

EXPLANATORY NOTES

Prisoners (Early Release) (Scotland) Act 2025 (asp 1)

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PRISONERS (EARLY RELEASE) (SCOTLAND) ACT 2025

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Prisoners (Early Release) (Scotland) Act 2025. They do not form part of the Act and have not been endorsed by the Parliament.

2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

OVERVIEW OF ACT

3. The Act is concerned with the automatic early release of prisoners: that is, the point in their sentence at which those imprisoned in Scotland by a Scottish court ("Scottish prisoners") will be automatically released from prison without a decision as to their release being required from the Parole Board for Scotland. It makes similar provision in relation to children detained following criminal proceedings as it does in relation to prisoners. It also makes provision for those sentenced to a term of imprisonment or detention outwith the United Kingdom but transferred to Scotland to serve their sentence.

4. The Act does two things in relation to automatic early release—

- It changes the automatic early release point for some short-term Scottish prisoners so that it will apply at the point of them having served 40% of their sentence in prison instead of applying at the previous 50% point. However, those serving sentences for sexual or domestic abuse offences are excluded from this change by the Act (while those serving terrorism sentences are excluded under the existing law). A similar change is made for children detained following criminal proceedings.
- It grants the Scottish Ministers a power to make future changes to automatic early release points for both short-term and long-term Scottish prisoners by subordinate legislation (subject to the approval of the Scottish Parliament). This expands upon an existing power of this nature, as discussed further below.

CROWN APPLICATION

5. Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish statutory instrument unless the provision expressly exempts it. As such, technically this Act applies to the Crown in the same way as it applies to everyone else. However, the substantive provisions of the Act will predominantly be inserted into the Prisoners and Criminal Proceedings (Scotland) Act 1993. The 1993 Act is an Act of the UK Parliament and did not bind the Crown when enacted, so the amendments of it made by the Prisoners (Early Release) (Scotland) Act 2025 will also not bind the Crown.

INTERPRETATION

6. In these Notes, the following abbreviations are used—

- "1993 Act" means the Prisoners and Criminal Proceedings (Scotland) Act 1993,
- "1995 Act" means the Criminal Procedure (Scotland) Act 1995,
- "automatic early release" means a prisoner being released automatically upon a certain point being reached, without there being a decision-making mechanism; this contrasts with release on licence authorised by the Parole Board for Scotland, which is not something to which there is an entitlement in the same way,
- "long-term prisoner" means a person serving a sentence of imprisonment for a term of 4 years or more (see section 27(1) of the 1993 Act),
- "prisoner" is used to include persons on whom detention in a young offenders institution has been imposed (and this result is achieved in the 1993 Act as a result of section 6 of that Act),
- "release on licence" means release from prison subject to specified licence conditions, and with the risk of the person being recalled to prison if the terms of the licence[1] are breached,
- "short-term prisoner" means a person serving a sentence of imprisonment for a term of less than 4 years (see section 27(1) of the 1993 Act).

7. The Act's freestanding text (that is, any provision which is not a textual amendment of another piece of legislation) is to be interpreted in accordance with the Interpretation and Legislative Reform (Scotland) Act 2010.

8. Text that an Act inserts into other enactments is to be interpreted in accordance with the interpretation legislation that applies to that enactment. As such, text inserted by the Act into the 1993 Act or the 1995 Act is to be interpreted in accordance with the Interpretation Act 1978.

[1] For details of common licence terms, see Frequently Asked Questions - Parole Board for Scotland.

DETAIL OF PROVISIONS

Automatic early release

Section 1 – extension of automatic early release for certain short-term prisoners

Previous position

9. The automatic early release of short-term prisoners is provided for primarily in section 1(1) of the 1993 Act. However, short-term prisoners who are sentenced to 6 months' imprisonment or more for an offence listed in schedule 3 of the Sexual Offences Act 2003 (i.e. one where sex offender notification requirements apply upon conviction) are dealt with separately under section 1AA of the 1993 Act. Terrorist prisoners are also dealt with separately and are provided for in section 1AB of the 1993 Act.

10. The effect of section 1(1) of the 1993 Act prior to this Act was that, subject to the exception of the categories of prisoner noted above, the Scottish Ministers[2] were required to release a short-term prisoner after the prisoner had served one-half (i.e. 50%) of their sentence. Release was normally unconditional, although this was subject to any supervised release order which applied in a particular case[3], and any prisoners who were subject to an extended sentence were to be released on licence instead[4].

