

# CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1 - Sentencing**

#### ***Section 19 – Early removal of certain short-term prisoners from the United Kingdom***

95. This section substitutes a new version of Schedule 6 to the Custodial Sentences and Weapons (Scotland) Act 2007 (“2007 Act”). The Schedule contains transitory amendments to Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“1993 Act”), which will have effect until the 1993 Act is repealed by the 2007 Act. Paragraph 3(a) replicates the effect of the existing version of Schedule 6.
96. **Paragraph 4** inserts three new sections, 9A to 9C, into the 1993 Act. Inserted section 9A provides for a definition of prisoners who are eligible for but not liable to removal from the UK. In order to be eligible for removal, a prisoner must be able to satisfy the Scottish Ministers that he or she has the settled intention of residing permanently outside the UK if removed from prison. If satisfied, the Scottish Ministers may release the prisoner from prison using the power under inserted section 9B.
97. Inserted section 9B provides the Scottish Ministers with a discretionary power to release short-term prisoners who are liable to or eligible for removal from the UK. This power may be exercised at any time during the 180 day period before the prisoner will have served one-half of their sentence, provided that the prisoner has already served at least one-quarter of his or her sentence. This corresponds to the existing time limits for Home Detention Curfew in the 1993 Act (inserted by the Management of Offenders etc. (Scotland) Act 2005). The Scottish Ministers also have the power to amend the 180 day period, up or down, by means of an order subject to approval by the Scottish Parliament.
98. Inserted section 9B(3) sets out conditions that must be satisfied before a prisoner can be removed from prison under the powers conferred by this section. If a prisoner removed under this section remains in the UK but has not been returned to prison, subsection 9B(4) enables the Scottish Ministers to exercise their duties and powers under sections 1(1), 1AA or 3 of the 1993 Act in relation to the prisoner as if the prisoner were in prison (i.e. duty to release the prisoner after serving one half of the sentence, and the power to release on compassionate grounds).
99. Inserted section 9C provides for the detention and/or further removal of a person who re-enters the UK within a certain time after being released from prison under section 9B.
100. **Paragraph 5** makes amendments to the International Criminal Court (Scotland) Act 2001. The amendments to section 24 of the 2001 Act prevent sections 9A, 9B and 9C of the 1993 Act from being applied to international criminal court prisoners.