POLICY NOTE

THE EARLY REMOVAL OF PRISONERS FROM THE UNITED KINGDOM (AMENDMENT OF SPECIFIED TIME PERIODS) (SCOTLAND) ORDER 2026

SSI 2026/137

The above instrument was made in exercise of the powers conferred by section 9B(5) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 ("the 1993 Act"). 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 to removal from the United Kingdom, or have the settled intention of residing permanently outside the United Kingdom once removed from prison. This will align with other aspects of release legislation in Scotland and help mitigate the high prison population.

The instrument will align the release provisions with recent changes approved by Parliament, to Home Detention Curfew, so:

- that the minimum sentence required to be served before removal is possible will be 15% of sentence rather than one quarter;
- and the number of days, working backwards from point of automatic release, within which the prisoner can be removed from prison would change from 180 to 210.

These changes will provide a longer, and earlier, timeframe for removal from prison for the purpose of removal from the country. Home Detention Curfew is not available to prisoners liable to removal from the UK.

The instrument follows on from the recently approved Management of Offenders (Scotland) Act 2019 and the Prisoners (Early Release) (Scotland) Act 2025 (Consequential Modifications) Regulations 2026.

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 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 sections 9A and 9B.

Background on section 9B

Section 9B provides a discretionary power for Scottish Ministers to remove prisoners who are liable to, or eligible for removal from the UK, from prison earlier than their automatic release date for the purpose of their leaving the UK. Early removal under section 9B 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 is eligible (under section 9A) due to having the settled intention of residing permanently outside the United Kingdom once removed from prison. Section 9B only applies to short-term prisoners, which are prisoners serving a sentence of less than four years.

Section 9B(1) provides that the prisoner may be removed at any time during the 180-day period ending with the day on which the prisoner will be automatically released from their sentence[1]. Section 9B(2) provides that such a release can only occur if the prisoner has also already served at least one-quarter of his or her sentence.

Section 9B(5) provides Scottish Ministers with the power to change section 9B(1), by order, to amend the number of days, prior to the prisoner's automatic release point within which the prisoner can be removed from prison for removal from the United Kingdom. Section 9B(5) also provides Scottish Ministers with the power to change section 9B(2), by order, to amend the minimum period of sentence which a prisoner must serve, before their removal from prison for removal from the United Kingdom is permitted.[2]

Proposed changes

The purpose of this instrument is to amend section 9B(1) to change the number of days prior to the prisoner's automatic release point within which the prisoner can be removed from prison, and to amend section 9B(2) to change the minimum period of sentence to be served before a prisoner can be removed from the Scottish prison estate.

This order will align early removal time limits for prisoners who are liable to, or eligible for, removal from the United Kingdom with release time limits for those prisoners who are eligible for early release into the community on licence, known as Home Detention Curfew ("HDC").

Release on HDC is provided for in section 3AA of the 1993 Act. Early release on licence under section 3AA is not available to prisoners who are liable to removal from the United

[1] The Management of Offenders (Scotland) Act 2019 and the Prisoners (Early Release) (Scotland) Act 2025 (Consequential Modifications) Regulations 2026 ("the 2026 Regulations") amended section 9B of the 1993 Act. The 2026 Regulations came into force on 16 January 2026. Section 9B(1) now provides that the time period for removal of a prisoner, which previously ended on the day on which the prisoner would have served one half of their sentence, now ends on the day which is the prisoner's automatic release date. This change was made because the automatic release date for a prisoner to which section 9B applies is not now uniformly set at the half way point of the sentence for all prisoners as it had been previously, but instead is now set at either 40% of the sentence or one half of sentence, dependent on the offence which led to imprisonment. The changes to certain prisoner's automatic early release dates were made by the Prisoners (Early Release) (Scotland) Act 2025 (asp 1).

[2] The power to make such changes to the minimum period of sentence was added to section 9B(5) by the 2026 Regulations.

Kingdom. Section 9B provides an opportunity for the earlier release of prisoners who are liable for removal from the United Kingdom, as section 3AA does for those who are entitled to be released into the community in Scotland. The time periods for HDC were recently amended by the Home Detention Curfew (Amendment of Specified Time Periods) (Scotland) Order 2025. The amendments to section 9B in this instrument will effect the same changes to time limits for the removal of prisoners who are liable to, or eligible for, removal from the United Kingdom. That is to reduce the minimum sentence required to be served before release in section 9B(2) to 15% of sentence rather than one quarter, and increase the number of days set out in section 9B(1), those days being the period during which early removal is possible, from 180 to 210.