New position

11. Section 1 of the Act modifies section 1(1) of the 1993 Act so as to impose a new automatic early release point for the short-term prisoners to whom it applies. The effect is as follows—

- No changes are made to the release of short-term terrorist prisoners. Such prisoners continue to be dealt with under section 1AB of the 1993 Act.
- No changes are made to the release of short-term prisoners who are sentenced to 6 months' imprisonment or more for an offence where sex offender notification requirements apply. Such prisoners continue to be dealt with under section 1AA of the 1993 Act.
- Under new section 1(1)(a) of the 1993 Act, a short-term prisoner serving a sentence of imprisonment for a domestic abuse offence, or a sentence of less than 6 months for a listed sexual offence (which therefore falls outwith the category immediately above), will be automatically released after serving one-half (i.e. 50%) of their sentence. Although the separate categorisation of this cohort is new, the outcome is the same as applied to these prisoners previously.

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[2] While the 1993 Act refers to this as being a duty upon the Secretary of State, this is read as meaning the Scottish Ministers under section 53 of the Scotland Act 1998.

[3] A supervised release order can be imposed by the court under section 209 of the 1995 Act on a short-term prisoner who is convicted on indictment of a non-sexual offence if the court considers the order necessary "to protect the public from serious harm from the offender" on the person's release.

[4] Extended sentences can be imposed by the court under section 210A and section 210AA of the 1995 Act where a person is convicted on indictment of a sexual, violent, terrorism or abduction offence and the court considers that the period (if any) for which the offender would otherwise be on licence "would not be adequate for the purpose of protecting the public from serious harm from the offender".

- Under new section 1(1)(b) of the 1993 Act, any other short-term prisoner not mentioned above will be automatically released after serving two-fifths (i.e. 40%) of their sentence. This is a reduction from the 50% level that applied to them previously. This change will apply regardless of when their sentence was imposed.

12. In the same way as applied under the previous law, short-term prisoners who are covered by and released under new section 1(1) of the 1993 Act will normally be released unconditionally. However, this default position continues to be subject to any supervised release order which applies to a particular prisoner, and where an extended sentence applies to the prisoner then the prisoner will still be released on licence instead. In short, no changes are made by the Act to the type of release which applies upon a short-term prisoner reaching the point of automatic early release – the only change is to the point at which the prisoner is released.

13. As noted above, the short-term prisoners who are covered by new section 1(1)(a) and who therefore do not benefit from any change to their release date under the Act are those who are serving a sentence for a listed sexual offence[5] or a domestic abuse offence. The effect of this in practical terms is as follows—

- The sexual offences listed (as set out in new section 1(1ZA)(a)) are in practice those offences which result in sex offender notification requirements applying. The list therefore aligns exactly with the offences that are covered by section 1AA of the 1993 Act. In practice, this means that section 1(1)(a) only covers those sentenced to less than 6 months' imprisonment for a sexual offence. If the sentence is longer than that, the short-term prisoner's release will be dealt with under section 1AA instead. While the release point is the same under section 1(1)(a) as it is under section 1AA, section 1AA provides for release on licence rather than unconditional release.
- A domestic abuse offence is defined in new section 1(10) of the 1993 Act. It covers both a domestic abuse offence and a domestic abuse aggravation.

14. New section 1(1ZA) of the 1993 Act provides that the continuation of the existing 50% rule applies not just where the prisoner is serving a sentence of imprisonment for a listed sexual offence or a domestic abuse offence. It also covers the case where the prisoner is serving a sentence which has been "single-termed" and the single-termed sentence includes a sentence passed in respect of such an offence. The concept of "single-terming" is provided for under section 27(5) of the 1993 Act. It means that if two sentences are imposed on a person to operate either wholly or partly concurrently, they are treated as one single sentence.

15. In such cases, what will therefore matter are the offences for which the person was sentenced which together make up the single-term. Prisoners to whom section 1AA applies who are serving a single-termed sentence will still be dealt with under section 1AA. But where a prisoner is serving a single-termed sentence where one of the offences is a domestic abuse offence, or where it is a sexual offence where the length of sentence does not trigger section 1AA, the prisoner's sentence will be dealt with under new section 1 by reference to the higher threshold which applies to cases of sexual offences or domestic abuse offences.

[5] The listed sexual offences are all the Scottish offences listed in schedule 3 of the Sexual Offences Act 2003. This covers a broad range from common law rape to indecent assault or voyeurism, as well as an offence where the court specifically determines that there was a significant sexual aspect to the offender's behaviour in committing the offence.

16. The Act also alters the automatic early release point which applies under section 5 of the 1993 Act to fine defaulters or those imprisoned for contempt of court. This is reduced from 50% to 40% for such short-term prisoners, in line with the changes above.

