Emergency Release planning has been initiated in order to reduce the population numbers thus minimising the spread of infection. The SPS must limit the total number of shared cells in order to isolate those infected thus containing the spread of the virus, whilst reducing operational pressure caused by limited regime and potential reduction in the workforce. Consideration must be given to the number of new admissions coming into the establishment who may carry the infection and the need to isolate each individual until they can return a negative test. ultimately minimizing the spread of virus. Risks to operational stability are predicted as a result of the following:

- *Reduced workforce, potential rising staff absence levels due to levels of infection in the community.*
- *Safe staff to prisoner working ratios are compromised.*
- *Restriction in the regime as a result of staffing levels and the need to minimise of spread of the infection via contact.*
- *Potential breach of human rights due to restriction in terms of access to basic facilities: shower, family contact, exercise, medication and out of cell time.*
- *Potential increase in violent altercations due to rising tensions and limitations in regime together with an increase in isolation of prisoners within the population.*
- *Increase in mental health issues due to lack of socialisation for prisoners and potential long-term impact. Short-term impact may cause increase in TTM numbers.*
- *Potential spread of the infection, serious health implications and potential fatalities; and*
- *Potential inability to deliver basic health care due to safety concerns and safe staffing levels (both NHS and SPS).*

To address the emergency the SPS will provide Ministers with advice and analysis which may lead to a decision on the utilisation of the power to release early under section 3C of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (Emergency Release).

Urgency Level: Moderate-High. Risk to operational stability and health, safety and wellbeing of prisoners and staff, loss of life.

Timescale: Imminent but prisons can contain spread of virus via testing and use of isolation whilst awaiting direction from SG and advice from PHS. Working towards delivery commencing within three weeks (maximum).

Day 1-2

Emergency Declared: SPS CE (or DCE in absence of CE) provides evidence and analysis to Scottish Ministers. This will include evidence against the Emergency Release criteria.. If a Regulation is made, initiation of the next steps can then take place. Whilst awaiting this the CEO will implement the following:

SPS Response Group - Roles and Responsibilities Devised: SPS HQ Emergency Response Group (ERG) to be created. Members will include a senior management representative from each directorate, together with NHS Partners & GICs of each establishment (or as required as directed by OD Director). This team will report to Scottish Government directly and work in collaboration with Public Health Scotland (PHS). The group will act as a conduit for information to and from GICs/establishments and are responsible for the creation of the Emergency Health/Pandemic Plan. An operational working group (subgroup) will be formed to ensure appropriate roll out and delivery across the estate.

Project/Monitoring Team: A project team will be identified who will project-manage the SPS response to the public health emergency. The project team will track progress, updates, and monitor all actions taken during the management of the public health 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, PHS and SPS ERG.

Day 3-4

Incident Response Plan: Scottish Government & Public Health Scotland will provide national guidance. Local guidance will be devised to align to national guidance but will be specific to prisons and take the form of an Emergency (or other applicable title) Plan this will be compiled by SPS ERG members. The SPS Project Team will identify key deliverables and manage oversight of delivery actions and timescales.

Population Planning: HQ Operations Directorate (OD) Population Management Teams (PMT) will identify optimum numbers required to ensure provision of appropriate accommodation across the prison estate which forms part of the evidence and analysis for Scottish Ministers. Reporting directly to ERG they will liaise with Scottish Courts (SCTS & COPFS) and JAS colleagues to help anticipate predicted admission numbers together with planned liberations in order to assess level of accommodation needs. HQ PMT will also develop further intermediate contingency planning should population numbers see a sharp rise during the lifespan of the declared emergency. It is proposed that this work will commence with immediate effect but will continue throughout the duration of the declared state of emergency. PMT will run high level business objects reports to identify those prisoners in our care that meet the initial criteria for Emergency Release, these will be supplied by SPS Digital Services team.

Day 5-7 (10 for larger establishments)

Vetting phase one: Upon completion of initial checks and vetting the PMT will then distribute a list of all prisoners meeting the initial eligibility criteria for ER to GICs at each establishment. Timescale for local vetting to determine whether to apply the Governor veto to any prisoner should be completed within **2** days. This can be extended by a further **3** days for larger establishments.

