

Criminal Justice Committee  
Wednesday 26 November 2025  
32nd Meeting, 2025 (Session 6)

## **Note by the Management of Offenders (Scotland) Act 2019 and the Prisoners (Early Release) (Scotland) Act 2025 (Consequential Modifications) Regulations 2026 [draft]**

### **Overview**

1. At this meeting, the Committee will take evidence from the Cabinet Secretary for Justice and Home Affairs and officials on the Management of Offenders (Scotland) Act 2019 and the Prisoners (Early Release) (Scotland) Act 2025 (Consequential Modifications) Regulations 2026 [draft] before debating a motion in the name of the Cabinet Secretary inviting the Committee to recommend approval of the instrument.
2. This is a draft Scottish Statutory Instrument (SSI), which requires approval by resolution of the Parliament before it can become law. More information about the instrument is summarised below:

**Title of instrument:** [The Management of Offenders \(Scotland\) Act 2019 and the Prisoners \(Early Release\) \(Scotland\) Act 2025 \(Consequential Modifications\) Regulations 2026](#)

**Laid under:** section 62(1) of the [Management of Offenders \(Scotland\) Act 2019](#) and section 7(1) of the [Prisoners \(Early Release\) \(Scotland\) Act 2025](#).

**Laid on:** 7 November 2025

**Procedure:** Affirmative

**Lead committee to report by:** 16 December 2025

**Commencement:** 16 January 2026

### **Procedure**

3. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament.
4. Once laid, the instrument is referred to:
  - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and

- a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
5. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.
  6. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee:
    - an evidence session with the Minister and officials, followed by
    - a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.
  7. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote. If the motion is agreed to, it is for the Chamber to decide, at a later date, whether to approve the instrument

## Delegated Powers and Law Reform Committee consideration

8. The DPLR Committee will consider the instrument at its meeting on Tuesday 25 November 2025. The clerks will provide a copy of its report or provide an oral update at the meeting.

## Purpose of the instrument

9. The purpose of the instrument is to facilitate the earlier removal from prison of prisoners who are liable for removal from the United Kingdom, or have the settled intention of residing permanently outside the United Kingdom once removed from prison.
10. The instrument changes the release point from which early removal arrangements work backwards to align with the automatic early release point for short-term prisoners as changed by the [Prisoners \(Early Release\) \(Scotland\) Act 2025](#) (which amended section 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993).
11. It also adds to the existing order making power contained within the provisions to provide Scottish Ministers with a power to change the minimum period of sentence served before a prisoner can be removed by Order.
12. The Policy Note accompanying the instrument is included in **Annexe A**. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.
13. A note from the Scottish Government on the background to the Early Removal Scheme for foreign national offenders in Scotland can be found in **Annexe B**.

## Report

14. Following today's proceedings, a draft report will be prepared by the clerks.

**15. The Committee is invited to delegate to the Convener and clerks responsibility for drafting a report and finalising it for publication.**

Clerks to the Committee  
November 2025

## **Annexe: Scottish Government Policy Note**

### **The Management of Offenders (Scotland) Act 2019 and the Prisoners (Early Release) (Scotland) Act 2025 (Consequential Modifications) Regulations 2026**

#### **SSI 2026/XXX**

The above instrument was made in exercise of the powers conferred by section 62(1) of the Management of Offenders (Scotland) Act 2019 and section 7(1) of the Prisoners (Early Release) (Scotland) Act 2025. The instrument is subject to affirmative procedure.

#### **Summary Box**

The purpose of this instrument is to facilitate the earlier removal from prison of prisoners who are liable for removal from the United Kingdom, or have the settled intention of residing permanently outside the United Kingdom once removed from prison. This intends to align with other aspects of release legislation in Scotland and help mitigate the high prison population.

This instrument changes the release point from which early removal arrangements work backwards to align with the automatic early release point for short-term prisoners as changed by the Prisoners (Early Release) (Scotland) Act 2025 (which amended section 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993). This instrument also adds to the existing order making power contained within the provisions to provide Scottish Ministers with a power to change the minimum period of sentence served before a prisoner can be removed by Order.

#### **Policy Objectives**

The purpose of this instrument is to make changes to paragraph 4 of schedule 6 of the Custodial Sentences and Weapons (Scotland) Act 2007 ('the 2007 Act'). Schedule 6 of the 2007 Act makes transitory amendments to the Prisoners and Criminal Proceedings (Scotland) Act 1993 ('the 1993 Act'). These transitory amendments mean that the 1993 Act is to be read as if paragraph 4 of schedule 6 of the 2007 Act has inserted text comprising sections 9A (persons eligible for removal from the United Kingdom), 9B (early removal of certain shortterm prisoners from the United Kingdom) and 9C (re-entry into United Kingdom of prisoner removed from prison early) into the 1993 Act. In this policy note the relevant parts of paragraph 4 of schedule 6 of the 2007 Act will be referred to as section 9B and section 9C.