17. It should be noted that although the Act changes the automatic early release point for prisoners, if a prisoner is in prison both because they are serving a sentence and because there is a warrant remanding them in custody awaiting trial for a separate offence, they will not be released upon reaching the automatic early release point in respect of their sentence. While the basis for holding the person in prison on account of their sentence will no longer apply, the person will continue to be held in prison on the basis of the warrant.

Examples

18. A number of examples are provided below to illustrate the effect of the provision made by section 1 of the Act. However, it should be noted that these are approximations only, as release dates are calculated by the Scottish Prison Service in days rather than weeks/months/years. Further, under section 27(7) of the 1993 Act, release dates are brought forward very slightly to avoid releasing prisoners on particular days, but the effect of that is disregarded for the purpose of these examples. Finally, the examples do not rely upon sentencing guidelines in stating a sentence, as insufficient information is provided to make an assessment about the likelihood of a particular sentence being imposed in any given case.

Short-term prisoner: listed sexual offence but with sentence of less than 6 months

19. Albert was sentenced to 4 months' imprisonment for causing a young child to see or hear an indecent communication. This is a listed sexual offence. It is dealt with as follows—

- Under the previous law, he would have been released unconditionally under section 1(1) of the 1993 Act after 50% of his sentence, which means after 2 months.
- Under the Act, there is no change. He continues to be released unconditionally after 2 months under new section 1(1)(a).

Short-term prisoner: listed sexual offence with sentence of 6 months or more

20. Brian was sentenced to 2 years' imprisonment for sexual exposure to a young child. This is a listed sexual offence. It is dealt with as follows—

- Under the previous law, he would have been released on licence under section 1AA of the 1993 Act after 50% of his sentence, which means after 1 year.
- Under the Act, there is no change. He continues to be released on licence after 1 year under section 1AA of the 1993 Act.

Short-term prisoner: domestic abuse offence

21. Connor was sentenced to 2 years' imprisonment for domestic abuse towards his partner. It is dealt with as follows—

- Under the previous law, he would have been released unconditionally under section 1(1) of the 1993 Act after 50% of his sentence, which means after 1 year.
- Under the Act, there is no change. He continues to be released unconditionally after 1 year under new section 1(1)(a).

Short-term prisoner: an offence other than a sexual offence or a domestic abuse offence

22. Diane was sentenced to 3 years' imprisonment for theft. It is dealt with as follows—

- Under the previous law, she would have been released unconditionally under section 1(1) of the 1993 Act after 50% of her sentence, which means after 1 year and 6 months.
- Under the Act, she is now to be released unconditionally under new section 1(1)(b) after 40% of her sentence, which means after 1 year and 2.4 months.

Long-term prisoner

23. Edward was sentenced to 5 years' imprisonment for a serious assault. It is dealt with as follows—

- Under the previous law, as a long-term prisoner who was sentenced on or after 1 February 2016, he would have been released on licence under section 1(2A) of the 1993 Act 6 months before his sentence ended, if not released earlier by being granted parole, which means after 4 years and 6 months.
- Under the Act, there is no change. He continues to be released on licence after 4 years and 6 months under section 1(2A) of the 1993 Act, if not released earlier by being granted parole.

Single-termed short-term prisoner with both domestic abuse and theft convictions – concurrent sentences

24. Frank was sentenced to 12 months' imprisonment for domestic abuse of his partner and 3 months' imprisonment for also stealing from his partner. The sentences are to run wholly concurrently. As such, the sentences form part of a single-term with a total sentence of 12 months, which is dealt with as follows—

- Under the previous law, he would have been released unconditionally under section 1(1) of the 1993 Act after 50% of his sentence, which means after 6 months.
- Under the Act, there is no change. Because part of his single-termed sentence relates to a domestic abuse offence, he is subject to new section 1(1)(a) and continues to be released unconditionally after 6 months.

Single-termed short-term prisoner with both domestic abuse and theft convictions – consecutive sentences

25. George was sentenced to 12 months' imprisonment for domestic abuse of his partner and 3 months' imprisonment for also stealing from his partner. The sentences are to run wholly consecutively. As such, the sentences form part of a single-term with a total sentence of 15 months, which is dealt with as follows—

- Under the previous law, he would have been released unconditionally under section 1(1) of the 1993 Act after 50% of his sentence, which means after 7.5 months.
- Under the Act, there is no change. Because part of his single-termed sentence relates to a domestic abuse offence, he is subject to new section 1(1)(a) and continues to be released unconditionally after 7.5 months.

