

MANAGEMENT OF OFFENDERS (SCOTLAND) ACT 2019

EXPLANATORY NOTES

THE STRUCTURE AND A SUMMARY OF THE ACT

Part 4 – Prisoners: Control of Release, Being Unlawfully at Large Etc.

Section 48 – Release on licence under section 3AA of the 1993 Act

175. Section 48(2) amends the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”), removing the “four week” minimum period in custody before someone can be considered for release on licence and leaving in place only the “one quarter of the prison sentence” minimum period. This changes the minimum period that a person must be in custody before becoming eligible for home detention curfew (“HDC”) to one quarter of their sentence.
176. Section 48(3) also gives Ministers the ability to amend the minimum period that a person must be in custody before becoming eligible for HDC (set at one quarter of the sentence by section 48(2)). This could be done by referring instead to a particular length of time served or by substituting a proportion of a prisoner’s sentence. Subsection (4) clarifies that the provisions in section 3AA of the 1993 Act do not place the Parole Board under any duty to make a decision on parole, in relation to a long term prisoner, by a particular date.

Section 49 – Release timed to benefit re-integration

177. Section 49 makes a change to replace the word “days” with “working days” in section 26C(3) of the 1993 Act with the effect that the release of a prisoner timed to benefit reintegration can be brought forward by two working days rather than two days.

Section 50 – Representations by certain recalled prisoners

178. Section 50(2) amends section 17A of the 1993 Act to remove the previous grounds for recall from HDC and instead makes provision that a licence can be revoked and a person recalled if it is expedient to do so in the public interest.
179. Section 50(3) amends section 17A of the 1993 Act in relation to the recall of prisoners released on HDC. Section 50(3) inserts a new subsection (2A) into section 17A to provide that a person must make any written representations to the Parole Board, concerning the revocation of their licence and recall to prison, within six months of being informed of the decision, or later if allowed by the Parole Board on cause shown by the person.
180. Section 50(4) amends section 17A of the 1993 Act to make it clear that if the Parole Board cancel the revocation of a person’s licence, the recall remains effective and Scottish Ministers must consider whether the person should again be released under section 3AA.

Section 51 – Frequency of review of particular decisions

181. Section 51 amends the 1993 Act to make provision in relation to reviews of the consideration for initial release of determinate sentence prisoners, who have their case considered by the Parole Board, and any further consideration for release where the prisoner's licence has been revoked and the prisoner's case has subsequently been considered by the Parole Board.
182. Subsection (2) amends section 3A of the 1993 Act (re-release of prisoners serving extended sentences) to provide that extended sentence prisoners, who have had their licence revoked and been returned to custody, must be given written notification of the process involved in having their case referred to the Parole Board.
183. Subsection (3) inserts a new section 3B into the 1993 Act to provide a new review process which applies to all determinate sentence prisoners who have their case considered by the Parole Board, with the exception of recalled extended sentence prisoners. New section 3B(2) and (3) provides that a relevant determinate sentence prisoner is entitled to have a review of the recommendation not to be released from the sentence within 12 months of the date of that decision. New section 3B(4) and (5) provides that a determinate sentence prisoner (not including those subject to an extended sentence) is entitled to have a review of the decision not to release them, following the revocation of the prisoner's licence under section 17 of the 1993 Act, within 12 months of the date of their return to prison. In both scenarios, it is for the Parole Board to fix a date to review the prisoner's case within the 12 month period.
184. New section 3B(7) provides for exceptions to this automatic annual review of a determinate sentence prisoner's case. These are: (a) where the prisoner has less than 12 months of their sentence to serve following the decision not to release them; or (b) where the prisoner has received a further custodial sentence and is not eligible for release from the other matter until after the review date. In this instance, the Parole Board will postpone their scheduled consideration of the case and fix a date for consideration of the case at the earliest point the prisoner would be eligible for release on all matters currently being served.
185. New section 3B(8) provides that the Parole Board must provide the determinate sentence prisoner with reasons for a decision not to recommend release of the prisoner from the sentence in the first instance. It also provides that determinate sentence prisoners, subject to the new review process, must be given written notification of their entitlement to a review.

Section 52 – Parole Board decisions: consideration of impact on prisoner's family

186. Section 52 inserts a new subsection 4B into section 20 of the 1993 Act. This provides specific reference that the Parole Boards Rules of procedure may include provision about the Parole Board's consideration of the "likely impact" of any of its decisions on a prisoners' family.

Section 53 – Re-release after revocation of licences generally

187. Section 53(3)(a) amends section 17(2) of the 1993 Act so as to provide that the Scottish Ministers must provide reasons for the revocation of a person's licence to that person on their return to prison rather than when the licence is revoked.
188. Section 53(3)(b) also amends section 17(4) of the 1993 Act in relation to the revocation of a prisoner's licence under section 17 of that Act. Section 53 removes the word "immediate" in relation to a direction to release a prisoner on licence by the Parole Board under that section, following the consideration of the prisoner's case. Section 17(4) is further amended to provide that the Scottish Ministers should give effect to any direction to release a prisoner on licence "without undue delay".