Section 9B provides a discretionary power for Scottish Ministers to remove prisoners who are eligible for, or liable to, removal from the UK, from prison earlier than their automatic release date for removal from the UK. This provides for the earlier release of prisoners who are liable for removal from the United Kingdom in a similar way to section 3AA of the 1993 Act. Section 3AA provides for the earlier release of prisoners on licence known as Home Detention Curfew. Early release on licence

under section 3AA is not available to prisoners who are liable to removal from the United Kingdom.

Inclusion for the Early Removal Scheme is subject to the requirement that the prisoner is liable for removal from the UK (within the meaning of section 9 of the 1993 Act) or has the settled intention of residing permanently outside the United Kingdom once removed from prison.

To be considered for early removal under section 9B, a prisoner must be serving a sentence of more than three months and less than four years. The prisoner may be released at any time during the 180 day period ending with the day on which 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.

The changes through this instrument will bring the point in sentence from which the provision works backwards in line with the automatic early release point for short-term prisoners as amended earlier this year by the Prisoners (Early Release) (Scotland) Act 2025. This means that eligibility for removal will be calculated from the two-fifths of sentence automatic release point for short-term prisoners who are entitled to be released at that point on their sentence under the 1993 Act and the half-way point for those which that remains the point of release, rather than the half-way point for all short-term prisoners.

The instrument also makes changes to section 9B to add to the order making power under subsection (5), which will allow Scottish Ministers to amend the period of time specified in subsection (2). This will then enable amendment, by order, of subsection (2) to change the minimum period of sentence served before a prisoner can be removed.

These changes will enable the time periods within section 9B to be aligned, through Scottish Ministers exercising the order making power, with other time periods for early release in the 1993 Act, specifically section 3AA. The order making power in section 3AA was amended by the Management of Offenders (Scotland) Act 2019 and the period of minimum sentence in section 3AA has been changed from one quarter to fifteen percent of sentence. The number of days within which a prisoner can be released early under section 3AA has also been changed by Order.

A separate instrument is planned to be laid should this instrument be approved. This will amend section 9B, subsection (1) to amend the number of days prior to the prisoner's automatic release point within which the prisoner can be removed from prisoner, and subsection (2) to change the minimum period of sentence served before a prisoner can be removed from prisoner for removal from the United Kingdom.

## **UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility**

I In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the 2024 Act), the Scottish Ministers

certify that, in their view, the Management of Offenders (Scotland) Act 2019 and the Prisoners (Early Release) (Scotland) Act 2025 (Consequential Modifications) Regulations 2026 is compatible with the UNCRC requirements as defined by section 1(2) of the 2024 Act.

## **EU Alignment Consideration**

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

## **Consultation**

Consultation has primarily been with the Scottish Prison Service (SPS) on this matter. SPS are supportive of the changes which improve alignment with other aspects of release legislation in Scotland, however have highlighted current pressures may impact resource available to support facilitation of early removals.

Scottish Government officials are also engaging with the Home Office to ensure appropriate resource is available with regards to their responsibility to remove individuals from the United Kingdom through the Early Removal Scheme.

## **Impact Assessments**

An [equality impact assessment](#) and [children's rights and wellbeing impact assessment](#) has been completed on the Management of Offenders (Scotland) Act 2019 and the Prisoners (Early Release) (Scotland) Act 2025 (Consequential Modifications) Regulations 2026, which also cover the planned instrument to follow, and are attached.

## **Financial Effects**

The Cabinet Secretary for Justice and Home Affairs confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government

Justice Directorate  
October 2025

## **Annexe B: background note from the Scottish Government**

### **Foreign national offenders: early removal scheme in Scotland**

Legislation in relation to immigration and deportation is reserved. Legislation on the early removal of Foreign National Offenders (FNOs) from Scottish prisons is devolved.

Since 2011, an Early Removal Scheme has operated in Scotland. This was introduced by amendment to the Prisoners and Criminal Proceedings (Scotland) Act 1993 ("the 1993 Act"). The provisions are provided below.<sup>1</sup>

Section 9B of the 1993 Act provides Scottish Ministers with a discretionary power to release certain short-term prisoners up to 180 days early.

This is subject to the requirement that they are liable for removal from the UK or have the settled intention of residing permanently outside the United Kingdom once removed from prison.

To be considered for early release a prisoner must be serving a sentence of more than three months and less than four years. The prisoner may be released at any time during the 180 day period ending with the day on which 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.

