

PRISONERS (CONTROL OF RELEASE) (SCOTLAND) ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1 – Restriction on automatic early release

3. Section 27(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) provides that a long-term prisoner is someone who is serving a sentence of four years or more.
4. Section 27(5) of the 1993 Act provides for the ‘single-termining’ of more than one sentence. This can happen where a person has been sentenced to more than one sentence either at the same time or at a different time where the person receiving the second or subsequent sentence has not been released from the first sentence. For example, a person receiving a three-year sentence for an offence and a two-year sentence for a separate offence at the same time where the court orders that the two-year sentence should run consecutive to the three-year sentence will have received what becomes a single-termined sentence of five years. A person receiving a single-termined sentence of four years or more will be classed as a long-term prisoner under the 1993 Act even though each individual sentence may be less than four years.
5. Section 1(2) of the 1993 Act provides for the release arrangements for all long-term prisoners with the exception of children. Release arrangements for children are provided for in section 7 of the 1993 Act and are not affected by the 2015 Act. A long-term prisoner is, by virtue of section 1(2), to be released as soon as the person has served two-thirds of their sentence. This applies if the prisoner has not by that point been released through other release arrangements of the 1993 Act e.g. discretionary early release through the operation of the Parole Board. This system is known as automatic early release.
6. Section 1(2) of the 2015 Act inserts new sections 1(1A), 1(1B) and 1(2A) into the 1993 Act.
7. Section 1(2)(a) of the 2015 Act inserts new section 1(1A) into the 1993 Act. This sets out which long-term prisoners will remain subject to existing section 1(2) of the 1993 Act, and which long-term prisoners will be subject instead to new section 1(2A) of the 1993 Act.
8. Paragraph (a) of new section 1(1A) of the 1993 Act provides for the existing automatic early release provisions in section 1(2) of the 1993 Act to continue to apply to those long-term prisoners who are serving sentences imposed before the day that section 1 of the 2015 Act comes into force.
9. Paragraph (b) provides for the new arrangements set out in section 1(2A) to apply to long-term prisoners (other than those subject to extended sentences) whose sentences are imposed on or after the day that section 1 of the 2015 Act comes into force. The

*These notes relate to the Prisoners (Control of Release) (Scotland)
Act 2015 (asp 8) which received Royal Assent on 4 August 2015*

date that a prisoner's sentence is imposed will therefore determine what entitlement that prisoner has to automatic early release.

10. Where the sentence is a single-termed one, the date of imposition of the sentence will be the date that the first sentence was imposed. Where the sentence is one that is imposed on appeal, new section (1B) of the 1993 Act provides for the date of imposition of the original sentence to be treated as the relevant date.
11. New section 1(2A) of the 1993 Act, as inserted by section 1(2)(b) of the 2015 Act, provides that those prisoners to whom it applies must be released on licence six months before their sentence end date (unless they have previously been released on licence in relation to that sentence).
12. The overall effect of the provisions inserted into the 1993 Act by section 1(2) of the 2015 Act, operating alongside existing provision in the 1993 Act, is that any long-term prisoner whose sentence was imposed before the day that section 1 of the 2015 Act comes into force will continue to be treated under the existing automatic early release rules within the 1993 Act. For those long-term prisoners sentenced on or after the day of commencement of section 1 of the 2015 Act, different rules will apply depending upon whether or not they have an extended sentence. For those with an extended sentence, no automatic early release will take place at any point in their sentence. For those without an extended sentence, automatic early release is restricted to the final six months of sentence for those who have not previously been released on licence in relation to that sentence.