



# Criminal Justice (Scotland) Act 2016

## 2016 asp 1

### PART 4

#### SENTENCING

PROSPECTIVE

#### *Prisoners on early release*

#### 85 Sentencing under the 1995 Act

After section 200 of the 1995 Act there is inserted—

#### **“200A Sentencing prisoners on early release**

- (1) Before sentencing or otherwise dealing with a person who has been found by the court to have committed an offence punishable with imprisonment (other than an offence in respect of which life imprisonment is mandatory), the court must so far as is reasonably practicable ascertain whether the person was on early release at the time the offence was committed.
- (2) Where the court ascertains that the person was on early release at the time the offence was committed, the court must consider making an order, or as the case may be a reference, under section 16(2) of the Prisoners and Criminal Proceedings (Scotland) Act 1993.
- (3) For the purposes of this section a person is on early release if, by virtue of one of the following enactments, the person is not in custody—
  - (a) Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993,
  - (b) Part II of the Criminal Justice Act 1991, or
  - (c) Part 12 of the Criminal Justice Act 2003.”.

---

*Status: This version of this cross heading contains provisions that are prospective.*

*Changes to legislation: Criminal Justice (Scotland) Act 2016, Cross Heading: Prisoners on early release is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

---

## **86 Sentencing under the 1993 Act**

- (1) Section 16 (commission of offence by released prisoner) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 is amended as follows.
- (2) In subsection (1), for the words “or Part II of the Criminal Justice Act 1991” there is substituted “, Part II of the Criminal Justice Act 1991 or Part 12 of the Criminal Justice Act 2003”.
- (3) In subsection (2)—
  - (a) in paragraph (a), for the words from “other” to “below” there is substituted “to which subsection (2A) does not apply”,
  - (b) in paragraph (b), for the words from “where” to “subsection (1)(a)” there is substituted “to which subsection (2A) applies”.
- (4) After subsection (2) there is inserted—

“(2A) This subsection applies to a case if—

  - (a) the court mentioned in subsection (1)(b) is inferior to the court which imposed the original sentence, and
  - (b) the whole of the period described in subsection (2)(a) exceeds—
    - (i) if the court mentioned in subsection (1)(b) is a justice of the peace court (however constituted), 60 days,
    - (ii) if the court is the sheriff court sitting in summary proceedings, 12 months,
    - (iii) if the court is the sheriff court sitting in solemn proceedings, 5 years.”.

**Status:**

This version of this cross heading contains provisions that are prospective.

**Changes to legislation:**

Criminal Justice (Scotland) Act 2016, Cross Heading: Prisoners on early release is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act expiry of affecting provision 2022 asp 8, sch. para. 15 by [S.S.I. 2023/360 reg. 2\(a\)](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 38(7)(a) words renumbered as s. 38(7)(a) by [2024 asp 5 s. 15\(6\)\(a\)](#)
- s. 38(7)(b) and word inserted by [2024 asp 5 s. 15\(6\)\(b\)](#)
- s. 41(1A) inserted by [2024 asp 5 s. 15\(7\)\(b\)](#)