Additional background on early removal arrangements

It remains at the discretion of the Scottish Ministers (as the Scottish Prison Service) whether to release a prisoner before their automatic release date for the purpose of removal from the United Kingdom, even if they are eligible for release. It has been and remains the policy that except in exceptional circumstances a prisoner will be excluded from consideration for early removal where:
- The prisoner does not consent to consideration for early removal;
- The prisoner is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003;
- The prisoner is subject to an extended sentence by virtue of section 210A of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act");
- The prisoner is subject to a supervised release order made under section 209 of the 1995 Act;
- The prisoner is subject to a hospital direction imposed under section 59A of the 1995 Act, or a transfer for treatment direction made under section 136(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003;
- The prisoner is subject to a confiscation order made under section 92(6)(b) of the Proceeds of Crime Act 2002.

The Scottish Prison Service consider individuals for suitability under the early removal scheme and then refer individuals assessed as suitable to Home Office Immigration Enforcement.

Home Office Immigration Enforcement will then consider the suitability of the prisoner for early removal. Once Home Office Immigration Enforcement have reached a decision on suitability, they will inform the Governor of the prison of this decision and set out the reasons for the decision. Where a prisoner is liable for removal from the United Kingdom, and the Governor is satisfied that the prisoner is liable, the Governor may then sign an order for the prisoner's removal under section 9B(1) of the 1993 Act in the same way as the Governor signs and approves a release under HDC.

A prisoner who is granted early release for removal is not permitted to return to the United Kingdom at any time before the expiry of their sentence in full. Where a prisoner returns to the United Kingdom following early release and removal but prior to their sentence expiry date, the prisoner will be considered to be unlawfully at large and returned to custody. The prisoner is then liable to serve the period from the date of early release to the date of

automatic release under the 1993 Act. The prisoner shall be released once they have served the outstanding custodial period or at the sentence expiry date, whichever comes first. The prisoner will then be released to Home Office Immigration Enforcement.

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 Early Removal of Prisoners from the United Kingdom (Amendment of Specified Time Periods) (Scotland) Order 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.

Victim Support Scotland raised points about interaction with the Victim Notification Scheme (VNS) in a submission to the Criminal Justice Committee at the Scottish Parliament on the 2026 Regulations. The Early Removal of Prisoners from the United Kingdom (Amendment of Specified Time Periods) (Scotland) Order 2026 and the 2026 Regulations make changes to how certain provisions in the 1993 Act operate. Releases under thew 1993 Act are notifiable under the VNS; accordingly, if a prisoner is released under section 9B, a eligible victim can be advised of the date of release under the scheme. Further if the prisoner returns to the United Kingdom prior to their sentence expiry date, (and is thus returned to custody due to being unlawfully at large), an eligible victim will be advised of that return to custody and any subsequent release.

Removal of the individual from the UK following their removal from a Scottish prison is not notifiable under the VNS as this is a reserved matter. However, we have taken forward amendments to the provisions governing the VNS in the Victims, Witnesses and Justice Reform (Scotland) Act 2025 which will better allow those responsible for removal from the UK to work with the Scottish Ministers in order to help victims receive more meaningful information in these situations in the future, to the extent possible under devolved law.

Impact Assessments

An equality impact assessment and children's rights and wellbeing impact assessment has been completed on the Early Removal of Prisoners from the United Kingdom (Amendment of Specified Time Periods) (Scotland) Order 2026. This is very similar to assessment of the Management of Offenders (Scotland) Act 2019 and the Prisoners (Early Release) (Scotland) Act 2025 (Consequential Modifications) Regulations 2026. The nature of the process is not changing as a result of this Order. A positive impact of equality of opportunity has been identified in the Equalities Impact Assessment for the protected characteristic of race as this instrument will allow for provide the opportunity for prisoners who are excluded from HDC to leave prison at the same earlier point in sentence. Prisoners excluded from HDC include those who are liable to removal from the UK on immigration grounds under section 9 of the 1993 Act. Documents have also been updated to take account of some recent publications.

Financial Effects

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

Scottish Government
Justice Directorate

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