

CRIMINAL JUSTICE (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT THE ACT IS IN 12 PARTS.

Part 4 – Prisoners

Release of prisoners

Section 33 – Prisoners repatriated to Scotland

147. **Section 33** amends the Repatriation of Prisoners Act 1984 (“the 1984 Act”) to ensure that, for the purposes of early release, the sentence of a prisoner who is repatriated to Scotland is deemed to begin when the repatriation takes place. This means that all prisoners who are repatriated to Scotland will require to serve some period in custody prior to release.
148. As the Schedule to the 1984 Act stands, all long-term prisoners (i.e. those serving a sentence of imprisonment for 4 years or more, as defined in section 27(5) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”)) require to serve two thirds of the balance of their sentence that is outstanding, following their transfer to Scotland, before they will automatically be released on licence. Their earlier release will only be possible if recommended by the Parole Board. However, the existing Schedule to the 1984 Act does not apply to short-term prisoners (defined in section 27(5) of the 1993 Act as those serving a sentence of imprisonment for less than 4 years). As a result, short-term prisoners who have served more than half of their sentence prior to their repatriation require to be released as soon as they arrive in Scotland. This has the potential to hinder the repatriation of short-term prisoners.
149. **Section 33(1)** therefore contains a new version of paragraph 2 of the Schedule to the 1984 Act . This new version will ensure that, for the purposes of early release, the sentences of all repatriated prisoners will be deemed to begin on the date of their transfer to Scotland. Account will still be taken of the time that the prisoner has served in the foreign jurisdiction. However, a short-term prisoner will require to serve one half of the outstanding balance of a sentence following his or her repatriation to Scotland. The amended Schedule does not change the existing law regarding the release of repatriated long-term prisoners.
150. **Section 33(1)** also amends section 3(9) of the 1984 Act and repeals paragraph 3 of the Schedule, removing provisions which are out of date in view of changes to the regime for repatriated life prisoners brought about by the Convention Rights (Compliance) (Scotland) Act 2001.
151. **Section 33(2)** provides that the new version of paragraph 2 of the Schedule applies only to those who received at least one of their sentences on or after 1 October 1993 (the date when the relevant provisions in the 1993 Act came into force). The early release of repatriated prisoners sentenced before that date does not present difficulties and therefore the original Schedule to the 1984 Act, as amended by paragraph 5 of Schedule 2 to the Crime (Sentences) Act 1997 (“the 1997 Act”), shall continue to apply to such prisoners.

*These notes relate to the Criminal Justice (Scotland) Act
2003 (asp 7) which received Royal Assent on 26 March 2003*

152. [Section 33\(4\)](#) amends paragraph 7 of Schedule 2 to the 1997 Act to make it clear that the Schedule to the 1984 Act, as amended by this paragraph, will apply to prisoners sentenced on or after 1 October 1993 but repatriated before the commencement of the new section. The new version of paragraph 2 of the Schedule to the 1984 Act, contained in section 33, will therefore apply only to prisoners who received at least one of their sentences on or after 1 October 1993 and who were repatriated after the commencement of section 33.