Phased liberation planning for ER prisoners: Tranche dates identified in the regulations.

Day 8 (11)-14

Final ER prisoners are identified: GICs will conduct their checks against eligibility and the decision on whether to apply a veto to the prisoners for their establishment. Communication with partnership agencies and community services for those prisoners identified on final list will now commence, this will be conducted via a team identified in each establishment. Preparations in the community for release will commence. Prisoners will be informed of status and letters issued to those who are eligible and those for whom the veto was applied.

Internal and external Communications: OD PMT will inform all relevant departments including, ERG, SPS Comms and Office of Chief Executive. Final list, totals and veto details will be provided to OD PMT who in turn will inform SG of totals numbers (both eligible and vetoed).

Day 15- to final release date

Phased Release Commences: Emergency Release for those individuals will be managed over the identified number of tranches. HQ Data Analysis team will continue to monitor the liberations and any returns to custody (for those released on ER).

Population Management & Configuration: PMT continue to monitor the prison numbers, planned and emergency release liberations against the court and admission numbers. Available spaces will continue to be mapped and population reconfiguration will be managed by OD directorate in liaison with GICs. All information gathered will be provided to ERG.

Scenario ii) In the interests of health, safety, and wellbeing due to operational emergency - population exceeds capacity, operational stability H&S and/or Human Rights Act significantly compromised.

Population numbers forecast to exceed operating capacity. Predictions from JAS (SG) together with information provided by Scottish Courts & Tribunal Service (SCTS) & Crown Office & Procurator Fiscal Service (COPFS). Using this information SPS HQ Population Management Team (PMT) working in collaboration with HQ Data Analysis Team will be used to monitor upcoming planned liberation numbers and the population geographic against operating capacity and current population configuration. Identified immediate risks to the safe operating of prisons are as follows:

Risk identified to staff and prisoners should operating capacity be exceeded:

- *Safe staff working levels would be compromised (prisoner to staff ratios).*
- *Restrictions to regime for prisoners, estate wide.*
- *Potential inability to meet basic human rights (exercise, showers, family contact and out of cell time etc) due to compromised regime and implementation of safe working practices exercise.*
- *Potential increase in violent altercation due to increased pressures and restriction in regime.*
- *Increase in mental health issues due to lack of socialisation for prisoners and potential long-term impact. Short-term impact may cause increase in TTM numbers; and*
- *Potential inability to deliver basic health care due to safety concerns and lack of appropriate available facilities.*

SPS will use data and trends available from HQ teams and JAS colleagues to prepare the evidence and analysis to Scottish Ministers where a decision may be made to use the powers of Emergency Release in order to accommodate rising population numbers. The scale (estimated number to be released) must be included in the analysis provided to Scottish Ministers.

Urgency Level: High. Risk to operational stability and health, safety and wellbeing of prisoners and staff, potential for loss of life.

Timescales: Should predictions be in place then planning can commence and reduction in population could complete to coincide with expected increase in the population. However, a sharp and unexpected rise in the population will increase the urgency level to Very High. Timescales for commencement of delivery in population reduction within three weeks (maximum).

Day 1-2

Emergency Declared: CE (Deputy CE in absence of CE) provides evidence and analysis to Scottish Ministers.

SPS Response Group - Roles and Responsibilities Devised: SPS HQ Emergency Response Group will be created. Members will include a senior management representative from each directorate & GICs of each establishment (or as required as directed by OD Director). This team will work directly with (SG) JAS colleagues SCTS/COPFS and SG and will act as be conduit for information to GICs/establishments to ensure appropriate management of the Emergency Response. An operational working group (subgroup) will be formed to ensure appropriate roll out and delivery across the estate.

Project/Monitoring Team: A project team will be identified who will project-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, PHS and SPS ERG.

