Prisoners (Early Release) (Scotland) Bill

[AS PASSED]

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Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Prisoners (Early Release) (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to amend the rules as to the automatic early release of prisoners from prison and of children from detention; and for connected purposes.

Automatic early release

1 Extension of automatic early release for certain short-term prisoners

(1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 is modified as follows.

(2) In section 1 (release of short-term, long-term and life prisoners)—

(a) for subsection (1) substitute—

"(1) Where section 1AA (release of certain sexual offenders) does not apply to the prisoner, the Scottish Ministers must release a short-term prisoner—

(a) where subsection (1ZA) applies, as soon as the prisoner has served one-half of the prisoner's sentence,

(b) in any other case, as soon as the prisoner has served two-fifths of the prisoner's sentence,

and, subject to section 26A(4) (extended sentences: release on licence) and to any supervised release order which applies to the prisoner, such release is to be unconditional.

(1ZA) This subsection applies where the prisoner is serving a sentence of imprisonment which is for, or (in the case of a sentence treated as a single term under section 27(5)) which includes a sentence passed in respect of—

(a) an offence listed in paragraphs 36 to 60 of schedule 3 of the Sexual Offences Act 2003, or

(b) a domestic abuse offence.",

(b) after subsection (9), insert—

"(10) In this section, "domestic abuse offence" means—

(a) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, or

(b) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018.".

(3) In section 5 (fine defaulters and persons in contempt of court), in subsection (2)(a), for "one-half" substitute "two-fifths".

2 Extension of automatic early release for certain detained children

(1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 is modified in accordance with subsection (2).

(2) In section 7 (children detained in solemn proceedings)—

(a) in subsection (1)(a), for "half the period so specified" substitute "the period mentioned in subsection (1ZA)",

(b) after subsection (1), insert—

"(1ZA) The period referred to in subsection (1)(a) is—

(a) where subsection (1ZB) applies, one-half of the period specified in the sentence,

(b) in any other case, two-fifths of the period specified in the sentence.

(1ZB) This subsection applies where the sentence is for, or (in the case of a sentence treated as a single term under section 27(5)) includes a sentence passed in respect of—

(a) an offence listed in paragraphs 36 to 60 of schedule 3 of the Sexual Offences Act 2003, or

(b) a domestic abuse offence within the meaning of section 1(10).".

(3) The Criminal Procedure (Scotland) Act 1995 is modified in accordance with subsection (4).

(4) In section 44 (detention of children)—

(a) in subsection (6)(a)—

(i) for "half the period specified in the order" substitute "the period mentioned in subsection (6A)",

(ii) for "such period" substitute "period specified in the order",

(b) after subsection (6), insert—

"(6A) The period referred to in subsection (6)(a) is—

(a) where subsection (6B) applies, one-half of the period specified in the order,

(b) in any other case, two-fifths of the period specified in the order.

(6B) This subsection applies where the offence to which the order relates is—

(a) an offence listed in paragraphs 36 to 60 of schedule 3 of the Sexual Offences Act 2003, or

(b) a domestic abuse offence.",

(c) in subsection (11)—

(i) the word "and" after the definition of "the appropriate local authority" is repealed,

(ii) after that definition insert—

""domestic abuse offence" means—

(a) an offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, or

(b) an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018,".

3 Power to modify timing of automatic early release

(1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 is modified as follows.

(2) After section 27, insert—

"27A Power to modify timing of automatic early release

(1) The Scottish Ministers may by regulations amend—

(a) section 1 or 5 so as to provide that, instead of a prisoner being released as soon as the prisoner reaches the point in the prisoner's sentence for the time being provided for in that section, the prisoner is to be released as soon as the prisoner reaches a different point,

(b) section 7 so as to provide that, instead of a person who is detained as a child being released as soon as the person reaches the point in the person's sentence for the time being provided for in that section, the person is to be released as soon as the person reaches a different point,

(c) section 44 of the Criminal Procedure (Scotland) Act 1995 so as to provide that, instead of a person who is detained as a child being released no later than the point in the person's period of detention for the time being provided for in that section, the person is to be released no later than a different point.

(2) Regulations under subsection (1)—

(a) may make provision applying to—

(i) a prisoner whose sentence began before the day on which the regulations come into force (the "commencement day"),

(ii) a person detained as a child for a period which continues immediately before the commencement day, or

(iii) a person who is subject to a licence under this Part immediately before the commencement day,

(b) may include incidental, supplementary, consequential, transitional, transitory or saving provision,

(c) may make different provision for different purposes,

(d) are subject to the affirmative procedure.