Single-termed short-term prisoner with both common assault and theft convictions – consecutive sentences

26. Hamish was sentenced to 6 months' imprisonment for theft and a further 12 months' imprisonment for assault for his part in a pub brawl. The sentences are to run wholly consecutively. As such, the sentences form part of a single-term with a total sentence of 18 months, which is dealt with as follows—

- Under the previous law, he would have been released unconditionally under section 1(1) of the 1993 Act after 50% of his sentence, which means after 9 months.
- Under the Act, he is now to be released after 40% of his sentence. Because neither part of his single-termed sentence relates to a domestic abuse or sexual offence, he is subject to new section 1(1)(b) and is to be released unconditionally after 7.2 months.

Section 2 – extension of automatic early release for certain detained children

27. Section 2 of the Act makes similar provision in relation to children detained in secure accommodation following proceedings by a criminal court as is made in relation to prisoners by section 1.

28. Under section 208 of the 1995 Act, children (i.e. those under 18) who are convicted on indictment can be sentenced to detention if the court is of the opinion that no other method of dealing with them is appropriate. Subsection (2) of section 2 of the Act provides that where a child is so detained for less than 4 years, they are to be released automatically on licence after 40% of their sentence has elapsed, rather than after 50% of their sentence has elapsed. However, as with prisoners, this is subject to an exception for those sentenced for sexual offences or domestic abuse offences. In those cases, the release point remains at 50%.

29. Under section 44 of the 1995 Act, children who are convicted in summary proceedings can be sentenced to detention for up to a year. Subsection (4) of section 2 of the Act provides that where a child is so detained, they must be released no later than when 40% of their sentence has elapsed, rather than when 50% of their sentence has elapsed. Again, as with prisoners, this is subject to an exception for those detained in respect of sexual offences or domestic abuse offences. In those cases, it remains the case that they must be released no later than when 50% of the period for which they are detained has elapsed.

Section 3 – power to modify timing of automatic early release

Previous position

30. The 1993 Act already included (at section 27(2)(b)) a power for the Scottish Ministers to provide that references to a particular proportion of a prisoner's sentence in Part 1 of the 1993 Act are to be construed as references to a different proportion of a prisoner's sentence. This existing power would therefore already have allowed the automatic early release point for some prisoners[6] to be adjusted by secondary legislation, as well as allowing adjustments to other things which are determined by reference to a proportion of a prisoner's sentence too (such as when a prisoner's sentence is referred to the parole board).

[6] This power could previously be used in relation to short-term prisoners and to long-term prisoners sentenced before 1 February 2016.

31. However, the power in section 27(2)(b) of the 1993 Act is limited in a number of ways—

- any change it makes to the law would not be shown on the face of the 1993 Act;
- it does not allow different provision to be made for different purposes, meaning that more nuanced changes could not be made for different categories of prisoner (such as those who are imprisoned for particular offences);
- because it only allows a reference to a proportion of a sentence to be construed as referring to a different proportion—
    - it does not allow a proportion to be changed to a fixed period of time,
    - it can no longer be used in relation to those long-term prisoners for whom automatic early release is, since 2016, calculated by reference to a fixed period of time[7].

32. There is also an existing power in section 7(1A)(b) of the 1993 Act which allows the Scottish Ministers to provide that references to the proportions of sentence referred to in that section are to be construed as references to different proportions of a sentence. This power relates to those who were detained as children under section 208 of the 1995 Act (see paragraph 28 of these Notes). However, this power has many of the same limitations as the power which exists under section 27(2)(b) of the 1993 Act in respect of prisoners.

New position

33. Section 3(2) of the Act provides the Scottish Ministers with a more flexible power to make regulations which adjust when the automatic early release of prisoners or of those detained as children takes place. This is achieved by inserting a new section 27A into the 1993 Act.

34. New section 27A(1)(a) allows regulations to modify section 1 or 5 so as to provide for a different release point to apply for the purposes of the automatic early release of prisoners. The power applies to both short-term and long-term prisoners, but it would not apply to prisoners released under section 1AA of the 1993 Act (i.e. those who are released on licence after imprisonment for 6 months or more for a sexual offence). There is no restriction upon how a prisoner's automatic early release point is expressed, so the power could, for example, be used to amend existing rules which are framed by reference to periods which a prisoner has left to serve, or rules which are framed by reference to the proportion of a prisoner's sentence which has already elapsed. New rules could also be expressed in either of those ways. The power would be exercised by making a change on the face of the 1993 Act, so that it was immediately apparent to anyone consulting the relevant section of the 1993 Act what the release point is.

35. New subsections (1)(b) and (c) of new section 27A similarly allow regulations to be made modifying the release point in respect of those detained as children. This means that there is the ability to ensure that they are not put at a disadvantage compared to adults in the event of a future reduction in the amount of a sentence which needs to be served in prison (particularly if that reduction was not phrased in terms of a proportion of sentence and the existing power in section 7(1A)(b) of the 1993 Act did not therefore cover it).

