POLICY NOTE

THE MANAGEMENT OF OFFENDERS (SCOTLAND) ACT 2019 AND THE PRISONERS (EARLY RELEASE) (SCOTLAND) ACT 2025 (CONSEQUENTIAL MODIFICATIONS) REGULATIONS 2026

SSI 2026/XXX

The above instrument was made in exercise of the powers conferred by section 62(1) of the Management of Offenders (Scotland) Act 2019 and section 7(1) of the Prisoners (Early Release) (Scotland) Act 2025. The instrument is subject to affirmative procedure.

Summary Box

The purpose of this instrument is to facilitate the earlier removal from prison of prisoners who are liable for removal from the United Kingdom, or have the settled intention of residing permanently outside the United Kingdom once removed from prison. This intends to align with other aspects of release legislation in Scotland and help mitigate the high prison population.

This instrument changes the release point from which early removal arrangements work backwards to align with the automatic early release point for short-term prisoners as changed by the Prisoners (Early Release) (Scotland) Act 2025 (which amended section 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993). This instrument also adds to the existing order making power contained within the provisions to provide Scottish Ministers with a power to change the minimum period of sentence served before a prisoner can be removed by Order.

Policy Objectives

The purpose of this instrument is to make changes to paragraph 4 of schedule 6 of the Custodial Sentences and Weapons (Scotland) Act 2007 ('the 2007 Act'). Schedule 6 of the 2007 Act makes transitory amendments to the Prisoners and Criminal Proceedings (Scotland) Act 1993 ("the 1993 Act"). These transitory amendments mean that the 1993 Act is to be read as if paragraph 4 of schedule 6 of the 2007 Act has inserted text comprising sections 9A (persons eligible for removal from the United Kingdom), 9B (early removal of certain short-term prisoners from the United Kingdom) and 9C (re-entry into United Kingdom of prisoner removed from prison early) into the 1993 Act. In this policy note the relevant parts of paragraph 4 of schedule 6 of the 2007 Act will be referred to as section 9B and section 9C.

Section 9B provides a discretionary power for Scottish Ministers to remove prisoners who are eligible for, or liable to, removal from the UK, from prison earlier than their automatic release date for removal from the UK. This provides for the earlier release of prisoners who are liable for removal from the United Kingdom in a similar way to section 3AA of the 1993 Act. Section 3AA provides for the earlier release of prisoners on licence known as Home Detention Curfew. Early release on licence under section 3AA is not available to prisoners who are liable to removal from the United Kingdom.

Inclusion for the Early Removal Scheme is subject to the requirement that the prisoner is liable for removal from the UK (within the meaning of section 9 of the 1993 Act) or has the settled intention of residing permanently outside the United Kingdom once removed from prison.

To be considered for early removal under section 9B, a prisoner must be serving a sentence of more than three months and less than four years. The prisoner may be released at any time during the 180 day period ending with the day on which the prisoner will have served one-half of their sentence, provided that the prisoner has already served at least one-quarter of his or her sentence.

The changes through this instrument will bring the point in sentence from which the provision works backwards in line with the automatic early release point for short-term prisoners as amended earlier this year by the Prisoners (Early Release) (Scotland) Act 2025. This means that eligibility for removal will be calculated from the two-fifiths of sentence automatic release point for short-term prisoners who are entitled to be released at that point on their sentence under the 1993 Act and the half-way point for those which that remains the point of release, rather than the half-way point for all short-term prisoners.

The instrument also makes changes to section 9B to add to the order making power under subsection (5), which will allow Scottish Ministers to amend the period of time specified in subsection (2). This will then enable amendment, by order, of subsection (2) to change the minimum period of sentence served before a prisoner can be removed.

These changes will enable the time periods within section 9B to be aligned, through Scottish Ministers exercising the order making power, with other time periods for early release in the 1993 Act, specifically section 3AA. The order making power in section 3AA was amended by the Management of Offenders (Scotland) Act 2019 and the period of minimum sentence in section 3AA has been changed from one quarter to fifteen percent of sentence. The number of days within which a prisoner can be released early under section 3AA has also been changed by Order.

A separate instrument is planned to be laid should this instrument be approved. This will amend section 9B, subsection (1) to amend the number of days prior to the prisoner's automatic release point within which the prisoner can be removed from prisoner, and subsection (2) to change the minimum period of sentence served before a prisoner can be removed from prisoner for removal from the United Kingdom.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the 2024 Act), the Scottish Ministers certify that, in their view, the Management of Offenders (Scotland) Act 2019 and the Prisoners (Early Release) (Scotland) Act 2025 (Consequential Modifications) Regulations 2026 is compatible with the UNCRC requirements as defined by section 1(2) of the 2024 Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

Consultation has primarily been with the Scottish Prison Service (SPS) on this matter. SPS are supportive of the changes which improve alignment with other aspects of release legislation in Scotland, however have highlighted current pressures may impact resource available to support facilitation of early removals.

Scottish Government officials are also engaging with the Home Office to ensure appropriate resource is available with regards to their responsibility to remove individuals from the United Kingdom through the Early Removal Scheme.

Impact Assessments

An equality impact assessment and children's rights and wellbeing impact assessment has been completed on the Management of Offenders (Scotland) Act 2019 and the Prisoners (Early Release) (Scotland) Act 2025 (Consequential Modifications) Regulations 2026, which also cover the planned instrument to follow, and are attached.

Financial Effects

The Cabinet Secretary for Justice and Home Affairs confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Justice Directorate

November 2025