(3) Insofar as regulations under subsection (1) relate to the release of long-term prisoners or persons detained as children for the period mentioned in section 7(1)(b)—

(a) subsection (2)(c) does not apply, but

(b) the regulations may make different provision for different prisoners or persons detained as children based on when they were imprisoned or (as the case may be) detained.

(3A) Provision made under subsection (2)(b) may amend section 27B.

(4) Before making regulations under subsection (1), the Scottish Ministers must consult—

(a) Community Justice Scotland,

(b) each local authority,

(c) each health board,

(d) the chief constable of the Police Service of Scotland,

(e) the Risk Management Authority,

(f) Social Care and Social Work Improvement Scotland,

(g) each integration joint board established by virtue of section 9 of the Public Bodies (Joint Working) (Scotland) Act 2014,

(h) persons who are providing support services to victims in relation to offences perpetrated against or in respect of those victims,

(i) such other persons as the Scottish Ministers consider appropriate.

(4A) At the same time as laying draft regulations under subsection (1) before the Scottish Parliament, the Scottish Ministers must seek to make a statement to the Parliament on—

(a) their reasons for proposing that the regulations be made,

(b) the consultation they have carried out in connection with the draft regulations, and

(c) what information will be available to victims about the change that the draft regulations would make (if approved) and the release of prisoners under the provisions amended by the regulations.

(5) For the purposes of subsection (4)—

"health board" means a board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978,

"support services" has the meaning given by section 34C(8) of the Community Justice (Scotland) Act 2016.".

(3) In section 27 (interpretation of Part 1), in subsection (2)(b), after "sentence" where it first appears insert "(other than a reference which may be amended under section 27A(1))".

(4) The italic heading immediately preceding section 27 becomes "Interpretation and powers to amend".

3A Persons transferred to Scotland from outwith the United Kingdom

(1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 is modified as follows.

(2) After section 27A (as inserted by section 3), insert—

"27B Power to make determinations in relation to persons transferred to Scotland

(1) Where a person is serving a sentence in respect of which the person has been or is to be transferred to Scotland under the Repatriation of Prisoners Act 1984, the Scottish Ministers may determine—

(a) where the person was convicted of the offence in respect of which the person is serving the sentence when the person was under the age of 18, that the person is to be treated for the purposes of section 7 as if the person had been detained under section 208 of the Criminal Procedure (Scotland) Act 1995, and

(b) where subsection (2) applies, that the person is to be treated for the purposes of section 1(1) or, as the case may be, section 7(1)(a) as if the sentence was passed in respect of an offence listed in section 1(1ZA) or, as the case may be, section 7(1ZB).

(2) This subsection applies where the act, omission or behaviour which led to the conviction for which the person is serving the sentence would have constituted an offence listed in section 1(1ZA) or, as the case may be, section 7(1ZB) if it had taken place in Scotland.

(3) The Scottish Ministers may by regulations make further provision about or in connection with the making of a determination under subsection (1)(a) or (b).

(4) Regulations under subsection (3)—

(a) may include incidental, supplementary, consequential, transitional, transitory or saving provision,

(b) may make different provision for different purposes,

(c) are subject to the affirmative procedure.".

4 Consequential, transitional and transitory provision

The schedule makes further provision in consequence of this Act.

Reporting

4A Report on operation of Act

(1) The Scottish Ministers must, as soon as reasonably practicable after the end of the review period—

(a) prepare and publish a report on the operation of the modifications of enactments made by or by virtue of this Act,

(b) lay a copy of the report before the Scottish Parliament.

(2) The report must include information on—

(a) the prison population throughout the review period,

(b) in relation to individuals released in accordance with paragraph 3(1) of the schedule—

(i) the number of individuals released in each release period, broken down by reference to—

(A) their gender,

(B) the offences (or types of offences) for which they were imprisoned or detained,

(C) the term of imprisonment or detention from which they were released,

(ii) for each local authority area, the number of individuals released whose last known address prior to their imprisonment or detention is within that area,

(iii) for each health board area, the number of individuals released whose last known address prior to their imprisonment or detention is within that area.

(3) For the purposes of this section—

"health board" means a board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978,

"health board area" means the area in relation to which a health board is constituted,

"prison population" includes persons detained in a young offenders institution,

"review period" means the period of 2 years beginning with the day on which section 1 comes into force.

Final provisions

5 Ancillary provision

(1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.

(2) Regulations under this section may—

(a) make different provision for different purposes,

(b) modify any enactment (including this Act).

(3) Regulations under this section—

(a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of this or any other Act,

(b) otherwise, are subject to the negative procedure.