[7] Under section 1(2A) of the 1993 Act, the automatic early release point is 6 months prior to the end of the person's sentence for long-term prisoners who are serving a sentence imposed on or after 1 February 2016, who are not subject to an extended sentence, and who have not previously been released on licence in respect of that sentence.

36. New section 27A(2) makes further provision about how the new powers will operate. Paragraph (a) of new section 27A(2) provides that the regulations can make provision applying to those who began serving their sentence or whose period of detention began before the regulations come into force. This means that those in prison or detention at the point of any rule change could be affected by it (in the same way as is the case with the changes made by sections 1 and 2 of the Act) rather than the new rule only applying to those who are sentenced from the date of the rule change onwards. It will also allow transitional provision akin to paragraph 4 of the schedule of the Act to be made for those who are on licence at the point when the rules change, so that provision can be made about the date on which their licence ends.

37. Paragraph (b) of new section 27A(2) enables the usual ability for regulations to include incidental, supplementary, consequential, transitional, transitory or saving provision. Section 27A(4) clarifies that provision of this nature can amend new section 27B.

38. Paragraph (c) of new section 27A(2) then provides that the regulations may make different provision for different purposes. This would allow different provision to be made for different categories of prisoner. For example, this would allow different release points to be imposed based on the offences committed by different prisoners, or whether they have an extended sentence, or what date their sentence was imposed, and so on. It will therefore continue to allow the kind of categorisation that is already provided for at inserted section 1(1) of the 1993 Act (as adjusted by section 1 of this Act) but it will allow these categories to be changed or expanded.

39. However, by dint of new section 27A(3), the ability to make different provision for different purposes does not apply to the use of the power in respect of long-term prisoners or those detained as children for four or more years. The only ability of this nature which is provided for in relation to them is the ability to make different provision based on when they were imprisoned or detained. It would therefore allow a change to be made which was not retrospective and which affected only future prisoners/detained children, but it would not allow different rules to be applied based on other distinguishing features.

40. Paragraph (d) of new section 27A(2) provides that the regulations are subject to parliamentary approval via the affirmative procedure.

41. New section 27A(5) (as read with the interpretation material in new section 27A(7)) sets out a list of those who must be consulted before Ministers can make regulations using this power. The consultees include certain specified consultees as well as, at paragraph (i), a requirement to consult such other persons as Ministers consider appropriate. The consultation required by this subsection could be undertaken as part of a public consultation or could take the form of more targeted engagement with the groups and bodies concerned.

42. New section 27A(6) requires the Scottish Ministers, when draft regulations using this power are laid before the Parliament for approval, to seek to make a statement to the Scottish Parliament. It will then be for the Parliamentary Bureau to determine the time that is allocated for such a statement. Any statement that is subsequently made must cover Ministers' reasons for proposing the regulations, information about the consultation they have carried out, and what information will be available to victims both about the proposed change and specifically about the release of prisoners under the law as adjusted by the regulations.

43. Subsection (3) of this section of the Act then adjusts the existing power at section 27(2) of the 1993 Act (discussed at paragraph 30 of these Notes) so as to exclude from it anything that will now be able to be modified under new section 27A(1) instead. This avoids the two powers overlapping and ensures that any future changes which can be made under section 27A(1) are dealt with under that provision, given the greater accessibility of any changes made that way.

44. Subsection (4) then simply updates the existing italic heading in the 1993 Act to accommodate the insertion of the new powers.

Section 4 – persons transferred to Scotland from outwith the United Kingdom

45. This section inserts a new section 27B into the 1993 Act which deals with persons who are transferred under the Repatriation of Prisoners Act 1984 from outwith the UK to serve their sentence of detention or imprisonment in Scotland. This applies where the UK is a party to international arrangements providing for the transfer of prisoners and it has been agreed that a person should be transferred to serve the remainder of their sentence elsewhere (for example, where a Scottish person has been convicted of and imprisoned for a crime while on holiday).

46. Inserted subsection (1)(a) allows the Scottish Ministers to determine that where a person is being repatriated from overseas to serve a sentence for an offence for which they were convicted as a child, they are to be treated for the purposes of section 7 of the 1993 Act as if they had been detained under section 208 of the 1995 Act. The effect of this power being exercised is that their release will then take place in accordance with section 7 of the 1993 Act. This mechanism will allow for clarity as to the law to which an individual is subject, and allows those who are detained abroad as children to be treated in the same way as those detained as children in Scotland.