Day 3-4

Emergency Release Guidance processes initiated: HQ Population Management Team will commence work on identifying the optimum population numbers across the estate, using future predictions and data provided by the Data Analysis Team. Business Objects reports will be run by Digital Services (DS) and provided to OD PMT who will commence work on initial reports and vetting. Business objects reports be supplied by PMT to the GIC each establishment who in turn will now commence work on eligibility checks and information relevant to any decision made on veto. SPS Emergency Release guidance, process and SOP must be followed during this period.

Population Planning: HQ PMT will also develop further intermediate contingency planning should population numbers see an unprecedented sharp rise during the lifespan of the declared prison estate emergency. It is proposed that this work will commence with immediate effect but will continue throughout the duration of the declared state of emergency.

Day 5-7 (8 for larger establishments)

Vetting phase one: Upon completion of initial checks and vetting the PMT will then distribute a list of all prisoners meeting the initial eligibility criteria for ER to GICs at each establishment. Timescale for local vetting to determine whether to apply the Governor veto to any prisoner

should be completed within **2** days. This can be extended by **one** further day for larger establishments.

Phased liberation planning for ER prisoners: Tranche dates identified by HQ ERG.

Day 9(10)-14

Final ER prisoners are identified: GICs conduct their checks against eligibility and the decision on whether to apply a veto to the prisoners for their establishment. Communication with partnership agencies and community services for those prisoners identified on final list will now commence, this will be conducted via a team identified in each establishment. Preparations in the community for release will commence. Prisoners will be informed of status and letters issued to those who are eligible and those for whom the veto was applied.

Internal and external Communications: OD PMT will inform all relevant departments including, ERG, SPS Comms and Office of Chief Executive. Final list, totals and veto details will be provided to OD PMT who in turn will inform SG of totals numbers (both approved and vetoed).

Day 15- onwards

Phased Release Commences: Emergency Release for those approved will be managed over the identified number of tranches. HQ Data Analysis team will continue to monitor the liberations and any returns to custody (for those released on ER).

Population Management & Configuration: PMT continue to monitor the prison numbers, planned and emergency release liberations against the court and admission numbers. Available spaces will continue to be mapped and population reconfiguration will be managed by OD in liaison with GICs. All information gathered will be provided to ERG.

Scenario iii) In the interest of health, safety, and wellbeing of others due to operational emergency – significant loss of accommodation/facilities.

An operational emergency has taken place and accommodation and/or facilities have been lost. The extent of the damage has deemed the building(s) to be unsafe for occupation or use. As such the prison population in the affected establishment can no longer safely be managed and operational stability has been significantly compromised. Redistribution of the prisoners affected has further complications due to nature of offence and protection of vulnerable prisoners. Cell sharing for these prisoners is not an option thus they must be moved to a designated residential area. Overall population numbers have reached capacity and redistribution of current population, alone, will not accommodate the number of prisoner spaces required. It is expected that other residential areas within the same establishment will also soon be deemed unsafe to house a further group of prisoners. As admission numbers continue to rise, whilst operating capacity is set to decrease, the trajectory illustrates that the prison estate is no longer able to operate safely. An emergency incident is declared, and the proposed option is to reduce the overall population numbers via the utilization of the powers of Emergency Release. The scale (number to be released) and criteria for selection must be defined within the application made to Scottish Ministers. Immediate risks identified as follows:

- *Safe staff working levels would be compromised (prisoner to staff ratios),*
- *Risk to health, safety and wellbeing of prisoners and staff as accommodation is no longer deemed appropriate and temporary accommodation is not deemed secure.*
- *Restrictions to regime for prisoners, estate-wide*
- *Potential inability to meet basic human rights (exercise, showers, family contact and out of cell time etc) due to compromised regime and implementation of safe working practices exercise.*
- *Potential increase in violent altercation due to increased pressures and restriction in regime*
- *Increase in mental health issues due to lack of socialisation for prisoners and potential long-term impact. Short-term impact may cause increase in TTM numbers.*
- *Contingency plans have been implemented but only provide a temporary solution and incur immediate risk(s)*
- *Potentially inability to deliver basic healthcare due to safety concerns and lack of appropriate facilities.*

Urgency Level: Very High, imminent risk to operational stability and health, safety and wellbeing of prisoners and staff, loss of life.