6 Commencement

(1) This section, and sections 5 and 7, come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

(3) Regulations under this section may—

(a) make different provision for different purposes,

(b) include transitional, transitory or saving provision.

7 Short title

The short title of this Act is the Prisoners (Early Release) (Scotland) Act 2025.

SCHEDULE
(introduced by section 4)

CONSEQUENTIAL, TRANSITIONAL AND TRANSITORY PROVISION

PART 1

CONSEQUENTIAL PROVISION

Release of short-term prisoners on licence tied to timing of automatic early release

1 (1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 is modified as follows.

(2) In section 3AA(3) (further powers to release short-term prisoners), for "will have served one half of his sentence" substitute "is entitled to be released under this Part".

Power to modify timing of automatic early release of certain detained children

2 (1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 is modified as follows.

(2) In section 7(1A) (children detained in solemn proceedings), paragraph (b) is repealed.

PART 2

TRANSITIONAL AND TRANSITORY PROVISION

Initial release of individuals when automatic early release date changes

3 (1) Where—

(a) a prisoner's release date is changed by this Act, and

(b) the prisoner is mentioned in an entry in the first column of the table in sub-paragraph (2),

the prisoner is, instead of being released on the prisoner's new release date, to be released within the period mentioned in the corresponding entry in the second column of the table.

(2) The table is—

Prisoners to whom release period applies	*Release period*
A prisoner whose new release date falls on or before the day that is 30 days before the commencement date.	The period of 3 days beginning with the first Tuesday after the commencement date.
A prisoner whose new release date falls within the period— (a) beginning 29 days before the commencement date, and (b) ending the day before the commencement date.	The period of 3 days beginning with the third Tuesday after the commencement date.
A prisoner whose new release date falls within the period—	The period of 3 days beginning with the fifth Tuesday after the

Prisoners to whom release period applies	*Release period*
(a) beginning with the commencement date, and (b) ending the day before the final release period begins.	commencement date ("the final release period").

(3) But if a prisoner would, if released in accordance with sub-paragraph (1), be released after the prisoner's original release date, the prisoner is instead to be released on the prisoner's original release date.

(4) Where—

(a) a child's release date is changed by section 2, and

(b) the child's new release date is before the date on which section 2 comes into force,

the child is, instead of being released on the child's new release date, to be released on the date on which section 2 comes into force.

(5) In this paragraph—

"child" means a person who, on the day before the date on which section 2 comes into force, is under the age of 18,

"commencement date" means the date on which this paragraph comes into force,

"new release date", in relation to a prisoner or a detained child, means the date to which the person's release date is changed by section 1 or (as the case may be) 2,

"original release date", in relation to a prisoner or a detained child, means the date from which the person's release date is changed by section 1 or (as the case may be) 2,

"prisoner" includes—

(a) a person who, having been detained as a child under section 208 of the Criminal Procedure (Scotland) Act 1995, is now detained in a young offenders institution or prison,

(b) any other person detained in a young offenders institution,

"release date" means the date on which a person is entitled to be released in accordance with Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 or (as the case may be) section 44 of the Criminal Procedure (Scotland) Act 1995.

Short-term prisoners on licence when automatic early release date changes

4 (1) Sub-paragraph (2) applies where—

(a) at the end of the day immediately prior to section 1 coming into force, a person is on licence under section 3 or 3AA of the Prisoners and Criminal Proceedings (Scotland) Act 1993 ("the 1993 Act") in respect of a short-term sentence, and

(b) the duration of the person's licence is provided for in section 11(3)(a)(ii) or (3B) of the 1993 Act.

(2) The person's licence remains in force (unless it is revoked) until the later of—

(a) the date on which section 1 comes into force,

(b) the date mentioned in section 11(3)(a)(ii) or (as the case may be) (3B) of the 1993 Act (ignoring for these purposes the effect of paragraph 3).

(3) For the purposes of this paragraph, "short-term sentence" means the sentence of imprisonment to which a short-term prisoner (within the meaning of section 27(1) of the 1993 Act) is subject.

Release of short-term prisoners on licence

5 Until section 9(4)(a) of the Bail and Release from Custody (Scotland) Act 2023 (release on licence of long-term prisoners) is in force, section 3AA(3) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 is to be read as if, for the words "the prisoner is entitled to be released under this Part", there were substituted "—

(a) in the case of a short-term prisoner, the prisoner is entitled to be released under this Part,

(b) in the case of a long-term prisoner, the prisoner will have served one-half of the prisoner's sentence.".

Prisoners (Early Release) (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to amend the rules as to the automatic early release of prisoners from prison and of children from detention; and for connected purposes.

Introduced by: Angela Constance
On: 18 November 2024
Bill type: Government Bill

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