



# Management of Offenders (Scotland) Act 2019 2019 asp 14

## PART 4

PRISONERS: CONTROL OF RELEASE, BEING UNLAWFULLY AT LARGE, ETC.

### *Persons unlawfully at large*

#### **59 Offence of remaining unlawfully at large**

- (1) The Prisons (Scotland) Act 1989 is amended as follows.
- (2) After section 32 there is inserted—

#### *“Remaining unlawfully at large*

##### **32A Offence where unlawfully at large**

- (1) A person commits an offence if, having been deemed to be unlawfully at large by virtue of—
  - (a) section 17(5) or 17A(6) of the Prisoners and Criminal Proceedings (Scotland) Act 1993,
  - (b) section 28(7) of this Act, or
  - (c) section 40(4) of this Act,the person remains unlawfully at large.
- (2) A person who commits an offence under subsection (1) is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

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### **32B Certification of being unlawfully at large**

- (1) Subsections (2) and (3) relate to proceedings for an offence under section 32A(1).
- (2) A qualifying document is sufficient evidence of the fact that a person has been deemed to be unlawfully at large by virtue of a particular section mentioned in section 32A(1).
- (3) A document is a qualifying document if it—
  - (a) certifies with respect to the person, by reference to the particular section mentioned in section 32A(1)—
    - (i) the matter of being deemed to be unlawfully at large, and
    - (ii) the date from which the deeming took effect, and
  - (b) bears to be signed and dated by or on behalf of the Scottish Ministers.

### **32C Meaning of remaining unlawfully at large**

- (1) Section 32A(1) is to be construed as provided for in (as applicable)—
  - (a) subsection (2), or
  - (b) subsection (3) (as read with subsections (4) to (7)).
- (2) In a case of a person to whom section 32A(1)(c) relates, the person remains unlawfully at large if the person—
  - (a) has been, orally or in writing—
    - (i) informed of the period of temporary release that is the subject of the person's licence, and
    - (ii) warned of the requirement to return to prison after the expiry of the period and of the offence and punishment available for failing to do so, and
  - (b) without reasonable excuse, fails to take all necessary steps in order to return to prison as soon as possible after the period of temporary release expires.
- (3) In a case of a person to whom section 32A(1)(a), (b) or (c) relates, the person remains unlawfully at large if the person—
  - (a) is given notification of the matter of being deemed to be unlawfully at large, and
  - (b) without reasonable excuse, fails to take all necessary steps in order to return to prison as soon as possible after notification of the matter is given to the person.
- (4) Notification of the matter to a person is to, as far as practicable—
  - (a) state the date from which the matter has arisen,
  - (b) state that the person has been recalled to prison (and record the reason for recall), and
  - (c) state—
    - (i) that the person must take all necessary steps in order to return to prison at the relevant time (as described in accompanying words), and

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- (ii) that prosecution for an offence punishable by imprisonment or a fine (or both) could result if the person fails to do so.
- (5) Notification of the matter is given to a person where the person—
  - (a) is actually notified of the matter orally or in writing, or
  - (b) is to be regarded as notified of the matter.
- (6) A person is to be regarded as notified of the matter if—
  - (a) written notice of the matter—
    - (i) is sent or delivered to an appropriate address,
    - (ii) prescribes a specific period for the purposes of this subsection, and
    - (iii) bears to be signed and dated by or on behalf of the Scottish Ministers, and
  - (b) the specific period so prescribed in the notice expires.
- (7) An appropriate address is—
  - (a) an address at which the person is, in accordance with the person's licence, permitted to reside or stay, or
  - (b) an address nominated, in accordance with the person's licence, for the purposes of this section.

### **32D Definition of associated expressions**

- (1) This section defines certain expressions used in section 32C.
- (2) A reference to a licence is to a licence under which a person is released from prison under the licence provisions.
- (3) A reference to prison is to such prison or other institution from which a person can be released on licence under the licence provisions.
- (4) Here, the licence provisions are—
  - (a) section 22 of this Act,
  - (b) rules for temporary release made under section 39 of this Act, or
  - (c) Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993.”.

## **60 Arrest where unlawfully at large**

- (1) The Prisons (Scotland) Act 1989 is amended as follows.
- (2) In section 40—
  - (a) in subsection (1), after the word “required” there is inserted “or liable”,
  - (b) in subsection (4), for the words “For the purposes of this section, a” there is substituted “A”,and the title of section 40 becomes “Arrest of and rules for absent prisoners”.
- (3) In section 40A—
  - (a) in subsection (1), after the word “application” there is inserted “by a constable”,
  - (b) after subsection (1) there is inserted—

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- “(1A) A warrant for a person’s arrest under this section confers power on a constable—
- (a) to enter and search any premises or other places specified in the warrant, and
  - (b) to use reasonable force in doing so.”.
- (4) The Custodial Sentences and Weapons (Scotland) Act 2007 is amended as follows.
- (5) In paragraph 4 of schedule 6, in the provision numbered as if inserted as section 9C(4) of the 1993 Act, the words “for the purposes of section 40 of the [Prisons \(Scotland\) Act 1989 \(c.45\)](#) (persons unlawfully at large)” are repealed.