Timescale: Imminent. Contingency planning will ensure temporary accommodation can be provided; however, this will not be sustainable and may have potential, human rights, health & safety implications for the SPS to provide and undertake safe and secure operating

practices. Therefore, the implementation of Emergency Release is critical, and the process must be condensed. Proposed completion with 14 days.

Day 1-2

Emergency Declared: CE (Deputy CE in absence of CE) provides evidence and analysis to Scottish Ministers.

SPS Response Group - Roles and Responsibilities Devised: SPS HQ Emergency Response Group will be created. Members will include a senior management representative from each Directorate & GICs of each establishment (or as required as directed by OD Director). All GIC will form part of the ERG, this is due to the need to re-absorb (now) surplus population who have been directly affected by loss of accommodation. Reconfiguration of the estate will take place to cover temporary measures and accommodate revised position on longer term basis in reduction of operating capacity. This team will work directly with (SG) JAS colleagues and SG directly and will be conduit for information to GICs/establishments to ensure appropriate management of the Emergency Response. An operational working group (subgroup) will be formed to ensure appropriate roll out and delivery across the estate.

Project/Monitoring Team: A team will be identified who will project manage the SPS response to the population emergency. The project team will track progress, updates, and all actions during the process. Timescales will be monitored in terms of delivery by this team. They will provide oversight and liaise with SG and SPS Emergency Response Team.

Temporary Accommodation: Whilst evidence and analysis is being provided to Scottish Ministers and teams are being created, the affected establishment will work closely with OD senior management team, OD PMT & HQ Estates team to identify any available temporary accommodation; it is proposed that facilities will be used as temporary accommodation whilst the population can be re-configured. This will be done at pace and the risk to operational stability must be minimised.

Day 2-3

Vetting phase one: Upon completion of initial checks and vetting the PMT will then distribute a list of all prisoners meeting the initial eligibility check for ER to GICs at each establishment. Timescale for local vetting to determine whether to apply the Governor veto to any prisoner should be completed within **2** days. This can be extended by **one** further day for larger establishments.

Phased liberation planning for ER prisoners: Tranche dates identified in the regulations.

Emergency Release Guidance processes initiated: HQ Population Management Team will commence work on identifying the optimum population numbers across the estate use future predictions and data provided by the Data Analysis Team. Business Objects reports will be run by IT and provided to OD PMT who will commence work on initial reports and vetting. Business objects reports be supplied by PMT to the GIC each establishment who in turn will

now commence work on assessing the suitability of the cases identified. SPS Emergency Release guidance, process and SOP must be followed during this period. Reports distributed to GIC at each establishment, proposed timescale for initial checks proposed within **3** days.

Population Planning: HQ PMT will also develop further intermediate contingency planning should population numbers see an unprecedented sharp rise during the lifespan of the declared prison estate emergency. It is proposed that this work will commence with immediate effect but will continue throughout the duration of the declared state of emergency.

Day 6-7

Final ER prisoners are identified: GICs will conduct their checks against eligibility and the decision on whether to apply a veto to the prisoners for their establishment. Communication with partnership agencies and community services for those prisoners identified on final list will now commence, this will be conducted via a team identified in each establishment. Preparations in the community for release will commence. Prisoners will be informed of status and letters issued to those who are eligible and those for whom the veto was applied.

Internal and external Communications: OD PMT will inform all relevant departments including, ERG, SPS Comms and Office of Chief Executive. Final list, totals and veto details will be provided to OD PMT who in turn will inform SG of totals numbers (both approved and vetoed).

Day 8-22

Phased Release Commences: Emergency Release for those eligible and identified will be managed over the identified number of tranches. HQ Data Analysis team will continue to monitor the liberations and the return to custody.

Population Management & Configuration: OD PMT continue to monitor the prison numbers, planned and emergency release liberations against the court and admission numbers. Available spaces will continue to be mapped and population reconfiguration will be managed by OD directorate in liaison with GICs. All information gathered will be provided to ERG.

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)¹. 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 (SPS) 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 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

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

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.
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 form at Annex A 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.

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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.

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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.

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.

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.

Review and Monitoring

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