Except in exceptional circumstances a prisoner will be excluded from consideration for early release where:

- The prisoner does not consent to consideration for early release;
- The prisoner is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003;
- The prisoner is subject to an extended sentence by virtue of section 210A of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act");
- The prisoner is subject to a supervised release order made under section 209 of the 1995 Act;
- The prisoner is subject to a hospital direction imposed under section 59A of the 1995 Act, or a transfer for treatment direction made under section 136(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003;

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<sup>1</sup> Section 19 of the Criminal Justice and Licensing (Scotland) Act 2010 substituted a new Schedule 6 to the Custodial Sentences and Weapons (Scotland) Act 2007. Sections 9A-C of the Prisoners and Criminal Proceedings (Scotland) Act 1993 were inserted as transitional provisions by the substituted Schedule 6, and section 66(3), of the Custodial Sentences and Weapons (Scotland) Act 2007. These provisions were commenced on 28 March 2011 and provide the statutory underpinning for the Early Removal Scheme in Scotland.

- The prisoner is subject to a confiscation order made under section 92(6)(b) of the Proceeds of Crime Act 2002.

Scottish Prison Service consider individuals for suitability under the scheme and then refer individuals assessed as suitable for early release (and removal) to Home Office Immigration Enforcement.

Home Office Immigration Enforcement will then consider the suitability of the prisoner for early release. Once the HO Immigration Enforcement have reached a decision on suitability, they will inform the Governor of the prison of this decision and set out the reasons for the decision. Where a prisoner is liable and the Governor is satisfied that the prisoner is liable for removal from the United Kingdom, the Governor may then sign an order for the prisoner's removal under section 9B(1) of the 1993 Act.

As immigration is reserved the decision to deport is the responsibility of the Secretary of State for the Home Office.

Officials are engaging with MoJ and Home Office colleagues to better understand prospective plans in relation to FNOs in England and Wales following the UK Government announcement in October 2024. This engagement is to explore options for making the early removal scheme for FNOs more effective in Scotland.

### **Legislative provisions**

#### **9A Persons eligible for removal from the United Kingdom**

(1) For the purposes of this Part, to be "eligible for removal from the United Kingdom" a person must show, to the satisfaction of the Scottish Ministers, that the condition in subsection (2) is met.

(2) The condition is that the person has the settled intention of residing permanently outside the United Kingdom if removed from prison under section 9B.

(3) The person must not be one who is liable to removal from the United Kingdom.

#### **9B Early removal of certain short-term prisoners from the United Kingdom**

(1) Subject to subsection (2), where a short-term prisoner is liable to, or eligible for, removal from the United Kingdom, the Scottish Ministers may remove the prisoner from prison under this section at any time during the period of 180 days ending with the day on which the prisoner will have served one-half of the prisoner's sentence.

(2) Subsection (1) does not apply in relation to a prisoner unless the prisoner has served one-quarter of the sentence.

(3) A prisoner removed from prison under this section—

(a) if liable to removal from the United Kingdom, is so removed only for the purpose of enabling the Secretary of State to remove the prisoner from the United Kingdom under powers conferred by—



- (i) Schedule 2 or 3 to the Immigration Act 1971 (c.77), or
- (ii) section 10 of the Immigration and Asylum Act 1999 (c.33),

(b) if eligible for removal from the United Kingdom, is so removed only for the purpose of enabling the prisoner to leave the United Kingdom in order to reside permanently outside the United Kingdom, and

(c) in either case, so long as remaining in the United Kingdom, remains liable to be detained in pursuance of the prisoner's sentence until the prisoner has served one-half of the sentence.

(4) So long as a prisoner removed from prison under this section remains in the United Kingdom but has not been returned to prison, any duty or power of the Scottish Ministers under section 1(1), 1AA or 3 is exercisable in relation to the prisoner as if the prisoner were in prison.

(5) The Scottish Ministers may by order amend the number of days for the time being specified in subsection (1).

(6) A statutory instrument containing an order under subsection (5) may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

### **9C Re-entry into United Kingdom of prisoner removed from prison early**

(1) This section applies in relation to a person (referred to in this section as "*the removed person*") who, after being removed from prison under section 9B, has been removed from the United Kingdom before serving one-half of the sentence.

(2) Where the removed person re-enters the United Kingdom at any time before the date on which the person would have served the person's sentence in full (but for the person's removal from prison under section 9B), the person is liable to be detained in pursuance of the person's sentence until the earlier of the following—

(a) the date of the expiry of the outstanding custodial period,

(b) the date on which the person would have served the person's sentence in full (but for the person's removal from prison under section 9B).

(3) In the case of a person liable to be detained under subsection (2), the duty to release the person under section 1(1) or 1AA(1) applies only after the expiry of the outstanding custodial period.

(4) A person who is liable to be detained by virtue of subsection (2) is, if at large, to be taken for the purposes of section 40 of the Prisons (Scotland) Act 1989 (persons unlawfully at large) to be unlawfully at large.

(5) Subsection (2) does not prevent—

(a) the further removal from prison under section 9B(1) of a person falling within that subsection, or

(b) the further removal from the United Kingdom of such a person.

(6) In this section, the “*outstanding custodial period*” means, in relation to a removed person, a period of time equal to the period beginning with the date of removal from the United Kingdom and ending with the date on which the person would, but for the removal, have served one-half of the sentence.”.