

# **PRISONERS (CONTROL OF RELEASE) (SCOTLAND) ACT 2015**

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## **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-terminated sentence of five years. A person receiving a single-terminated 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

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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.

***Section 2 – Release timed to benefit re-integration***

13. Section 2(2) of the 2015 Act inserts new section 26C into the 1993 Act. New section 26C provides limited discretion to the Scottish Ministers to adjust a prisoner's release date from imprisonment.
14. New section 26C(1) provides that where a prisoner is to be released by the Scottish Ministers, such as under section 1(1) or section 1(2) of the 1993 Act, the Scottish Ministers may release the prisoner on a day that is earlier than the day the prisoner would otherwise be released.
15. New section 26C(2) provides that the release of a prisoner can only be brought forward if the Scottish Ministers consider that it would be better for the prisoner's reintegration into the community for the prisoner to be released on the earlier day than the day the prisoner would have been released. The 2015 Act does not define what is meant by reintegration into the community, but examples could include the prisoner obtaining access to drug or alcohol treatment services or the prisoner obtaining access to the provision of housing services.
16. It will be an operational matter for the Scottish Prison Service, on behalf of the Scottish Ministers, to consider the use of this discretion to bring forward a release date for individual prisoners.
17. New section 26C(3) provides that the date of release of the prisoner under new section 26C(1) can be brought forward by up to two days. There is no equivalent discretion to delay release by up to two days. For example, if a prisoner was due to be released under section 1(1) of the 1993 Act on a Thursday, new section 26C(1) would permit release up to two days before i.e. release on the Tuesday or Wednesday, but it would not permit release any later than the scheduled date of release of Thursday.
18. Existing section 27(7) of the 1993 Act provides that where a prisoner's release under the 1993 Act or the Criminal Procedure (Scotland) Act 1995 Act is scheduled to fall on a Saturday, Sunday or a public holiday, the prisoner shall be released on the last working day preceding the weekend or public holiday. For example, if a prisoner was due to be released under section 1(2) of the 1993 Act on a Saturday, section 27(7) of the 1993 Act provides that the release of the prisoner shall take place on the Friday.

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19. New section 26C(4) provides that references in new section 26C referring to a day when a prisoner would be released should be read as the day they fall to be released by virtue of section 27(7) of the 1993 Act. For example, new section 26C would operate so that a prisoner initially due for release on Saturday, who would become due for release on the Friday as a result of existing section 27(7) of the 1993 Act, will be able to be released up to two days before the Friday i.e. release on the Wednesday or Thursday.
20. New section 26C(5) provides that discretion to adjust a prisoner's release date does not apply where the prisoner is serving a sentence of imprisonment of less than 15 days. This would also not apply to any young offender serving a period of detention of less than 15 days. Due to the operation of section 5(1) of the 1993 Act, the discretion will also not be available to adjust release dates for those receiving a period in custody of less than 15 days for non-payment of a fine or for contempt of court. Similarly, the discretion will not be available to adjust the release date for any young offender receiving a period of less than 15 days detention in a young offender's institution for non-payment of a fine or for contempt of court.

***Section 3 – Commencement***

21. Section 3(1) of the 2015 Act provides that the provisions in this section and section 4 of the Act will come into force on the day after Royal Assent. Section 3(2) provides for the rest of the Act to come into force on a day appointed by order. Section 3(4) provides that a commencement order may amend section 1(1A) of the 1993 Act so that the actual date of commencement of section 1 of the 2015 Act is specified in new section 1(1A) of the 1993 Act rather than referring there to the day when section 1 of the 2015 Act comes into force. Section 8 of the Interpretation and Legislative Reform (Scotland) Act 2010 allows for different days to be appointed for different purposes.