47. Under inserted subsection (1)(b), where an adult or child is transferred to Scotland from abroad to serve their sentence of imprisonment/detention, the Scottish Ministers can determine that the person is to be treated for the purposes of sections 1(1) and 7(1)(a) as though they are serving a sentence for a sexual offence or domestic abuse offence committed in Scotland. Any prisoner subject to such a determination would then be automatically released after serving 50% of their sentence (instead of 40% of their sentence) – i.e. they will be automatically released at the same point that they would have been released at had the sexual/domestic abuse offence been committed in Scotland. However, under inserted subsection (2), such a determination will only be able to be made where the act, omission or behaviour for which the person was convicted abroad was something that could, if it had occurred in Scotland, have resulted in a conviction in Scotland for domestic abuse or a sexual offence.

48. Inserted subsection (3) provides the Scottish Ministers with a regulation-making power to enable further provision to be made about or in connection with this process. Inserted subsection (4) provides that such regulations would be subject to the affirmative procedure and the power has the usual ancillary powers attached to it.

49. New section 27B is relevant only to transfers into Scottish prisons from outwith the UK. Where a prisoner is transferred to a Scottish prison from within the UK, they are transferred under different legislation which allows them to be transferred on the basis that their release point is determined by reference to the law of the part of the UK in which they were sentenced.

Section 5 – consequential, transitional and transitory provision

50. This section introduces the schedule, which makes consequential and transitional provision. Commentary on the schedule is located from paragraph 61 of these Notes onwards.

Reporting

Section 6 – report on operation of Act

51. Subsection (1) of this section requires the Scottish Ministers to carry out a review of how the changes made to the 1993 Act and 1995 Act have operated. This must be carried out as soon as reasonably practicable after the period of 2 years, beginning with the day on which section 1 comes into force. The report must be published and a copy of it laid before the Scottish Parliament.

52. Subsection (2) of this section sets out some things which the report must include (though it can also include other information about how the changes are operating). In particular, the report must include information about the prison population throughout the review period as well as setting out certain information in relation to those who are released in tranches under the transitional arrangements that are provided for in paragraph 3(1) of the schedule. Release under paragraph 3(1) (i.e. in the three tranches that are provided for) will be the biggest release of prisoners under the changes made by this Act.

53. In relation to those releases, the report must set out—

- the number of individuals released in each release period (broken down by reference to the matters set out at subsection (2)(b)(i)(A) to (C)),
- for each local authority area, the number of individuals released whose last known address prior to imprisonment was within that area,
- for each health board area, the number of individuals released whose last known address prior to imprisonment was within that area.

Final provisions

Section 7 – ancillary provision

54. This section empowers the Scottish Ministers, by regulations, to make various types of ancillary provision for the purposes of, in connection with, or to give full effect to the Act.

55. Regulations under this section may modify any enactment (including the Act itself). The word "enactment" is defined in schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 and includes Acts of the Scottish or UK Parliaments as well as secondary legislation.

56. If regulations under this section textually amend an Act then they are subject to the affirmative procedure, but otherwise they are subject to the negative procedure[8].

[8] See sections 28 and 29 of the Interpretation and Legislative Reform (Scotland) Act 2010.

Section 8 – commencement

57. This section sets out when the provisions of the Act will come into force (i.e. take effect).

58. The final sections (that is, sections 7 to 9) come into force automatically on the day after the Act receives Royal Assent. The other provisions of the Act (that is, the substantive provisions) will be commenced in accordance with regulations made by the Scottish Ministers under this section. Such regulations may include transitional, transitory or saving provision related to commencement and may make different provision for different purposes. However, the Act already includes some transitional provision in relation to the initial release of prisoners following commencement – see paragraph 3 of the schedule.

59. Regulations under this section will be laid before the Scottish Parliament but will not be subject to any parliamentary procedure (see section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010).

Section 9 – short title

60. This section provides for the Act to be known as the Prisoners (Early Release) (Scotland) Act 2025.

Schedule – consequential, transitional and transitory provision

Part 1 – consequential provision

Paragraph 1: release of short-term prisoners on licence tied to timing of automatic early release

61. Section 3AA of the 1993 Act deals with the power to release prisoners on licence (known informally as "home detention curfew"). It has recently been amended by section 9 of the Bail and Release from Custody (Scotland) Act 2023 (to remove long-term prisoners from the scope of the section) but that change is not yet in force as at the point of production of these Notes.

62. Prior to the changes made by this Act, the rule in relation to short-term prisoners was that such a prisoner serving more than a 3 month sentence of imprisonment could be released on licence at any point in the period which began 180 days before they reached the halfway point of their sentence and which ended 14 days before that point was reached. In practice, this correlated with the then-current automatic early-release point for short-term prisoners, and meant in essence that they may be released up to 180 days before automatic early release would operate (provided it was not in the fortnight immediately prior to it).

