

CRIMINAL JUSTICE (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT THE ACT IS IN 12 PARTS.

Part 4 – Prisoners

Release of prisoners

Section 28 – Release on licence etc. under 1993 Act

129. **Section 28** amends sections 1(3) and 12 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) which apply to the early release of long-term prisoners (i.e. those sentenced to a term of 4 years or more) who were sentenced on or after 1 October 1993. It also repeals section 20(3) of that Act.
130. Section 1(3) of the 1993 Act, read with section 53 of the Scotland Act 1998, provides that after a long-term prisoner has served half of his or her sentence the Scottish Ministers may, if recommended to do so by the Parole Board, release him or her on licence. This was modified on 1 April 1995 with the effect that the Scottish Ministers are statutorily obliged to release such a prisoner who is sentenced to a term of less than 10 years, if that sentence was imposed on or after 1 October 1993 and provided that the person is not liable to deportation from the UK. In other cases, where the Board recommends early release on licence, the Scottish Ministers exercise discretion over whether or not to accept the recommendation. The amendment proposed to section 1(3) will remove the Scottish Ministers’ discretion and require them to release such a prisoner on licence if recommended to do so by the Parole Board.
131. Section 9(1) of the 1993 Act modifies the terms of section 1(3) of that Act in relation to persons liable to removal from the UK, for example those subject to an order for deportation. The modification is to the effect that the Scottish Ministers exercise discretion over whether or not to grant early release on licence in respect of such prisoners. The Board is not involved in such a decision. The Act does not affect the operation of these provisions.
132. Section 12 of the 1993 Act provides that in the case of a life prisoner or a long-term prisoner, sentenced on or after 1 October 1993 to a term of less than 10 years, no licence condition may be included on release or subsequently inserted, varied or cancelled except in accordance with the recommendation of the Parole Board. The amendment to section 12 will bring the arrangements governing the inclusion, insertion, variation or cancellation of licence conditions for all other long-term prisoners into line with those applicable to the classes of case referred to above. It will also provide, by way of exception to this, that the Scottish Ministers may include conditions in a licence on the release of a person on compassionate grounds (under section 3 of the 1993 Act), where the Parole Board was not consulted prior to release.
133. Section 20(3) of the 1993 Act – repealed by subsection (3) – provides that sections 1(3), 12(3)(a) and 17(1)(a) of that Act may be modified by order. The provision is redundant by virtue of the amendments being made by this section and section 36 of the Act.