189. As a consequence of removing the word 'immediate' from section 17(4), subsection (2) removes the word 'immediately' from subsection (3)(b) of section 10A of the 1993 Act.

Section 54 – Long-term prisoners due for removal from the UK

190. Section 54 amends section 1 and 9 of the 1993 Act concerning long-term prisoners who are subject to removal from the UK. Section 54 provides that it will be the Parole Board who will recommend to the Scottish Ministers if this category of prisoner should be released on licence. Where such a recommendation is made, this will be binding on Scottish Ministers. This amendment removes the Scottish Ministers from the decision to release this category of prisoner.

Section 55 – Temporary release on licence under prison rules

191. Section 55 amends the Prisons (Scotland) Act 1989 to make temporary release a form of release on licence.

Section 56 – Co-operation between public authorities

192. Section 56 amends the Management of Offenders (Scotland) Act 2005 so that Scottish Ministers, local authorities, the Scottish Courts and Tribunal Service and the chief constable of the Police Service of Scotland, have a duty to cooperate with one another in carrying out their respective functions in relation to relevant persons as defined in the 2005 Act (such co-operation may include exchange of information).

Section 57 – Operating protocol for release on licence under section 3AA of the 1993 Act

193. Section 57 inserts a new section into the 1993 Act which places an obligation on Scottish Ministers to produce a document describing the processes and procedures which underpin release on licence under section 3AA.
194. Subsection (1) sets out that such description should cover: the process of risk assessment prior to release, the factors taken account of in such risk assessment, the procedures for monitoring a prisoner while released, the process for investigating a suspected failure to comply with a licence condition and the process under which a licence is revoked and a prisoner is recalled.
195. Subsection (2) places a requirement on Scottish Ministers that the document produced under subsection (1) is kept under review and is revised to reflect changes in the things it describes.
196. Subsection (3) places a requirement on Scottish Ministers that: the Scottish Courts and Tribunal Service, the Parole Board, the chief constable of the Police Service of Scotland, local authorities and the Risk Management Authority, are consulted in the preparation of the first version or a revised version of the document.
197. Subsection (4) places a requirement on Scottish Ministers to make the document publically available and must lay a copy of it before the Scottish Parliament.
198. Subsection (5) places a requirement on Scottish Ministers to lay the first version of the document before the Scottish Parliament within 6 months of Royal Assent.

Section 58 – Parole Board recommendations: publication of test

199. Section 58 inserts a new subsection 3B into section 1 of the 1993 Act which requires the Parole Board to publish, by whatever means it sees fit, the test that it will apply in making a recommendation to release a long-term prisoner under subsection (3) of section 1 of the 1993 Act.

Section 59 – Offence of remaining unlawfully at large

200. Section 59 makes provision for a new offence of remaining unlawfully at large by inserting into the Prisons (Scotland) Act 1989 (“the 1989 Act”) new sections 32A to 32D.
201. New section 32A of the 1989 Act makes it an offence for a person who has been deemed to be unlawfully at large under the 1989 or 1993 Acts to remain unlawfully at large. It also sets out the maximum penalties for that offence.
202. New section 32B of the 1989 Act provides that, in proceedings for the unlawfully at large offence, the fact that a person has been deemed to be unlawfully at large can be evidenced by a document certifying that fact which is signed and dated by the Scottish Ministers.
203. New section 32C of the 1989 Act explains what constitutes remaining unlawfully at large for the purposes of the offence in section 32A. A person on temporary release from prison remains unlawfully at large if, having been notified of the period of their temporary release, the requirement to return to prison on the expiry of that period and the consequences of a failure to return to prison, they fail to return to prison on the expiry of the temporary release. A person otherwise remains unlawfully at large if they are notified of having been deemed to be unlawfully at large and fail to return to prison as soon as possible thereafter. In both cases, the person must take all necessary steps to return to prison and the person does not remain unlawfully at large if they have a reasonable excuse for their failure to return to prison. Notification can be given orally or in writing, must contain the information listed in section 32C(4) and can be deemed to have taken place where written notice is sent or delivered to the person’s address.
204. New section 32D of the 1989 Act provides definitions of the terms used in the preceding sections.

Section 60 – Arrest where unlawfully at large

205. Section 60 amends section 40 of the 1989 Act to clarify the powers of a constable (or prison officer) to arrest a person who is unlawfully at large. Section 60(2) amends section 40 so as to provide that a person who is deemed to be unlawfully at large from a period of temporary release is deemed to be unlawfully at large in general and not just for the purposes of section 40.
206. Section 60(3) amends section 40A of the 1989 Act to provide that a warrant to arrest a person who is unlawfully at large can only be sought under that section by a constable. It also adds subsection (1A) to section 40A to provide that a warrant granted under that section confers a power to enter and search premises, and to use reasonable force in doing so.
207. Section 60(5) amends section 9C(4) of the 1993 Act (as nominally inserted by paragraph 4 of schedule 6 of the Custodial Sentences and Weapons (Scotland) Act 2007) so as to provide that a person who is deemed to be unlawfully at large under section 9C(4) (re-entry into United Kingdom of prisoner removed from prison early) is deemed to be unlawfully at large in general and not just for the purposes of section 40 of the 1989 Act.