63. The provision relating to short-term prisoners is altered by this paragraph of the Act so as to tie in to the particular prisoner's release date, rather than being a set proportion. This means that the provision will continue to function properly despite the fact that different release points have now been set for different short-term prisoners (i.e. 50% for some and 40% for others). It will therefore continue to be the case that a short-term prisoner will be able to be released on licence up to 180 days before automatic early release would operate (provided it is not in the fortnight immediately prior to it). Without this change, a short-term prisoner's eligibility for home detention curfew might only have kicked in a very small amount of time before, or even after, they would have been given automatic early release after serving 40% of their sentence, which might have led to a reduction in its use or availability for use.

Paragraph 2: power to modify timing of automatic early release of certain detained children

64. Paragraph 2 repeals the existing power in section 7(1A)(b) of the 1993 Act which allowed a reference to a proportion of a detained child's sentence to be construed as a different proportion. This power is redundant in light of the new power at section 3 of the Act.

Part 2 – transitional and transitory provision

Paragraph 3: initial release of individuals when automatic early release changes

65. This paragraph makes provision about how the release of individuals is to take place immediately following the commencement of the new rules in sections 1 and 2, providing a mechanism for moving from the old regime to the new regime.

66. Sub-paragraph (1) provides that existing prisoners whose release dates are changed by the Act and who are listed in the first column of the table in sub-paragraph (2) are to be released on the date provided for in that table instead of being released on the new release date which would apply to them under section 1 of the Act. This will avoid all prisoners who have served 40% or more of their sentence at the point of commencement, but less than 50%, all needing to be released on the same day upon commencement occurring.

67. Sub-paragraphs (1) and (2) together provide as follows—

- A prisoner whose new release date falls on or before the day that is 30 days before the commencement date is, as default, to be released in the period running from Tuesday to Thursday which starts with the first Tuesday after the commencement date.
- A prisoner whose new release date falls in the period starting 29 days before the commencement date and ending 1 day before the commencement date is, as default, to be released in the period running from Tuesday to Thursday which starts with the third Tuesday after the commencement date.
- A prisoner whose new release date falls in the period starting on the commencement date and ending the day before the final release period is, as default, to be released in the period running from Tuesday to Thursday which starts with the fifth Tuesday after the commencement date.

68. The effect of this can be demonstrated as follows, based on an example which assumes a hypothetical commencement date of Tuesday 18 February 2025—

- Those prisoners who reached the 40% mark on or before 19 January and who fall within new section 1(1)(b) of the 1993 Act would, as default, be released in the first tranche, which would take place from Tuesday 25 to Thursday 27 February.
- Those prisoners who reached the 40% mark in the period from 20 January to 17 February (inclusive) and who fall within new section 1(1)(b) of the 1993 Act would, as default, be released in the second tranche, which would take place from Tuesday 11 to Thursday 13 March.
- Those prisoners who reached the 40% mark in the period from 18 February to 24 March and who fall within new section 1(1)(b) of the 1993 Act would, as default, be released in the third tranche, which would take place from Tuesday 25 to Thursday 27 March.

69. The references above to prisoners being released "as default" in the release period provided for in the table is because sub-paragraph (3) also provides that if release under the provisions set out in the table would lead to the prisoner being released later than their original 50% release date, they are instead to be released on their original release date. This will be relevant to those who are already very close to the 50% point in their sentence at the time of commencement. For example, if a prisoner was at the 49% point in their sentence at the time of commencement and reached their original release date 3 days after commencement, they would be released then instead of being delayed until the first tranche of releases.

70. Those prisoners who reach the 40% mark on or after the first day of the release period for the final tranche and who fall within new section 1(1)(b) of the 1993 Act will be released under the new rules without any transitional provision applying to them. In the example above where the final tranche is released in the period from Tuesday 25 to Thursday 27 March, there may also be people being released on any of those days simply because that is their new release date.

71. These transitional rules in sub-paragraphs (1) to (3) apply to "prisoners". This is defined in sub-paragraph (5) to include young offenders detained in a young offenders institution. This covers both those who are placed in a young offenders institution in relation to an offence and those who are initially detained in secure accommodation but who are then moved to a young offenders institution upon reaching the age of 18.

72. Sub-paragraph (4) makes provision in relation to children who are being detained following criminal proceedings. It relates only to those who continue to be children at the point of commencement. If their release date is changed by the Act and their new release date would therefore have arisen prior to the commencement of the change relating to them, they are to be released on the date on which the change (i.e. section 2 of the Act) is commenced. This recognises that their new release date has already passed and therefore ensures that they are released immediately while providing for their detention up to that point to continue to have been lawful detention. Due to the significantly smaller numbers involved, there is no release in tranches in the same way as is applied to prisoners.

73. Sub-paragraph (5) sets out the definitions which apply for the purpose of these transitional provisions.

Paragraph 4: short-term prisoners on licence when automatic early release changes

74. Paragraph 4 makes transitional provision for short-term prisoners who are on licence at the point when the change to automatic early release made by section 1 of the Act takes effect. This covers both those on home detention curfew under section 3AA of the 1993 Act and those who have received compassionate release on licence under section 3 of the 1993 Act.

75. The duration of the licence granted to such short-term prisoners is provided for in section 11 of the 1993 Act and (other than in the case of short-term terrorism prisoners) is tied to the point when, had the individual not been released on licence, they would have been given automatic early release under section 1(1) of the 1993 Act. Those who are on licence at the point when section 1 of the 1993 Act is altered as a result of the change made by this Act will therefore automatically have their licence periods recalculated: where they would have benefitted from an earlier release had they remained in prison, their licences will similarly end early.

76. However, paragraph 4 makes provision to avoid this leading to any retrospective change to when the licence ends. It provides for the person's licence to end (unless revoked earlier) on the later of the date on which section 1 of the Act comes into force and the date on which the licence would otherwise have ended.

77. For example, prior to the Act coming into force, an individual might be on licence with their licence due to end in February 2025 (on what would have been their automatic early release date, upon reaching 50% of their sentence). If that person's sentence is now recalculated to find the 40% point, that might occur in December 2024. If the Act comes into force in January 2025, that person's licence will be recalculated and brought to an end in January (i.e. on the date the changes to automatic early release take effect). What this paragraph of the schedule prevents is the individual's licence suddenly being viewed after the fact as having ended in December, when they reached the 40% mark, despite having been in force throughout December prior to the Act's changes coming into force.

Paragraph 5: release of short-term prisoners on licence

78. Paragraphs 61 to 63 of these Notes discuss the consequential amendment that paragraph 1 of the schedule makes to section 3AA of the 1993 Act to allow home detention curfew to continue to operate properly despite the changes being made to the automatic early release point for short-term prisoners. However, as noted above, a recent change to section 3AA is due to take effect when section 9 of the Bail and Release from Custody (Scotland) Act 2023 is commenced and removes long-term prisoners from the scope of section 3AA.

79. Until that takes effect, long-term prisoners will continue to need to be referenced within section 3AA. This paragraph of the Act therefore makes transitional provision which sets out how the consequential amendment is to be interpreted until such time as the removal of long-term prisoners from this section takes effect. It provides for the change made by paragraph 1 to take effect immediately but allows the existing reference to long-term prisoners to continue in place unaltered as a stopgap measure.

PARLIAMENTARY HISTORY

80. The following is a list of the proceedings in the Scottish Parliament on the Bill for the Act and significant documents connected to the Bill published by the Parliament during the Bill's parliamentary passage. The Act was passed under the procedure for Emergency Bills.

Proceedings and reports	***Reference***
Introduction	
Bill	SP Bill 53 Session 6 (2024)
Explanatory Notes	SP Bill 53-EN Session 6 (2024)
Policy Memorandum	SP Bill 53-PM Session 6 (2024)
Financial Memorandum	SP Bill 53-FM Session 6 (2024)
Delegated Powers Memorandum	SP Bill 53-DPM Session 6 (2024)
Statements on Legislative Competence	SP Bill 53-LC Session 6 (2024)

Proceedings and reports	***Reference***
Emergency Bill motion	
Emergency Bill debate, 20 November 2024	Official report, cols 73 – 85
Stage 1	
Stage 1 debate, 21 November 2024	Official report, cols 67 – 115
Stage 2	
Marshalled list of amendments for Stage 2	SP Bill 53-ML Session 6 (2024)
Groupings of amendments for Stage 2	SP Bill 53-G Session 6 (2024)
Consideration of amendments at Stage 2, 26 November 2024	Official report, cols 10 – 80
Bill as amended at Stage 2	SP Bill 53A Session 6 (2024)
Stage 3	
Marshalled list of amendments for Stage 3	SP Bill 53A – ML Session 6 (2024)
Groupings of amendments for Stage 3	SP Bill 53A – G Session 6 (2024)
Consideration of amendments at Stage 3, 26 November 2024	Official report, cols 81 – 89
Stage 3 debate, 26 November 2024	Official report, cols 91 – 109
Bill as passed	SP Bill 53B – Session 6 (2024)
Royal Assent	
Royal Assent – 22 January 2025	2025 asp 1

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